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JEANNE HICKS, CLERK

BY: J. Blake

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4 Attorneys for Plaintiffs

5 **IN THE SUPERIOR COURT OF ARIZONA**
6 **COUNTY OF YAVAPAI**

8 **JOHN B. CUNDIFF** and **BARBARA C. CUNDIFF**, husband and wife; **BECKY NASH**,
9 a married woman dealing with her separate
10 property; **KENNETH PAGE** and **KATHRYN PAGE**, as Trustee of the Kenneth Page and
11 Kathryn Page Trust,

12 Plaintiffs,
13 vs.

✓ 14 **DONALD COX** and **CATHERINE COX**,
husband and wife,
15 Defendants.

Case No. CV 2003-0399 -

Division 4

**PLAINTIFFS' REPLY TO
DEFENDANTS' RESPONSE
TO PLAINTIFFS' MOTION
IN LIMINE
TO PRECLUDE DEFENDANTS'
INTRODUCTION OF LAY WITNESS
OPINION TESTIMONY**

17 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Katheryn Page, by and
18 through undersigned counsel, hereby replies to Defendants' response to their motion *in limine*
19 requesting this Court for its order precluding Defendants from introducing into evidence lay witness
20 opinion testimony on an ultimate issue of fact in this case.

21 This reply is supported by the following memorandum of points and authorities, attached
22 exhibit, as well as the entire record in this proceeding.

23 RESPECTFULLY SUBMITTED this 29th day of September, 2004.

24 FAVOUR MOORE & WILHELMSSEN, P.A.

25 By: Marguerite Kirk
26 David K. Wilhelmsen
Marguerite Kirk

DIV. 1

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Statement of Case**

3 Plaintiffs moved to preclude Defendants from introducing several lay witnesses they had
4 disclosed in their disclosure statement from testifying in this matter. The basis for the motion *in*
5 *limine* was that, based upon the description of the lay witnesses anticipated testimony provided by
6 Defendants' in their disclosure statement, it was evident that certain witnesses lacked personal
7 knowledge whether there are other business operations in Coyote Springs Ranch. Plaintiffs expressly
8 moved to preclude Christin Bowra; Jeff and Mychel Westra; Wendy Ditterman; Bill Jensen; Kevin
9 Eickleberry; Charles Hildrebrant; and, Sheila Cahill. *Plaintiffs' Motion in Limine, September 9, 2004*
10 *at p.3, lines 11-17; and, at p.3, line 25 through p.4, line 2.*

11 In response, Defendants erroneously argue that Plaintiffs sought to preclude other witnesses
12 from testifying. These lay witnesses include Karrie Decker; Frank and Laura Lamberson; Mike and
13 Karen Wargo; and, RT Contracting Specialists, LLC. However, Plaintiffs' *motion in limine*
14 specifically did not move to preclude these witnesses from testifying at this time. Rather, these
15 witnesses were mentioned in contrast to those other lay witnesses that Plaintiffs have sought to
16 preclude from testifying. *Plaintiffs' Motion in Limine, at p.3, lines 22-24.* As a result of Defendants'
17 counsel's incorrect reading of Plaintiffs' motion, opposing counsel attached several letters from these
18 individuals in an effort to convince the Court that all their lay witnesses have personal knowledge.

19 Defendants further contest the timing of Plaintiffs' motion, calling it premature. Defendants
20 also questioned the basis for Plaintiffs' motion, complaining that Plaintiffs' counsel had failed to
21 contact, interview or depose any of their lay witnesses. Finally, Defendants' counsel, in an untoward
22 allegation, claims that Plaintiffs' motion "completely misstates and misrepresents and [sic]
23 mischaracterizes the expected testimony" of those lay witnesses raised in the motion *in limine*.

24 Separating Defendants' rhetoric from the legal argument presented to this Court reveals that
25 Defendants have failed to raise a cogent argument establishing that the lay witnesses do, indeed, have
26 personal knowledge that would enable them to testify to the matter as disclosed by Defendants in their

1 disclosure statement. Additionally, Defendants attempt to re-characterize Sheila Cahill from a lay to
2 an expert witness in a supplemental disclosure statement “Defendants intend to shortly deliver to
3 Plaintiffs....” (*Defendants’ Response to Motion in Limine, September 23, 2004 at p.4, fn.1*) This
4 recharacterization still fails to cure the problems associated with Ms. Cahill’s testimony. In fact,
5 characterizing Ms. Cahill as an expert witness only confounds Defendants’ arguments and compels
6 a finding that she be precluded from testifying as an expert as well.

7 **II. Defendants’ Lay Witness Testimony Is Properly Excluded**

8 Rule 26.1(a) states that a party is to disclose:

9 (3) The names, addresses, and telephone numbers of any witnesses whom the
10 disclosing party expects to call at trial with *a fair description of the substance of each
witness’ expected testimony.*

11 *Id. (italics added).* The Committee Comment to the 1996 Amendment discussed the specificity
12 required for disclosure of lay witness testimony:

13 ...it is the intent of the rule that parties must disclose the substance of the witness’
14 expected testimony. The disclosure must fairly apprise the parties of the information
15 and opinion known by that person. It is not sufficient to simply describe the subject
16 matter upon which the witness will testify.

