

REFERENCE TITLE: tax on sweetened beverages

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HB 2643

Introduced by
Representative Heinz

AN ACT

AMENDING SECTION 42-5010, 42-5061, 42-5071 AND 42-5074, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5077; AMENDING SECTION 42-5106, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5010, Arizona Revised Statutes, is amended to
3 read:

4 42-5010. Rates; distribution base

5 A. The tax imposed by this article is levied and shall be collected at
6 the following rates:

7 1. Five per cent of the tax base as computed for the business of every
8 person engaging or continuing in this state in the following business
9 classifications described in article 2 of this chapter:

- 10 (a) Transporting classification.
- 11 (b) Utilities classification.
- 12 (c) Telecommunications classification.
- 13 (d) Pipeline classification.
- 14 (e) Private car line classification.
- 15 (f) Publication classification.
- 16 (g) Job printing classification.
- 17 (h) Prime contracting classification.
- 18 (i) Owner builder sales classification.
- 19 (j) Amusement classification.
- 20 (k) Restaurant classification.
- 21 (l) Personal property rental classification.
- 22 (m) Retail classification.

23 2. Five and one-half per cent of the tax base as computed for the
24 business of every person engaging or continuing in this state in the
25 transient lodging classification described in section 42-5070.

26 3. Three and one-eighth per cent of the tax base as computed for the
27 business of every person engaging or continuing in this state in the mining
28 classification described in section 42-5072.

29 4. Zero per cent of the tax base as computed for the business of every
30 person engaging or continuing in this state in the commercial lease
31 classification described in section 42-5069.

32 5. FORTY PER CENT OF THE TAX BASE AS COMPUTED FOR THE BUSINESS OF
33 EVERY PERSON ENGAGING OR CONTINUING IN THIS STATE IN THE RETAIL SWEETENED
34 BEVERAGE CLASSIFICATION.

35 B. Twenty per cent of the tax revenues collected at the rate
36 prescribed by subsection A, paragraph 1 of this section from persons on
37 account of engaging in business under the business classifications listed in
38 subsection A, paragraph 1, subdivisions (a) through (i) of this section is
39 designated as distribution base for purposes of section 42-5029.

40 C. Forty per cent of the tax revenues collected at the rate prescribed
41 by subsection A, paragraph 1 of this section from persons on account of
42 engaging in business under the business classifications listed in subsection
43 A, paragraph 1, subdivisions (j) through (m) of this section is designated
44 as distribution base for purposes of section 42-5029.

1 D. Thirty-two per cent of the tax revenues collected from persons on
2 account of engaging in business under the business classification listed in
3 subsection A, paragraph 3 of this section is designated as distribution base
4 for purposes of section 42-5029.

5 E. Fifty-three and one-third per cent of the tax revenues collected
6 from persons on account of engaging in business under the business
7 classification listed in subsection A, paragraph 4 of this section is
8 designated as distribution base for purposes of section 42-5029.

9 F. Fifty per cent of the tax revenues collected from persons on
10 account of engaging in business under the business classification listed in
11 subsection A, paragraph 2 of this section is designated as distribution base
12 for purposes of section 42-5029.

13 G. In addition to the rates prescribed by subsection A of this
14 section, if approved by the qualified electors voting at a statewide general
15 election, an additional rate increment is imposed and shall be collected
16 through June 30, 2021. The taxpayer shall pay taxes pursuant to this
17 subsection at the same time and in the same manner as under subsection A of
18 this section. The department shall separately account for the revenues
19 collected with respect to the rates imposed pursuant to this subsection and
20 the state treasurer shall distribute all of those revenues in the manner
21 prescribed by section 42-5029, subsection E. The rates imposed pursuant to
22 this subsection shall not be considered local revenues for purposes of
23 article IX, section 21, Constitution of Arizona. The additional tax rate
24 increment is levied at the rate of six-tenths of one per cent of the tax base
25 of every person engaging or continuing in this state in a business
26 classification listed in subsection A, paragraph 1 of this section.

27 H. Any increase in the rate of tax that is imposed by this chapter and
28 that is enacted by the legislature or by a vote of the people does not apply
29 with respect to contracts entered into by prime contractors or pursuant to
30 written bids made by prime contractors on or before the effective date of the
31 legislation or the date of the election enacting the increase. To qualify
32 for the exemption under this subsection, the prime contractor must maintain
33 sufficient documentation, in a manner and form prescribed by the department,
34 to verify the date of the contract or written bid.

35 I. For taxpayers taxable under this chapter other than prime
36 contractors taxable pursuant to section 42-5075:

37 1. Any increase in the rate of tax that is levied by this article or
38 article 2 of this chapter enacted by the legislature or by a vote of the
39 people does not apply for a period of one hundred twenty days from the date
40 of the tax rate increase to the gross proceeds of sales or gross income from
41 the business of the taxpayer with respect to written contracts entered into
42 before the effective date of the tax rate increase unless the taxpayer has
43 entered into a contract that contains a provision that entitles the taxpayer
44 to recover from the purchaser the amount of the additional tax levied.

1 2. The provisions of this subsection apply without regard to the
2 accounting method used by the taxpayer to report the taxes imposed under
3 article 2 of this chapter.

4 3. The provisions of this subsection shall not be considered in
5 determining the rate of tax imposed under chapter 6, article 3 of this title.

6 Sec. 2. Section 42-5061, Arizona Revised Statutes, is amended to read:
7 42-5061. Retail classification; definitions

8 A. The retail classification is comprised of the business of selling
9 tangible personal property at retail. The tax base for the retail
10 classification is the gross proceeds of sales or gross income derived from
11 the business. The tax imposed on the retail classification does not apply to
12 the gross proceeds of sales or gross income from:

13 1. Professional or personal service occupations or businesses which
14 involve sales or transfers of tangible personal property only as
15 inconsequential elements.

16 2. Services rendered in addition to selling tangible personal property
17 at retail.

18 3. Sales of warranty or service contracts. The storage, use or
19 consumption of tangible personal property provided under the conditions of
20 such contracts is subject to tax under section 42-5156.

21 4. Sales of tangible personal property by any nonprofit organization
22 organized and operated exclusively for charitable purposes and recognized by
23 the United States internal revenue service under section 501(c)(3) of the
24 internal revenue code.

25 5. Sales to persons engaged in business classified under the
26 restaurant classification of articles used by human beings for food, drink or
27 condiment, whether simple, mixed or compounded.

28 6. Business activity which is properly included in any other business
29 classification which is taxable under this article.

30 7. The sale of stocks and bonds.

31 8. Drugs and medical oxygen, including delivery hose, mask or tent,
32 regulator and tank, on the prescription of a member of the medical, dental or
33 veterinarian profession who is licensed by law to administer such substances.

34 9. Prosthetic appliances as defined in section 23-501 prescribed or
35 recommended by a health professional who is licensed pursuant to title 32,
36 chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.

37 10. Insulin, insulin syringes and glucose test strips.

38 11. Prescription eyeglasses or contact lenses.

39 12. Hearing aids as defined in section 36-1901.

