

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

CHAPTER 233
HOUSE BILL 2336

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.

44 14. Sales to nonresidents of this state for use outside this state if
45 the vendor ships or delivers the tangible personal property out of this
46 state.

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

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

8 17. Textbooks by any bookstore that are required by any state
9 university or community college.

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

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

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

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

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

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

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

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

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

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

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

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

16 25. Tangible personal property sold to:

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

18 (b) A qualifying health care organization as defined in section
19 42-5001 if the tangible personal property is used by the organization solely
20 to provide health and medical related educational and charitable services.

21 (c) A qualifying health care organization as defined in section
22 42-5001 if the organization is dedicated to providing educational,
23 therapeutic, rehabilitative and family medical education training for blind,
24 visually impaired and multihandicapped children from the time of birth to age
25 twenty-one.

26 (d) A qualifying community health center as defined in section
27 42-5001.

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

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

39 26. Magazines or other periodicals or other publications by this state
40 to encourage tourist travel.

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

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

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

5 28. The sale of a motor vehicle to:

6 (a) A nonresident of this state if the purchaser's state of residence
7 does not allow a corresponding use tax exemption to the tax imposed by
8 article 1 of this chapter and if the nonresident has secured a special ninety
9 day nonresident registration permit for the vehicle as prescribed by sections
10 28-2154 and 28-2154.01.

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

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

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

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

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

36 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
37 propagative material to persons who use those items to commercially produce
38 agricultural, horticultural, viticultural or floricultural crops in this
39 state.

40 34. Machinery, equipment, technology or related supplies that are only
41 useful to assist a person who is physically disabled as defined in section
42 46-191, has a developmental disability as defined in section 36-551 or has a
43 head injury as defined in section 41-3201 to be more independent and
44 functional.

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

4 36. Sales of natural gas or liquefied petroleum gas used to propel a
5 motor vehicle.

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

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

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

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

39 (a) "Personal property liquidation transaction" means a sale of
40 personal property made by a personal property liquidator acting solely on
41 behalf of the owner of the personal property sold at the dwelling of the
42 owner or on the death of any owner, on behalf of the surviving spouse, if
43 any, any devisee or heir or the personal representative of the estate of the
44 deceased, if one has been appointed.

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

1 41. Sales of food, drink and condiment for consumption within the
2 premises of any prison, jail or other institution under the jurisdiction of
3 the state department of corrections, the department of public safety, the
4 department of juvenile corrections or a county sheriff.

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

9 43. Livestock and poultry feed, salts, vitamins and other additives for
10 livestock or poultry consumption that are sold to persons who are engaged in
11 producing livestock, poultry, or livestock or poultry products or who are
12 engaged in feeding livestock or poultry commercially. For the purposes of
13 this paragraph, "poultry" includes ratites.

14 44. Sales of implants used as growth promotants and injectable
15 medicines, not already exempt under paragraph 8 of this subsection, for
16 livestock or poultry owned by or in possession of 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 45. Sales of motor vehicles at auction to nonresidents of this state
21 for use outside this state if the vehicles are shipped or delivered out of
22 this state, regardless of where title to the motor vehicles passes or its
23 free on board point.

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

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

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

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

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

39 49. Tangible personal property sold to a commercial airline and
40 consisting of food, beverages and condiments and accessories used for serving
41 the food and beverages, if those items are to be provided without additional
42 charge to passengers for consumption in flight. For the purposes of this
43 paragraph, "commercial airline" means a person holding a federal certificate
44 of public convenience and necessity or foreign air carrier permit for air
45 transportation to transport persons, property or United States mail in
46 intrastate, interstate or foreign commerce.

1 50. Sales of alternative fuel vehicles if the vehicle was manufactured
2 as a diesel fuel vehicle and converted to operate on alternative fuel and
3 equipment that is installed in a conventional diesel fuel motor vehicle to
4 convert the vehicle to operate on an alternative fuel, as defined in section
5 1-215.

