

REFERENCE TITLE: TPT; municipal tax; pole attachment

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2147

Introduced by
Representatives Olson, Mitchell: Senators Lesko, Shooter

AN ACT

AMENDING SECTIONS 42-5063, 42-5064, 42-5069, 42-5071 AND 42-6004, ARIZONA
REVISED STATUTES; RELATING TO TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-5063, Arizona Revised Statutes, is amended to
3 read:
4 42-5063. Utilities classification; definitions
5 A. The utilities classification is comprised of the business of:
6 1. Producing and furnishing or furnishing to consumers natural or
7 artificial gas and water.
8 2. Providing to retail electric customers ancillary services, electric
9 distribution services, electric generation services, electric transmission
10 services and other services related to providing electricity.
11 B. The utilities classification does not include:
12 1. Sales of ancillary services, electric distribution services,
13 electric generation services, electric transmission services and other
14 services related to providing electricity, gas or water to a person who
15 resells the services.
16 2. Sales of natural gas or liquefied petroleum gas used to propel a
17 motor vehicle.
18 3. Sales of alternative fuel, as defined in section 1-215, to a used
19 oil fuel burner who has received a permit to burn used oil or used oil fuel
20 under section 49-426 or 49-480.
21 4. Sales of ancillary services, electric distribution services,
22 electric generation services, electric transmission services and other
23 services that are related to providing electricity to a retail electric
24 customer who is located outside this state for use outside this state if the
25 electricity is delivered to a point of sale outside this state.
26 5. Sales or other transfers of renewable energy credits or any other
27 unit created to track energy derived from renewable energy resources. For
28 the purposes of this paragraph, "renewable energy credit" means a unit
29 created administratively by the corporation commission or governing body of a
30 public power utility to track kilowatt hours of electricity derived from a
31 renewable energy resource or the kilowatt hour equivalent of conventional
32 energy resources displaced by distributed renewable energy resources.
33 6. THE LEASING OR RENTING OF SPACE TO MAKE ATTACHMENTS TO UTILITY
34 POLES AS FOLLOWS:
35 (a) BY A PERSON THAT IS ENGAGED IN BUSINESS UNDER THIS SECTION.
36 (b) TO A PERSON THAT IS ENGAGED IN BUSINESS UNDER THIS SECTION OR
37 SECTION 42-5064 OR THAT IS A CABLE OPERATOR.
38 C. The tax base for the utilities classification is the gross proceeds
39 of sales or gross income derived from the business, but the following shall
40 be deducted from the tax base:
41 1. Revenues received by a municipally owned utility in the form of
42 fees charged to persons constructing residential, commercial or industrial
43 developments or connecting residential, commercial or industrial developments
44 to a municipal utility system or systems if the fees are segregated and used

1 only for capital expansion, system enlargement or debt service of the utility
2 system or systems.

3 2. Revenues received by any person or persons owning a utility system
4 in the form of reimbursement or contribution compensation for property and
5 equipment installed to provide utility access to, on or across the land of an
6 actual utility consumer if the property and equipment become the property of
7 the utility. This deduction shall not exceed the value of such property and
8 equipment.

9 3. Gross proceeds of sales or gross income derived from sales to:

10 (a) Qualifying hospitals as defined in section 42-5001.

11 (b) A qualifying health care organization as defined in section
12 42-5001 if the tangible personal property is used by the organization solely
13 to provide health and medical related educational and charitable services.

14 4. The portion of gross proceeds of sales or gross income that is
15 derived from sales to a qualified environmental technology manufacturer,
16 producer or processor as defined in section 41-1514.02 of a utility product
17 and that is used directly in environmental technology manufacturing,
18 producing or processing. This paragraph shall apply for twenty full
19 consecutive calendar or fiscal years from the date the first paper
20 manufacturing machine is placed in service. In the case of a qualified
21 environmental technology manufacturer, producer or processor who does not
22 manufacture paper, the time period shall begin with the date the first
23 manufacturing, processing or production equipment is placed in service.

24 5. The portion of gross proceeds of sales or gross income attributable
25 to transfers of electricity by any retail electric customer owning a solar
26 photovoltaic energy generating system to an electric distribution system, if
27 the electricity transferred is generated by the customer's system.

