

REFERENCE TITLE: use tax; retailer; definition

State of Arizona
Senate
Fiftieth Legislature
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2012

SB 1338

Introduced by
Senators Melvin, McComish: Representatives Mesnard, Olson

AN ACT

AMENDING SECTIONS 42-5151, 42-5160, 42-5161, 42-5162 AND 42-5167, ARIZONA REVISED STATUTES; REPEALING SECTION 42-5169, ARIZONA REVISED STATUTES; AMENDING SECTION 43-321, ARIZONA REVISED STATUTES; RELATING TO USE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5151, Arizona Revised Statutes, is amended to
3 read:

4 42-5151. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Ancillary services" means those services so designated in federal
7 energy regulatory commission order 888 adopted in 1996 that include the
8 services necessary to support the transmission of electricity from resources
9 to loads while maintaining reliable operation of the transmission system
10 according to good utility practice.

11 2. "Electric distribution service" means distributing electricity to
12 retail electric customers through the use of electric distribution
13 facilities.

14 3. "Electric generation service" means providing electricity for sale
15 to retail electric customers but excluding electric distribution or
16 transmission services.

17 4. "Electric transmission service" means transmitting electricity to
18 retail electric customers or to electric distribution facilities so
19 classified by the federal energy regulatory commission or, to the extent
20 permitted by law, so classified by the Arizona corporation commission.

21 5. "Electric utility services" means the business of providing
22 electric ancillary services, electric distribution services, electric
23 generation services, electric transmission services and other services
24 related to providing electricity.

25 6. "Electricity" means electric energy, electric capacity or electric
26 capacity and energy.

27 7. "Electricity supplier" means a person, whether acting in a
28 principal, agent or other capacity, that offers to sell electricity to a
29 retail electric customer in this state.

30 8. "Natural gas" means natural or artificial gas, and includes methane
31 and propane gas, the natural gas commodity, natural gas pipeline capacity or
32 natural gas commodity and pipeline capacity.

33 9. "Natural gas utility services" means the business of selling
34 natural gas or providing natural gas transportation services or other
35 services related to providing natural gas.

36 10. "Notice" means written notice served personally or by certified
37 mail and addressed to the last known address of the person to whom such
38 notice is given.

39 11. "Other services" includes metering, meter reading services, billing
40 and collecting services.

41 12. "Person" means an individual, firm, partnership, joint venture,
42 association, corporation, estate, trust, receiver or syndicate, this state or
43 a county, city, municipality, district or other political subdivision or
44 agency thereof.

1 13. "Purchase" means any transfer, exchange or barter, conditional or
2 otherwise, in any manner or by any means, of tangible personal property for a
3 consideration, including transactions by which the possession of property is
4 transferred but the seller retains the title as security for payment.

5 14. "Purchase price" or "sales price" means the total amount for which
6 tangible personal property is sold, including any services that are a part of
7 the sale, valued in money, whether paid in money or otherwise, and any amount
8 for which credit is given to the purchaser by the seller without any
9 deduction on account of the cost of the property sold, materials used, labor
10 or services performed, interest charged, losses or other expenses, but does
11 not include:

12 (a) Discounts allowed and taken.

13 (b) Charges for labor or services in installing, remodeling or
14 repairing.

15 (c) Freight costs billed to and collected from a purchaser by a
16 retailer for tangible personal property which, on the order of the retailer,
17 is shipped directly from a manufacturer or wholesaler to the purchaser.

18 (d) Amounts attributable to federal excise taxes imposed by 26 United
19 States Code section 4001, 4051 or 4081 on sales of heavy trucks and trailers
20 and automobiles or on sales of use fuel, as defined in section 28-5601.

21 (e) The value of merchandise that is traded in on the purchase of new
22 or pre-owned merchandise when the trade-in allowance is deducted from the
23 sales price of the new or pre-owned merchandise before the completion of the
24 sale.

25 15. "Retail electric customer" means a person who purchases electricity
26 for that person's own use, including use in that person's trade or business,
27 and not for resale, redistribution or retransmission.

28 16. "Retail natural gas customer" means a person who purchases natural
29 gas for that person's own use, including use in that person's trade or
30 business, and not for resale, redistribution or retransmission.

