

REFERENCE TITLE: **taxation; retail classification; cash equivalents**

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2336

Introduced by
Representative Forese

AN ACT

AMENDING SECTION 42-5061, ARIZONA REVISED STATUTES; RELATING TO RETAIL CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-5061, Arizona Revised Statutes, is amended to
3 read:
4 42-5061. Retail classification; definitions
5 A. The retail classification is comprised of the business of selling
6 tangible personal property at retail. The tax base for the retail
7 classification is the gross proceeds of sales or gross income derived from
8 the business. The tax imposed on the retail classification does not apply to
9 the gross proceeds of sales or gross income from:
10 1. Professional or personal service occupations or businesses that
11 involve sales or transfers of tangible personal property only as
12 inconsequential elements.
13 2. Services rendered in addition to selling tangible personal property
14 at retail.
15 3. Sales of warranty or service contracts. The storage, use or
16 consumption of tangible personal property provided under the conditions of
17 such contracts is subject to tax under section 42-5156.
18 4. Sales of tangible personal property by any nonprofit organization
19 organized and operated exclusively for charitable purposes and recognized by
20 the United States internal revenue service under section 501(c)(3) of the
21 internal revenue code.
22 5. Sales to persons engaged in business classified under the
23 restaurant classification of articles used by human beings for food, drink or
24 condiment, whether simple, mixed or compounded.
25 6. Business activity that is properly included in any other business
26 classification that is taxable under this article.
27 7. The sale of stocks and bonds.
28 8. Drugs and medical oxygen, including delivery hose, mask or tent,
29 regulator and tank, on the prescription of a member of the medical, dental or
30 veterinarian profession who is licensed by law to administer such substances.
31 9. Prosthetic appliances as defined in section 23-501 prescribed or
32 recommended by a health professional who is licensed pursuant to title 32,
33 chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.
34 10. Insulin, insulin syringes and glucose test strips.
35 11. Prescription eyeglasses or contact lenses.
36 12. Hearing aids as defined in section 36-1901.
37 13. Durable medical equipment which has a centers for medicare and
38 medicaid services common procedure code, is designated reimbursable by
39 medicare, is prescribed by a person who is licensed under title 32, chapter
40 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and
41 customarily used to serve a medical purpose, is generally not useful to a
42 person in the absence of illness or injury and is appropriate for use in the
43 home.

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

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

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

11 17. Textbooks by any bookstore that are required by any state
12 university or community college.

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

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

22 20. Lottery tickets or shares pursuant to title 5, chapter 5.1,
23 article 1.

24 21. The sale of CASH EQUIVALENTS AND THE SALE OF precious metal bullion
25 and monetized bullion to the ultimate consumer, but the sale of coins or
26 other forms of money for manufacture into jewelry or works of art is subject
27 to the tax AND THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE
28 REDEMPTION OF ANY CASH EQUIVALENT BY THE HOLDER AS A MEANS OF PAYMENT FOR
29 GOODS OR SERVICES THAT ARE TAXABLE UNDER THIS ARTICLE IS SUBJECT TO THE TAX.
30 For the purposes of this paragraph:

31 (a) "CASH EQUIVALENTS" MEANS ITEMS OR INTANGIBLES, WHETHER OR NOT
32 NEGOTIABLE, THAT ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE
33 DENOMINATED IN MONEY IS PURCHASED IN ADVANCE AND MAY BE REDEEMED IN FULL OR
34 IN PART FOR TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES. CASH
35 EQUIVALENTS INCLUDE GIFT CARDS, STORED VALUE CARDS, GIFT CERTIFICATES,
36 VOUCHERS, TRAVELER'S CHECKS, MONEY ORDERS OR OTHER INSTRUMENTS, ORDERS OR
37 ELECTRONIC MECHANISMS, SUCH AS AN ELECTRONIC CODE, PERSONAL IDENTIFICATION
38 NUMBER OR DIGITAL PAYMENT MECHANISM, OR ANY OTHER PREPAID INTANGIBLE RIGHT TO
39 ACQUIRE TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES IN THE FUTURE,
40 WHETHER FROM THE SELLER OF THE CASH EQUIVALENT OR FROM ANOTHER PERSON. CASH
41 EQUIVALENTS DO NOT INCLUDE EITHER OF THE FOLLOWING:

42 (i) ITEMS OR INTANGIBLES THAT ARE SOLD TO ONE OR MORE PERSONS, THROUGH
43 WHICH A VALUE IS NOT DENOMINATED IN MONEY.