28 6. Gross proceeds of sales or gross income derived from sales of
29 electricity or natural gas to a business that is principally engaged in
30 manufacturing or smelting operations and that uses at least fifty-one ~~per~~
31 ~~cent~~ PERCENT of the electricity or natural gas in the manufacturing or
32 smelting operations. This paragraph does not apply to gas transportation
33 services. For the purposes of this paragraph:

34 (a) "Gas transportation services" means the services of transporting
35 natural gas to a natural gas customer or to a natural gas distribution
36 facility if the natural gas was purchased from a supplier other than the
37 utility.

38 (b) "Manufacturing" means the performance as a business of an
39 integrated series of operations that places tangible personal property in a
40 form, composition or character different from that in which it was acquired
41 and transforms it into a different product with a distinctive name, character
42 or use. Manufacturing does not include processing, fabricating, job
43 printing, mining, generating electricity or operating a restaurant.

44 (c) "Principally engaged" means at least fifty-one ~~per cent~~ PERCENT of
45 the business is a manufacturing or smelting operation.

1 (d) "Smelting" means to melt or fuse a metalliferous mineral, often
2 with an accompanying chemical change, usually to separate the metal.

3 D. For the purposes of this section:

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

9 2. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 9-505.

10 ~~2-~~ 3. "Electric distribution service" means distributing electricity
11 to retail electric customers through the use of electric distribution
12 facilities.

13 ~~3-~~ 4. "Electric generation service" means providing electricity for
14 sale to retail electric customers but excluding electric distribution or
15 transmission services.

16 ~~4-~~ 5. "Electric transmission service" means transmitting electricity
17 to retail electric customers or to electric distribution facilities so
18 classified by the federal energy regulatory commission or, to the extent
19 permitted by law, so classified by the Arizona corporation commission.

20 ~~5-~~ 6. "Other services" includes metering, meter reading services,
21 billing and collecting services.

22 ~~6-~~ 7. "Retail electric customer" means a person who purchases
23 electricity for that person's own use, including use in that person's trade
24 or business and not for resale, redistribution or retransmission.

25 8. "UTILITY POLE" MEANS ANY WOODEN, METAL OR OTHER POLE USED FOR
26 UTILITY PURPOSES AND THE POLE'S APPURTENANCES THAT ARE ATTACHED OR AUTHORIZED
27 FOR ATTACHMENT BY THE PERSON CONTROLLING THE POLE.

28 Sec. 2. Section 42-5064, Arizona Revised Statutes, is amended to read:

29 42-5064. Telecommunications classification; definitions

30 A. The telecommunications classification is comprised of the business
31 of providing intrastate telecommunications services. The telecommunications
32 classification does not include:

33 1. Sales of intrastate telecommunications services by a cable
34 ~~television system as defined in section 9-505~~ OPERATOR or by a microwave
35 television transmission system that transmits television programming to
36 multiple subscribers and that is operated pursuant to 47 Code of Federal
37 Regulations parts 21 and 74.

38 2. Sales of internet access or application services to the person's
39 subscribers and customers. For the purposes of this paragraph:

40 (a) "Application services" means software applications provided
41 remotely using hypertext transfer protocol or another network protocol and
42 purchased by or for any school district, charter school, community college or
43 state university to assess or test student learning or to promote curriculum
44 design or enhancement.

1 (b) "Curriculum design or enhancement" means planning, implementing or
2 reporting on courses of study, lessons, assignments or other learning
3 activities.

4 3. THE LEASING OR RENTING OF SPACE TO MAKE ATTACHMENTS TO UTILITY
5 POLES AS FOLLOWS:

6 (a) BY A PERSON THAT IS ENGAGED IN BUSINESS UNDER THIS SECTION.

7 (b) TO A PERSON THAT IS ENGAGED IN BUSINESS UNDER SECTION 42-5063 OR
8 THIS SECTION OR THAT IS A CABLE OPERATOR.

9 B. The tax base for the telecommunications classification is the gross
10 proceeds of sales or gross income derived from the business, including the
11 gross income derived from tolls, subscriptions and services on behalf of
12 subscribers or from the publication of a directory of the names of
13 subscribers. However, the gross proceeds of sales or gross income derived
14 from the following shall be deducted from the tax base:

15 1. Sales of intrastate telecommunications services to:

16 (a) Other persons engaged in businesses classified under the
17 telecommunications classification for use in such business.