40 13. Durable medical equipment which has a centers for medicare and
41 medicaid services common procedure code, is designated reimbursable by
42 medicare, is prescribed by a person who is licensed under title 32, chapter
43 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and
44 customarily used to serve a medical purpose, is generally not useful to a

1 person in the absence of illness or injury and is appropriate for use in the
2 home.

3 14. Sales to nonresidents of this state for use outside this state if
4 the vendor ships or delivers the tangible personal property out of this
5 state.

6 15. Food, as provided in and subject to the conditions of article 3 of
7 this chapter and section 42-5074.

8 16. Items purchased with United States department of agriculture food
9 stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat.
10 958) or food instruments issued under section 17 of the child nutrition act
11 (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code
12 section 1786).

13 17. Textbooks by any bookstore that are required by any state
14 university or community college.

15 18. Food and drink to a person who is engaged in business which is
16 classified under the restaurant classification and which provides such food
17 and drink without monetary charge to its employees for their own consumption
18 on the premises during the employees' hours of employment.

19 19. Articles of food, drink or condiment and accessory tangible
20 personal property to a school district or charter school if such articles and
21 accessory tangible personal property are to be prepared and served to persons
22 for consumption on the premises of a public school within the district or on
23 the premises of the charter school during school hours.

24 20. Lottery tickets or shares pursuant to title 5, chapter 5,
25 article 1.

26 21. The sale of precious metal bullion and monetized bullion to the
27 ultimate consumer, but the sale of coins or other forms of money for
28 manufacture into jewelry or works of art is subject to the tax. For the
29 purposes of this paragraph:

30 (a) "Monetized bullion" means coins and other forms of money which are
31 manufactured from gold, silver or other metals and which have been or are
32 used as a medium of exchange in this or another state, the United States or a
33 foreign nation.

34 (b) "Precious metal bullion" means precious metal, including gold,
35 silver, platinum, rhodium and palladium, which has been smelted or refined so
36 that its value depends on its contents and not on its form.

37 22. Motor vehicle fuel and use fuel that are subject to a tax imposed
38 under title 28, chapter 16, article 1, sales of use fuel to a holder of a
39 valid single trip use fuel tax permit issued under section 28-5739, sales of
40 aviation fuel that are subject to the tax imposed under section 28-8344 and
41 sales of jet fuel that are subject to the tax imposed under article 8 of this
42 chapter.

43 23. Tangible personal property sold to a person engaged in the business
44 of leasing or renting such property under the personal property rental
45 classification if such property is to be leased or rented by such person.

1 24. Tangible personal property sold in interstate or foreign commerce
2 if prohibited from being so taxed by the Constitution of the United States or
3 the constitution of this state.

4 25. Tangible personal property sold to:

5 (a) A qualifying hospital as defined in section 42-5001.

6 (b) A qualifying health care organization as defined in section
7 42-5001 if the tangible personal property is used by the organization solely
8 to provide health and medical related educational and charitable services.

9 (c) A qualifying health care organization as defined in section
10 42-5001 if the organization is dedicated to providing educational,
11 therapeutic, rehabilitative and family medical education training for blind,
12 visually impaired and multihandicapped children from the time of birth to age
13 twenty-one.

14 (d) A qualifying community health center as defined in section
15 42-5001.

16 (e) A nonprofit charitable organization that has qualified under
17 section 501(c)(3) of the internal revenue code and that regularly serves
18 meals to the needy and indigent on a continuing basis at no cost.

19 (f) For taxable periods beginning from and after June 30, 2001, a
20 nonprofit charitable organization that has qualified under section 501(c)(3)
21 of the internal revenue code and that provides residential apartment housing
22 for low income persons over sixty-two years of age in a facility that
23 qualifies for a federal housing subsidy, if the tangible personal property is
24 used by the organization solely to provide residential apartment housing for
25 low income persons over sixty-two years of age in a facility that qualifies
26 for a federal housing subsidy.

27 26. Magazines or other periodicals or other publications by this state
28 to encourage tourist travel.

29 27. Tangible personal property sold to a person that is subject to tax
30 under this article by reason of being engaged in business classified under
31 the prime contracting classification under section 42-5075, or to a
32 subcontractor working under the control of a prime contractor that is subject
33 to tax under article 1 of this chapter, if the property so sold is any of the
34 following:

35 (a) Incorporated or fabricated by the person into any real property,
36 structure, project, development or improvement as part of the business.

37 (b) Used in environmental response or remediation activities under
38 section 42-5075, subsection B, paragraph 6.

39 (c) Incorporated or fabricated by the person into any lake facility
40 development in a commercial enhancement reuse district under conditions
41 prescribed for the deduction allowed by section 42-5075, subsection B,
42 paragraph 8.

43 28. The sale of a motor vehicle to:

44 (a) A nonresident of this state if the purchaser's state of residence
45 does not allow a corresponding use tax exemption to the tax imposed by

1 article 1 of this chapter and if the nonresident has secured a special ninety
2 day nonresident registration permit for the vehicle as prescribed by sections
3 28-2154 and 28-2154.01.

4 (b) An enrolled member of an Indian tribe who resides on the Indian
5 reservation established for that tribe.

6 29. Tangible personal property purchased in this state by a nonprofit
7 charitable organization that has qualified under section 501(c)(3) of the
8 United States internal revenue code and that engages in and uses such
9 property exclusively in programs for mentally or physically handicapped
10 persons if the programs are exclusively for training, job placement,
11 rehabilitation or testing.

12 30. Sales of tangible personal property by a nonprofit organization
13 that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6)
14 of the internal revenue code if the organization is associated with a major
15 league baseball team or a national touring professional golfing association
16 and no part of the organization's net earnings inures to the benefit of any
17 private shareholder or individual.

18 31. Sales of commodities, as defined by title 7 United States Code
19 section 2, that are consigned for resale in a warehouse in this state in or
20 from which the commodity is deliverable on a contract for future delivery
21 subject to the rules of a commodity market regulated by the United States
22 commodity futures trading commission.

23 32. Sales of tangible personal property by a nonprofit organization
24 that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
25 501(c)(7) or 501(c)(8) of the internal revenue code if the organization
26 sponsors or operates a rodeo featuring primarily farm and ranch animals and
27 no part of the organization's net earnings inures to the benefit of any
28 private shareholder or individual.

29 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
30 propagative material to persons who use those items to commercially produce
31 agricultural, horticultural, viticultural or floricultural crops in this
32 state.

33 34. Machinery, equipment, technology or related supplies that are only
34 useful to assist a person who is physically disabled as defined in section
35 46-191, has a developmental disability as defined in section 36-551 or has a
36 head injury as defined in section 41-3201 to be more independent and
37 functional.

38 35. Sales of tangible personal property that is shipped or delivered
39 directly to a destination outside the United States for use in that foreign
40 country.

41 36. Sales of natural gas or liquefied petroleum gas used to propel a
42 motor vehicle.

43 37. Paper machine clothing, such as forming fabrics and dryer felts,
44 sold to a paper manufacturer and directly used or consumed in paper
45 manufacturing.

1 38. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity
2 sold to a qualified environmental technology manufacturer, producer or
3 processor as defined in section 41-1514.02 and directly used or consumed in
4 the generation or provision of on-site power or energy solely for
5 environmental technology manufacturing, producing or processing or
6 environmental protection. This paragraph shall apply for twenty full
7 consecutive calendar or fiscal years from the date the first paper
8 manufacturing machine is placed in service. In the case of an environmental
9 technology manufacturer, producer or processor who does not manufacture
10 paper, the time period shall begin with the date the first manufacturing,
11 processing or production equipment is placed in service.