44 (ii) PREPAID CALLING CARDS OR PREPAID AUTHORIZATION NUMBERS FOR
45 TELECOMMUNICATIONS SERVICES MADE TAXABLE BY SUBSECTION Q OF THIS SECTION.

1 ~~(a)~~ (b) "Monetized bullion" means coins and other forms of money that
2 are manufactured from gold, silver or other metals and that have been or are
3 used as a medium of exchange in this or another state, the United States or a
4 foreign nation.

5 ~~(b)~~ (c) "Precious metal bullion" means precious metal, including
6 gold, silver, platinum, rhodium and palladium, that has been smelted or
7 refined so that its value depends on its contents and not on its form.

8 22. Motor vehicle fuel and use fuel that are subject to a tax imposed
9 under title 28, chapter 16, article 1, sales of use fuel to a holder of a
10 valid single trip use fuel tax permit issued under section 28-5739, sales of
11 aviation fuel that are subject to the tax imposed under section 28-8344 and
12 sales of jet fuel that are subject to the tax imposed under article 8 of this
13 chapter.

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

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

20 25. Tangible personal property sold to:

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

22 (b) A qualifying health care organization as defined in section
23 42-5001 if the tangible personal property is used by the organization solely
24 to provide health and medical related educational and charitable services.

25 (c) A qualifying health care organization as defined in section
26 42-5001 if the organization is dedicated to providing educational,
27 therapeutic, rehabilitative and family medical education training for blind,
28 visually impaired and multihandicapped children from the time of birth to age
29 twenty-one.

30 (d) A qualifying community health center as defined in section
31 42-5001.

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

35 (f) For taxable periods beginning from and after June 30, 2001, a
36 nonprofit charitable organization that has qualified under section 501(c)(3)
37 of the internal revenue code and that provides residential apartment housing
38 for low income persons over sixty-two years of age in a facility that
39 qualifies for a federal housing subsidy, if the tangible personal property is
40 used by the organization solely to provide residential apartment housing for
41 low income persons over sixty-two years of age in a facility that qualifies
42 for a federal housing subsidy.

43 26. Magazines or other periodicals or other publications by this state
44 to encourage tourist travel.

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

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

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

11 28. The sale of a motor vehicle to:

12 (a) A nonresident of this state if the purchaser's state of residence
13 does not allow a corresponding use tax exemption to the tax imposed by
14 article 1 of this chapter and if the nonresident has secured a special ninety
15 day nonresident registration permit for the vehicle as prescribed by sections
16 28-2154 and 28-2154.01.

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

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

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

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

36 32. Sales of tangible personal property by a nonprofit organization
37 that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
38 501(c)(7) or 501(c)(8) of the internal revenue code if the organization
39 sponsors or operates a rodeo featuring primarily farm and ranch animals and
40 no part of the organization's net earnings inures to the benefit of any
41 private shareholder or individual.

42 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
43 propagative material to persons who use those items to commercially produce
44 agricultural, horticultural, viticultural or floricultural crops in this
45 state.

1 34. Machinery, equipment, technology or related supplies that are only
2 useful to assist a person who is physically disabled as defined in section
3 46-191, has a developmental disability as defined in section 36-551 or has a
4 head injury as defined in section 41-3201 to be more independent and
5 functional.

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

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

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

14 38. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity
15 sold to a qualified environmental technology manufacturer, producer or
16 processor as defined in section 41-1514.02 and directly used or consumed in
17 the generation or provision of on-site power or energy solely for
18 environmental technology manufacturing, producing or processing or
19 environmental protection. This paragraph shall apply for twenty full
20 consecutive calendar or fiscal years from the date the first paper
21 manufacturing machine is placed in service. In the case of an environmental
22 technology manufacturer, producer or processor who does not manufacture
23 paper, the time period shall begin with the date the first manufacturing,
24 processing or production equipment is placed in service.

25 39. Sales of liquid, solid or gaseous chemicals used in manufacturing,
26 processing, fabricating, mining, refining, metallurgical operations, research
27 and development and, beginning on January 1, 1999, printing, if using or
28 consuming the chemicals, alone or as part of an integrated system of
29 chemicals, involves direct contact with the materials from which the product
30 is produced for the purpose of causing or permitting a chemical or physical
31 change to occur in the materials as part of the production process. This
32 paragraph does not include chemicals that are used or consumed in activities
33 such as packaging, storage or transportation but does not affect any
34 deduction for such chemicals that is otherwise provided by this section. For
35 the purposes of this paragraph, "printing" means a commercial printing
36 operation and includes job printing, engraving, embossing, copying and
37 bookbinding.