18 (b) A direct broadcast satellite television or data transmission
19 service that operates pursuant to 47 Code of Federal Regulations part 25 for
20 use in its direct broadcast satellite television or data transmission
21 operation by a facility described in section 42-5061, subsection B, paragraph
22 15, subdivision (b).

23 2. End user common line charges established by federal communications
24 commission regulations (47 Code of Federal Regulations section 69.104(a)).

25 3. Carrier access charges established by federal communications
26 commission regulations (47 Code of Federal Regulations sections 69.105(a)
27 through 69.118).

28 4. Sales of direct broadcast satellite television services pursuant to
29 47 Code of Federal Regulations part 25 by a direct broadcast satellite
30 television service that operates pursuant to 47 Code of Federal Regulations
31 part 25.

32 5. Telecommunications services purchased with a prepaid calling card,
33 or a prepaid authorization number for telecommunications services, that is
34 taxable under section 42-5061.

35 C. A person that is engaged in a transient lodging business subject to
36 taxation under section 42-5070 and that provides telephone, fax or internet
37 access services to its customers at an additional charge, which is separately
38 stated on the customer invoice, is considered to be engaged in business
39 subject to taxation under this section for the purposes of taxing the gross
40 proceeds of sales or gross income derived from providing those services.

41 D. The gross proceeds of sales or gross income derived from a bundled
42 transaction of services that are taxable pursuant to section 42-5023 are
43 subject to the following:

44 1. A telecommunications service provider who can reasonably identify
45 the portion of the sales price of the bundled transaction derived from

1 charges for nontaxable services is subject to tax only on the gross proceeds
2 of sales or gross income derived from the taxable services. For the purposes
3 of this section, the telecommunications service provider may elect to
4 reasonably identify the portion of the sales price of the bundled transaction
5 derived from charges for nontaxable services by using allocation percentages
6 derived from the telecommunications service provider's entire service area,
7 including territories outside of this state. On request, the department may
8 require the telecommunications service provider to provide this allocation
9 information. The reasonableness of the allocation is subject to audit by the
10 department.

11 2. Notwithstanding sections 42-1118, 42-1120 and 42-1121, the
12 telecommunications service provider shall waive the right to file a claim for
13 a refund of taxes paid on the bundled transaction if the taxes paid are based
14 on the allocation percentage the telecommunications service provider had
15 determined to be reasonable at the beginning of the tax period at issue.

16 3. The burden of proof is on the telecommunications service provider
17 to establish that the gross proceeds of sales or gross income is derived from
18 charges for nontaxable services.

19 E. For the purposes of this section:

20 1. "Bundled transaction" means a sale of multiple services in which
21 both of the following apply:

22 (a) The sale consists of both taxable and nontaxable services.

23 (b) The telecommunications service provider charges a customer one
24 sales price for all services that are sold instead of separately charging for
25 each individual service.

26 2. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 9-505.

27 ~~2-~~ 3. "Internet" means the computer and telecommunications facilities
28 that comprise the interconnected worldwide network of networks that employ
29 the transmission control protocol or internet protocol, or any predecessor or
30 successor protocol, to communicate information of all kinds by wire or radio.

31 ~~3-~~ 4. "Internet access" means a service that enables users to access
32 content, information, electronic mail or other services over the internet.
33 Internet access does not include telecommunications services provided by a
34 common carrier.

35 ~~4-~~ 5. "Intrastate telecommunications services" means transmitting
36 signs, signals, writings, images, sounds, messages, data or other information
37 of any nature by wire, radio waves, light waves or other electromagnetic
38 means if the information transmitted originates and terminates in this state.

39 6. "UTILITY POLE" MEANS ANY WOODEN, METAL OR OTHER POLE USED FOR
40 UTILITY PURPOSES AND THE POLE'S APPURTENANCES THAT ARE ATTACHED OR AUTHORIZED
41 FOR ATTACHMENT BY THE PERSON CONTROLLING THE POLE.

42 Sec. 3. Section 42-5069, Arizona Revised Statutes, is amended to read:

43 42-5069. Commercial lease classification; definitions

44 A. The commercial lease classification is comprised of the business of
45 leasing for a consideration the use or occupancy of real property.

1 B. A person who, as a lessor, leases or rents for a consideration
2 under one or more leases or rental agreements the use or occupancy of real
3 property that is used by the lessee for commercial purposes is deemed to be
4 engaged in business and subject to the tax imposed by article 1 of this
5 chapter, but this subsection does not include leases or rentals of real
6 property used for residential or agricultural purposes.

