

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SENATE BILL 1229

AN ACT

AMENDING SECTIONS 42-5001 AND 42-5063, 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 42-5001, Arizona Revised Statutes, is amended to
3 read:

4 42-5001. Definitions

5 In this article and article 2 of this chapter, unless the context
6 otherwise requires:

7 1. "Business" includes all activities or acts, personal or corporate,
8 engaged in or caused to be engaged in with the object of gain, benefit or
9 advantage, either directly or indirectly, but DOES not INCLUDE:

10 (a) Casual activities or sales.

11 (b) THE TRANSFER OF ELECTRICITY FROM A SOLAR PHOTOVOLTAIC GENERATION
12 SYSTEM TO AN ELECTRIC UTILITY DISTRIBUTION SYSTEM.

13 2. "Distribution base" means the portion of the revenues derived from
14 the tax levied by this article and articles 5 and 8 of this chapter
15 designated for distribution to counties, municipalities and other purposes
16 according to section 42-5029, subsection D.

17 3. "Engaging", when used with reference to engaging or continuing in
18 business, includes the exercise of corporate or franchise powers.

19 4. "Gross income" means the gross receipts of a taxpayer derived from
20 trade, business, commerce or sales and the value proceeding or accruing from
21 the sale of tangible personal property or service, or both, and without any
22 deduction on account of losses.

23 5. "Gross proceeds of sales" means the value proceeding or accruing
24 from the sale of tangible personal property without any deduction on account
25 of the cost of property sold, expense of any kind or losses, but cash
26 discounts allowed and taken on sales are not included as gross income.

27 6. "Gross income" and "gross proceeds of sales" do not include goods,
28 wares or merchandise, or value thereof, returned by customers if the sale
29 price is refunded either in cash or by credit, nor the value of merchandise
30 traded in on the purchase of new merchandise when the trade-in allowance is
31 deducted from the sales price of the new merchandise before completion of the
32 sale.

33 7. "Gross receipts" means the total amount of the sale, lease or
34 rental price, as the case may be, of the retail sales of retailers, including
35 any services that are a part of the sales, valued in money, whether received
36 in money or otherwise, including all receipts, cash, credits and property of
37 every kind or nature, and any amount for which credit is allowed by the
38 seller to the purchaser without any deduction from the amount on account of
39 the cost of the property sold, materials used, labor or service performed,
40 interest paid, losses or any other expense. Gross receipts do not include
41 cash discounts allowed and taken nor the sale price of property returned by
42 customers if the full sale price is refunded either in cash or by credit.

43 8. "Person" or "company" includes an individual, firm, partnership,
44 joint venture, association, corporation, estate or trust, this state, any
45 county, city, town, district, other than a school district, or other

1 political subdivision and any other group or combination acting as a unit,
2 and the plural as well as the singular number.

3 9. "Qualifying community health center":

4 (a) Means an entity that is recognized as nonprofit under section
5 501(c)(3) of the United States internal revenue code, that is a
6 community-based, primary care clinic that has a community-based board of
7 directors and that is either:

8 (i) The sole provider of primary care in the community.

9 (ii) A nonhospital affiliated clinic that is located in a federally
10 designated medically underserved area in this state.

11 (b) Includes clinics that are being constructed as qualifying
12 community health centers.

13 10. "Qualifying health care organization" means an entity that is
14 recognized as nonprofit under section 501(c) of the United States internal
15 revenue code and that uses, saves or invests at least eighty per cent of all
16 monies that it receives from all sources each year only for health and
17 medical related educational and charitable services, as documented by annual
18 financial audits prepared by an independent certified public accountant,
19 performed according to generally accepted accounting standards and filed
20 annually with the department. Monies that are used, saved or invested to
21 lease, purchase or construct a facility for health and medical related
22 education and charitable services are included in the eighty per cent
23 requirement.