17 *Id., Committee Comment to 1996 Amendment at “Rule 26.1(a)(3).”*

18 These comments support the purpose of Arizona’s disclosure rule, which is “the preparation
19 of cases for trial or settlement.” *Bryan v. Riddel, 178 Ariz. 472, 477, 875 P.2d 131, 136 (1994).*
20 Hence, the sooner matters affecting the trial – such as, the admission of lay witness testimony on an
21 issue – are raised and determined by the Court, the more expeditiously and cost-effectively can the
22 focus of the case be narrowed. This in turn promotes “the preparation of cases for trial or settlement.”
23 *Id.; see, Rule 26.1, Ariz.R.Civ.Proc., Court Comment to 1991 Amendment (purpose of mandatory
24 disclosure include reducing cost, expense and delay in litigation).* Thus, Defendants’ objections to
25 the contrary, complaining that Plaintiffs’ motion is “premature” are belied by the very intent of
26 Arizona’s disclosure rule.

With respect to lay witnesses Bowra, Westra, Ditterman, Jensen, Eickleberry, Hildebrant and

1 Cahill, Defendants' "fair description of the substance of each witness' expert testimony" was that each
2 would testify to *other* landowners' alleged violations of the recorded Declaration of Restrictions,
3 "including the business use of those properties." *Defendants' Rule 26.1 Disclosure Statement at §III*
4 *Witnesses Whom Defendants Expect to Call at Trial, pp. 7-8 (true and correct copy attached as Exhibit*
5 *1 to Plaintiffs' Motion In Limine).*

6 Equally unsound is Defendants' contention that Plaintiffs' are amiss in filing their motion *in*
7 *limine* as their counsel have failed to contact any of the named lay witnesses, and has not deposed
8 these individuals. Again, the purpose of mandatory disclosure, with specificity, is obviously aimed
9 at relying upon the disclosing party's description of the intended witnesses testimony. Moreover,
10 Arizona's rules of discovery allow depositions as of right only of parties, expert witnesses, and
11 custodians of records. The purpose is "to address the problem of overuse of expensive and
12 unnecessary depositions..." *Rule 30(a), Ariz.R.Civ.Proc., at Committee Comment to 1991 Amendment.*
13 Rules 26(a)(3) and 30(a) operate in tandem in an effort to reduce the cost of litigation, and expedite
14 discovery in cases. Accordingly, a motion *in limine* is not required to be based upon a witness
15 interview or deposition.

16 Turning to the legal basis for Plaintiffs' motion *in limine*, Defendants have failed to provide
17 the basis that each of the lay witnesses raised in the motion has the requisite personal knowledge on
18 the matter they will purportedly testify to at trial as required under Rule 602, Ariz.R.Evid. Instead,
19 Defendants have sought to obscure the deficiencies in their legal argument by attaching a number of
20 copies of letters of support from individuals that were not named in Plaintiffs' motion *in limine*. A
21 cursory review of these letters further mandates that the authors often lack personal knowledge,
22 instead relying on inadmissible hearsay for their opinion. Notwithstanding this evidentiary hurdle,
23 the letters fail to substantiate the personal knowledge of the lay witnesses Plaintiffs have moved to
24 have precluded from testifying at trial.

25 Similarly, Defendants have failed to establish *how* testimony from these witnesses would assist
26 the trier of fact in a clear understanding of the facts in the case. *Rule 701(b), Ariz.R.Evid.* Rather, the

1 lay witnesses Defendants have disclosed would be providing inadmissible opinion testimony (some
2 of which is apparently based on inadmissible hearsay) as to facts which are neither complex nor
3 beyond the ability of a lay juror to understand. Absent meeting this criteria, these witnesses are
4 foreclosed from providing opinion testimony as to the number and extent of other alleged business
5 operations in the subdivision. Permitting these lay witnesses to testify would be tantamount to
6 allowing testimony from a witness on a conclusion of law; that is, whether other property owners are
7 indeed operating business enterprises on their property which constitutes a *violation of the recorded*
8 *restrictions*.

9 **III. Defendants' Newly Disclosed Expert Witness Testimony**

10 **is Foreclosed by Rule 702, Ariz.R.Evid.**

11 In an effort to make an end-run around Rules 602 and 701, Ariz.R.Evid., Defendants have now
12 decided to re-characterize Sheila Cahill from a lay witness to an expert witness.¹ In doing so,
13 Defendants admit that Ms. Cahill “does not live in Coyote Springs Ranch,” and thus cannot testify as
14 an individual landowner in the subdivision with personal knowledge of alleged business operations
15 in the area. However, even as an expert witness, Ms. Cahill is precluded from testifying in accordance
16 with Rule 702.