7 C. The commercial lease classification does not include:

8 1. Any business activities that are classified under the transient
9 lodging classification.

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

13 3. Leasing real property to a lessee who subleases the property if the
14 lessee is engaged in business classified under the commercial lease
15 classification or the transient lodging classification.

16 4. Leasing real property pursuant to a written lease agreement entered
17 into before December 1, 1967. This exclusion does not apply to the
18 businesses of hotels, guest houses, dude ranches and resorts, rooming houses,
19 apartment houses, office buildings, automobile storage garages, parking lots
20 or tourist camps, or to the extension or renewal of any such written lease
21 agreement.

22 5. Leasing real property between affiliated companies, businesses,
23 persons or reciprocal insurers. For the purposes of this paragraph:

24 (a) "Affiliated companies, businesses, persons or reciprocal insurers"
25 means the lessor holds a controlling interest in the lessee, the lessee holds
26 a controlling interest in the lessor, affiliated persons hold a controlling
27 interest in both the lessor and the lessee, or an unrelated person holds a
28 controlling interest in both the lessor and lessee.

29 (b) "Affiliated persons" means members of an individual's family or
30 persons who have ownership or control of a business entity.

31 (c) "Controlling interest" means direct or indirect ownership of at
32 least eighty ~~per-cent~~ PERCENT of the voting shares of a corporation or of the
33 interests in a company, business or person other than a corporation.

34 (d) "Members of an individual's family" means the individual's spouse
35 and brothers and sisters, whether by whole or half blood, including adopted
36 persons, ancestors and lineal descendants.

37 (e) "Reciprocal insurers" has the same meaning prescribed in section
38 20-762.

39 6. Leasing real property for boarding horses.

40 7. Leasing or renting real property or the right to use real property
41 at exhibition events in this state sponsored, operated or conducted by a
42 nonprofit organization that is exempt from taxation under section 501(c)(3),
43 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is
44 associated with major league baseball teams or a national touring

1 professional golfing association and no part of the organization's net
2 earnings inures to the benefit of any private shareholder or individual.

3 8. Leasing or renting real property or the right to use real property
4 for use as a rodeo featuring primarily farm and ranch animals in this state
5 sponsored, operated or conducted by a nonprofit organization that is exempt
6 from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or
7 501(c)(8) of the internal revenue code and no part of the organization's net
8 earnings inures to the benefit of any private shareholder or individual.

9 9. Leasing or renting dwelling units, lodging facilities or trailer or
10 mobile home spaces if the units, facilities or spaces are intended to serve
11 as the principal or permanent place of residence for the lessee or renter or
12 if the unit, facility or space is leased or rented to a single tenant thirty
13 or more consecutive days.

14 10. Leasing or renting real property and improvements for use primarily
15 for religious worship by a nonprofit organization that is exempt from
16 taxation under section 501(c)(3) of the internal revenue code and no part of
17 the organization's net earnings inures to the benefit of any private
18 shareholder or individual.

19 11. Leasing or renting real property used for agricultural purposes
20 under either of the following circumstances:

21 (a) The lease or rental is between family members, trusts, estates,
22 corporations, partnerships, joint venturers or similar entities, or any
23 combination thereof, if the individuals or at least eighty ~~per cent~~ PERCENT
24 of the beneficiaries, shareholders, partners or joint venturers share a
25 family relationship as parents or ancestors of parents, children or
26 descendants of children, siblings, cousins of the first degree, aunts,
27 uncles, nieces or nephews of the first degree, spouses of any of the listed
28 relatives and listed relatives by the half-blood or by adoption.

29 (b) The lessor leases or rents real property used for agricultural
30 purposes under no more than three leases or rental agreements.

31 12. Leasing, renting or granting the right to use real property to
32 vendors or exhibitors by a trade or industry association that is a qualifying
33 organization pursuant to section 513(d)(3)(C) of the internal revenue code
34 for a period not to exceed twenty-one days in connection with an event that
35 meets all of the following conditions:

36 (a) The majority of such vending or exhibition activities relate to
37 the nature of the trade or business sponsoring the event.

38 (b) The event is held in conjunction with a formal business meeting of
39 the trade or industry association.

40 (c) The event is organized by the persons engaged in the particular
41 trade or industry.