38 40. Through December 31, 1994, personal property liquidation
39 transactions, conducted by a personal property liquidator. From and after
40 December 31, 1994, personal property liquidation transactions shall be
41 taxable under this section provided that nothing in this subsection shall be
42 construed to authorize the taxation of casual activities or transactions
43 under this chapter. For the purposes of this paragraph:

44 (a) "Personal property liquidation transaction" means a sale of
45 personal property made by a personal property liquidator acting solely on

1 behalf of the owner of the personal property sold at the dwelling of the
2 owner or on the death of any owner, on behalf of the surviving spouse, if
3 any, any devisee or heir or the personal representative of the estate of the
4 deceased, if one has been appointed.

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

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

11 42. A motor vehicle and any repair and replacement parts and tangible
12 personal property becoming a part of such motor vehicle sold to a motor
13 carrier who is subject to a fee prescribed in title 28, chapter 16, article 4
14 and who is engaged in the business of leasing or renting such property.

15 43. Livestock and poultry feed, salts, vitamins and other additives for
16 livestock or poultry consumption that are sold to persons who are engaged in
17 producing livestock, poultry, or livestock or poultry products or who are
18 engaged in feeding livestock or poultry commercially. For the purposes of
19 this paragraph, "poultry" includes ratites.

20 44. Sales of implants used as growth promotants and injectable
21 medicines, not already exempt under paragraph 8 of this subsection, for
22 livestock or poultry owned by or in possession of persons who are engaged in
23 producing livestock, poultry, or livestock or poultry products or who are
24 engaged in feeding livestock or poultry commercially. For the purposes of
25 this paragraph, "poultry" includes ratites.

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

30 46. Tangible personal property sold to a person engaged in business and
31 subject to tax under the transient lodging classification if the tangible
32 personal property is a personal hygiene item or articles used by human beings
33 for food, drink or condiment, except alcoholic beverages, that are furnished
34 without additional charge to and intended to be consumed by the transient
35 during the transient's occupancy.

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

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

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

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

3 49. Tangible personal property sold to a commercial airline and
4 consisting of food, beverages and condiments and accessories used for serving
5 the food and beverages, if those items are to be provided without additional
6 charge to passengers for consumption in flight. For the purposes of this
7 paragraph, "commercial airline" means a person holding a federal certificate
8 of public convenience and necessity or foreign air carrier permit for air
9 transportation to transport persons, property or United States mail in
10 intrastate, interstate or foreign commerce.

11 50. Sales of alternative fuel vehicles if the vehicle was manufactured
12 as a diesel fuel vehicle and converted to operate on alternative fuel and
13 equipment that is installed in a conventional diesel fuel motor vehicle to
14 convert the vehicle to operate on an alternative fuel, as defined in section
15 1-215.

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

19 52. Sales of tangible personal property to be incorporated or installed
20 as part of environmental response or remediation activities under section
21 42-5075, subsection B, paragraph 6.

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

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

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

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

35 (b) "Curriculum design or enhancement" means planning, implementing or
36 reporting on courses of study, lessons, assignments or other learning
37 activities.

38 56. Sales of motor vehicle fuel and use fuel to a qualified business
39 under section 41-1516 for off-road use in harvesting, processing or
40 transporting qualifying forest products removed from qualifying projects as
41 defined in section 41-1516.

42 57. Sales of repair parts installed in equipment used directly by a
43 qualified business under section 41-1516 in harvesting, processing or
44 transporting qualifying forest products removed from qualifying projects as
45 defined in section 41-1516.

1 58. Sales or other transfers of renewable energy credits or any other
2 unit created to track energy derived from renewable energy resources. For
3 the purposes of this paragraph, "renewable energy credit" means a unit
4 created administratively by the corporation commission or governing body of a
5 public power utility to track kilowatt hours of electricity derived from a
6 renewable energy resource or the kilowatt hour equivalent of conventional
7 energy resources displaced by distributed renewable energy resources.

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

12 1. Machinery, or equipment, used directly in manufacturing,
13 processing, fabricating, job printing, refining or metallurgical operations.
14 The terms "manufacturing", "processing", "fabricating", "job printing",
15 "refining" and "metallurgical" as used in this paragraph refer to and include
16 those operations commonly understood within their ordinary meaning.
17 "Metallurgical operations" includes leaching, milling, precipitating,
18 smelting and refining.