17 That rule of evidence governs the admissibility of expert witness testimony, and provides:

18 If scientific, technical, or other specialized knowledge will assist the trier of fact *to*
19 *understand the evidence or to determine a fact in issue*, a witness qualified as an expert
20 by knowledge, skill, experience, training, or education, may testify thereto in the form
21 of an opinion or otherwise.

22 *Id. (emphasis added)*. Expert testimony is admissible where the fact or issue is beyond the knowledge
23 of the common person. The Court of Appeals adopted this test for the admission of expert testimony:

24 Expert testimony is not “a mechanism for having someone of elevated education or

25 ¹It should be noted that Defendants' recent disclosure of Ms. Cahill as an “expert witness”
26 comes only after Plaintiffs expressly stated in their motion *in limine* to preclude Ms. Cahill from
testifying as a lay witness, that she was not identified as an expert in Defendants' disclosure statement.
Plaintiffs' Motion in Limine, at p.4, line 25.

1 station engage in a laying on of the hands, placing an imprimatur upon the justice of
2 one's cause," but rather "is a device allowing the trier to receive information, beyond
its competence, useful to a resolution of the dispute before it."

3 *Wal-Mart v. Industrial Comm'n of Arizona*, 183 Ariz. 145, 147, 901 P.2d 1175, 1175 (App. Div.2
4 1995) (internal citation omitted).

5 Defendants go to great lengths to discuss how Ms. Cahill arrived at her opinion that other
6 subdivision landowners are operating businesses in violation of the recorded Declaration of
7 Restrictions. Yet Defendants side-step the legal test for expert opinion testimony. First, Defendants
8 have not established that recognition of a business operation is somehow beyond the grasp of the
9 layperson. Nor have Defendants set forth any basis by which Ms. Cahill is an expert in determining
10 what is or is not a "business enterprise" in violation of the recorded covenant. While Ms. Cahill may
11 have gone to great lengths to investigate the presence of alleged other businesses in the area, none of
12 these measures requires "scientific, technical, or other specialized knowledge...."² *Rule 702*,
13 *Ariz.R.Evid.* Reaching a conclusion as to the *number* of businesses that may be operating in the area
14 requires no more than rudimentary mathematical skills – hardly the type of specialized knowledge that
15 one expects from an expert witness.

16 Therefore, Ms. Cahill's purported expert testimony would not assist lay jurors with
17

18 ²One of the measures undertaken by Ms. Cahill that Defendants recite in their response was
19 her "inspect[ion of] the County records in search of Transaction Privilege Tax Licenses being owned
20 by people [supposedly] transacting business on their properties" in the subdivision. *Defendants'*
Response to Motion In Limine, at p.4, lines 13-15.

21 The Arizona Department of Revenue application, available at the department's website,
22 requires a *mailing address* for the taxpayer, which may be the taxpayer's "home address, corporate
23 headquarters, or accounting firm's address, etc." *Arizona Joint Tax Application*, p.1 at *Section A*; and,
24 *at Instructions, Section A, Items 8 and 9 (a true and correct copy attached hereto and incorporated*
by reference herein as Exhibit A).

25 The same fallacy of Ms. Cahill's investigation of corporate records is clearly apparent, as the
26 Arizona Corporation Commission permits the use of addresses for statutory agents, rather than the
actual business location.

1 understanding the facts at issue, since the dispositive facts in this case are not beyond the common
2 knowledge and experience of lay individuals. *State v. Logan, 199 Ariz. 256, 17 P.3d 101 (App. Div.1*
3 *2000), rev. granted, vacated, 200 Ariz. 564, 30 P.3d 631 (where juror as competent as expert to*
4 *determine fact in issue, it is error to admit expert opinion testimony as it will be of no assistance to*
5 *the trier of fact.)*

6 **IV. Conclusion**

7 Defendants are legally proscribed by Rules 602 and 701, Ariz.R.Evid., from introducing lay
8 witness testimony from Bowra, Westra, Ditterman, Jensen, Eickleberry, Hildebrant and Cahill, as to
9 violations of any of the recorded covenants by any landowner in the subdivision. None of these lay
10 witnesses disclosed by Defendants has the requisite personal knowledge to testify as to violations of
11 any covenant by any landowner. More importantly, Defendants are disingenuously attempting to
12 utilize lay opinion testimony on an ultimate issue of fact or conclusion of law. Clearly, this tactic is
13 in obvious violation of Rule 701.

14 Furthermore, Defendants' apparent disclosure now of Ms. Cahill as an expert witness is fatally
15 flawed. Defendants have failed to establish that expert testimony is necessary to assist the trier of fact
16 in identifying a business operation, or the total number of alleged businesses, operating in Coyote
17 Springs Ranch in violation of the recorded covenants and restrictions. Laypersons are quite capable
18 of recognizing whether property is used for a business purpose or a residential purpose.