12 39. Sales of liquid, solid or gaseous chemicals used in manufacturing,
13 processing, fabricating, mining, refining, metallurgical operations, research
14 and development and, beginning on January 1, 1999, printing, if using or
15 consuming the chemicals, alone or as part of an integrated system of
16 chemicals, involves direct contact with the materials from which the product
17 is produced for the purpose of causing or permitting a chemical or physical
18 change to occur in the materials as part of the production process. This
19 paragraph does not include chemicals that are used or consumed in activities
20 such as packaging, storage or transportation but does not affect any
21 deduction for such chemicals that is otherwise provided by this section. For
22 the purposes of this paragraph, "printing" means a commercial printing
23 operation and includes job printing, engraving, embossing, copying and
24 bookbinding.

25 40. Through December 31, 1994, personal property liquidation
26 transactions, conducted by a personal property liquidator. From and after
27 December 31, 1994, personal property liquidation transactions shall be
28 taxable under this section provided that nothing in this subsection shall be
29 construed to authorize the taxation of casual activities or transactions
30 under this chapter. For the purposes of this paragraph:

31 (a) "Personal property liquidation transaction" means a sale of
32 personal property made by a personal property liquidator acting solely on
33 behalf of the owner of the personal property sold at the dwelling of the
34 owner or upon the death of any owner, on behalf of the surviving spouse, if
35 any, any devisee or heir or the personal representative of the estate of the
36 deceased, if one has been appointed.

37 (b) "Personal property liquidator" means a person who is retained to
38 conduct a sale in a personal property liquidation transaction.

39 41. Sales of food, drink and condiment for consumption within the
40 premises of any prison, jail or other institution under the jurisdiction of
41 the state department of corrections, the department of public safety, the
42 department of juvenile corrections or a county sheriff.

43 42. A motor vehicle and any repair and replacement parts and tangible
44 personal property becoming a part of such motor vehicle sold to a motor

1 carrier who is subject to a fee prescribed in title 28, chapter 16, article 4
2 and who is engaged in the business of leasing or renting such property.

3 43. Livestock and poultry feed, salts, vitamins and other additives for
4 livestock or poultry consumption that are sold to persons who are engaged in
5 producing livestock, poultry, or livestock or poultry products or who are
6 engaged in feeding livestock or poultry commercially. For the purposes of
7 this paragraph, "poultry" includes ratites.

8 44. Sales of implants used as growth promotants and injectable
9 medicines, not already exempt under paragraph 8 of this subsection, for
10 livestock or poultry owned by or in possession of persons who are engaged in
11 producing livestock, poultry, or livestock or poultry products or who are
12 engaged in feeding livestock or poultry commercially. For the purposes of
13 this paragraph, "poultry" includes ratites.

14 45. Sales of motor vehicles at auction to nonresidents of this state
15 for use outside this state if the vehicles are shipped or delivered out of
16 this state, regardless of where title to the motor vehicles passes or its
17 free on board point.

18 46. Tangible personal property sold to a person engaged in business and
19 subject to tax under the transient lodging classification if the tangible
20 personal property is a personal hygiene item or articles used by human beings
21 for food, drink or condiment, except alcoholic beverages, which are furnished
22 without additional charge to and intended to be consumed by the transient
23 during the transient's occupancy.

24 47. Sales of alternative fuel, as defined in section 1-215, to a used
25 oil fuel burner who has received a permit to burn used oil or used oil fuel
26 under section 49-426 or 49-480.

27 48. Sales of materials that are purchased by or for publicly funded
28 libraries including school district libraries, charter school libraries,
29 community college libraries, state university libraries or federal, state,
30 county or municipal libraries for use by the public as follows:

31 (a) Printed or photographic materials, beginning August 7, 1985.

32 (b) Electronic or digital media materials, beginning July 17, 1994.

33 49. Tangible personal property sold to a commercial airline and
34 consisting of food, beverages and condiments and accessories used for serving
35 the food and beverages, if those items are to be provided without additional
36 charge to passengers for consumption in flight. For the purposes of this
37 paragraph, "commercial airline" means a person holding a federal certificate
38 of public convenience and necessity or foreign air carrier permit for air
39 transportation to transport persons, property or United States mail in
40 intrastate, interstate or foreign commerce.

41 50. Sales of alternative fuel vehicles if the vehicle was manufactured
42 as a diesel fuel vehicle and converted to operate on alternative fuel and
43 equipment that is installed in a conventional diesel fuel motor vehicle to
44 convert the vehicle to operate on an alternative fuel, as defined in section
45 1-215.

1 51. Sales of any spirituous, vinous or malt liquor by a person that is
2 licensed in this state as a wholesaler by the department of liquor licenses
3 and control pursuant to title 4, chapter 2, article 1.

4 52. Sales of tangible personal property to be incorporated or installed
5 as part of environmental response or remediation activities under section
6 42-5075, subsection B, paragraph 6.

7 53. Sales of tangible personal property by a nonprofit organization
8 that is exempt from taxation under section 501(c)(6) of the internal revenue
9 code if the organization produces, organizes or promotes cultural or civic
10 related festivals or events and no part of the organization's net earnings
11 inures to the benefit of any private shareholder or individual.

12 54. Through August 31, 2014, sales of Arizona centennial medallions by
13 the historical advisory commission.

14 55. Application services that are designed to assess or test student
15 learning or to promote curriculum design or enhancement purchased by or for
16 any school district, charter school, community college or state university.
17 For the purposes of this paragraph:

18 (a) "Application services" means software applications provided
19 remotely using hypertext transfer protocol or another network protocol.

20 (b) "Curriculum design or enhancement" means planning, implementing or
21 reporting on courses of study, lessons, assignments or other learning
22 activities.

23 B. In addition to the deductions from the tax base prescribed by
24 subsection A of this section, the gross proceeds of sales or gross income
25 derived from sales of the following categories of tangible personal property
26 shall be deducted from the tax base:

27 1. Machinery, or equipment, used directly in manufacturing,
28 processing, fabricating, job printing, refining or metallurgical operations.
29 The terms "manufacturing", "processing", "fabricating", "job printing",
30 "refining" and "metallurgical" as used in this paragraph refer to and include
31 those operations commonly understood within their ordinary meaning.
32 "Metallurgical operations" includes leaching, milling, precipitating,
33 smelting and refining.

34 2. Mining machinery, or equipment, used directly in the process of
35 extracting ores or minerals from the earth for commercial purposes, including
36 equipment required to prepare the materials for extraction and handling,
37 loading or transporting such extracted material to the surface. "Mining"
38 includes underground, surface and open pit operations for extracting ores and
39 minerals.

40 3. Tangible personal property sold to persons engaged in business
41 classified under the telecommunications classification and consisting of
42 central office switching equipment, switchboards, private branch exchange
43 equipment, microwave radio equipment and carrier equipment including optical
44 fiber, coaxial cable and other transmission media which are components of
45 carrier systems.

