

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1179

AN ACT

AMENDING SECTIONS 42-5071 AND 42-6004, ARIZONA REVISED STATUTES; RELATING TO
IGNITION INTERLOCK DEVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5071, Arizona Revised Statutes, is amended to
3 read:

4 42-5071. Personal property rental classification

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

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

11 2. Activities engaged in by the Arizona exposition and state fair
12 board or county fair commissions in connection with events sponsored by such
13 entities.

14 3. Leasing or renting tangible personal property by a parent
15 corporation to a subsidiary corporation or by a subsidiary corporation to
16 another subsidiary of the same parent corporation if taxes were paid under
17 this chapter on the gross proceeds or gross income accruing from the initial
18 sale of the tangible personal property. For the purposes of this paragraph,
19 "subsidiary" means a corporation of which at least eighty per cent of the
20 voting shares are owned by the parent corporation.

21 4. Operating coin-operated washing, drying and dry cleaning machines
22 or coin-operated car washing machines at establishments for the use of such
23 machines.

24 5. Leasing or renting tangible personal property for incorporation
25 into or comprising any part of a qualified environmental technology facility
26 as described in section 41-1514.02. This paragraph shall apply for ten full
27 consecutive calendar or fiscal years following the initial lease or rental by
28 each qualified environmental technology manufacturer, producer or processor.

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

33 7. Leasing or renting photographs, transparencies or other creative
34 works used by this state on internet ~~web-sites~~ WEBSITES, in magazines or in
35 other publications that encourage tourism.

36 8. LEASING OR RENTING CERTIFIED IGNITION INTERLOCK DEVICES INSTALLED
37 PURSUANT TO THE REQUIREMENTS PRESCRIBED BY SECTION 28-1461. FOR THE PURPOSES
38 OF THIS PARAGRAPH, "CERTIFIED IGNITION INTERLOCK DEVICE" HAS THE SAME MEANING
39 PRESCRIBED IN SECTION 28-1301.

40 B. The tax base for the personal property rental classification is the
41 gross proceeds of sales or gross income derived from the business, but the
42 gross proceeds of sales or gross income derived from the following shall be
43 deducted from the tax base:

44 1. Reimbursements by the lessee to the lessor of a motor vehicle for
45 payments by the lessor of the applicable fees and taxes imposed by sections

1 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15,
2 article 2 and article IX, section 11, Constitution of Arizona, to the extent
3 such amounts are separately identified as such fees and taxes and are billed
4 to the lessee.

5 2. Leases or rentals of tangible personal property ~~which~~ THAT, if it
6 had been purchased instead of leased or rented by the lessee, would have been
7 exempt under:

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

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

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

14 (ii) Section 42-5061, subsection B, paragraph 21.

15 (c) Section 42-5061, subsection J, paragraph 1.

16 (d) Section 42-5061, subsection N.

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

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

23 5. Amounts received by a motor vehicle dealer for the first month of a
24 lease payment if the lease and the lease payment for the first month of the
25 lease are transferred to a third-party leasing company.

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

29 D. In computing the tax base, the gross proceeds of sales or gross
30 income from the lease or rental of a motor vehicle does not include any
31 amount attributable to the car rental surcharge under section 28-5810 or
32 48-4234.

33 E. Until December 31, 1988, leasing or renting animals for
34 recreational purposes is exempt from the tax imposed by this section.
35 Beginning January 1, 1989, the gross proceeds or gross income from leasing or
36 renting animals for recreational purposes is subject to taxation under this
37 section. Tax liabilities, penalties and interest paid for taxable periods
38 before January 1, 1989 shall not be refunded unless the taxpayer requesting
39 the refund provides proof satisfactory to the department that the monies paid
40 as taxes will be returned to the customer.

41 Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to read:

42 42-6004. Exemption from municipal tax

43 A. A city, town or special taxing district shall not levy a
44 transaction privilege, sales, use or other similar tax on:

