

Online Sales Tax Collection Changes

For years, the nexus test for when a state could require sellers of goods to collect and remit sales tax to the state to which the goods were shipped was whether the seller had a physical presence in that state. However, on June 21, 2018, the U.S. Supreme Court decided the case *South Dakota v. Wayfair, Inc.* upholding a South Dakota law requiring out-of-state persons making online sales to purchasers within South Dakota to collect and remit sales tax to the state once certain dollar thresholds were met. The landmark *Wayfair* case has paved the way for states (39 so far) to enact laws similar to South Dakota's law, with Arizona being one of those states.

HB 2757 was signed into law on May 31, 2019, and became effective October 1, 2019. The law provides that marketplace facilitators (think Amazon and eBay) and remote sellers are required to track annual gross retail sales or income from online

sales into Arizona and collect and remit transaction privilege tax ("TPT," Arizona's version of a sales tax) to the state after certain dollar thresholds are met. For marketplace facilitators, the threshold is when online sales into Arizona through the facilitator's platform exceed \$100,000. For remote sellers, the threshold is when their online sales into Arizona exceed \$200,000 in 2019, \$150,000 in 2020, and \$100,000 in 2021 and thereafter.

The Arizona law provides that if the threshold was not met in the prior calendar year and is met partway through the current calendar year, the seller or facilitator must obtain a TPT license and begin collecting and remitting TPT to Arizona once the threshold is met for the remainder of the current year and the entire next calendar year. If in that next calendar year the seller or facilitator does not meet the threshold, then in the following calendar year, the process begins anew.



SEE **TAXES** INSIDE

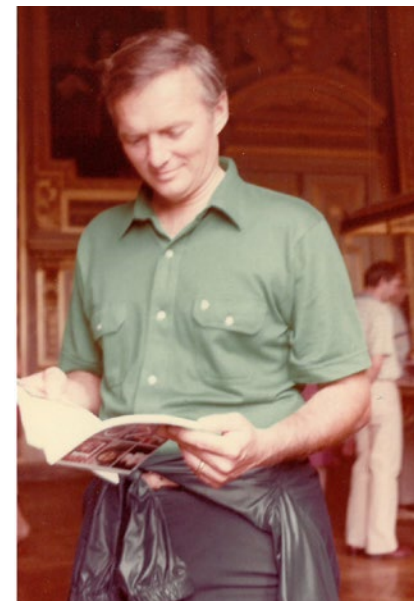
Richard H. "Dick" Whitney, 1937-2019 **Preeminent attorney, staunch supporter of the arts**

On March 23, 2019, we lost our partner Richard H. Whitney. Dick was a preeminent lawyer in our firm, having helped Arizona residents with their trusts and estate needs his entire adult life.

Dick worked until he couldn't, approximately one week before his passing. He loved his job and helping his clients. He would often make house calls, even when the 'house' he was calling on was the hospital. He once told me that he would hate to inconvenience a client by making them come downtown and try to park if that client didn't want to. Dick was "other" focused.

Dick was a passionate supporter of the arts in Arizona. The organizations that benefited from his charisma and support are many: Phoenix Chamber Music Society, Arizona State Art Museum, Arizona Theatre Company and Florence Crittenton Services of Arizona, to name a few. He encouraged other lawyers to get involved in volunteering their time for something that they were passionate about.

His colleagues here remember his sharp mind, his booming voice, and his dapper manner. Dick was a gentleman in the true sense of that word. He was always a genteel presence in our office. I am blessed to have a whole set of memories that are more personal of Dick. I grew up next door to him and his beautiful family: his lovely wife Linda and his precious girls, Judy and Desha.



Dick Whitney at a museum in London, 1982.

SEE **WHITNEY** INSIDE

I Can Film Here! No, You Can't!

Arizona cities, towns and school districts sometimes encounter so-called "First Amendment Auditors," who appear at city hall or school district offices and film public employees at work in public areas, such as customer service areas, publicly visible workspaces, and streets and sidewalks. These "auditors" are testing their right to film in public areas as an exercise of free speech.

"Auditors" engage employees in conversation, but they do not give their names or say why they are filming; they make it clear it is their right to do so. They sometimes taunt employees to get a reaction. Some believe their actions promote transparency and open government; others are interested in driving viewers to their websites or YouTube channels – the more outrageous the employee's behavior, the better to entice subscribers.