19 2. Mining machinery, or equipment, used directly in the process of
20 extracting ores or minerals from the earth for commercial purposes, including
21 equipment required to prepare the materials for extraction and handling,
22 loading or transporting such extracted material to the surface. "Mining"
23 includes underground, surface and open pit operations for extracting ores and
24 minerals.

25 3. Tangible personal property sold to persons engaged in business
26 classified under the telecommunications classification and consisting of
27 central office switching equipment, switchboards, private branch exchange
28 equipment, microwave radio equipment and carrier equipment including optical
29 fiber, coaxial cable and other transmission media which are components of
30 carrier systems.

31 4. Machinery, equipment or transmission lines used directly in
32 producing or transmitting electrical power, but not including distribution.
33 Transformers and control equipment used at transmission substation sites
34 constitute equipment used in producing or transmitting electrical power.

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

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

42 7. Aircraft, navigational and communication instruments and other
43 accessories and related equipment sold to:

44 (a) A person holding a federal certificate of public convenience and
45 necessity, a supplemental air carrier certificate under federal aviation

1 regulations (14 Code of Federal Regulations part 121) or a foreign air
2 carrier permit for air transportation for use as or in conjunction with or
3 becoming a part of aircraft to be used to transport persons, property or
4 United States mail in intrastate, interstate or foreign commerce.

5 (b) Any foreign government.

6 (c) Persons who are not residents of this state and who will not use
7 such property in this state other than in removing such property from this
8 state. This subdivision also applies to corporations that are not
9 incorporated in this state, regardless of maintaining a place of business in
10 this state, if the principal corporate office is located outside this state
11 and the property will not be used in this state other than in removing the
12 property from this state.

13 8. Machinery, tools, equipment and related supplies used or consumed
14 directly in repairing, remodeling or maintaining aircraft, aircraft engines
15 or aircraft component parts by or on behalf of a certificated or licensed
16 carrier of persons or property.

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

19 10. Machinery or equipment used directly to drill for oil or gas or
20 used directly in the process of extracting oil or gas from the earth for
21 commercial purposes.

22 11. Buses or other urban mass transit vehicles which are used directly
23 to transport persons or property for hire or pursuant to a governmentally
24 adopted and controlled urban mass transportation program and which are sold
25 to bus companies holding a federal certificate of convenience and necessity
26 or operated by any city, town or other governmental entity or by any person
27 contracting with such governmental entity as part of a governmentally adopted
28 and controlled program to provide urban mass transportation.

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

30 13. New machinery and equipment consisting of tractors, tractor-drawn
31 implements, self-powered implements, machinery and equipment necessary for
32 extracting milk, and machinery and equipment necessary for cooling milk and
33 livestock, and drip irrigation lines not already exempt under paragraph 6 of
34 this subsection and that are used for commercial production of agricultural,
35 horticultural, viticultural and floricultural crops and products in this
36 state. For the purposes of this paragraph:

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

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

42 14. Machinery or equipment used in research and development. For the
43 purposes of this paragraph, "research and development" means basic and
44 applied research in the sciences and engineering, and designing, developing
45 or testing prototypes, processes or new products, including research and

1 development of computer software that is embedded in or an integral part of
2 the prototype or new product or that is required for machinery or equipment
3 otherwise exempt under this section to function effectively. Research and
4 development do not include manufacturing quality control, routine consumer
5 product testing, market research, sales promotion, sales service, research in
6 social sciences or psychology, computer software research that is not
7 included in the definition of research and development, or other
8 nontechnological activities or technical services.

9 15. Tangible personal property that is used by either of the following
10 to receive, store, convert, produce, generate, decode, encode, control or
11 transmit telecommunications information:

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

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

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

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

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

30 16. Clean rooms that are used for manufacturing, processing,
31 fabrication or research and development, as defined in paragraph 14 of this
32 subsection, of semiconductor products. For the purposes of this paragraph,
33 "clean room" means all property that comprises or creates an environment
34 where humidity, temperature, particulate matter and contamination are
35 precisely controlled within specified parameters, without regard to whether
36 the property is actually contained within that environment or whether any of
37 the property is affixed to or incorporated into real property. Clean room:

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

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

1 17. Machinery and equipment used directly in the feeding of poultry,
2 the environmental control of housing for poultry, the movement of eggs within
3 a production and packaging facility or the sorting or cooling of eggs. This
4 exemption does not apply to vehicles used for transporting eggs.