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

9 52. Sales of tangible personal property to be incorporated or installed
10 as part of environmental response or remediation activities under section
11 42-5075, subsection B, paragraph 6.

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

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

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

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

25 (b) "Curriculum design or enhancement" means planning, implementing or
26 reporting on courses of study, lessons, assignments or other learning
27 activities.

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

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

36 58. Sales or other transfers of renewable energy credits or any other
37 unit created to track energy derived from renewable energy resources. For
38 the purposes of this paragraph, "renewable energy credit" means a unit
39 created administratively by the corporation commission or governing body of a
40 public power utility to track kilowatt hours of electricity derived from a
41 renewable energy resource or the kilowatt hour equivalent of conventional
42 energy resources displaced by distributed renewable energy resources.

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

1 1. Machinery, or equipment, used directly in manufacturing,
2 processing, fabricating, job printing, refining or metallurgical operations.
3 The terms "manufacturing", "processing", "fabricating", "job printing",
4 "refining" and "metallurgical" as used in this paragraph refer to and include
5 those operations commonly understood within their ordinary meaning.
6 "Metallurgical operations" includes leaching, milling, precipitating,
7 smelting and refining.

8 2. Mining machinery, or equipment, used directly in the process of
9 extracting ores or minerals from the earth for commercial purposes, including
10 equipment required to prepare the materials for extraction and handling,
11 loading or transporting such extracted material to the surface. "Mining"
12 includes underground, surface and open pit operations for extracting ores and
13 minerals.

14 3. Tangible personal property sold to persons engaged in business
15 classified under the telecommunications classification and consisting of
16 central office switching equipment, switchboards, private branch exchange
17 equipment, microwave radio equipment and carrier equipment including optical
18 fiber, coaxial cable and other transmission media which are components of
19 carrier systems.

20 4. Machinery, equipment or transmission lines used directly in
21 producing or transmitting electrical power, but not including distribution.
22 Transformers and control equipment used at transmission substation sites
23 constitute equipment used in producing or transmitting electrical power.

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

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

31 7. Aircraft, navigational and communication instruments and other
32 accessories and related equipment sold to:

33 (a) A person holding a federal certificate of public convenience and
34 necessity, a supplemental air carrier certificate under federal aviation
35 regulations (14 Code of Federal Regulations part 121) or a foreign air
36 carrier permit for air transportation for use as or in conjunction with or
37 becoming a part of aircraft to be used to transport persons, property or
38 United States mail in intrastate, interstate or foreign commerce.

39 (b) Any foreign government.

40 (c) Persons who are not residents of this state and who will not use
41 such property in this state other than in removing such property from this
42 state. This subdivision also applies to corporations that are not
43 incorporated in this state, regardless of maintaining a place of business in
44 this state, if the principal corporate office is located outside this state
45 and the property will not be used in this state other than in removing the
46 property from this state.

1 8. Machinery, tools, equipment and related supplies used or consumed
2 directly in repairing, remodeling or maintaining aircraft, aircraft engines
3 or aircraft component parts by or on behalf of a certificated or licensed
4 carrier of persons or property.

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

7 10. Machinery or equipment used directly to drill for oil or gas or
8 used directly in the process of extracting oil or gas from the earth for
9 commercial purposes.

10 11. Buses or other urban mass transit vehicles which are used directly
11 to transport persons or property for hire or pursuant to a governmentally
12 adopted and controlled urban mass transportation program and which are sold
13 to bus companies holding a federal certificate of convenience and necessity
14 or operated by any city, town or other governmental entity or by any person
15 contracting with such governmental entity as part of a governmentally adopted
16 and controlled program to provide urban mass transportation.