19 Therefore, Plaintiffs respectfully request that this Court enter its order precluding Defendants
20 from introducing as witnesses at time of trial Christin Bowra; Jeff and Mychel Westra; Wendy
21 Ditterman; Bill Jensen; Kevin Eickleberry; Charles Hildebrant; and, Sheila Cahill, to testify on those
22 ultimate issues of fact and conclusions of law as disclosed by Defendants.

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DATED this 29th day of September, 2004.

FAVOUR MOORE & WILHELMSSEN, P.A.

By: Marguerite Kirk
David ~~K~~. Wilhelmsen
Marguerite Kirk
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Attorneys for Plaintiffs

Original of the foregoing
filed this 29th day of September, 2004
with:

Clerk, Superior Court of Arizona
Yavapai County
Prescott, Arizona

A copy hand-delivered this 29th day
of September, 2004 to:

Honorable David L. Mackey
Division One
Superior Court of Arizona
Yavapai County
Prescott, Arizona

and, a copy hand-delivered this
29th day of September, 2004 to:

Mark Drutz
Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Prescott, Arizona 86302
Attorneys for Defendants Cox

By: Marguerite Kirk
Marguerite Kirk



ARIZONA JOINT TAX APPLICATION

IMPORTANT: See attached instructions before completing this application. For licensing questions on Transaction Privilege, Withholding or Use call (602) 542-4576 or 1-800-634-6494 (from area codes 520 and 928). For questions on Unemployment Tax call (602) 248-9396 or e-mail uit.status@azdes.gov Please return complete application to: **License & Registration Section, Department of Revenue, 1600 W Monroe, Phoenix AZ 85007.**

**To complete this online,
go to www.aztaxes.gov**

*Incomplete applications will not be processed.
All required information is designated with asterisk **

Section A: Taxpayer Information (Please print legibly or type the information on this application.)							
1. License Type (Please check all that apply) * <input type="checkbox"/> Transaction Privilege Tax (TPT) <input type="checkbox"/> Withholding/Unemployment Tax (if hiring employees) <input type="checkbox"/> Use Tax <input type="checkbox"/> TPT For Cities ONLY		2. Type of Ownership * <input type="checkbox"/> Individual / Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Corporation State of Inc. _____ Date of Inc. _____ <small>Tax exempt organizations must attach a copy of the Internal Revenue Service letter of determination</small>				<input type="checkbox"/> Sub-Chapter S Corporation <input type="checkbox"/> Association <input type="checkbox"/> Trust <input type="checkbox"/> Government <input type="checkbox"/> Estate <input type="checkbox"/> Joint Venture <input type="checkbox"/> Receivership	
3. Federal Employer Identification Number (Required for Employers and Entities other than Sole Proprietors) or Social Security Number *							
4. Legal Business Name / Owner / Employing Unit *							
5. Business or "Doing Business As" Name *			6. Business Phone Number *		7. Fax Number		
			()		()		
8. Mailing address (Street, City, State, ZIP code) *					9. Country		
10. Email Address			11. Is your business located on an Indian Reservation? <input type="checkbox"/> Yes If yes, _____ (See Section G for listing of Reservations) <input type="checkbox"/> No				
12. Physical Location of Business (Street, City, State, ZIP code) *					13. County		
For additional business locations, complete Section B-12							
14. Are you a construction contractor? * <input type="checkbox"/> Yes (See Bonding Requirements below) <input type="checkbox"/> No			15. Did you acquire all or part of an existing business? * <input type="checkbox"/> Yes If yes, you must complete the Unemployment Tax Information (Section D) <input type="checkbox"/> No				
Bonding Requirements: Prior to the issuance of a Transaction Privilege Tax license, new or out of state contractors are required to post a Taxpayer Bond for Contractors, unless the Contractor qualifies for an exemption from the bonding requirement. The primary type of contracting being performed determines the amount of bond to be posted. Bonds may also be required from applicants who are delinquent in paying Arizona taxes or have a history of delinquencies. For more information on bonding, please see the "Taxpayer Bonds" publication, which is available online or at the Department of Revenue offices.							
16. Description of Business (Must include type of merchandise sold or taxable activity; for employers, the type of employment) *							
17. NAICS Code: (Select at least one. Go to www.aztaxes.gov for a listing of codes)							
18. Identification of Owner (and Spouse if married) Partners, Corporate Officers, Members (or Managing Members) or Officials of this employing unit							
A. Name (Last, First, MI) *	B. Soc. Sec No *	C. Title *	D. % Owned *	E. Complete Residence Address *	F. Phone Number *		
					()		
					()		
					()		
					()		
If the owner, partners, corporate officers or combination of partners or corporate officers, members and/or managing members own or control more than 50% of another business in Arizona, attach a list of the businesses, percentages owned and unemployment insurance account numbers.							
THIS BOX FOR AGENCY USE ONLY							
<input type="checkbox"/> New Acct No. _____		LIAB _____		DLN _____			
<input type="checkbox"/> Change Start _____		LIAB Est. _____		TPT _____			
<input type="checkbox"/> Revise				WH _____			
<input type="checkbox"/> Reopen S/E Date _____							