42 13. Leasing, renting or granting the right to use real property for a
43 period not to exceed twenty-one days by a coliseum, civic center, civic
44 plaza, convention center, auditorium or arena owned by this state or any of
45 its political subdivisions.

1 14. Leasing or subleasing real property used by a nursing care
2 institution as defined in section 36-401 that is licensed pursuant to title
3 36, chapter 4.

4 15. Leasing or renting an eligible facility as defined in section
5 28-7701.

6 16. Granting or providing rights to real property that constitute a
7 profit à prendre for the severance of minerals, including all rights to use
8 the surface or subsurface of the property as is necessary or convenient to
9 the right to sever the minerals. This paragraph does not exclude from the
10 commercial lease classification leasehold rights to the real property that
11 are granted in addition to and not included within the right of profit à
12 prendre, but the tax base for the grant of such a leasehold right, if the
13 gross income derived from the grant is not separately stated from the gross
14 income derived from the grant of the profit à prendre, shall not exceed the
15 fair market value of the leasehold rights computed after excluding the value
16 of all rights under the profit à prendre. For the purposes of this
17 paragraph, "profit à prendre" means a right to use the land of another to
18 mine minerals, and carries with it the right of entry and the right to remove
19 and take the minerals from the land and also includes the right to use the
20 surface of the land as is necessary and convenient for exercise of the
21 profit.

22 17. THE LEASING OR RENTING OF SPACE TO MAKE ATTACHMENTS TO UTILITY
23 POLES AS FOLLOWS:

24 (a) BY A PERSON THAT IS ENGAGED IN BUSINESS UNDER SECTION 42-5063 OR
25 42-5064 OR THAT IS A CABLE OPERATOR.

26 (b) TO A PERSON THAT IS ENGAGED IN BUSINESS UNDER SECTION 42-5063 OR
27 42-5064 OR THAT IS A CABLE OPERATOR.

28 D. The tax base for the commercial lease classification is the gross
29 proceeds of sales or gross income derived from the business, but
30 reimbursements to the lessor for utility service shall be deducted from the
31 tax base.

32 E. Notwithstanding section 42-1104, subsection B, paragraph 1,
33 subdivision (b) and paragraph 2, the failure to file tax returns for the
34 commercial lease classification that report gross income derived from any
35 agreement that constitutes, in whole or in part, a grant of a right of profit
36 à prendre for the severance of minerals does not constitute an exception to
37 the general rule for the statute of limitations.

38 F. For the purposes of this section:

39 1. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED BY SECTION 9-505.

40 ~~2.~~ 2. "Leasing" includes renting.

41 ~~3.~~ 3. "Real property" includes any improvements, rights or interest
42 in such property.

43 4. "UTILITY POLE" MEANS ANY WOODEN, METAL OR OTHER POLE USED FOR
44 UTILITY PURPOSES AND THE POLE'S APPURTENANCES THAT ARE ATTACHED OR AUTHORIZED
45 FOR ATTACHMENT BY THE PERSON CONTROLLING THE POLE.

1 Sec. 4. Section 42-5071, Arizona Revised Statutes, is amended to read:
2 42-5071. Personal property rental classification; definitions

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

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

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

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

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

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

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

31 7. Leasing or renting photographs, transparencies or other creative
32 works used by this state on internet websites, in magazines or in other
33 publications that encourage tourism.

34 8. Leasing or renting certified ignition interlock devices installed
35 pursuant to the requirements prescribed by section 28-1461. For the purposes
36 of this paragraph, "certified ignition interlock device" has the same meaning
37 prescribed in section 28-1301.

38 9. THE LEASING OR RENTING OF SPACE TO MAKE ATTACHMENTS TO UTILITY
39 POLES, AS FOLLOWS:

40 (a) BY A PERSON THAT IS ENGAGED IN BUSINESS UNDER SECTION 42-5063 OR
41 42-5064 OR THAT IS A CABLE OPERATOR.

42 (b) TO A PERSON THAT IS ENGAGED IN BUSINESS UNDER SECTION 42-5063 OR
43 42-5064 OR THAT IS A CABLE OPERATOR.