1 4. Machinery, equipment or transmission lines used directly in
2 producing or transmitting electrical power, but not including distribution.
3 Transformers and control equipment used at transmission substation sites
4 constitute equipment used in producing or transmitting electrical power.

5 5. Neat animals, horses, asses, sheep, ratites, swine or goats used or
6 to be used as breeding or production stock, including sales of breedings or
7 ownership shares in such animals used for breeding or production.

8 6. Pipes or valves four inches in diameter or larger used to transport
9 oil, natural gas, artificial gas, water or coal slurry, including compressor
10 units, regulators, machinery and equipment, fittings, seals and any other
11 part that is used in operating the pipes or valves.

12 7. Aircraft, navigational and communication instruments and other
13 accessories and related equipment sold to:

14 (a) A person holding a federal certificate of public convenience and
15 necessity, a supplemental air carrier certificate under federal aviation
16 regulations (14 Code of Federal Regulations part 121) or a foreign air
17 carrier permit for air transportation for use as or in conjunction with or
18 becoming a part of aircraft to be used to transport persons, property or
19 United States mail in intrastate, interstate or foreign commerce.

20 (b) Any foreign government for use by such government outside of this
21 state.

22 (c) Persons who are not residents of this state and who will not use
23 such property in this state other than in removing such property from this
24 state. This subdivision also applies to corporations that are not
25 incorporated in this state, regardless of maintaining a place of business in
26 this state, if the principal corporate office is located outside this state
27 and the property will not be used in this state other than in removing the
28 property from this state.

29 8. Machinery, tools, equipment and related supplies used or consumed
30 directly in repairing, remodeling or maintaining aircraft, aircraft engines
31 or aircraft component parts by or on behalf of a certificated or licensed
32 carrier of persons or property.

33 9. Railroad rolling stock, rails, ties and signal control equipment
34 used directly to transport persons or property.

35 10. Machinery or equipment used directly to drill for oil or gas or
36 used directly in the process of extracting oil or gas from the earth for
37 commercial purposes.

38 11. Buses or other urban mass transit vehicles which are used directly
39 to transport persons or property for hire or pursuant to a governmentally
40 adopted and controlled urban mass transportation program and which are sold
41 to bus companies holding a federal certificate of convenience and necessity
42 or operated by any city, town or other governmental entity or by any person
43 contracting with such governmental entity as part of a governmentally adopted
44 and controlled program to provide urban mass transportation.

45 12. Groundwater measuring devices required under section 45-604.

1 13. New machinery and equipment consisting of tractors, tractor-drawn
2 implements, self-powered implements, machinery and equipment necessary for
3 extracting milk, and machinery and equipment necessary for cooling milk and
4 livestock, and drip irrigation lines not already exempt under paragraph 6 of
5 this subsection and that are used for commercial production of agricultural,
6 horticultural, viticultural and floricultural crops and products in this
7 state. For the purposes of this paragraph:

8 (a) "New machinery and equipment" means machinery and equipment which
9 have never been sold at retail except pursuant to leases or rentals which do
10 not total two years or more.

11 (b) "Self-powered implements" includes machinery and equipment that
12 are electric-powered.

13 14. Machinery or equipment used in research and development. For the
14 purposes of this paragraph, "research and development" means basic and
15 applied research in the sciences and engineering, and designing, developing
16 or testing prototypes, processes or new products, including research and
17 development of computer software that is embedded in or an integral part of
18 the prototype or new product or that is required for machinery or equipment
19 otherwise exempt under this section to function effectively. Research and
20 development do not include manufacturing quality control, routine consumer
21 product testing, market research, sales promotion, sales service, research in
22 social sciences or psychology, computer software research that is not
23 included in the definition of research and development, or other
24 nontechnological activities or technical services.

25 15. Machinery and equipment that are purchased by or on behalf of the
26 owners of a soundstage complex and primarily used for motion picture,
27 multimedia or interactive video production in the complex. This paragraph
28 applies only if the initial construction of the soundstage complex begins
29 after June 30, 1996 and before January 1, 2002 and the machinery and
30 equipment are purchased before the expiration of five years after the start
31 of initial construction. For the purposes of this paragraph:

32 (a) "Motion picture, multimedia or interactive video production"
33 includes products for theatrical and television release, educational
34 presentations, electronic retailing, documentaries, music videos, industrial
35 films, CD-ROM, video game production, commercial advertising and television
36 episode production and other genres that are introduced through developing
37 technology.

38 (b) "Soundstage complex" means a facility of multiple stages including
39 production offices, construction shops and related areas, prop and costume
40 shops, storage areas, parking for production vehicles and areas that are
41 leased to businesses that complement the production needs and orientation of
42 the overall facility.

43 16. Tangible personal property that is used by either of the following
44 to receive, store, convert, produce, generate, decode, encode, control or
45 transmit telecommunications information:

1 (a) Any direct broadcast satellite television or data transmission
2 service that operates pursuant to 47 Code of Federal Regulations part 25.

3 (b) Any satellite television or data transmission facility, if both of
4 the following conditions are met:

5 (i) Over two-thirds of the transmissions, measured in megabytes,
6 transmitted by the facility during the test period were transmitted to or on
7 behalf of one or more direct broadcast satellite television or data
8 transmission services that operate pursuant to 47 Code of Federal Regulations
9 part 25.

10 (ii) Over two-thirds of the transmissions, measured in megabytes,
11 transmitted by or on behalf of those direct broadcast television or data
12 transmission services during the test period were transmitted by the facility
13 to or on behalf of those services.

14 For the purposes of subdivision (b) of this paragraph, "test period" means
15 the three hundred sixty-five day period beginning on the later of the date on
16 which the tangible personal property is purchased or the date on which the
17 direct broadcast satellite television or data transmission service first
18 transmits information to its customers.

19 17. Clean rooms that are used for manufacturing, processing,
20 fabrication or research and development, as defined in paragraph 14 of this
21 subsection, of semiconductor products. For the purposes of this paragraph,
22 "clean room" means all property that comprises or creates an environment
23 where humidity, temperature, particulate matter and contamination are
24 precisely controlled within specified parameters, without regard to whether
25 the property is actually contained within that environment or whether any of
26 the property is affixed to or incorporated into real property. Clean room:

27 (a) Includes the integrated systems, fixtures, piping, movable
28 partitions, lighting and all property that is necessary or adapted to reduce
29 contamination or to control airflow, temperature, humidity, chemical purity
30 or other environmental conditions or manufacturing tolerances, as well as the
31 production machinery and equipment operating in conjunction with the clean
32 room environment.

33 (b) Does not include the building or other permanent, nonremovable
34 component of the building that houses the clean room environment.

35 18. Machinery and equipment used directly in the feeding of poultry,
36 the environmental control of housing for poultry, the movement of eggs within
37 a production and packaging facility or the sorting or cooling of eggs. This
38 exemption does not apply to vehicles used for transporting eggs.

39 19. Machinery or equipment, including related structural components,
40 that is employed in connection with manufacturing, processing, fabricating,
41 job printing, refining, mining, natural gas pipelines, metallurgical
42 operations, telecommunications, producing or transmitting electricity or
43 research and development and that is used directly to meet or exceed rules or
44 regulations adopted by the federal energy regulatory commission, the United
45 States environmental protection agency, the United States nuclear regulatory

1 commission, the Arizona department of environmental quality or a political
2 subdivision of this state to prevent, monitor, control or reduce land, water
3 or air pollution.