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

18 13. New machinery and equipment consisting of tractors, tractor-drawn
19 implements, self-powered implements, machinery and equipment necessary for
20 extracting milk, and machinery and equipment necessary for cooling milk and
21 livestock, and drip irrigation lines not already exempt under paragraph 6 of
22 this subsection and that are used for commercial production of agricultural,
23 horticultural, viticultural and floricultural crops and products in this
24 state. For the purposes of this paragraph:

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

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

30 14. Machinery or equipment used in research and development. For the
31 purposes of this paragraph, "research and development" means basic and
32 applied research in the sciences and engineering, and designing, developing
33 or testing prototypes, processes or new products, including research and
34 development of computer software that is embedded in or an integral part of
35 the prototype or new product or that is required for machinery or equipment
36 otherwise exempt under this section to function effectively. Research and
37 development do not include manufacturing quality control, routine consumer
38 product testing, market research, sales promotion, sales service, research in
39 social sciences or psychology, computer software research that is not
40 included in the definition of research and development, or other
41 nontechnological activities or technical services.

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

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

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

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

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

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

17 16. Clean rooms that are used for manufacturing, processing,
18 fabrication or research and development, as defined in paragraph 14 of this
19 subsection, of semiconductor products. For the purposes of this paragraph,
20 "clean room" means all property that comprises or creates an environment
21 where humidity, temperature, particulate matter and contamination are
22 precisely controlled within specified parameters, without regard to whether
23 the property is actually contained within that environment or whether any of
24 the property is affixed to or incorporated into real property. Clean room:

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

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

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

37 18. Machinery or equipment, including related structural components,
38 that is employed in connection with manufacturing, processing, fabricating,
39 job printing, refining, mining, natural gas pipelines, metallurgical
40 operations, telecommunications, producing or transmitting electricity or
41 research and development and that is used directly to meet or exceed rules or
42 regulations adopted by the federal energy regulatory commission, the United
43 States environmental protection agency, the United States nuclear regulatory
44 commission, the Arizona department of environmental quality or a political
45 subdivision of this state to prevent, monitor, control or reduce land, water
46 or air pollution.

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

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

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

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

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

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

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

28 1. Expendable materials. For the purposes of this paragraph,
29 expendable materials do not include any of the categories of tangible
30 personal property specified in subsection B of this section regardless of the
31 cost or useful life of that property.

32 2. Janitorial equipment and hand tools.

33 3. Office equipment, furniture and supplies.

34 4. Tangible personal property used in selling or distributing
35 activities, other than the telecommunications transmissions described in
36 subsection B, paragraph ~~16~~ 15 of this section.

37 5. Motor vehicles required to be licensed by this state, except buses
38 or other urban mass transit vehicles specifically exempted pursuant to
39 subsection B, paragraph 11 of this section, without regard to the use of such
40 motor vehicles.

41 6. Shops, buildings, docks, depots and all other materials of whatever
42 kind or character not specifically included as exempt.

43 7. Motors and pumps used in drip irrigation systems.

44 D. In addition to the deductions from the tax base prescribed by
45 subsection A of this section, there shall be deducted from the tax base the
46 gross proceeds of sales or gross income derived from sales of machinery,

1 equipment, materials and other tangible personal property used directly and
2 predominantly to construct a qualified environmental technology
3 manufacturing, producing or processing facility as described in section
4 41-1514.02. This subsection applies for ten full consecutive calendar or
5 fiscal years after the start of initial construction.

6 E. In computing the tax base, gross proceeds of sales or gross income
7 from retail sales of heavy trucks and trailers does not include any amount
8 attributable to federal excise taxes imposed by 26 United States Code section
9 4051.

10 F. In computing the tax base, gross proceeds of sales or gross income
11 from the sale of use fuel, as defined in section 28-5601, does not include
12 any amount attributable to federal excise taxes imposed by 26 United States
13 Code section 4091.

14 G. If a person is engaged in an occupation or business to which
15 subsection A of this section applies, the person's books shall be kept so as
16 to show separately the gross proceeds of sales of tangible personal property
17 and the gross income from sales of services, and if not so kept the tax shall
18 be imposed on the total of the person's gross proceeds of sales of tangible
19 personal property and gross income from services.

20 H. If a person is engaged in the business of selling tangible personal
21 property at both wholesale and retail, the tax under this section applies
22 only to the gross proceeds of the sales made other than at wholesale if the
23 person's books are kept so as to show separately the gross proceeds of sales
24 of each class, and if the books are not so kept, the tax under this section
25 applies to the gross proceeds of every sale so made.