44 B. The tax base for the personal property rental classification is the
45 gross proceeds of sales or gross income derived from the business, but the

1 gross proceeds of sales or gross income derived from the following shall be
2 deducted from the tax base:

3 1. Reimbursements by the lessee to the lessor of a motor vehicle for
4 payments by the lessor of the applicable fees and taxes imposed by sections
5 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15,
6 article 2 and article IX, section 11, Constitution of Arizona, to the extent
7 such amounts are separately identified as such fees and taxes and are billed
8 to the lessee.

9 2. Leases or rentals of tangible personal property that, if it had
10 been purchased instead of leased or rented by the lessee, would have been
11 exempt under:

12 (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 49
13 or 54.

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

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

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

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

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

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

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

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

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

33 D. In computing the tax base, the gross proceeds of sales or gross
34 income from the lease or rental of a motor vehicle does not include any
35 amount attributable to the car rental surcharge under section 5-839, 28-5810
36 or 48-4234.

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

1 F. FOR THE PURPOSES OF THIS SECTION:

2 1. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED BY SECTION 9-505.

3 2. "UTILITY POLE" MEANS ANY WOODEN, METAL OR OTHER POLE USED FOR
4 UTILITY PURPOSES AND THE POLE'S APPURTENANCES THAT ARE ATTACHED OR AUTHORIZED
5 FOR ATTACHMENT BY THE PERSON CONTROLLING THE POLE.

6 Sec. 5. Section 42-6004, Arizona Revised Statutes, is amended to read:
7 42-6004. Exemption from municipal tax; definitions

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

10 1. Exhibition events in this state sponsored, conducted or operated by
11 a nonprofit organization that is exempt from taxation under section
12 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
13 organization is associated with a major league baseball team or a national
14 touring professional golfing association and no part of the organization's
15 net earnings inures to the benefit of any private shareholder or individual.

16 2. Interstate telecommunications services, which include that portion
17 of telecommunications services, such as subscriber line service, allocable by
18 federal law to interstate telecommunications service.

19 3. Sales of warranty or service contracts.

20 4. Sales of motor vehicles to nonresidents of this state for use
21 outside this state if the motor vehicle dealer ships or delivers the motor
22 vehicle to a destination outside this state.

23 5. Interest on finance contracts.

24 6. Dealer documentation fees on the sales of motor vehicles.

25 7. Sales of food or other items purchased with United States
26 department of agriculture food stamp coupons issued under the food stamp act
27 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section
28 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,
29 section 4302; 42 United States Code section 1786) but may impose such a tax
30 on other sales of food. If a city, town or special taxing district exempts
31 sales of food from its tax or imposes a different transaction privilege rate
32 on the gross proceeds of sales or gross income from sales of food and nonfood
33 items, it shall use the definition of food prescribed by rule adopted by the
34 department pursuant to section 42-5106.

35 8. Orthodontic devices dispensed by a dental professional who is
36 licensed under title 32, chapter 11 to a patient as part of the practice of
37 dentistry.

38 9. Sales of internet access services to the person's subscribers and
39 customers. For the purposes of this paragraph:

40 (a) "Internet" means the computer and telecommunications facilities
41 that comprise the interconnected worldwide network of networks that employ
42 the transmission control protocol or internet protocol, or any predecessor or
43 successor protocol, to communicate information of all kinds by wire or radio.

44 (b) "Internet access" means a service that enables users to access
45 content, information, electronic mail or other services over the internet.

1 Internet access does not include telecommunication services provided by a
2 common carrier.

3 10. The gross proceeds of sales or gross income retained by the Arizona
4 exposition and state fair board from ride ticket sales at the annual Arizona
5 state fair.

6 11. Through August 31, 2014, sales of Arizona centennial medallions by
7 the historical advisory commission.

8 12. Leasing real property between affiliated companies, businesses,
9 persons or reciprocal insurers. For the purposes of this paragraph:

10 (a) "Affiliated companies, businesses, persons or reciprocal insurers"
11 means the lessor holds a controlling interest in the lessee, the lessee holds
12 a controlling interest in the lessor, affiliated persons hold a controlling
13 interest in both the lessor and the lessee, or an unrelated person holds a
14 controlling interest in both the lessor and lessee.

15 (b) "Affiliated persons" means members of the individual's family or
16 persons who have ownership or control of a business entity.

17 (c) "Controlling interest" means direct or indirect ownership of at
18 least eighty ~~per cent~~ PERCENT of the voting shares of a corporation or of the
19 interests in a company, business or person other than a corporation.