4 20. Machinery and equipment that are sold to a person engaged in the
5 commercial production of livestock, livestock products or agricultural,
6 horticultural, viticultural or floricultural crops or products in this state
7 and that are used directly and primarily to prevent, monitor, control or
8 reduce air, water or land pollution.

9 21. Machinery or equipment that enables a television station to
10 originate and broadcast or to receive and broadcast digital television
11 signals and that was purchased to facilitate compliance with the
12 telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States
13 Code section 336) and the federal communications commission order issued
14 April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does
15 not exempt any of the following:

16 (a) Repair or replacement parts purchased for the machinery or
17 equipment described in this paragraph.

18 (b) Machinery or equipment purchased to replace machinery or equipment
19 for which an exemption was previously claimed and taken under this paragraph.

20 (c) Any machinery or equipment purchased after the television station
21 has ceased analog broadcasting, or purchased after November 1, 2009,
22 whichever occurs first.

23 22. Qualifying equipment that is purchased from and after June 30, 2004
24 through June 30, 2014 by a qualified business under section 41-1516 for
25 harvesting or the initial processing of qualifying forest products removed
26 from qualifying projects as defined in section 41-1516. To qualify for this
27 deduction, the qualified business at the time of purchase must present its
28 certification approved by the department.

29 23. Machinery, equipment and other tangible personal property used
30 directly in motion picture production by a motion picture production company.
31 To qualify for this deduction, at the time of purchase, the motion picture
32 production company must present to the retailer its certificate that is
33 issued pursuant to section 42-5009, subsection H and that establishes its
34 qualification for the deduction.

35 C. The deductions provided by subsection B of this section do not
36 include sales of:

37 1. Expendable materials. For the purposes of this paragraph,
38 expendable materials do not include any of the categories of tangible
39 personal property specified in subsection B of this section regardless of the
40 cost or useful life of that property.

41 2. Janitorial equipment and hand tools.

42 3. Office equipment, furniture and supplies.

43 4. Tangible personal property used in selling or distributing
44 activities, other than the telecommunications transmissions described in
45 subsection B, paragraph 16 of this section.

1 5. Motor vehicles required to be licensed by this state, except buses
2 or other urban mass transit vehicles specifically exempted pursuant to
3 subsection B, paragraph 11 of this section, without regard to the use of such
4 motor vehicles.

5 6. Shops, buildings, docks, depots and all other materials of whatever
6 kind or character not specifically included as exempt.

7 7. Motors and pumps used in drip irrigation systems.

8 D. In addition to the deductions from the tax base prescribed by
9 subsection A of this section, there shall be deducted from the tax base the
10 gross proceeds of sales or gross income derived from sales of machinery,
11 equipment, materials and other tangible personal property used directly and
12 predominantly to construct a qualified environmental technology
13 manufacturing, producing or processing facility as described in section
14 41-1514.02. This subsection applies for ten full consecutive calendar or
15 fiscal years after the start of initial construction.

16 E. In computing the tax base, gross proceeds of sales or gross income
17 from retail sales of heavy trucks and trailers does not include any amount
18 attributable to federal excise taxes imposed by 26 United States Code section
19 4051.

20 F. In computing the tax base, gross proceeds of sales or gross income
21 from the sale of use fuel, as defined in section 28-5601, does not include
22 any amount attributable to federal excise taxes imposed by 26 United States
23 Code section 4091.

24 G. If a person is engaged in an occupation or business to which
25 subsection A of this section applies, the person's books shall be kept so as
26 to show separately the gross proceeds of sales of tangible personal property
27 and the gross income from sales of services, and if not so kept the tax shall
28 be imposed on the total of the person's gross proceeds of sales of tangible
29 personal property and gross income from services.

30 H. If a person is engaged in the business of selling tangible personal
31 property at both wholesale and retail, the tax under this section applies
32 only to the gross proceeds of the sales made other than at wholesale if the
33 person's books are kept so as to show separately the gross proceeds of sales
34 of each class, and if the books are not so kept, the tax under this section
35 applies to the gross proceeds of every sale so made.

36 I. A person who engages in manufacturing, baling, crating, boxing,
37 barreling, canning, bottling, sacking, preserving, processing or otherwise
38 preparing for sale or commercial use any livestock, agricultural or
39 horticultural product or any other product, article, substance or commodity
40 and who sells the product of such business at retail in this state is deemed,
41 as to such sales, to be engaged in business classified under the retail
42 classification. This subsection does not apply to businesses classified
43 under the:

44 1. Transporting classification.

45 2. Utilities classification.

- 1 3. Telecommunications classification.
- 2 4. Pipeline classification.
- 3 5. Private car line classification.
- 4 6. Publication classification.
- 5 7. Job printing classification.
- 6 8. Prime contracting classification.
- 7 9. Owner builder sales classification.
- 8 10. Restaurant classification.

9 J. IN LIEU OF SEPARATE TRANSACTION PRIVILEGE TAX LICENSES, THE
10 DEPARTMENT SHALL PROVIDE WITHOUT ADDITIONAL COST AN ENDORSEMENT TO A RETAIL
11 CLASSIFICATION TRANSACTION PRIVILEGE TAX LICENSE IN THE CASE OF A PERSON IN
12 THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL WHO ALSO SELLS
13 SWEETENED BEVERAGES INCLUDED UNDER THE RETAIL SWEETENED BEVERAGE
14 CLASSIFICATION.

15 ~~J.~~ K. The gross proceeds of sales or gross income derived from the
16 following shall be deducted from the tax base for the retail classification:

17 1. Sales made directly to the United States government or its
18 departments or agencies by a manufacturer, modifier, assembler or repairer.

19 2. Sales made directly to a manufacturer, modifier, assembler or
20 repairer if such sales are of any ingredient or component part of products
21 sold directly to the United States government or its departments or agencies
22 by the manufacturer, modifier, assembler or repairer.

23 3. Overhead materials or other tangible personal property that is used
24 in performing a contract between the United States government and a
25 manufacturer, modifier, assembler or repairer, including property used in
26 performing a subcontract with a government contractor who is a manufacturer,
27 modifier, assembler or repairer, to which title passes to the government
28 under the terms of the contract or subcontract.

29 4. Sales of overhead materials or other tangible personal property to
30 a manufacturer, modifier, assembler or repairer if the gross proceeds of
31 sales or gross income derived from the property by the manufacturer,
32 modifier, assembler or repairer will be exempt under paragraph 3 of this
33 subsection.

34 ~~K.~~ L. There shall be deducted from the tax base fifty per cent of the
35 gross proceeds or gross income from any sale of tangible personal property
36 made directly to the United States government or its departments or agencies,
37 which is not deducted under subsection ~~J.~~ K of this section.

38 ~~L.~~ M. The department shall require every person claiming a deduction
39 provided by subsection ~~J.~~ ~~or~~ K OR L of this section to file on forms
40 prescribed by the department at such times as the department directs a sworn
41 statement disclosing the name of the purchaser and the exact amount of sales
42 on which the exclusion or deduction is claimed.