Section B: Transaction Privilege Tax (TPT)														
1. Date Business Started in Arizona *				2. Date Sales Began *				3. What is your anticipated annual income for your first twelve months of business?						
4. Business Classes (Select at least one See Section H for a listing of business classes on page 4) *														
5. TPT Filing Method <input type="checkbox"/> Cash Receipts <input type="checkbox"/> Accrual				6. Does your business sell tobacco products? <input type="checkbox"/> Yes If yes, <input type="checkbox"/> Retailer OR <input type="checkbox"/> Distributor <input type="checkbox"/> No				7. Does your business sell new motor vehicle tires or vehicles? <input type="checkbox"/> No <input type="checkbox"/> Yes (You will be required to file a TR-1.)						
8. Are you a seasonal filer? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, please check the months in which you intend to do business:												
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
9. Location of Tax Records (Street Address, City, State and ZIP code) Do not use PO Box or Route No. *														
10. Name of Company or person to Contact								11. Phone Number ()						
For additional locations, complete the following: (if more space is needed, please attach additional sheets)														
12. "Doing Business As" Name for this Location										13. Phone Number ()				
14. Physical Location Address (Do not use PO Box or Route No.)														
15. City						16. County			17. State		18. ZIP code			
19. "Doing Business As" Name for this Location										20. Phone Number ()				
21. Physical Location Address (Do not use PO Box or Route No.)														
22. City						23. County			24. State		25. ZIP code			
Section C: Program Cities / License Fees Below is a list of cities and towns licensed by the Arizona Department of Revenue.														
City/Town	Code	Fee	No. of Loc	Total	City/Town	Code	Fee	No. of Loc	Total	City/Town	Code	Fee	No. of Loc	Total
Apache Junction	AJ	2.00			Goodyear	GY	5.00			Sahuarita	SA	5.00		
Benson	BS	5.00			Guadalupe	GU	2.00			San Luis	SU	2.00		
Bisbee	BB	1.00			Hayden	HY	5.00			Sedona	SE	2.00		
Buckeye	BE	2.00			Holbrook	HB	1.00			Show Low	SL	2.00		
Bullhead City	BH	2.00			Huachuca City	HC	2.00			Sierra Vista	SR	1.00		
Camp Verde	CE	2.00			Jerome	JO	2.00			Snowflake	SN	2.00		
Carefree	CA	10.00			Kearny	KN	2.00			Somerton	SO	2.00		
Casa Grande	CG	2.00			Kingman	KM	2.00			South Tucson	ST	2.00		
Cave Creek	CK	20.00			Lake Havasu	LH	5.00			Springerville	SV	5.00		
Chino Valley	CV	2.00			Litchfield Park	LP	2.00			St. Johns	SJ	2.00		
Clarkdale	CD	2.00			Mammoth	MH	2.00			Superior	SI	2.00		
Clifton	CF	2.00			Marana	MA	5.00			Surprise	SP	10.00		
Colorado City	CC	2.00			Marcopa	MP	2.00			Taylor	TL	2.00		
Coolidge	CL	2.00			Miami	MM	2.00			Thatcher	TC	2.00		
Cottonwood	CW	2.00			Oro Valley	OR	12.00			Tolleson	TN	2.00		
Douglas	DL	5.00			Page	PG	2.00			Tombstone	TS	1.00		
Duncan	DC	2.00			Paradise Valley	PV	2.00			Wellton	WT	2.00		
Eagar	EG	10.00			Parker	PK	2.00			Wickenburg	WB	2.00		
El Mirage	EM	15.00			Patagonia	PA	25.00			Willcox	WC	1.00		
Eloy	EL	10.00			Payson	PS	2.00			Williams	WL	2.00		
Florence	FL	2.00			Pima	PM	2.00			Winkelman	WM	2.00		
Fountain Hills	FH	2.00			Pinetop/Lakeside	PP	2.00			Winslow	WS	10.00		
Fredonia	FD	10.00			Prescott Valley	PL	2.00			Youngtown	YT	10.00		
Gila Bend	GI	2.00			Quartzsite	QZ	2.00			Yuma	YM	2.00		
Gilbert	GB	2.00			Queen Creek	QC	2.00							
Globe	GL	2.00			Safford	SF	2.00							
Please Note: City fees are subject to change (go to our website for updates). For cities not listed above, please contact the cities directly. Your license will not be issued until all fees are paid.										Total of City Fees:				
										State Fees \$12.00 X _____ Number of Locations:				
										TOTAL Fees:				