31 17. "Retailer" includes:

32 (a) Every person engaged in the business of making sales of tangible
33 personal property for storage, use or other consumption or in the business of
34 making sales at auction of tangible personal property owned by that person or
35 others for storage, use or other consumption. If in the opinion of the
36 department it is necessary for the efficient administration of this article
37 to regard any salesmen, representatives, peddlers or canvassers as the agents
38 of the dealers, distributors, supervisors or employers under whom they
39 operate or from whom they obtain the tangible personal property sold by them,
40 regardless of whether they are making sales on their own behalf or on behalf
41 of such dealers, distributors, supervisors or employers, the department may
42 so regard them and may regard the dealers, distributors, supervisors or
43 employers as retailers for purposes of this article.

44 (b) A person who solicits orders for tangible personal property by
45 mail if the solicitations are substantial and recurring or if the retailer

1 benefits from any banking, financing, debt collection, telecommunication,
2 television shopping system, cable, optic, microwave or other communication
3 system or marketing activities occurring in this state or benefits from the
4 location in this state of authorized installation, servicing or repair
5 facilities.

6 (c) ANY PERSON WHO MAKES SALES OF TANGIBLE PERSONAL PROPERTY THAT ARE
7 TAXABLE UNDER THIS ARTICLE FOR STORAGE, USE OR OTHER CONSUMPTION IN THIS
8 STATE IF ANY OTHER PERSON, OTHER THAN A COMMON CARRIER ACTING IN ITS OFFICIAL
9 CAPACITY, MAINTAINS A DISTRIBUTION CENTER, WAREHOUSE, FULFILLMENT CENTER OR
10 SIMILAR PLACE OF BUSINESS WITHIN THIS STATE THAT FACILITATES THE DELIVERY OF
11 PROPERTY SOLD BY THE PERSON TO THE PERSON'S CUSTOMERS. THIS SUBDIVISION
12 CREATES A PRESUMPTION THAT SUCH PERSON IS A RETAILER, AND THIS PRESUMPTION
13 MAY BE REBUTTED BY DEMONSTRATING THAT THE ACTIVITIES CONDUCTED BY THE PERSON
14 MAINTAINING THE DISTRIBUTION CENTER, WAREHOUSE, FULFILLMENT CENTER OR SIMILAR
15 PLACE OF BUSINESS ARE NOT SIGNIFICANTLY ASSOCIATED WITH THE PERSON'S ABILITY
16 TO ESTABLISH OR MAINTAIN A MARKET IN THE STATE FOR THE PERSON'S SALES.

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

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

31 20. "Storage" means keeping or retaining tangible personal property
32 purchased from a retailer for any purpose except sale in the regular course
33 of business or subsequent use solely outside this state.

34 21. "Taxpayer" means any retailer or person storing, using or consuming
35 tangible personal property the storage, use or consumption of which is
36 subject to the tax imposed by this article when such tax was not paid to a
37 retailer.

38 22. "Use or consumption" means the exercise of any right or power over
39 tangible personal property incidental to owning the property except holding
40 for sale or selling the property in the regular course of business.

41 23. "Utility business" means a person that is engaged in the business
42 of providing electric utility services to retail electric customers or
43 natural gas utility services to retail natural gas customers.

1 or consumption of which is subject to the tax imposed by this article, and
2 every person who purchases for use, storage or consumption any such property
3 for which the tax is not paid to the retailer, shall file a return with the
4 department on or before the twentieth day of the month next succeeding the
5 month in which the tax accrues. The return shall be on a form prescribed by
6 the department and shall show the tangible personal property sold for use,
7 storage or consumption or purchased for use, storage or consumption within
8 the state during the preceding calendar month. Such return shall be verified
9 by oath or affirmation of the retailer or person making the report, or his
10 agent, and shall be accompanied by payment of the tax shown to be due. The
11 return and tax are delinquent if not postmarked on or before the twenty-fifth
12 day of the month when due or if not received by the department on or before
13 the business day preceding the last business day of that month for those
14 taxpayers electing to file by mail, or are delinquent if not received by the
15 department on the business day preceding the last business day of the month
16 when due for those taxpayers electing to file in person.

17 B. The department **may**, for any taxpayer whose estimated annual
18 liability for taxes imposed by this article is between five hundred and one
19 thousand two hundred fifty dollars, **MAY** authorize such taxpayer to pay such
20 taxes on a quarterly basis. The department **may**, for any taxpayer whose
21 estimated annual liability for taxes imposed by this article is five hundred
22 dollars or less, **MAY** authorize such taxpayer to pay such taxes on an annual
23 basis.

24 C. For good cause shown the department may extend the time for making
25 a return and paying the tax, but the time for filing the return shall not be
26 extended beyond the first day of the third month next succeeding the regular
27 due date of the return.