43 ~~M.~~ N. In computing the tax base, gross proceeds of sales or gross
44 income does not include:

1 1. A manufacturer's cash rebate on the sales price of a motor vehicle
2 if the buyer assigns the buyer's right in the rebate to the retailer.
3 2. The waste tire disposal fee imposed pursuant to section 44-1302.
4 ~~N.~~ O. There shall be deducted from the tax base the amount received
5 from sales of solar energy devices. The retailer shall register with the
6 department as a solar energy retailer. By registering, the retailer
7 acknowledges that it will make its books and records relating to sales of
8 solar energy devices available to the department for examination.
9 ~~Q.~~ P. In computing the tax base in the case of the sale or transfer
10 of wireless telecommunications equipment as an inducement to a customer to
11 enter into or continue a contract for telecommunications services that are
12 taxable under section 42-5064, gross proceeds of sales or gross income does
13 not include any sales commissions or other compensation received by the
14 retailer as a result of the customer entering into or continuing a contract
15 for the telecommunications services.
16 ~~P.~~ Q. For the purposes of this section, a sale of wireless
17 telecommunications equipment to a person who holds the equipment for sale or
18 transfer to a customer as an inducement to enter into or continue a contract
19 for telecommunications services that are taxable under section 42-5064 is
20 considered to be a sale for resale in the regular course of business.
21 ~~Q.~~ R. Retail sales of prepaid calling cards or prepaid authorization
22 numbers for telecommunications services, including sales of reauthorization
23 of a prepaid card or authorization number, are subject to tax under this
24 section.
25 ~~R.~~ S. For the purposes of this section, the diversion of gas from a
26 pipeline by a person engaged in the business of:
27 1. Operating a natural or artificial gas pipeline, for the sole
28 purpose of fueling compressor equipment to pressurize the pipeline, is not a
29 sale of the gas to the operator of the pipeline.
30 2. Converting natural gas into liquefied natural gas, for the sole
31 purpose of fueling compressor equipment used in the conversion process, is
32 not a sale of gas to the operator of the compressor equipment.
33 ~~S.~~ T. If a seller is entitled to a deduction pursuant to subsection
34 B, paragraph 16, subdivision (b) of this section, the department may require
35 the purchaser to establish that the requirements of subsection B, paragraph
36 16, subdivision (b) of this section have been satisfied. If the purchaser
37 cannot establish that the requirements of subsection B, paragraph 16,
38 subdivision (b) of this section have been satisfied, the purchaser is liable
39 in an amount equal to any tax, penalty and interest which the seller would
40 have been required to pay under article 1 of this chapter if the seller had
41 not made a deduction pursuant to subsection B, paragraph 16, subdivision (b)
42 of this section. Payment of the amount under this subsection exempts the
43 purchaser from liability for any tax imposed under article 4 of this chapter
44 and related to the tangible personal property purchased. The amount shall be
45 treated as transaction privilege tax to the purchaser and as tax revenues

1 collected from the seller to designate the distribution base pursuant to
2 section 42-5029.

3 ~~F~~ U. For the purposes of section 42-5032.01, the department shall
4 separately account for revenues collected under the retail classification
5 from businesses selling tangible personal property at retail:

6 1. On the premises of a multipurpose facility that is owned, leased or
7 operated by the tourism and sports authority pursuant to title 5, chapter 8.

8 2. At professional football contests that are held in a stadium
9 located on the campus of an institution under the jurisdiction of the Arizona
10 board of regents.

11 ~~H~~ V. In computing the tax base for the sale of a motor vehicle to a
12 nonresident of this state, if the purchaser's state of residence allows a
13 corresponding use tax exemption to the tax imposed by article 1 of this
14 chapter and the rate of the tax in the purchaser's state of residence is
15 lower than the rate prescribed in article 1 of this chapter or if the
16 purchaser's state of residence does not impose an excise tax, and the
17 nonresident has secured a special ninety day nonresident registration permit
18 for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall
19 be deducted from the tax base a portion of the gross proceeds or gross income
20 from the sale so that the amount of transaction privilege tax that is paid in
21 this state is equal to the excise tax that is imposed by the purchaser's
22 state of residence on the nonexempt sale or use of the motor vehicle.

23 ~~V~~ W. For the purposes of this section:

24 1. "Aircraft" includes:

25 (a) An airplane flight simulator that is approved by the federal
26 aviation administration for use as a phase II or higher flight simulator
27 under appendix H, 14 Code of Federal Regulations part 121.

28 (b) Tangible personal property that is permanently affixed or attached
29 as a component part of an aircraft that is owned or operated by a
30 certificated or licensed carrier of persons or property.

31 2. "Other accessories and related equipment" includes aircraft
32 accessories and equipment such as ground service equipment that physically
33 contact aircraft at some point during the overall carrier operation.

34 3. "Selling at retail" means a sale for any purpose other than for
35 resale in the regular course of business in the form of tangible personal
36 property, but transfer of possession, lease and rental as used in the
37 definition of sale mean only such transactions as are found on investigation
38 to be in lieu of sales as defined without the words lease or rental.

39 ~~W~~ X. For the purposes of subsection ~~J~~ K of this section:

40 1. "Assembler" means a person who unites or combines products, wares
41 or articles of manufacture so as to produce a change in form or substance
42 without changing or altering the component parts.

43 2. "Manufacturer" means a person who is principally engaged in the
44 fabrication, production or manufacture of products, wares or articles for use

1 from raw or prepared materials, imparting to those materials new forms,
2 qualities, properties and combinations.

3 3. "Modifier" means a person who reworks, changes or adds to products,
4 wares or articles of manufacture.

5 4. "Overhead materials" means tangible personal property, the gross
6 proceeds of sales or gross income derived from which would otherwise be
7 included in the retail classification, and which are used or consumed in the
8 performance of a contract, the cost of which is charged to an overhead
9 expense account and allocated to various contracts based upon generally
10 accepted accounting principles and consistent with government contract
11 accounting standards.

12 5. "Repairer" means a person who restores or renews products, wares or
13 articles of manufacture.

14 6. "Subcontract" means an agreement between a contractor and any
15 person who is not an employee of the contractor for furnishing of supplies or
16 services that, in whole or in part, are necessary to the performance of one
17 or more government contracts, or under which any portion of the contractor's
18 obligation under one or more government contracts is performed, undertaken or
19 assumed and that includes provisions causing title to overhead materials or
20 other tangible personal property used in the performance of the subcontract
21 to pass to the government or that includes provisions incorporating such
22 title passing clauses in a government contract into the subcontract.

23 Sec. 3. Section 42-5071, Arizona Revised Statutes, is amended to read:
24 42-5071. Personal property rental classification

25 A. The personal property rental classification is comprised of the
26 business of leasing or renting tangible personal property for a
27 consideration. The tax does not apply to:

28 1. Leasing or renting films, tapes or slides used by theaters or
29 movies, which are engaged in business under the amusement classification, or
30 used by television stations or radio stations.

31 2. Activities engaged in by the Arizona exposition and state fair
32 board or county fair commissions in connection with events sponsored by such
33 entities.