26 I. A person who engages in manufacturing, baling, crating, boxing,
27 barreling, canning, bottling, sacking, preserving, processing or otherwise
28 preparing for sale or commercial use any livestock, agricultural or
29 horticultural product or any other product, article, substance or commodity
30 and who sells the product of such business at retail in this state is deemed,
31 as to such sales, to be engaged in business classified under the retail
32 classification. This subsection does not apply to businesses classified
33 under the:

- 34 1. Transporting classification.
- 35 2. Utilities classification.
- 36 3. Telecommunications classification.
- 37 4. Pipeline classification.
- 38 5. Private car line classification.
- 39 6. Publication classification.
- 40 7. Job printing classification.
- 41 8. Prime contracting classification.
- 42 9. Owner builder sales classification.
- 43 10. Restaurant classification.

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

1 1. Sales made directly to the United States government or its
2 departments or agencies by a manufacturer, modifier, assembler or repairer.

3 2. Sales made directly to a manufacturer, modifier, assembler or
4 repairer if such sales are of any ingredient or component part of products
5 sold directly to the United States government or its departments or agencies
6 by the manufacturer, modifier, assembler or repairer.

7 3. Overhead materials or other tangible personal property that is used
8 in performing a contract between the United States government and a
9 manufacturer, modifier, assembler or repairer, including property used in
10 performing a subcontract with a government contractor who is a manufacturer,
11 modifier, assembler or repairer, to which title passes to the government
12 under the terms of the contract or subcontract.

13 4. Sales of overhead materials or other tangible personal property to
14 a manufacturer, modifier, assembler or repairer if the gross proceeds of
15 sales or gross income derived from the property by the manufacturer,
16 modifier, assembler or repairer will be exempt under paragraph 3 of this
17 subsection.

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

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

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

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

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

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

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

44 P. For the purposes of this section, a sale of wireless
45 telecommunications equipment to a person who holds the equipment for sale or
46 transfer to a customer as an inducement to enter into or continue a contract

1 for telecommunications services that are taxable under section 42-5064 is
2 considered to be a sale for resale in the regular course of business.

3 Q. Retail sales of prepaid calling cards or prepaid authorization
4 numbers for telecommunications services, including sales of reauthorization
5 of a prepaid card or authorization number, are subject to tax under this
6 section.

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

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

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

15 S. If a seller is entitled to a deduction pursuant to subsection B,
16 paragraph 15, subdivision (b) of this section, the department may require the
17 purchaser to establish that the requirements of subsection B, paragraph 15,
18 subdivision (b) of this section have been satisfied. If the purchaser cannot
19 establish that the requirements of subsection B, paragraph 15, subdivision
20 (b) of this section have been satisfied, the purchaser is liable in an amount
21 equal to any tax, penalty and interest which the seller would have been
22 required to pay under article 1 of this chapter if the seller had not made a
23 deduction pursuant to subsection B, paragraph 15, subdivision (b) of this
24 section. Payment of the amount under this subsection exempts the purchaser
25 from liability for any tax imposed under article 4 of this chapter and
26 related to the tangible personal property purchased. The amount shall be
27 treated as transaction privilege tax to the purchaser and as tax revenues
28 collected from the seller to designate the distribution base pursuant to
29 section 42-5029.

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

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

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

38 U. In computing the tax base for the sale of a motor vehicle to a
39 nonresident of this state, if the purchaser's state of residence allows a
40 corresponding use tax exemption to the tax imposed by article 1 of this
41 chapter and the rate of the tax in the purchaser's state of residence is
42 lower than the rate prescribed in article 1 of this chapter or if the
43 purchaser's state of residence does not impose an excise tax, and the
44 nonresident has secured a special ninety day nonresident registration permit
45 for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall
46 be deducted from the tax base a portion of the gross proceeds or gross income

1 from the sale so that the amount of transaction privilege tax that is paid in
2 this state is equal to the excise tax that is imposed by the purchaser's
3 state of residence on the nonexempt sale or use of the motor vehicle.