Section D: Withholding/Unemployment Tax Information						
1. Are you liable for Federal Unemployment Tax? <input type="checkbox"/> Yes If yes, what was the first year of liability? <input type="checkbox"/> No Year _____	2. Are individuals performing services for you excluded from withholding or unemployment tax? <input type="checkbox"/> Yes If yes, please explain: <input type="checkbox"/> No					
3. Do you have an IRS Ruling that grants an exclusion from Federal Unemployment Tax? <input type="checkbox"/> Yes If yes, please attach a copy of the Ruling Letter. <input type="checkbox"/> No	4. Date Employees First Hired. * 	5. Do you have or have you previously had an Unemployment Tax Number? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, Business Name _____ Unemployment Number _____				
6. Record of Arizona wages paid by calendar quarter for current and preceding calendar year						
YEAR	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER		
7. Weekly record of number of persons performing services in Arizona for current and preceding calendar year.						
YEAR	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
If you acquired all or part of an existing Arizona business, please complete this section						
8. Date Acquired *	9. Acquired * <input type="checkbox"/> All <input type="checkbox"/> Part "To apply for a portion of the account and its corresponding tax rate, you must file an Application & Agreement for Severable Portion Experience Rating Transfer (UC-247) within 180 days of acquiring the business."			10. Acquired by * If other, please explain <input type="checkbox"/> Purchase <input type="checkbox"/> Lease <input type="checkbox"/> Other		
Previous Owner Information						
11. Name(s) of Previous Owner(s) *			12. Business Name of Previous Owner(s) *			
13. Current Mailing Address of Previous Owner(s) (Street, City, State, ZIP code)						
14. Current Telephone Number of Previous Owner(s) ()			15. Unemployment Number of Previous Owner(s)			
Voluntary Election of Unemployment Tax Coverage						
16. The applicant, on behalf of the employing unit, voluntarily elects to assume liability regarding employer beginning January 1 of the current calendar year (or the date employment started, if later) and continuing for not less than two full calendar years to: <input type="checkbox"/> A. Be deemed an employer subject to Title 23, Chapter 4, Arizona Revised Statutes, 23-725 (D), to the same extent as all other employers and extend unemployment tax coverage to my employees although not mandatory, or <input type="checkbox"/> B. Extend coverage to all employees performing services excluded from coverage pursuant to Arizona Revised Statutes, 23-725 (E).						

Section E: AZTaxes.gov Security Administrator (Authorized User)

By electing to register for www.aztaxes.gov you can have online access to account information, and file and pay Arizona transaction, use, and withholding taxes. You also designate authorized users to access these services.

- I Elect to Register to use aztaxes.gov to file and pay online
- I DO NOT Elect to Register to use aztaxes.gov to file and pay online.

1. Authorized Users Last Name	2. Authorized Users First Name
3. Authorized Users Title	4. Authorized Users Social Security Number
5. Authorized Users Email Address	6. Authorized Users Phone Number

Section F: Signature(s) By Individuals legally responsible for the business (required)

This application must be signed by either a sole owner, partners, corporate officer, managing member, the trustee, receiver or personal representative of an estate.

Under penalty of perjury I (we), the applicant, declare that the information provided on this application is true and correct. I (we) hereby authorize the security administrator listed in Section E to access the AZTaxes gov site for the business identified in Section A. This authority is to remain in full force and effect until the Arizona Department of Revenue has received written termination notification from an authorized officer

Type or Print Name	Title	Signature	Date
Type or Print Name	Title	Signature	Date

THIS APPLICATION MUST BE COMPLETED, SIGNED AND RETURNED AS PROVIDED BY ARS § 23-722 Equal Opportunity Employer/Program • This document available in alternative formats by contacting the UI Tax Office.

Section G: Indian Reservation Codes

Indian Reservation (County)	Code	Indian Reservation (County)	Code	Indian Reservation (County)	Code	Indian Reservation (County)	Code
Ak-Chin (Pinal)	PNA	Hopi (Coconino)	COJ	Pascua-Yaqui (Maricopa)	MAN	Tohono O'Odham (Pinal)	PNT
Cocopah (Yuma)	YMB	Hopi (Navajo)	NAJ	Pascua-Yaqui (Pima)	PMN	Tonto Apache (Gila)	GLU
Colorado River (La Paz)	LAC	Hualapai (Coconino)	COK	Salt River Pima-Maricopa (Mar.)	MAO	White Mtn Apache (Apache)	APD
Fort McDowell-Yavapai (Mar)	MAE	Hualapai (Mohave)	MOK	San Carlos Apache (Gila)	GLP	White Mtn Apache (Gila)	GLD
Fort Mohave (Mohave)	MOF	Kaibab-Paiute (Coconino)	COL	San Carlos Apache (Graham)	GRP	White Mtn Apache (Graham)	GRD
Fort Yuma-Quechan (Yuma)	YMG	Kaibab-Paiute (Mohave)	MOL	San Carlos Apache (Pinal)	PNP	White Mtn Apache (Navajo)	NAD
Gila River (Maricopa)	MAH	Navajo (Apache)	APM	San Juan Southern Paiute (Coco.)	COQ	Yavapai Apache (Yavapai)	YAW
Gila River (Pinal)	PNH	Navajo (Coconino)	COM	Tohono O'Odham (Maricopa)	MAT	Yavapai Prescott (Yavapai)	YAX
Havasupai (Coconino)	COI	Navajo (Navajo)	NAM	Tohono O'Odham (Pima)	PMT		