- 1 1. Exhibition events in this state sponsored, conducted or operated by
2 a nonprofit organization that is exempt from taxation under section
3 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
4 organization is associated with a major league baseball team or a national
5 touring professional golfing association and no part of the organization's
6 net earnings inures to the benefit of any private shareholder or individual.
- 7 2. Interstate telecommunications services, which include that portion
8 of telecommunications services, such as subscriber line service, allocable by
9 federal law to interstate telecommunications service.
- 10 3. Sales of warranty or service contracts.
- 11 4. Sales of motor vehicles to nonresidents of this state for use
12 outside this state if the vendor ships or delivers the motor vehicle to a
13 destination outside this state.
- 14 5. Interest on finance contracts.
- 15 6. Dealer documentation fees on the sales of motor vehicles.
- 16 7. Sales of food or other items purchased with United States
17 department of agriculture food stamp coupons issued under the food stamp act
18 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section
19 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,
20 section 4302; 42 United States Code section 1786) but may impose such a tax
21 on other sales of food. If a city, town or special taxing district exempts
22 sales of food from its tax or imposes a different transaction privilege rate
23 on the gross proceeds of sales or gross income from sales of food and nonfood
24 items, it shall use the definition of food prescribed by rule adopted by the
25 department pursuant to section 42-5106.
- 26 8. Sales of internet access services to the person's subscribers and
27 customers. For the purposes of this paragraph:
 - 28 (a) "Internet" means the computer and telecommunications facilities
29 that comprise the interconnected worldwide network of networks that employ
30 the transmission control protocol or internet protocol, or any predecessor or
31 successor protocol, to communicate information of all kinds by wire or radio.
 - 32 (b) "Internet access" means a service that enables users to access
33 content, information, electronic mail or other services over the internet.
34 Internet access does not include telecommunication services provided by a
35 common carrier.
- 36 9. The gross proceeds of sales or gross income retained by the Arizona
37 exposition and state fair board from ride ticket sales at the annual Arizona
38 state fair.
- 39 10. Through August 31, 2014, sales of Arizona centennial medallions by
40 the historical advisory commission.
- 41 11. The gross proceeds of sales or gross income derived from a
42 commercial lease in which a reciprocal insurer or a corporation leases real
43 property to an affiliated corporation. For the purposes of this paragraph:
 - 44 (a) "Affiliated corporation" means a corporation that meets one of the
45 following conditions:

1 (i) The corporation owns or controls at least eighty per cent of the
2 lessor.

3 (ii) The corporation is at least eighty per cent owned or controlled
4 by the lessor.

5 (iii) The corporation is at least eighty per cent owned or controlled
6 by a corporation that also owns or controls at least eighty per cent of the
7 lessor.

8 (iv) The corporation is at least eighty per cent owned or controlled
9 by a corporation that is at least eighty per cent owned or controlled by a
10 reciprocal insurer.

11 (b) For the purposes of subdivision (a) of this paragraph, ownership
12 and control are determined by reference to the voting shares of a
13 corporation.

14 (c) "Reciprocal insurer" has the same meaning prescribed in section
15 20-762.

16 12. The gross proceeds of sales or gross income derived from a
17 commercial lease in which a corporation leases real property to a corporation
18 of which at least eighty per cent of the voting shares of each corporation
19 are owned by the same shareholders.

20 13. THE LEASING OR RENTING OF CERTIFIED IGNITION INTERLOCK DEVICES
21 INSTALLED PURSUANT TO THE REQUIREMENTS PRESCRIBED BY SECTION 28-1461. FOR
22 THE PURPOSES OF THIS PARAGRAPH, "CERTIFIED IGNITION INTERLOCK DEVICE" HAS THE
23 SAME MEANING PRESCRIBED IN SECTION 28-1301.

24 B. A city, town or other taxing jurisdiction shall not levy a
25 transaction privilege, sales, use, franchise or other similar tax or fee,
26 however denominated, on natural gas or liquefied petroleum gas used to propel
27 a motor vehicle.

28 C. A city, town or other taxing jurisdiction shall not levy a
29 transaction privilege, sales, gross receipts, use, franchise or other similar
30 tax or fee, however denominated, on gross proceeds of sales or gross income
31 derived from any of the following:

32 1. A motor carrier's use on the public highways in this state if the
33 motor carrier is subject to a fee prescribed in title 28, chapter 16,
34 article 4.

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

37 3. The sale of a motor vehicle and any repair and replacement parts
38 and tangible personal property becoming a part of such motor vehicle to a
39 motor carrier who is subject to a fee prescribed in title 28, chapter 16,
40 article 4 and who is engaged in the business of leasing, renting or licensing
41 such property.

42 4. Incarcerating or detaining in a privately operated prison, jail or
43 detention facility prisoners who are under the jurisdiction of the United
44 States, this state or any other state or a political subdivision of this
45 state or of any other state.

1 5. Transporting for hire persons, freight or property by light motor
2 vehicles subject to a fee under title 28, chapter 15, article 4.

