House Engrossed Senate Bill

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

SENATE BILL 1435

AN ACT

AMENDING SECTION 42-5012, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6012; RELATING TO TRANSACTION PRIVILEGE AND AFFILIATED EXCISE TAXES AND LOCAL EXCISE TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-5012, Arizona Revised Statutes, is amended to read:

42-5012. Sales between affiliated persons; definitions

A. In determining value as applied to sales from one to another of affiliated corporations or persons, or other circumstances ~~where~~ IN WHICH the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the department shall prescribe uniform and equitable rules for determining the value ~~upon~~ ON which the tax ~~shall be~~ IS levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers ~~where~~ IN WHICH no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IF THE TRANSFER OF A MODULAR DATA CENTER FROM ONE TO ANOTHER OF AFFILIATED ENTITIES FOR WHICH THE TRANSFEROR IS A MANUFACTURER OF MODULAR DATA CENTERS IN THIS STATE AND THE TRANSFER IS MADE TO AN AFFILIATED TRANSFEREE THAT STORES, USES OR CONSUMES THE MODULAR DATA CENTER IN THIS STATE, BOTH OF THE FOLLOWING APPLY:

1. THE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THE SALE OF A MODULAR DATA CENTER BY THE TRANSFEROR TO AN UNRELATED THIRD-PARTY PURCHASER IS TAXABLE UNDER SECTION 42-5061 OR 42-5155, UNLESS AN EXCLUSION, EXEMPTION OR DEDUCTION APPLIES.

2. REGARDING THE PURCHASE OF ANY RAW OR PREPARED MATERIAL THAT IS AN INGREDIENT OR COMPONENT PART OF A MODULAR DATA CENTER, FOR TRANSFER OF THE MODULAR DATA CENTER FROM THE TRANSFEROR TO THE AFFILIATED TRANSFEREE:

(a) IF THE AFFILIATED TRANSFEREE DOES NOT LEASE OR RENT THE MODULAR DATA CENTER AFTER THE TRANSFER, THE TRANSFEROR IS DEEMED TO HAVE USED OR CONSUMED THE MATERIAL PURCHASED AND IS SUBJECT TO USE TAX ON ITS PURCHASE PURSUANT TO SECTION 42-5155, SUBSECTION B.

(b) IF THE AFFILIATED TRANSFEREE LEASES OR RENTS THE MODULAR DATA CENTER AFTER THE TRANSFER, THE SALE OF THE MATERIAL IS DEEMED A NONTAXABLE RESALE SALE PURSUANT TO SECTION 42-5061, SUBSECTION A, PARAGRAPH 23 AND SECTION 42-5159, SUBSECTION A, PARAGRAPH 4.

C. FOR THE PURPOSES OF THIS SECTION:

1. "AFFILIATED ENTITY" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES HAS CONTROL, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON.

2. "CONTROL", "CONTROLLED BY" OR "UNDER COMMON CONTROL WITH" MEANS EITHER OF THE FOLLOWING:

(a) OWNERSHIP OF AN EQUITY INTEREST OR THE EQUIVALENT OF AN EQUITY INTEREST OF TWENTY-FIVE PER CENT OR MORE.

(b) DIRECT OR INDIRECT POSSESSION OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY CONTRACT OR OTHERWISE.

3. "MANUFACTURER" MEANS A PERSON WHO IS BOTH OF THE FOLLOWING:

(a) PRINCIPALLY ENGAGED IN THE FABRICATION, PRODUCTION OR MANUFACTURE OF TANGIBLE PERSONAL PROPERTY FOR USE FROM RAW OR PREPARED MATERIALS, IMPARTING TO THOSE MATERIALS NEW FORMS, QUALITIES, PROPERTIES AND COMBINATIONS.

(b) SELLING OR TRANSFERRING TANGIBLE PERSONAL PROPERTY TO BOTH AN AFFILIATED ENTITY AND UNRELATED THIRD-PARTY PURCHASERS.

4. "MODULAR DATA CENTER" MEANS A PORTABLE SYSTEM OF INFORMATION TECHNOLOGY, CLIMATE CONTROL, POWER SUPPLY AND POWER DISTRIBUTION MACHINERY, EQUIPMENT AND RELATED TANGIBLE PERSONAL PROPERTY CONTAINED IN AN INTERMODAL FREIGHT CONTAINER OR SIMILAR STRUCTURE.

5. "STORAGE" AND "USE OR CONSUMPTION" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 42-5151.

Sec. 2. Title 42, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 42-6012, to read:

42-6012. Municipal transaction privilege taxes; sales between affiliated persons; definitions