20 (d) "Members of the individual's family" means the individual's spouse
21 and brothers and sisters, whether by whole or half blood, including adopted
22 persons, ancestors and lineal descendants.

23 (e) "Reciprocal insurer" has the same meaning prescribed in section
24 20-762.

25 13. The gross proceeds of sales or gross income derived from a contract
26 for the installation, assembly, repair or maintenance of machinery, equipment
27 or other tangible personal property THAT IS described in section 42-5061,
28 subsection B and that has independent functional utility, pursuant to the
29 following provisions:

30 (a) The deduction provided in this paragraph includes the gross
31 proceeds of sales or gross income derived from all of the following:

32 (i) Any activity performed on machinery, equipment or other tangible
33 personal property with independent functional utility.

34 (ii) Any activity performed on any tangible personal property relating
35 to machinery, equipment or other tangible personal property with independent
36 functional utility in furtherance of any of the purposes provided for under
37 subdivision (d) of this paragraph.

38 (iii) Any activity that is related to the activities described in
39 items (i) and (ii) of this subdivision, including inspecting the installation
40 of or testing the machinery, equipment or other tangible personal property.

41 (b) The deduction provided in this paragraph does not include gross
42 proceeds of sales or gross income from the portion of any contracting
43 activity that consists of the development of, or modification to, real
44 property in order to facilitate the installation, assembly, repair,

1 maintenance or removal of machinery, equipment or other tangible personal
2 property described in section 42-5061, subsection B.

3 (c) The deduction provided in this paragraph shall be determined
4 without regard to the size or useful life of the machinery, equipment or
5 other tangible personal property.

6 (d) For the purposes of this paragraph, "independent functional
7 utility" means that the machinery, equipment or other tangible personal
8 property can independently perform its function without attachment to real
9 property, other than attachment for any of the following purposes:

10 (i) Assembling the machinery, equipment or other tangible personal
11 property.

12 (ii) Connecting items of machinery, equipment or other tangible
13 personal property to each other.

14 (iii) Connecting the machinery, equipment or other tangible personal
15 property, whether as an individual item or as a system of items, to water,
16 power, gas, communication or other services.

17 (iv) Stabilizing or protecting the machinery, equipment or other
18 tangible personal property during operation by bolting, burying or performing
19 other dissimilar nonpermanent connections to either real property or real
20 property improvements.

21 14. The leasing or renting of certified ignition interlock devices
22 installed pursuant to the requirements prescribed by section 28-1461. For
23 the purposes of this paragraph, "certified ignition interlock device" has the
24 same meaning prescribed in section 28-1301.

25 15. Computer data center equipment purchased by the owner, operator or
26 qualified colocation tenant of the computer data center or an authorized
27 agent of the owner, operator or qualified colocation tenant during the
28 qualification period for use in a computer data center that is certified by
29 the Arizona commerce authority under section 41-1519. To qualify for this
30 deduction, at the time of purchase, the owner, operator or qualified
31 colocation tenant must present to the retailer its certificate that is issued
32 pursuant to section 41-1519 and that establishes its qualification for the
33 deduction. For the purposes of this paragraph, "computer data center",
34 "computer data center equipment", "qualification period" and "qualified
35 colocation tenant" have the same meanings prescribed in section 41-1519.

36 16. The gross proceeds of sales or gross income derived from a contract
37 with the owner of real property or the person owning the improvements to the
38 real property for the maintenance, repair, ~~or~~ replacement or alteration of
39 existing property ~~is not subject to tax under this section~~ if the contract
40 does not include modification activities, except as specified in this
41 paragraph. The gross proceeds of sales or gross income derived from a
42 de minimis amount of modification activity that is essential to the
43 completion of the maintenance, repair, replacement or alteration contract
44 does not subject the entire contract to tax under this section. For the
45 purposes of this paragraph:

1 (a) Each contract or project is independent of another contract.

2 (b) "Modification" means construction, alteration, addition,
3 subtraction, improvement, movement, wreckage or demolition.

4 17. Monitoring services relating to an alarm system as defined in
5 section 32-101.

6 18. Tangible personal property, job printing or publications sold to or
7 purchased by, or tangible personal property leased, rented or licensed for
8 use to or by, a qualifying health sciences educational institution as defined
9 in section 42-5001.