3 6. Any amount attributable to development fees that are incurred in
4 relation to the construction, development or improvement of real property and
5 paid by the taxpayer as defined in the model city tax code or by a contractor
6 providing services to the taxpayer. For the purposes of this paragraph:

7 (a) The attributable amount shall not exceed the value of the
8 development fees actually imposed.

9 (b) The attributable amount is equal to the total amount of
10 development fees paid by the taxpayer or by a contractor providing services
11 to the taxpayer and the total development fees credited in exchange for the
12 construction of, contribution to or dedication of real property for providing
13 public infrastructure, public safety or other public services necessary to
14 the development. The real property must be the subject of the development
15 fees.

16 (c) "Development fees" means fees imposed to offset capital costs of
17 providing public infrastructure, public safety or other public services to a
18 development and authorized pursuant to section 9-463.05, section 11-1102 or
19 title 48 regardless of the jurisdiction to which the fees are paid.

20 D. A city, town or other taxing jurisdiction shall not levy a
21 transaction privilege, sales, use, franchise or other similar tax or fee,
22 however denominated, in excess of one-tenth of one per cent of the value of
23 the entire product mined, smelted, extracted, refined, produced or prepared
24 for sale, profit or commercial use, on persons engaged in the business of
25 mineral processing, except to the extent that the tax is computed on the
26 gross proceeds or gross income from sales at retail.

27 E. In computing the tax base, any city, town or other taxing
28 jurisdiction shall not include in the gross proceeds of sales or gross
29 income:

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

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

33 F. A city or town shall not levy a use tax on the storage, use or
34 consumption of tangible personal property in the city or town by a school
35 district or charter school.

36 Sec. 3. Retroactivity; refunds; nonseverability

37 A. Section 42-5071, subsection A, paragraph 8, Arizona Revised
38 Statutes, as added by this act, providing that leasing or renting certified
39 ignition interlock devices, as defined in section 28-1301, Arizona Revised
40 Statutes, installed pursuant to the requirements prescribed in section
41 28-1461, Arizona Revised Statutes, are not subject to tax under section
42 42-5071, Arizona Revised Statutes, applies retroactively to taxable periods
43 beginning from and after August 31, 2004.

1 B. Any claim for refund of transaction privilege tax based on the
2 retroactive application of section 42-5071, subsection A, paragraph 8,
3 Arizona Revised Statutes, as added by this act, shall be submitted to the
4 department of revenue on or before December 31, 2013, pursuant to section
5 42-1118, Arizona Revised Statutes. A failure to file a claim on or before
6 December 31, 2013 constitutes a waiver of the claim for refund under this
7 section.

8 C. The burden is on the taxpayer to establish by competent evidence
9 the amount of tax paid for all taxable periods and the amount, if any,
10 attributable to leasing or renting certified ignition interlock devices, as
11 defined in section 28-1301, Arizona Revised Statutes, installed pursuant to
12 the requirements prescribed in section 28-1461, Arizona Revised Statutes, and
13 qualifying for exemption under the amendment to section 42-5071, Arizona
14 Revised Statutes, as provided by this act. The department of revenue shall:

15 1. Review all timely filed claims.

16 2. Determine, on audit if necessary, the correct amount of each claim.

17 3. Notify the taxpayer of its determination. The notice is final
18 unless a taxpayer appeals in the manner provided in section 42-1119, Arizona
19 Revised Statutes.

20 D. Notwithstanding section 42-1119, Arizona Revised Statutes, the
21 department of revenue shall not make a refund until after determination of
22 the amount of all refund claims filed pursuant to this section. If a
23 taxpayer appeals the department's determination, the department, pursuant to
24 the rules protecting confidentiality under title 42, chapter 2, article 1,
25 Arizona Revised Statutes, may notify other taxpayers who have filed claims as
26 to the nature of any delay and, if possible, estimate the possible extent of
27 the delay.

28 E. The aggregate amount of the refund under this section shall not
29 exceed ten thousand dollars. If the aggregate amount of claims under this
30 section that are ultimately determined to be correct exceeds ten thousand
31 dollars, the department shall reduce each claim proportionately so that the
32 total refund amount equals ten thousand dollars.

33 F. Interest shall not be allowed or compounded on any refundable
34 amount if paid before July 1, 2014, but if the amount cannot be determined or
35 paid until after June 30, 2014, interest accrues after that date under
36 section 42-1123, Arizona Revised Statutes.

37 G. If any part of this section is finally adjudicated to be invalid,
38 this entire section is void. The provisions of this section are intended to
39 be nonseverable.