4 V. For the purposes of this section:

5 1. "Aircraft" includes:

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

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

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

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

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

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

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

28 3. "Modifier" means a person who reworks, changes or adds to products,
29 wares or articles of manufacture.

30 4. "Overhead materials" means tangible personal property, the gross
31 proceeds of sales or gross income derived from that would otherwise be
32 included in the retail classification, and that are used or consumed in the
33 performance of a contract, the cost of which is charged to an overhead
34 expense account and allocated to various contracts based on generally
35 accepted accounting principles and consistent with government contract
36 accounting standards.

37 5. "Repairer" means a person who restores or renews products, wares or
38 articles of manufacture.

39 6. "Subcontract" means an agreement between a contractor and any
40 person who is not an employee of the contractor for furnishing of supplies or
41 services that, in whole or in part, are necessary to the performance of one
42 or more government contracts, or under which any portion of the contractor's
43 obligation under one or more government contracts is performed, undertaken or
44 assumed and that includes provisions causing title to overhead materials or
45 other tangible personal property used in the performance of the subcontract

1 to pass to the government or that includes provisions incorporating such
2 title passing clauses in a government contract into the subcontract.

3 Sec. 2. Purpose

4 It is the intent of the legislature to clarify that sales of cash
5 equivalents are not subject to the transaction privilege tax under the retail
6 classification. This act does not establish a new exemption or deduction
7 from the retail classification, but reaffirms that sales of cash equivalents
8 are not subject to tax and should not have been subject to tax under section
9 42-5061, Arizona Revised Statutes, under any circumstances.

10 Sec. 3. Retroactivity; refunds

11 A. Section 42-5061, Arizona Revised Statutes, as amended by this act,
12 applies retroactively to taxable periods beginning from and after December
13 31, 1998.

14 B. Any claim for refund of transaction privilege tax based on the
15 retroactive application of section 42-5061, Arizona Revised Statutes, as
16 amended by this act, must be submitted to the department of revenue on or
17 before December 31, 2013, pursuant to section 42-1118, Arizona Revised
18 Statutes. Failure to file a claim for refund on or before December 31, 2013
19 constitutes a waiver of the claim for refund under this section.

20 C. The aggregate amount of refunds under this section shall not exceed
21 ten thousand dollars, including interest. If the aggregate amount of claims
22 under this section that are ultimately determined to be correct exceeds ten
23 thousand dollars, then each claim shall be proportionately reduced so that
24 the total refund amount equals ten thousand dollars. Amounts due under this
25 section shall not be refunded unless the taxpayer requesting the refund
26 provides evidence satisfactory to the department of revenue that amounts of
27 tax and interest collected from other persons by the taxpayer will be
28 returned to those persons.

29 D. Notwithstanding section 42-1119, Arizona Revised Statutes, the
30 department of revenue shall not issue a refund to any taxpayer until after
31 determining the amount of all refund claims filed pursuant to this section.

32 E. If a taxpayer appeals the department of revenue's determination of
33 a refund claim filed pursuant to this section, the department of revenue,
34 pursuant to the rules protecting taxpayer confidentiality under title 42,
35 chapter 2, article 1, Arizona Revised Statutes, may notify other taxpayers
36 who have filed refund claims under this section as to the nature of any delay
37 and, if possible, estimate the extent of the delay.

38 F. Interest shall not be allowed or compounded on any refundable
39 amount if paid before July 1, 2014, but if the refund amount cannot be
40 determined or paid before July 1, 2014, interest shall accrue and be paid
41 pursuant to section 42-1123, Arizona Revised Statutes.

42 G. This section does not extend the statute of limitations for
43 assessment or refund beyond that which is open under sections 42-1104 and
44 42-1106, Arizona Revised Statutes.

H.B. 2336

APPROVED BY THE GOVERNOR JUNE 20, 2013.

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