"Auditors" behavior can be disconcerting to public employees. Courts have upheld the right of "auditors" to film in public areas, so it is important that employees are trained to know how to respond.

If approached, the employee should: (i) acknowledge but not engage the "auditor;" (ii) be professional and polite; and (iii) call 911 if illegal activity is observed. If working on sensitive material, that material should be turned over so it cannot be seen; if speaking with someone needing privacy, the conversation should be moved to a non-public area. Employees should not (i) argue with



the "auditor;" or (ii) try to stop the filming.

Although permitted, filming is subject to reasonable time, place, and manner restrictions. Police officers may request that filming occurs at a safe distance to prevent interference during an active arrest, and the "auditors" do not have a right to enter private offices, locker rooms, break rooms, or other non-public areas.

The take-away for public employees: stay calm; be boring.

*Susan Goodwin | 602.257.7671 | sgoodwin@gustlaw.com
Susan practices in the area of public law.*

WHITNEY FROM FRONT PAGE

When I first got to know Dick and his family, it was the 1970s and 80s in Phoenix, Arizona; Dick and Linda were Old Phoenix blood. Dick was a graduate of North High and represented the third generation of Whitneys in Phoenix. They showed my Chicago parents the ropes: where to eat (Bob's Big Boy was about it); where to golf (Phoenix Country Club); and what is a jumping cholla! Dick helped my family; he created our estate planning and he reviewed investments. When my dad was diagnosed with cancer, Dick called and said not to worry, it was all set. He always provided that personal contact and unwavering assurance to all of his clients. Dick treated all clients alike, big or small. It made no difference.

Dick's home was an extremely happy one. His girls would say the same. He built an area for his mother in law, Grandma Alberta, to live in. She lived with them for most of my adult life and he beamed every time he greeted her.

Dick loved his dogs – and there were many – but none more precious than Fritz, his Rottweiler. The dog terrified everyone but

him. He would load that large puppy in his best car and drive up the steep driveway in reverse, Fritz's tongue hanging out.

I was privileged to babysit Judy and Desha when Dick would take Linda out, typically to a charity event. He treated his wife with care and love and devotion. Their marriage was a blessing and an honor to observe.

He adored his daughters. He was a man who was thrilled to have two girls. He rejoiced in everything they did and rejoiced even more upon the arrival of his grandchildren, Will and Hayden.

I miss him. He never passed by my office without calling out my name, asking about my family, visiting for a bit. Dick always let you know how much he cared about your life and your concerns, and that is a rare trait.

Our firm was honored to call him a partner for 55 years.

*Jennifer N. MacLennan | 602.257.7475 |
maclennan@gustlaw.com*

Jennifer advises and represents school districts in all facets of operation.



Dick adored his daughters, Judy and Desha, seen here before school in a 1982 photo.

Fred Rosenfeld: A Lifetime of Service

Fred H. Rosenfeld was awarded the Bernard P. Friel Medal by the National Association of Bond Lawyers. The medal honors distinguished service in public finance and is given to bond lawyers who have significantly shaped public finance. Fred was given the award during NABL's Annual Membership Meeting on Wednesday, September 11, 2019, in Chicago.

Timothy Stratton, Co-Chair of Gust Rosenfeld's Municipal Bond Department, said, "Fred truly deserves this award. He has shaped governmental law in Arizona, being directly involved in most of Arizona's bond and public finance related statutes. For decades he has worked on important public works projects, including the Central Arizona Project."



Photo credit: Indigo Photography



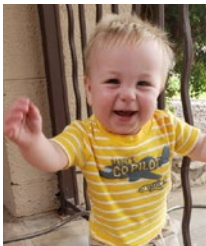
Susan Goodwin Recognized for Top Municipal Lawyer Award

Susan Goodwin received the Marvin J. Glink Private Practice Local Government Award from the International Municipal Lawyers Association. The award recognizes a private practice practitioner who has provided outstanding service to the public and who possesses an exemplary

reputation in the legal community, the highest of ethical standards, and who revels in maintaining a life that balances a passion for professional excellence with the joy of family and friends. The award was presented to Susan during IMLA's Annual Conference in September 2019.

Can You Match the GR Attorney to Their Baby?

Want to learn which attorneys are matched with which baby? Turn to the last page for answers.