24 11. "Qualifying hospital" means any of the following:

25 (a) A licensed hospital which is organized and operated exclusively
26 for charitable purposes, no part of the net earnings of which inures to the
27 benefit of any private shareholder or individual.

28 (b) A licensed nursing care institution or a licensed residential care
29 institution or a residential care facility operated in conjunction with a
30 licensed nursing care institution or a licensed kidney dialysis center, which
31 provides medical services, nursing services or health related services and is
32 not used or held for profit.

33 (c) A hospital, nursing care institution or residential care
34 institution which is operated by the federal government, this state or a
35 political subdivision of this state.

36 (d) A facility that is under construction and that on completion will
37 be a facility under subdivision (a), (b) or (c) of this paragraph.

38 12. "Retailer" includes every person engaged in the business classified
39 under the retail classification pursuant to section 42-5061 and, when in the
40 opinion of the department it is necessary for the efficient administration of
41 this article, includes dealers, distributors, supervisors, employers and
42 salesmen, representatives, peddlers or canvassers as the agents of the
43 dealers, distributors, supervisors or employers under whom they operate or
44 from whom they obtain the tangible personal property sold by them, whether in

1 making sales on their own behalf or on behalf of the dealers, distributors,
2 supervisors or employers.

3 13. "Sale" means any transfer of title or possession, or both,
4 exchange, barter, lease or rental, conditional or otherwise, in any manner or
5 by any means whatever, including consignment transactions and auctions, of
6 tangible personal property or other activities taxable under this chapter,
7 for a consideration, and includes:

8 (a) Any transaction by which the possession of property is transferred
9 but the seller retains the title as security for the payment of the price.

10 (b) Fabricating tangible personal property for consumers who furnish
11 either directly or indirectly the materials used in the fabrication work.

12 (c) Furnishing, preparing or serving for a consideration any tangible
13 personal property consumed on the premises of the person furnishing,
14 preparing or serving the tangible personal property.

15 14. "Solar daylighting" means a device that is specifically designed to
16 capture and redirect the visible portion of the solar beam, while controlling
17 the infrared portion, for use in illuminating interior building spaces in
18 lieu of artificial lighting.

19 15. "Solar energy device" means a system or series of mechanisms
20 designed primarily to provide heating, to provide cooling, to produce
21 electrical power, to produce mechanical power, to provide solar daylighting
22 or to provide any combination of the foregoing by means of collecting and
23 transferring solar generated energy into such uses either by active or
24 passive means, including wind generator systems that produce electricity.
25 Solar energy systems may also have the capability of storing solar energy for
26 future use. Passive systems shall clearly be designed as a solar energy
27 device, such as a trombe wall, and not merely as a part of a normal
28 structure, such as a window.

29 16. "Tangible personal property" means personal property which may be
30 seen, weighed, measured, felt or touched or is in any other manner
31 perceptible to the senses.

32 17. "Tax year" or "taxable year" means either the calendar year or the
33 taxpayer's fiscal year, if permission is obtained from the department to use
34 a fiscal year as the tax period instead of the calendar year.

35 18. "Taxpayer" means any person who is liable for any tax which is
36 imposed by this article.

37 19. "Wholesaler" or "jobber" means any person who sells tangible
38 personal property for resale and not for consumption by the purchaser.

39 Sec. 2. Section 42-5063, Arizona Revised Statutes, is amended to read:
40 42-5063. Utilities classification; definitions

41 A. The utilities classification is comprised of the business of:

42 1. Producing and furnishing or furnishing to consumers natural or
43 artificial gas and water.

1 2. Providing to retail electric customers ancillary services, electric
2 distribution services, electric generation services, electric transmission
3 services and other services related to providing electricity.

4 B. The utilities classification does not include:

5 1. Sales of ancillary services, electric distribution services,
6 electric generation services, electric transmission services and other
7 services related to providing electricity, gas or water to a person who
8 resells the services.