34 3. Leasing or renting tangible personal property by a parent
35 corporation to a subsidiary corporation or by a subsidiary corporation to
36 another subsidiary of the same parent corporation if taxes were paid under
37 this chapter on the gross proceeds or gross income accruing from the initial
38 sale of the tangible personal property. For the purposes of this paragraph,
39 "subsidiary" means a corporation of which at least eighty per cent of the
40 voting shares are owned by the parent corporation.

41 4. Operating coin operated washing, drying and dry cleaning machines
42 or coin operated car washing machines at establishments for the use of such
43 machines.

44 5. Leasing or renting tangible personal property for incorporation
45 into or comprising any part of a qualified environmental technology facility

1 as described in section 41-1514.02. This paragraph shall apply for ten full
2 consecutive calendar or fiscal years following the initial lease or rental by
3 each qualified environmental technology manufacturer, producer or processor.

4 6. Leasing or renting aircraft, flight simulators or similar training
5 equipment to students or staff by nonprofit, accredited educational
6 institutions that offer associate or baccalaureate degrees in aviation or
7 aerospace related fields.

8 7. Leasing or renting photographs, transparencies or other creative
9 works used by this state on internet web sites, in magazines or in other
10 publications that encourage tourism.

11 B. The tax base for the personal property rental classification is the
12 gross proceeds of sales or gross income derived from the business, but the
13 gross proceeds of sales or gross income derived from the following shall be
14 deducted from the tax base:

15 1. Reimbursements by the lessee to the lessor of a motor vehicle for
16 payments by the lessor of the applicable fees and taxes imposed by sections
17 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15,
18 article 2 and article IX, section 11, Constitution of Arizona, to the extent
19 such amounts are separately identified as such fees and taxes and are billed
20 to the lessee.

21 2. Leases or rentals of tangible personal property which, if it had
22 been purchased instead of leased or rented by the lessee, would have been
23 exempt under:

24 (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 50
25 or 55.

26 (b) Section 42-5061, subsection B, except that a lease or rental of
27 new machinery or equipment is not exempt pursuant to:

28 (i) Section 42-5061, subsection B, paragraph 13 if the lease is for
29 less than two years.

30 (ii) Section 42-5061, subsection B, paragraph 22 if the lease is for
31 less than five years.

32 (c) Section 42-5061, subsection ~~J~~ K, paragraph 1.

33 (d) Section 42-5061, subsection ~~N~~ O.

34 3. Motor vehicle fuel and use fuel that are subject to a tax imposed
35 under title 28, chapter 16, article 1, sales of use fuel to a holder of a
36 valid single trip use fuel tax permit issued under section 28-5739 and sales
37 of aviation fuel that are subject to the tax imposed under section 28-8344.

38 4. Leasing or renting a motor vehicle subject to and upon which the
39 fee has been paid under title 28, chapter 16, article 4.

40 5. Amounts received by a motor vehicle dealer for the first month of a
41 lease payment if the lease and the lease payment for the first month of the
42 lease are transferred to a third party leasing company.

43 C. Sales of tangible personal property to be leased or rented to a
44 person engaged in a business classified under the personal property rental
45 classification are deemed to be resale sales.

1 D. In computing the tax base, the gross proceeds of sales or gross
2 income from the lease or rental of a motor vehicle does not include any
3 amount attributable to the car rental surcharge under section 28-5810 or
4 48-4234.

5 E. Until December 31, 1988, leasing or renting animals for
6 recreational purposes is exempt from the tax imposed by this section.
7 Beginning January 1, 1989, the gross proceeds or gross income from leasing or
8 renting animals for recreational purposes is subject to taxation under this
9 section. Tax liabilities, penalties and interest paid for taxable periods
10 before January 1, 1989 shall not be refunded unless the taxpayer requesting
11 the refund provides proof satisfactory to the department that the monies paid
12 as taxes will be returned to the customer.

13 Sec. 4. Section 42-5074, Arizona Revised Statutes, is amended to read:

14 42-5074. Restaurant classification

15 A. The restaurant classification is comprised of the business of
16 operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands,
17 soda fountains, catering services or similar establishments where articles of
18 food or drink are sold for consumption on or off the premises.

19 B. The tax base for the restaurant classification is the gross
20 proceeds of sales or gross income derived from the business. The gross
21 proceeds of sales or gross income derived from the following shall be
22 deducted from the tax base:

23 1. Sales to a person engaged in business classified under the
24 restaurant classification if the items sold are to be resold in the regular
25 course of the business.

26 2. Sales by a congressionally chartered veterans organization of food
27 or drink prepared for consumption on the premises leased, owned or maintained
28 by the organization.

29 3. Sales by churches, fraternal benefit societies and other nonprofit
30 organizations, as these organizations are defined in the federal internal
31 revenue code (26 United States Code section 501), which do not regularly
32 engage or continue in the restaurant business for the purpose of
33 fund-raising.

34 4. Sales by a nonprofit organization that is exempt from taxation
35 under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code
36 if the organization is associated with a major league baseball team or a
37 national touring professional golfing association and no part of the
38 organization's net earnings inures to the benefit of any private shareholder
39 or individual.

40 5. Sales at a rodeo featuring primarily farm and ranch animals in this
41 state by a nonprofit organization that is exempt from taxation under section
42 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal
43 revenue code and no part of the organization's net earnings inures to the
44 benefit of any private shareholder or individual.

1 6. Sales by any nonprofit organization organized and operated
2 exclusively for charitable purposes and recognized by the United States
3 internal revenue service under section 501(c)(3) of the internal revenue
4 code.

5 7. Sales to qualifying hospitals as defined in section 42-5001.

6 8. Sales to a qualifying health care organization as defined in
7 section 42-5001 if the tangible personal property is used by the organization
8 solely to provide health and medical related educational and charitable
9 services.

10 9. Sales of food, drink and condiment for consumption within the
11 premises of any prison, jail or other institution under the jurisdiction of
12 the state department of corrections, the department of public safety, the
13 department of juvenile corrections or a county sheriff.

14 10. Sales of catered food, drink and condiment to a motion picture
15 production company. To qualify for this deduction, at the time of purchase,
16 the motion picture production company must present to the business its
17 certificate of qualification that is issued pursuant to section 42-5009,
18 subsection H and that establishes its qualification for the deduction.

19 11. Sales of articles of prepared or unprepared food, drink or
20 condiment and accessory tangible personal property to a school district or
21 charter school if the articles and accessory tangible personal property are
22 served to persons for consumption on the premises of a public school in the
23 school district or charter school during school hours.

24 12. Prepared food, drink or condiment donated by a restaurant to a
25 nonprofit charitable organization that has qualified under section 501(c)(3)
26 of the internal revenue code and that regularly serves meals to the needy and
27 indigent on a continuing basis at no cost.

28 C. The tax imposed on the restaurant classification pursuant to this
29 section does not apply to the gross proceeds of sales or gross income from
30 tangible personal property sold to a commercial airline consisting of food,
31 beverages and condiments and accessories used for serving the food and
32 beverages, if those items are to be provided without additional charge to
33 passengers for consumption in flight. For the purposes of this subsection,
34 "commercial airline" means a person holding a federal certificate of public
35 convenience and necessity or foreign air carrier permit for air
36 transportation to transport persons, property or United States mail in
37 intrastate, interstate or foreign commerce.