Luke, 13 mos



James, 3 mos



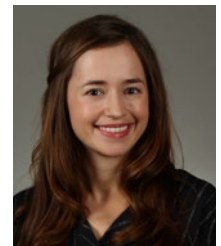
Madeline, 8 mos



Trish Stuhan



Brittany Reed



Mina O'Boyle

The Best Lawyers in America[®] 2020 Lists 24 Gust Rosenfeld Lawyers as Leaders in Their Field

Twenty-four of the firm's attorneys across 21 practice areas were selected by their peers for inclusion in The Best Lawyers in America[®] 2020. The following attorneys were named to the list:

Phoenix

- **Kent E. Cammack** (Litigation – Real Estate; Real Estate Law)
- **Tom Chauncey II** (Corporate Law)
- **Susan D. Goodwin** (Land Use and Zoning Law; Municipal Law)
- **Robert D. Haws** (Education Law; Employment Law – Management; Litigation – Labor and Employment)
- **John L. Hay** (Franchise Law)
- **Richard B. Hood** (Commercial Litigation)
- **Jennifer N. MacLennan** (Education Law)
- **Scott A. Malm** (Real Estate Law)
- **Craig A. McCarthy** (Insurance Law; Litigation - Insurance)
- **Andrew J. McGuire** (Land Use and Zoning Law; Municipal Law; Real Estate Law)
- **Christopher M. McNichol** (Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law)
- **Christina M. Noyes** (Franchise Law)
- **Sean P. O'Brien** (Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law)
- **Barbara U. Rodriguez-Pashkowski** (Environmental Law)
- **Frederick H. Rosenfeld** (Corporate Law; Municipal Law; Public Finance Law)
- **Susan Plimpton Segal** (Employment Law – Management)
- **Gary J. Verburg** (Land Use and Zoning Law)
- **Charles W. Wirken** (Appellate Practice; Franchise Law)

Tucson

- **Mark L. Collins** (Litigation – Real Estate; Real Estate Law)
- **Peter Collins, Jr.** (Commercial Litigation; Insurance Law; Personal Injury Litigation – Defendants; Personal Injury Litigation – Plaintiffs)
- **Patrick J. Farrell** (Corporate Law)
- **James W. Kaucher** (Professional Malpractice Law – Defendants)
- **Gerard R. O'Meara** (Litigation – Banking and Finance)
- **Michael S. Woodlock** (Litigation – Construction; Real Estate Law)

TAXES FROM FRONT PAGE

How does it affect you?

If you live in and run a business from Arizona and you make online sales out of state, you will need to (a) verify if you are subject to a *Wayfair* type statute in those other states, (b) determine what the states' requirements are, and (c) begin tracking all sales (or number of transactions) into those states and comply with their statutes.

If you are a consumer in Arizona, this may mean that your online purchases become more expensive if the seller or facilitator you buy from is required to remit taxes on your purchases.

If you do not live in Arizona, but you make online sales into Arizona subject to Arizona's TPT, then you will need to begin tracking the gross proceeds of, or gross income from, sales into Arizona, and collect and remit TPT to Arizona if you exceed the threshold.

Kyle B. Bate | 602.257.7437 | kbate@gustlaw.com
Kyle's estate planning practice includes wills, trusts, and probate and trust administration.

ET·Y·MOL·O·GY COR·NER

A True Legacy

The word "legacy" has multiple origins and meanings. Each meaning is appropriately applied when speaking of Dick Whitney. One meaning is derived from the Medieval Latin "legatus" which refers to an envoy or ambassador. Dick, without question, was an ambassador for Gust Rosenfeld throughout his 55-year career with the firm. He also left a legacy, from the Old French "legacie" meaning gift, of commitment and service to both the firm and the community, a gift which is remembered and appreciated.

Richard B. Hood | 602.257.7420 | rbhood@gustlaw.com
Rick, our etymologist, practices in the areas of commercial law and litigation.

PERSONAL NOTES



Charles W. “Chas” Wirken was selected as a co-recipient of the Arizona State Bar’s 2019 President’s Award. Also, **Chas** spoke to the East Valley Bar Association regarding assessing cases for appeal.

Jennifer MacLennan and **Rob Haws** presented at the Arizona School Personnel Administrators Association Conference.

Carrie O’Brien presented on data privacy at the Arizona Association of School Business Officials Spring Conference. Carrie also presented on public records requests at the Copper Chapter of The Institute for Public Procurement.

Trish Stuhan and **Rob Williams** presented at the Arizona Credit Union Collectors Council’s April meeting.