9 2. Sales of natural gas or liquefied petroleum gas used to propel a
10 motor vehicle.

11 3. Sales of alternative fuel, as defined in section 1-215, to a used
12 oil fuel burner who has received a permit to burn used oil or used oil fuel
13 under section 49-426 or 49-480.

14 4. Sales of ancillary services, electric distribution services,
15 electric generation services, electric transmission services and other
16 services that are related to providing electricity to a retail electric
17 customer who is located outside this state for use outside this state if the
18 electricity is delivered to a point of sale outside this state.

19 5. GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM CREDITS
20 RECEIVED FOR THE ELECTRICITY TRANSFERRED TO AN ELECTRIC UTILITY DISTRIBUTION
21 SYSTEM BY ANY PERSON OR PERSONS OWNING A SOLAR PHOTOVOLTAIC GENERATING
22 SYSTEM.

23 C. The tax base for the utilities classification is the gross proceeds
24 of sales or gross income derived from the business, but the following shall
25 be deducted from the tax base:

26 1. Revenues received by a municipally owned utility in the form of
27 fees charged to persons constructing residential, commercial or industrial
28 developments or connecting residential, commercial or industrial developments
29 to a municipal utility system or systems if the fees are segregated and used
30 only for capital expansion, system enlargement or debt service of the utility
31 system or systems.

32 2. Revenues received by any person or persons owning a utility system
33 in the form of reimbursement or contribution compensation for property and
34 equipment installed to provide utility access to, on or across the land of an
35 actual utility consumer if the property and equipment become the property of
36 the utility. This deduction shall not exceed the value of such property and
37 equipment.

38 3. Gross proceeds of sales or gross income derived from sales to:

39 (a) Qualifying hospitals as defined in section 42-5001.

40 (b) A qualifying health care organization as defined in section
41 42-5001 if the tangible personal property is used by the organization solely
42 to provide health and medical related educational and charitable services.

43 4. The portion of gross proceeds of sales or gross income that is
44 derived from sales to a qualified environmental technology manufacturer,
45 producer or processor as defined in section 41-1514.02 of a utility product

1 and that is used directly in environmental technology manufacturing,
2 producing or processing. This paragraph shall apply for twenty full
3 consecutive calendar or fiscal years from the date the first paper
4 manufacturing machine is placed in service. In the case of a qualified
5 environmental technology manufacturer, producer or processor who does not
6 manufacture paper, the time period shall begin with the date the first
7 manufacturing, processing or production equipment is placed in service.

8 5. AMOUNTS ATTRIBUTABLE TO CREDITS PROVIDED TO ANY RETAIL ELECTRIC
9 CUSTOMER OWNING A SOLAR PHOTOVOLTAIC ENERGY GENERATING SYSTEM FOR THE
10 TRANSFER OF ELECTRICITY GENERATED BY THAT SYSTEM TO AN ELECTRIC DISTRIBUTION
11 SYSTEM.

12 D. For the purposes of this section:

13 1. "Ancillary services" means those services so designated in federal
14 energy regulatory commission order 888 adopted in 1996 that include the
15 services necessary to support the transmission of electricity from resources
16 to loads while maintaining reliable operation of the transmission system
17 according to good utility practice.

18 2. "Electric distribution service" means distributing electricity to
19 retail electric customers through the use of electric distribution
20 facilities.

21 3. "Electric generation service" means providing electricity for sale
22 to retail electric customers but excluding electric distribution or
23 transmission services.

24 4. "Electric transmission service" means transmitting electricity to
25 retail electric customers or to electric distribution facilities so
26 classified by the federal energy regulatory commission or, to the extent
27 permitted by law, so classified by the Arizona corporation commission.

28 5. "Other services" includes metering, meter reading services, billing
29 and collecting services.

30 6. "Retail electric customer" means a person who purchases electricity
31 for that person's own use, including use in that person's trade or business
32 and not for resale, redistribution or retransmission.