5 18. Machinery or equipment, including related structural components,
6 that is employed in connection with manufacturing, processing, fabricating,
7 job printing, refining, mining, natural gas pipelines, metallurgical
8 operations, telecommunications, producing or transmitting electricity or
9 research and development and that is used directly to meet or exceed rules or
10 regulations adopted by the federal energy regulatory commission, the United
11 States environmental protection agency, the United States nuclear regulatory
12 commission, the Arizona department of environmental quality or a political
13 subdivision of this state to prevent, monitor, control or reduce land, water
14 or air pollution.

15 19. Machinery and equipment that are sold to a person engaged in the
16 commercial production of livestock, livestock products or agricultural,
17 horticultural, viticultural or floricultural crops or products in this state
18 and that are used directly and primarily to prevent, monitor, control or
19 reduce air, water or land pollution.

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

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

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

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

34 21. Qualifying equipment that is purchased from and after June 30, 2004
35 through June 30, 2024 by a qualified business under section 41-1516 for
36 harvesting or processing qualifying forest products removed from qualifying
37 projects as defined in section 41-1516. To qualify for this deduction, the
38 qualified business at the time of purchase must present its certification
39 approved by the department.

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

42 1. Expendable materials. For the purposes of this paragraph,
43 expendable materials do not include any of the categories of tangible
44 personal property specified in subsection B of this section regardless of the
45 cost or useful life of that property.

- 1 2. Janitorial equipment and hand tools.
- 2 3. Office equipment, furniture and supplies.
- 3 4. Tangible personal property used in selling or distributing
- 4 activities, other than the telecommunications transmissions described in
- 5 subsection B, paragraph ~~16~~ 15 of this section.
- 6 5. Motor vehicles required to be licensed by this state, except buses
- 7 or other urban mass transit vehicles specifically exempted pursuant to
- 8 subsection B, paragraph 11 of this section, without regard to the use of such
- 9 motor vehicles.
- 10 6. Shops, buildings, docks, depots and all other materials of whatever
- 11 kind or character not specifically included as exempt.
- 12 7. Motors and pumps used in drip irrigation systems.
- 13 D. In addition to the deductions from the tax base prescribed by
- 14 subsection A of this section, there shall be deducted from the tax base the
- 15 gross proceeds of sales or gross income derived from sales of machinery,
- 16 equipment, materials and other tangible personal property used directly and
- 17 predominantly to construct a qualified environmental technology
- 18 manufacturing, producing or processing facility as described in section
- 19 41-1514.02. This subsection applies for ten full consecutive calendar or
- 20 fiscal years after the start of initial construction.
- 21 E. In computing the tax base, gross proceeds of sales or gross income
- 22 from retail sales of heavy trucks and trailers does not include any amount
- 23 attributable to federal excise taxes imposed by 26 United States Code section
- 24 4051.
- 25 F. In computing the tax base, gross proceeds of sales or gross income
- 26 from the sale of use fuel, as defined in section 28-5601, does not include
- 27 any amount attributable to federal excise taxes imposed by 26 United States
- 28 Code section 4091.
- 29 G. If a person is engaged in an occupation or business to which
- 30 subsection A of this section applies, the person's books shall be kept so as
- 31 to show separately the gross proceeds of sales of tangible personal property
- 32 and the gross income from sales of services, and if not so kept the tax shall
- 33 be imposed on the total of the person's gross proceeds of sales of tangible
- 34 personal property and gross income from services.
- 35 H. If a person is engaged in the business of selling tangible personal
- 36 property at both wholesale and retail, the tax under this section applies
- 37 only to the gross proceeds of the sales made other than at wholesale if the
- 38 person's books are kept so as to show separately the gross proceeds of sales
- 39 of each class, and if the books are not so kept, the tax under this section
- 40 applies to the gross proceeds of every sale so made.
- 41 I. A person who engages in manufacturing, baling, crating, boxing,
- 42 barreling, canning, bottling, sacking, preserving, processing or otherwise
- 43 preparing for sale or commercial use any livestock, agricultural or
- 44 horticultural product or any other product, article, substance or commodity
- 45 and who sells the product of such business at retail in this state is deemed,

1 as to such sales, to be engaged in business classified under the retail
2 classification. This subsection does not apply to businesses classified
3 under the:

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

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

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

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

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

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

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

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

- 44 1. A manufacturer's cash rebate on the sales price of a motor vehicle
45 if the buyer assigns the buyer's right in the rebate to the retailer.

