

Memorandum



City Manager's Office

Date: November 22, 2016

To: Mayor and Councilmembers

From: Ken Jones, Deputy City Manager, CFO

Subject: The process for proposing modifications to the Model City Tax Code

The City Council requested that staff add an item to an Issue Review Session agenda regarding the process to add a local option to the Model City Tax Code (I believe the issue that started the conversation was an added tax on sugary drinks by cities in other states). The item will appear on your December 1st Issue Review Session agenda.

Arizona's Model City Tax Code (MCTC) is maintained by the Arizona Department of Revenue (ADOR) and adopted by individual cities and towns to provide uniformity while maintaining a certain level of local control. "Model options" and "local options" are contained within the MCTC, providing flexibility to cities and towns. Tables are attached that show the model options and local options currently being exercised by various municipalities.

Proposed changes to the code, including the addition of new local options, are reviewed by the Unified Audit Committee and approved by the Municipal Tax Code Commission. If the City Council directs staff to pursue a new local option to the MCTC, staff will draft a proposal and bring it back to the City Council for review and approval. I presume any proposal would involve the ability to tax different products at a rate other than the City's standard transaction privilege tax rate. The proposal would then be presented to the Unified Audit Committee, which is a statutorily-established body that meets regularly at the offices of the League of Arizona Cities and Towns. The proposal, along with the recommendation of the Audit Committee would then be forwarded to the Model City Tax Code Commission for consideration.

If the proposed MCTC option is adopted by the Commission, it would then be available for Tempe and other cities to incorporate into their local tax structure. However, if the City Council wanted to increase the transaction privilege tax on specific items by adopting the local option, I believe it would require a vote of Tempe residents to change the existing tax rate.

Following are statutory excerpts related to the MCTC and the process for recommending changes, including local options. The section highlighted in red font relates to recommendations made by individual cities and towns:

2016 Arizona Revised Statutes
Title 42 - Taxation
§ 42-6052 Municipal tax code commission

Universal Citation: [AZ Rev Stat § 42-6052 \(2016\)](#)

42-6052. Municipal tax code commission

A. The municipal tax code commission is established consisting of the director of the department of revenue, or the director's representative, as an ex officio member without the power to vote and nine members who are mayors or members of the governing bodies of cities or towns that have adopted the model city tax code and who are appointed as follows:

1. Five members appointed by the governor.
2. Two members appointed by the president of the senate.
3. Two members appointed by the speaker of the house of representatives.

B. No more than two members of the commission may be from the same city or town. The commission shall annually elect a chairman from among its members. Appointive members shall serve terms of three years. Members of the commission are not eligible for compensation for their services.

C. The commission shall meet on the second Friday of every other month unless the chairman determines that a meeting is unnecessary due to a lack of issues for the commission to consider. The commission may hold additional meetings on the call of the chairman or at the request of four or more of its members but the commission must give at least two weeks' notice of the meeting. The department of revenue shall maintain a list of recipients to mail meeting notices to, mail required notices and provide staff support and meeting accommodations for the commission.

D. The commission shall prepare an annual report and deliver the report to the governor, the president of the senate and the speaker of the house of representatives before January 1 in each year.

2016 Arizona Revised Statutes
Title 42 - Taxation
§ 42-6054 Modifications to model city tax code; notice and hearing

Universal Citation: [AZ Rev Stat § 42-6054 \(2016\)](#)

42-6054. Modifications to model city tax code; notice and hearing

A. If a city or town adopts the model city tax code, the city or town shall not adopt any modification or amendment to the code unless the city or town holds a public hearing on the proposed action before the modification or amendment becomes effective.

B. If a city or town that has adopted the model city tax code issues a written notice with respect to an interpretation of any provision of the code or any procedures to be followed under the code, the city or town shall not adopt any modification or amendment to the written notice unless the city or town holds a public hearing on the proposed action before the modification or amendment becomes effective.

C. A city or town that has adopted the model city tax code shall not change the application of the code from audit to audit unless the city or town adopted an amendment or modification to the code.

D. The governing body of the city or town shall publish a notice of the hearing at least fifteen days before the date of the hearing in a newspaper of general circulation in the city or town. At the hearing the governing body shall receive all written and oral comments relating to the proposed action. If, after receiving and considering all comments, the governing body proceeds with the proposed action, the modification or amendment shall not become effective for at least thirty days after the date of the hearing, unless otherwise provided by city charter.

2016 Arizona Revised Statutes

Title 42 - Taxation

§ 42-6053 Official copy of model city tax code; review and comment on proposed changes

Universal Citation: [AZ Rev Stat § 42-6053 \(2016\)](#)

42-6053. Official copy of model city tax code; review and comment on proposed changes

A. The department of revenue shall:

1. Maintain the official copy of the model city tax code.
2. Post the official copy on the department's official website.

B. At least sixty days before adopting any modification or amendment of the model city tax code a city or town shall submit the proposed modification or amendment to the municipal tax code commission for review and recommendation.

C. The commission shall review and comment on language submitted by any city, town or taxpayer for the purpose of describing, defining, deleting, adding or otherwise modifying taxable activities, exemptions, administrative procedures or regulations relating to the model city tax code. The commission may hold public hearings within thirty days after receiving a proposed amendment or modification for the purpose of reviewing and receiving comments on the proposed changes, shall consider any information and testimony presented at the hearing, may require changes to the language presented at the hearing and may require changes to the language presented by the city or town or taxpayer. All changes to the model city tax code must be reflected in the official copy on file with the department of revenue within ten days after the commission's approval. Any changes not reflected in the official copy on file with the department of revenue are void and have no effect.

D. Changes to the model city tax code approved by the commission shall be adopted by all cities and towns. This requirement shall not be construed to prohibit the commission from recommending a model or local option or changes to a model or local option contained in the model city tax code to be adopted only by those cities and towns choosing the option or from approving a change submitted by a city or town that does not apply to any other city or town. The city or town shall not adopt a modification or amendment of any provision of the model city tax code unless it has been approved by the commission.

E. Changes in rates of tax are not subject to review, but within ten days after passage of the ordinance imposing a rate change:

1. The city or town imposing a new or different tax rate shall notify the commission and the department of revenue. Failure of a city or town to notify the commission and, beginning July 1, 2012, the department of revenue renders the new or different tax rate void and has no effect. For the purposes of this subsection, a "new or different tax rate" means the adoption or repeal of a model or local option or any change that increases the amount of tax a taxpayer must pay to a city or town.
2. The change must be reflected in the official copy of the model city tax code. Any change not reflected in the official copy of the model city tax code is void and has no effect.