38 D. IN LIEU OF SEPARATE TRANSACTION PRIVILEGE TAX LICENSES, THE
39 DEPARTMENT SHALL PROVIDE WITHOUT ADDITIONAL COST AN ENDORSEMENT TO A
40 RESTAURANT CLASSIFICATION TRANSACTION PRIVILEGE TAX LICENSE IN THE CASE OF A
41 PERSON CONDUCTING BUSINESS UNDER THE RESTAURANT CLASSIFICATION WHO ALSO SELLS
42 SWEETENED BEVERAGES INCLUDED UNDER THE RETAIL SWEETENED BEVERAGE
43 CLASSIFICATION.

1 ~~D.~~ E. For purposes of section 42-5032.01, the department shall
2 separately account for revenues collected under the restaurant classification
3 from businesses operating restaurants, dining rooms, lunchrooms, lunch
4 stands, soda fountains, catering services or similar establishments:

5 1. On the premises of a multipurpose facility that is owned or
6 operated by the tourism and sports authority pursuant to title 5, chapter 8
7 for consumption on or off the premises.

8 2. At professional football contests that are held in a stadium
9 located on the campus of an institution under the jurisdiction of the Arizona
10 board of regents.

11 Sec. 5. Title 42, chapter 5, article 2, Arizona Revised Statutes, is
12 amended by adding section 42-5077, to read:

13 42-5077. Retail sweetened beverage classification; definitions

14 A. THE RETAIL SWEETENED BEVERAGE CLASSIFICATION IS COMPRISED OF THE
15 BUSINESS OF SELLING SWEETENED BEVERAGES FOR CONSUMPTION BY THE CUSTOMER OF
16 THE BUSINESS ON OR OFF THE PREMISES.

17 B. THE TAX BASE FOR THE RETAIL SWEETENED BEVERAGE CLASSIFICATION IS
18 THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE BUSINESS. THE
19 TAX BASE IS SEPARATE FROM THE TAX BASES OF OTHER RETAIL OR RESTAURANT
20 ACTIVITIES ENGAGED IN BY THE TAXPAYER, AND THE TAX DUE UNDER THE RETAIL
21 SWEETENED BEVERAGE CLASSIFICATION IS IN ADDITION TO THE TAX DUE UNDER THOSE
22 CLASSIFICATIONS ON THE GROSS PROCEEDS OF SALES OF SWEETENED BEVERAGES.

23 C. FOR THE PURPOSES OF THIS SECTION:

24 1. "NATURAL FRUIT JUICE" MEANS THE LIQUID THAT RESULTS FROM THE
25 PRESSING OF FRUIT, THE RECONSTITUTION OF NATURAL FRUIT JUICE CONCENTRATE OR
26 THE RESTORATION OF WATER TO DEHYDRATED NATURAL FRUIT JUICE.

27 2. "NATURAL VEGETABLE JUICE" MEANS THE LIQUID THAT RESULTS FROM THE
28 PRESSING OF VEGETABLES, THE RECONSTITUTION OF NATURAL VEGETABLE JUICE
29 CONCENTRATE OR THE RESTORATION OF WATER TO DEHYDRATED NATURAL VEGETABLE
30 JUICE.

31 3. "SOFT DRINK" MEANS ANY NONALCOHOLIC BEVERAGE, CONTAINING NATURAL
32 SWEETENERS, THAT IS SOLD FOR HUMAN CONSUMPTION. SOFT DRINK INCLUDES
33 SWEETENED SODA WATER, GINGER ALE, FRUIT DRINKS AND OTHER DRINKS AND BEVERAGES
34 THAT ARE COMMONLY REFERRED TO AS COLA, SODA, SODA POP OR SOFT DRINK.

35 4. "SWEETENED BEVERAGES" MEANS LIQUID SOFT DRINKS, FRUIT JUICE AND
36 POWDERS USED TO PRODUCE A LIQUID SOFT DRINK CONTAINING NATURAL SWEETENERS.
37 THE FOLLOWING ARE NOT CONSIDERED TO BE SWEETENED BEVERAGES FOR THE PURPOSES
38 OF THIS SECTION:

39 (a) ANY POWDER OR OTHER BASE PRODUCT THAT IS USED IN PREPARING COFFEE
40 OR TEA.

41 (b) NATURAL OR CONCENTRATED VEGETABLE JUICE OR FREEZE-DRIED
42 CONCENTRATE TO WHICH ONLY WATER IS ADDED TO PRODUCE A DRINK THAT CONTAINS
43 MORE THAN FIFTY PER CENT NATURAL VEGETABLE JUICE.

44 (c) ANY INFANT FORMULA THAT IS SOLD IN LIQUID OR POWDER FORM AND THAT
45 IS INTENDED BY THE MANUFACTURER TO BE CONSUMED BY INFANTS.

1 (d) ANY SOFT DRINK THAT CONTAINS FEWER THAN TEN CALORIES PER TWELVE
2 LIQUID OUNCES.

3 (e) ANY LIQUID OR POWDER PRODUCT THAT IS INTENDED BY THE MANUFACTURER
4 TO BE USED FOR WEIGHT REDUCTION.

5 (f) WATER THAT HAS NO ADDED NATURAL SWEETENERS.

6 (g) ANY PRODUCT THAT CONTAINS MILK OR MILK PRODUCTS. FOR THE PURPOSES
7 OF THIS SUBDIVISION, "MILK" MEANS NATURAL LIQUID MILK FROM ANY ANIMAL SOURCE,
8 SOY MILK, NATURAL MILK CONCENTRATE THAT IS FROM ANY ANIMAL SOURCE AND THAT
9 MAY BE RECONSTITUTED OR DEHYDRATED NATURAL MILK THAT MAY BE RECONSTITUTED.

10 Sec. 6. Section 42-5106, Arizona Revised Statutes, is amended to read:
11 42-5106. Rules

12 A. The department shall adopt rules defining food consistent with
13 section 42-5101 and this section.

14 B. The department shall include as food:

- 15 1. Returnable containers for which a deposit is collected.
- 16 2. Ice and dry ice used in packing, shipping or transporting food.
- 17 3. Seeds and plants to grow food for personal consumption.

18 C. The department shall not include food for consumption on the
19 premises, alcoholic beverages, ~~or~~ tobacco OR SWEETENED BEVERAGES, AS PROVIDED
20 BY SECTION 42-5077, as food.

21 D. The department shall adopt rules which, other than for those items
22 specifically included or excluded by subsections B and C of this section,
23 define food to be those items which are intended for human consumption and
24 which are intended for home consumption. In adopting such rules, the
25 department shall give strong consideration to those specific items which are
26 then eligible for purchase with food coupons issued by the United States
27 department of agriculture so as to effectuate the intent of the legislature
28 as specified in this article.

29 Sec. 7. Requirements for enactment: two-thirds vote

30 Pursuant to article IX, section 22, Constitution of Arizona, this act
31 is effective only on the affirmative vote of at least two-thirds of the
32 members of each house of the legislature and is effective immediately on the
33 signature of the governor or, if the governor vetoes this act, on the
34 subsequent affirmative vote of at least three-fourths of the members of each
35 house of the legislature.