Jay Graif and **Jennifer Kalvestran** spoke at West Coast Casualty’s construction defect seminar.

John Hay was a panelist for the State Bar Business Law Section discussing the new Limited Liability Act.

Frank Tomkins presented on access issues to the Land Title Association of Arizona.

Susan Goodwin, Andrew McGuire, Susan Segal, and Trish Stuhan presented “City Attorney Fundamentals,” a half-day program at the Arizona City Attorneys’ Association Summer Meeting.

Shelby Exposito presented at the Women Leading Government Annual Conference.

Chris McNichol participated on a panel discussing current economic and legislative issues at a combined Arizona Private Lenders Association and Arizona Trustee Association Luncheon.

Rob Haws presented at the Arizona Association of School Business Officials Annual Conference.

Chris McNichol and **Kent Cammack** presented at the Arizona Trustee Association Annual Convention on current legal issues related to secured real estate loans and enforcement.

Susan Goodwin and **Andrew McGuire** presented “First Amendment Auditors” at the Annual Conference of the League of Arizona Cities and Towns.

Susan Goodwin conducted the 2019 Arizona City Attorneys Association City Attorneys Fundamentals program.

Scott Malm spoke at the Land Title Association of Arizona Annual Convention on title insurance claims. **Scott** also spoke at the Arizona State Bar’s Real Estate Section Luncheon about judgment renewals and home-stead exemptions.

James Kaucher was the lawyer presenter at Optimizing Wound Care across the Continuum of Care Symposium.

Peter Collins was elected to the Board of Directors of TROT, Therapeutic Riding of Tucson.

Samantha Winter McAlpin was selected as a *Top Pro Bono Attorney* in Arizona by the Arizona Foundation for Legal Services & Education.

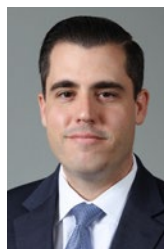
NEW FACES



Brittany Reed (Phoenix Office)

Brittany’s practice focuses on the areas of education law and employment law. She represents schools, school districts, and other educational organizations in various types of law, including employment, special education, and litigation.

Brittany has several years of litigation and business law experience. She graduated cum laude from Colorado State University with a B.S. in Business Administration. She earned her J.D. from Arizona State University, graduating cum laude, where she served as the Business Editor for the Arizona State Law Journal.



A. Daniel (Dan) Coumides (Phoenix Office)

Dan has extensive litigation experience. His practice is focused on general liability defense, insurance coverage analysis, commercial litigation, personal injury, wrongful death, and professional liability litigation. He has additional litigation experience working as a criminal defense attorney. Dan has tried multiple jury trials to verdict and has participated in numerous arbitrations and mediations.

He earned his J.D. from the University of Arizona James E. Rogers College of Law. Dan earned a B.S. in accounting from Arizona State University.

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New ID Requirements for Flying

“Does your ID have a star?” If you’ve flown lately, you’ve seen this question posed by the U.S. Department of Homeland Security. Starting on October 1, 2020, the federal REAL ID Act of 2005 will prohibit federal agencies from accepting state-issued identification cards that fail to meet the standards of this Act. As of that date, if you plan to use a driver’s license or state-issued identification card at an airport security checkpoint, it will be required to have a REAL ID-compliant marking (a gold star).

Updated licenses can be obtained for \$25 at an Arizona Motor Vehicle Division office or an authorized third-party provider and will typically be valid for eight years. An application requires one document establishing a legal presence, one document verifying Social Security number, and two documents establishing residence in Arizona. With a year left until this change goes into effect, you have plenty of time to obtain your starred license, but don’t forget – if you fail to upgrade, you’ll need to use another

form of identification that is REAL ID-compliant for all domestic flights.

If you choose to skip the driver’s license update, both the passport card and the passport book issued by the U.S. government conform to the Act’s requirements, so either can be used to fly domestically. Only the passport book, however, can be used for international air travel, while the passport card is limited to use at land border crossings with Canada and Mexico and seaports of entry to some Caribbean nations. With an average wait time of 6-8 weeks (unless you pay extra to expedite your application), start planning now if you need to apply for or renew a passport book or passport card for an end-of-the-year vacation.

Shelby M. Exposito | 602.257.7498 | smexposito@gustlaw.com
Shelby focuses her practice on public finance and education.

Attorney BABY Match... Luke, son of Brittany Reed; James, son of Trish Stuhan; and, Madeline, daughter of Mina O’Boyle.

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