A. IN DETERMINING VALUE AS APPLIED TO SALES FROM ONE TO ANOTHER OF AFFILIATED CORPORATIONS OR PERSONS, OR OTHER CIRCUMSTANCES IN WHICH THE RELATION BETWEEN THE BUYER AND SELLER IS SUCH THAT THE GROSS PROCEEDS FROM THE SALE ARE NOT INDICATIVE OF THE TRUE VALUE OF THE SUBJECT MATTER OF THE SALE, A CITY OR TOWN THAT LEVIES A TRANSACTION PRIVILEGE, SALES, GROSS RECEIPTS, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE, HOWEVER DENOMINATED, SHALL PRESCRIBE UNIFORM AND EQUITABLE RULES FOR DETERMINING THE VALUE ON WHICH THE TAX IS LEVIED, CORRESPONDING AS NEARLY AS POSSIBLE TO THE GROSS PROCEEDS FROM THE SALE OF SIMILAR PRODUCTS OF LIKE QUALITY OR CHARACTER BY OTHER TAXPAYERS IN WHICH NO COMMON INTEREST EXISTS BETWEEN THE BUYER AND SELLER, BUT OTHERWISE UNDER SIMILAR CIRCUMSTANCES AND CONDITIONS.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IF THE TRANSFER OF A MODULAR DATA CENTER FROM ONE TO ANOTHER OF AFFILIATED ENTITIES FOR WHICH THE TRANSFEROR IS A MANUFACTURER OF MODULAR DATA CENTERS IN THIS STATE AND THE TRANSFER IS MADE TO AN AFFILIATED TRANSFEREE THAT STORES, USES OR CONSUMES THE MODULAR DATA CENTER IN THE CITY OR TOWN, BOTH OF THE FOLLOWING APPLY:

1. THE SALE OF A MODULAR DATA CENTER BY THE TRANSFEROR TO AN UNRELATED THIRD-PARTY PURCHASER IS TAXABLE UNDER THE CITY'S OR TOWN'S TRANSACTION PRIVILEGE, SALES, GROSS RECEIPTS, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE, CONSISTENT WITH SECTIONS 42-6002 AND 42-6003, UNLESS THE CITY OR TOWN HAS PROVIDED AN APPLICABLE EXCLUSION, EXEMPTION OR DEDUCTION.

2. REGARDING THE PURCHASE OF ANY RAW OR PREPARED MATERIAL THAT IS AN INGREDIENT OR COMPONENT PART OF A MODULAR DATA CENTER, FOR TRANSFER OF THE MODULAR DATA CENTER FROM THE TRANSFEROR TO THE AFFILIATED TRANSFEREE:

(a) IF THE AFFILIATED TRANSFEREE DOES NOT LEASE OR RENT THE MODULAR DATA CENTER AFTER THE TRANSFER, THE TRANSFEROR IS DEEMED TO HAVE USED OR CONSUMED THE MATERIAL PURCHASED AND IS SUBJECT TO THE CITY'S OR TOWN'S USE

TAX OR OTHER SIMILAR TAX OR FEE ON ITS PURCHASE, CONSISTENT WITH SECTIONS 42-6002 AND 42-6003.

(b) IF THE AFFILIATED TRANSFEREE LEASES OR RENTS THE MODULAR DATA CENTER AFTER THE TRANSFER, THE SALE OF THE MATERIAL IS DEEMED A NONTAXABLE RESALE SALE.

C. THIS SECTION APPLIES REGARDLESS OF WHETHER THE CITY OR TOWN HAS ADOPTED THE MODEL CITY TAX CODE PURSUANT TO ARTICLE 2 OF THIS CHAPTER.

D. FOR THE PURPOSES OF THIS SECTION:

1. "AFFILIATED ENTITY" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES HAS CONTROL, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON.

2. "CONTROL", "CONTROLLED BY" OR "UNDER COMMON CONTROL WITH" MEANS EITHER OF THE FOLLOWING:

(a) OWNERSHIP OF AN EQUITY INTEREST OR THE EQUIVALENT OF AN EQUITY INTEREST OF TWENTY-FIVE PER CENT OR MORE.

(b) DIRECT OR INDIRECT POSSESSION OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY CONTRACT OR OTHERWISE.

3. "MANUFACTURER" MEANS A PERSON WHO IS BOTH OF THE FOLLOWING:

(a) PRINCIPALLY ENGAGED IN THE FABRICATION, PRODUCTION OR MANUFACTURE OF TANGIBLE PERSONAL PROPERTY FOR USE FROM RAW OR PREPARED MATERIALS, IMPARTING TO THOSE MATERIALS NEW FORMS, QUALITIES, PROPERTIES AND COMBINATIONS.

(b) SELLING OR TRANSFERRING TANGIBLE PERSONAL PROPERTY TO BOTH AN AFFILIATED ENTITY AND UNRELATED THIRD-PARTY PURCHASERS.

4. "MODULAR DATA CENTER" MEANS A PORTABLE SYSTEM OF INFORMATION TECHNOLOGY, CLIMATE CONTROL, POWER SUPPLY AND POWER DISTRIBUTION MACHINERY, EQUIPMENT AND RELATED TANGIBLE PERSONAL PROPERTY CONTAINED IN AN INTERMODAL FREIGHT CONTAINER OR SIMILAR STRUCTURE.

5. "PERSON" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5001.

6. "STORAGE" MEANS KEEPING OR RETAINING TANGIBLE PERSONAL PROPERTY PURCHASED FROM A RETAILER FOR ANY PURPOSE EXCEPT SALE IN THE REGULAR COURSE OF BUSINESS OR SUBSEQUENT USE SOLELY OUTSIDE THE CITY OR TOWN.

7. "USE OR CONSUMPTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5151.

Sec. 3. Exemption from rule making

For the purposes of implementing section 42-5012, Arizona Revised Statutes, as amended by this act, the department of revenue is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 4. Effective date

This act is effective and applies to taxable periods beginning from and after December 31, 2013.