Section H: Business Classes

Business Class	Code	Business Class	Code	Business Class	Code	Business Class	Code
Mining - Nonmetal	002	Commercial Lease	013	Use Tax - Utilities	026	Jet Fuel Tax	049
Utilities	004	Personal Property Rental	014	Rental Occupancy Tax	028	Jet Fuel Use Tax	051
Communications	005	Contracting - Prime	015	Use Tax Purchases	029	Rental Car Surcharge	053/055
Transporting	006	Retail	017	Use Tax from Inventory	030	Jet Fuel Tax > 10 million gallons	056
Private Car - Pipeline	007/008	Service - Metalliferous Mining	019	Telecommunications Devices	033	Use Tax Direct Payments	129
Publication	009	Serverance - Timbering Ponderosa	021	911 Wireless Telecommunications	036	911 Wireline Telecommunications	131
Job Printing	010	Serverance - Timbering Other	022	Contracting - Owner Builder	037	Rental Car Surcharge - Stadium	153
Restaurants and Bars	011	Recreational Vehicle Surcharge	023	Municipal Water	041		
Amusement	012	Transient Lodging	025	Membership Camping	047		

INSTRUCTIONS FOR ARIZONA JOINT TAX APPLICATION

IMPORTANT: You must complete each of the following sections or your application will be returned

USE THIS APPLICATION TO:

- **License New Business:** A new business with no previous owners.
 - **Change Ownership:** If acquiring or succeeding to all or part of an existing business or changing business entity (sole owner to corporation, etc.).
- If you need to update a license, add a business location, or make other changes:** Request an update card or provide a written notification of the change (a form is not necessary). Please include fees of \$12 per location plus applicable city fee(s).

Section A: TAXPAYER INFORMATION

1. LICENSE TYPE

Transaction Privilege Tax (TPT): Anyone involved in an activity taxable under the TPT statutes must apply for a TPT License before engaging in business.

For TPT, you are required to obtain and display a separate license certificate for each business or rental location. This may be accomplished in one of the following ways:

Each location may be licensed as a separate business with a separate license number for purposes of reporting transaction privilege and use taxes individually. Therefore a separate application is needed for each location.

Multiple locations may be licensed under a consolidated license number, provided the ownership is the same, to allow filing of a single tax return. If applying for a new license, list the various business locations as instructed below. If already licensed and you are adding locations, **do not use this application to consolidate an existing license. Please submit update form.**

Withholding & Unemployment Taxes: Employers paying wages or salaries to employees for services performed in the State must apply for a Withholding number & Unemployment number.

Use Tax: Out-of-state vendors (that is, vendors with no Arizona location) making direct sales into Arizona must obtain a Use Tax Registration Certificate. In-state vendors making out-of-state purchases for their own use (and not for resale) must also obtain the Use Tax Registration Certificate.

TPT for cities only: This type of license is needed if your business activity is subject to city TPT that is collected by the state, but the activity is not taxed at the state level. Many of the larger cities in Arizona administer and collect their own privilege taxes. Please contact those cities directly to obtain information regarding licensing requirements.

2. TYPE OF OWNERSHIP

Check as applicable. A corporation must provide the state and date of incorporation.

3. Enter your Federal Employer Identification number.

- Taxpayers are required to provide their taxpayer identification number (TIN) on all returns and documents. A TIN is defined as the federal employer identification number (EIN), or social security number (SSN) depending upon how income tax is reported. The

EIN is required for all employers. A penalty of \$5 will be assessed by the Department of Revenue for each document filed without a TIN.

4. Enter the **Legal Business Name** of the Owner or Employing Unit (Name of corporation as listed in its articles of incorporation, or individual & spouse, or partners, or organization owning or controlling the business)
5. Enter the name of the Business/DBA (**doing business as**). If same as above, enter "same."
6. Enter the **business telephone number** including area code.
7. Enter the **fax number** including area code.
8. and 9.

Accounting and Reporting: If mailing address differs for licenses (for instance withholding and unemployment insurance), please use cover letter to explain.

10. Enter the **e-mail address** (option) for the business or contact person.
11. See section G for listing of **reservation codes** if your business is located on an Indian Reservation.
12. and 13.
Enter the **physical location** of business including county. This can not be a PO Box or Route Number.
14. If you are a **construction contractor**, read the bonding requirements carefully.
15. If you answered yes, you must complete Section D.
16. Describe the major business activity: principal product you manufacture, commodity sold, or services performed. Your description of the business is very important because it determines your transaction privilege tax rate and provides a basis for state economic forecasting.
17. Enter the **North American Industries Classification System (NAICS) code** identified for your business activity.
18. Identify the **owners of the business**. Enter as many as applicable; attach a separate sheet if additional space is needed.