1 2. The waste tire disposal fee imposed pursuant to section 44-1302.

2 N. There shall be deducted from the tax base the amount received from
3 sales of solar energy devices. The retailer shall register with the
4 department as a solar energy retailer. By registering, the retailer
5 acknowledges that it will make its books and records relating to sales of
6 solar energy devices available to the department for examination.

7 O. In computing the tax base in the case of the sale or transfer of
8 wireless telecommunications equipment as an inducement to a customer to enter
9 into or continue a contract for telecommunications services that are taxable
10 under section 42-5064, gross proceeds of sales or gross income does not
11 include any sales commissions or other compensation received by the retailer
12 as a result of the customer entering into or continuing a contract for the
13 telecommunications services.

14 P. For the purposes of this section, a sale of wireless
15 telecommunications equipment to a person who holds the equipment for sale or
16 transfer to a customer as an inducement to enter into or continue a contract
17 for telecommunications services that are taxable under section 42-5064 is
18 considered to be a sale for resale in the regular course of business.

19 Q. Retail sales of prepaid calling cards or prepaid authorization
20 numbers for telecommunications services, including sales of reauthorization
21 of a prepaid card or authorization number, are subject to tax under this
22 section.

23 R. For the purposes of this section, the diversion of gas from a
24 pipeline by a person engaged in the business of:

25 1. Operating a natural or artificial gas pipeline, for the sole
26 purpose of fueling compressor equipment to pressurize the pipeline, is not a
27 sale of the gas to the operator of the pipeline.

28 2. Converting natural gas into liquefied natural gas, for the sole
29 purpose of fueling compressor equipment used in the conversion process, is
30 not a sale of gas to the operator of the compressor equipment.

31 S. If a seller is entitled to a deduction pursuant to subsection B,
32 paragraph 15, subdivision (b) of this section, the department may require the
33 purchaser to establish that the requirements of subsection B, paragraph 15,
34 subdivision (b) of this section have been satisfied. If the purchaser cannot
35 establish that the requirements of subsection B, paragraph 15, subdivision
36 (b) of this section have been satisfied, the purchaser is liable in an amount
37 equal to any tax, penalty and interest which the seller would have been
38 required to pay under article 1 of this chapter if the seller had not made a
39 deduction pursuant to subsection B, paragraph 15, subdivision (b) of this
40 section. Payment of the amount under this subsection exempts the purchaser
41 from liability for any tax imposed under article 4 of this chapter and
42 related to the tangible personal property purchased. The amount shall be
43 treated as transaction privilege tax to the purchaser and as tax revenues
44 collected from the seller to designate the distribution base pursuant to
45 section 42-5029.

1 T. For the purposes of section 42-5032.01, the department shall
2 separately account for revenues collected under the retail classification
3 from businesses selling tangible personal property at retail:

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

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

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

21 V. For the purposes of this section:

22 1. "Aircraft" includes:

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

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

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

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

37 W. For the purposes of subsection J of this section:

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

41 2. "Manufacturer" means a person who is principally engaged in the
42 fabrication, production or manufacture of products, wares or articles for use
43 from raw or prepared materials, imparting to those materials new forms,
44 qualities, properties and combinations.

- 1 3. "Modifier" means a person who reworks, changes or adds to products,
2 wares or articles of manufacture.
- 3 4. "Overhead materials" means tangible personal property, the gross
4 proceeds of sales or gross income derived from that would otherwise be
5 included in the retail classification, and that are used or consumed in the
6 performance of a contract, the cost of which is charged to an overhead
7 expense account and allocated to various contracts based on generally
8 accepted accounting principles and consistent with government contract
9 accounting standards.
- 10 5. "Repairer" means a person who restores or renews products, wares or
11 articles of manufacture.
- 12 6. "Subcontract" means an agreement between a contractor and any
13 person who is not an employee of the contractor for furnishing of supplies or
14 services that, in whole or in part, are necessary to the performance of one
15 or more government contracts, or under which any portion of the contractor's
16 obligation under one or more government contracts is performed, undertaken or
17 assumed and that includes provisions causing title to overhead materials or
18 other tangible personal property used in the performance of the subcontract
19 to pass to the government or that includes provisions incorporating such
20 title passing clauses in a government contract into the subcontract.