28 Sec. 5. Section 42-5167, Arizona Revised Statutes, is amended to read:
29 **42-5167. Use tax direct payment: utility business transactions**

30 A. **FOR TRANSACTIONS WITH A UTILITY BUSINESS**, a person may elect to pay
31 use taxes directly to the department under this article if the person:

32 1. Applies to the department for a use tax direct payment permit. The
33 application must be on a form prescribed by the department setting forth the
34 name under which the applicant transacts or intends to transact business, the
35 location of the place or places of business where the applicant intends to
36 make direct payment of use taxes and any other information that the
37 department may require. The application must be signed, in the case of:

38 (a) A natural person, by the owner.

39 (b) An association or partnership, by a member or partner.

40 (c) A corporation, by an executive officer or another person
41 specifically authorized by the corporation to sign the application.

42 2. Agrees to self-assess and pay directly to the department any use
43 tax liability incurred under this article.

1 3. Certifies to the department that the person purchased for the
2 person's own use tangible personal property at a cost of five hundred
3 thousand dollars or more, in the aggregate, during the immediately preceding
4 calendar year.

5 B. The department shall issue a use tax direct payment permit to any
6 applicant that meets the requirements of subsection A of this section.

7 C. If the department deems it necessary to protect the revenues to be
8 collected under this section, it may require a person to file a bond to
9 secure the payment of such amounts pursuant to section 42-1102.

10 D. A person who holds a valid use tax direct payment permit shall:

11 1. Self-assess and pay directly to the department use taxes due under
12 this article for all tangible personal property subject to use tax.

13 2. Report the tax on a tax return prescribed by the department.

14 E. A holder of a use tax direct payment ~~certificate~~ PERMIT may issue a
15 use tax direct payment certificate to any ~~retailer or~~ seller, subject to all
16 of the following:

17 1. The certificate shall be in a form prescribed by the department and
18 must be signed by and bear the name, address and permit number of the holder
19 of the use tax direct payment permit.

20 2. The certificate is effective until the permit holder revises or
21 withdraws the certificate or until the ~~retailer or~~ seller receives actual
22 notice that the department has revoked the permit.

23 3. The certificate relieves the ~~retailer or~~ seller of the duty to
24 collect use tax only if taken in good faith from a person who holds a use tax
25 direct payment permit. The department may periodically publish on its web
26 site a list of taxpayers by name with tax identification numbers who have
27 been issued direct payment permits. A purchaser holding a direct payment
28 permit who issues a use tax direct payment certificate that is accepted in
29 good faith by a ~~retailer or~~ seller of tangible personal property shall be
30 liable for use tax and related interest and penalties with respect to any
31 transaction that the department subsequently determines properly subjects the
32 vendor to the transaction privilege tax and not use tax. The vendor shall be
33 relieved of the duty to pay transaction privilege tax on such transactions.

34 4. In addition to any use tax liabilities, a holder of a use tax
35 direct payment permit that gives a use tax direct payment certificate to a
36 ~~retailer or~~ seller is subject to the same penalty provisions that apply to a
37 ~~retailer or~~ seller.

38 Sec. 6. Repeal

39 Section 42-5169, Arizona Revised Statutes, is repealed.

40 Sec. 7. Section 43-321, Arizona Revised Statutes, is amended to read:
41 43-321. Information required in returns

42 Each return required to be filed under this title shall contain the
43 following:

1 1. It shall contain or be verified by a declaration that it is made
2 under penalties of perjury. The declaration shall be written or in a form
3 prescribed by the department pursuant to section 42-1105, subsection B.

4 2. A specific statement of the items of the taxpayer's gross income
5 and the adjustments, deductions and credits allowed by this title.

6 ~~3. A specific statement of the taxpayer's use tax liability pursuant~~
7 ~~to section 42-5169.~~

8 ~~4.~~ 3. Such other information as the department may by rule prescribe
9 for the purpose of carrying out the provisions of this title.

10 Sec. 8. Forgiveness of penalty

11 Notwithstanding the failure to declare any use tax liability, the
12 penalties prescribed by title 42, chapter 1, article 3, Arizona Revised
13 Statutes, for failing to declare the taxpayer's use tax liability pursuant to
14 section 42-5169, Arizona Revised Statutes, as repealed by this act, do not
15 apply and the department of revenue shall waive any applicable penalties.

16 Sec. 9. Retroactivity

17 A. Sections 42-5162 and 43-321, Arizona Revised Statutes, as amended
18 by this act, are effective retroactively to July 20, 2011.

19 B. Section 42-5169, Arizona Revised Statutes, as repealed by this act,
20 is effective retroactively to July 20, 2011.