Section B: TRANSACTION PRIVILEGE TAX (TPT)

1. Enter the date the business started in Arizona.
2. Enter **date sales began in Arizona**, or estimate when you plan to begin selling in Arizona.
3. Enter the amount of Transaction Privilege Tax income you can reasonable expect to generate in your first twelve months of business. You will be set up for monthly filing unless your anticipated annual income will result in a tax liability of less than \$1,250 which may qualify for a quarterly filer.
4. For businesses applying for Transaction Privilege and/or Use Tax, enter the applicable **business classes** based on your activity. See Section H for listing of business classes.

5. **Cash/Accrual Methods:** Cash method requires the payment of tax based on sales receipts actually received during the period covered on the tax return. When filing under the accrual method, the tax is calculated on the sales billed rather than actual receipts.
6. Complete as indicated.
7. Sellers of new motor vehicles and motor vehicle tires in the state, for on-road use, are required to report and pay waste tire fees to the Department of Revenue. By checking the box, you will receive form TR-1 on a quarterly basis.
8. If your business is seasonal or a transient vendor, indicate the months in which you intend to do business.

9. 10. and 11.

Indicate the physical location of your tax records, the contact person and their phone number. This can not be a PO Box or Route Number.

12. through 25.

If you have additional business locations, complete this section. If more space is necessary, attach additional sheets.

Section C: PROGRAM CITIES / LICENSE FEES

There are no fees for Withholding, Unemployment, or Use Tax registrations. To calculate the fees for TPT licenses, multiply the number of locations in the state by \$12. To calculate the city fees, use the listing of program cities in Section C. First, indicate the number of businesses or physical locations for each of the cities for which the Department of Revenue licenses and collects. Then multiply by the city fee for each city in which you will do business. Add the columns to determine the total city fees. Fill in the totals for state fees and city fees on the application form and total to determine the amount due. Make checks payable to the Arizona Department of Revenue. Be sure to return the city fees sheet with your application. **To obtain licensing for cities not listed on the form, please contact the city directly.**

Section D: WITHHOLDING/UNEMPLOYMENT TAX INFORMATION

1. Indicate whether you are liable for Federal Unemployment Tax and the first year of your liability.
2. If you have individuals excluded from withholding or unemployment tax, please explain why.
3. Indicate whether you have an IRS Ruling for exclusion from Federal Unemployment Tax. If you have an IRS Ruling that grants an exclusion from Federal Unemployment Taxes, attach a copy.
4. Enter the date employees were first hired in Arizona.
5. If you have or had an unemployment tax number, provide the requested information.
6. Enter the total gross wages paid for each quarter.
7. Enter the number of persons performing services each week.
8. Indicate the date you acquired the business.
9. Please indicate if you acquired all or only a portion of the business.
10. Indicate the manner in which you became the new owner or operator of this business.

11. Enter the name of the previous owner/operator of the business.
12. Enter the previous business name.

13. through 15.

If you know it, we need a current address, phone number and unemployment number for the previous owner.

16. Check the applicable box **only** if you believe you are not required to provide unemployment coverage **and** you voluntarily elect to assume employer coverage subject to the provisions of Title 23, Chapter 4, Arizona Revised Statutes 23-725 (D), to the same extent as all other employers and to extend unemployment tax coverage to all employees **although not mandatory** or to extend coverage to all employees performing services excluded from unemployment tax.

Please note: If you voluntarily elect coverage by checking the applicable box, then your signature(s) in Section F shows that you have elected to assume liability pursuant to Arizona Revised Statutes 23-725(D) or (E) and you will not be permitted to challenge this election at a later date if the application is approved. If you have any questions, please refer to the Employers Handbook or Guide to Arizona Employment Tax Requirements available on line at <http://www.azui.com> or by calling the Unemployment Tax Office at (602) 248-9396.

Section E: AZTaxes.gov AUTHORIZED USER INFORMATION

1. through 6.

Complete this section if you would like to designate a security administrator for your online services at www.aztaxes.gov. The authorized individual will have full access to tax account information and will add or delete users and grant user privileges to view tax account information, file tax returns, and remit tax payments on behalf of the business identified in Section A. The name and e-mail address of the administrator are required for registration.

Section F: SIGNATURES

The application must be signed only by individuals legally responsible for the business, not agents or representatives.

Section G: INDIAN RESERVATION CODES

If your business is located on an Indian Reservation, select the appropriate code from this table and indicate on Section A-11.

Section H: BUSINESS CLASSES

Select appropriate business classes based on your business activities. You must indicate at least one business class on Section B-4.