10 19. The transfer of title or possession of coal back and forth between
11 an owner or operator of a power plant and a person who is responsible for
12 refining coal if both of the following apply:

13 (a) The transfer of title or possession of the coal is for the purpose
14 of refining the coal.

15 (b) The title or possession of the coal is transferred back to the
16 owner or operator of the power plant after completion of the coal refining
17 process. For the purposes of this subdivision, "coal refining process" means
18 the application of a coal additive system that aids the reduction of power
19 plant emissions during the combustion of coal and the treatment of flue gas.

20 20. The gross proceeds of sales or gross income from sales of low or
21 reduced cost articles of food or drink to eligible elderly, ~~disabled~~ or
22 homeless persons **OR PERSONS WITH A DISABILITY** by a business subject to tax
23 under section 42-5074 that contracts with the department of economic security
24 and that is approved by the food and nutrition service of the United States
25 department of agriculture pursuant to the supplemental nutrition assistance
26 program established by the food and nutrition act of 2008 (P.L. 110-246; 122
27 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the
28 purchases are made with the benefits issued pursuant to the supplemental
29 nutrition assistance program.

30 **21. THE CHARGES FOR THE LEASING OR RENTING OF SPACE TO MAKE ATTACHMENTS**
31 **TO UTILITY POLES AS FOLLOWS:**

32 (a) **BY A PERSON THAT IS ENGAGED IN THE BUSINESS OF PROVIDING OR**
33 **FURNISHING ELECTRICAL SERVICES OR TELECOMMUNICATION SERVICES OR THAT IS A**
34 **CABLE OPERATOR.**

35 (b) **TO A PERSON THAT IS ENGAGED IN THE BUSINESS OF PROVIDING OR**
36 **FURNISHING ELECTRICAL SERVICES OR TELECOMMUNICATION SERVICES OR THAT IS A**
37 **CABLE OPERATOR.**

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

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

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

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

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

11 4. Incarcerating or detaining in a privately operated prison, jail or
12 detention facility prisoners who are under the jurisdiction of the United
13 States, this state or any other state or a political subdivision of this
14 state or of any other state.

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

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

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

23 (b) The attributable amount is equal to the total amount of
24 development fees paid by the taxpayer or by a contractor providing services
25 to the taxpayer and the total development fees credited in exchange for the
26 construction of, contribution to or dedication of real property for providing
27 public infrastructure, public safety or other public services necessary to
28 the development. The real property must be the subject of the development
29 fees.

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

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

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

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

5 G. FOR THE PURPOSES OF THIS SECTION:

6 1. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED BY SECTION 9-505.

7 2. "ELECTRICAL SERVICES" MEANS TRANSMITTING OR DISTRIBUTING
8 ELECTRICITY, ELECTRIC LIGHTS, CURRENT OR POWER OVER LINES, WIRES OR CABLES.

9 3. "TELECOMMUNICATION SERVICES" MEANS TRANSMITTING OR RELAYING SOUND,
10 VISUAL IMAGE, DATA, INFORMATION, IMAGES OR MATERIAL OVER LINES, WIRES OR
11 CABLES BY RADIO SIGNAL, LIGHT BEAM, TELEPHONE, TELEGRAPH OR ANY OTHER
12 ELECTROMAGNETIC MEANS.

13 4. "UTILITY POLE" MEANS ANY WOODEN, METAL OR OTHER POLE USED FOR
14 UTILITY PURPOSES AND THE POLE'S APPURTENANCES THAT ARE ATTACHED OR AUTHORIZED
15 FOR ATTACHMENT BY THE PERSON CONTROLLING THE POLE.

16 Sec. 6. Retroactivity; refunds; nonseverability

17 A. Section 42-5071, subsection A, paragraph 9, Arizona Revised
18 Statutes, providing that charges for the right to make attachments to utility
19 poles are not subject to tax under section 42-5071, Arizona Revised Statutes,
20 applies retroactively to taxable periods beginning from and after August 31,
21 2006.

22 B. Any claim for refund of transaction privilege tax for charges for
23 the right to make attachments to utility poles based on the retroactive
24 application of section 42-5071, subsection A, paragraph 9, Arizona Revised
25 Statutes, must be submitted pursuant to section 42-1118, Arizona Revised
26 Statutes, to the department of revenue on or before December 31, 2015. A
27 claim for refund includes a claim for the amount of any prior refund or
28 voucher, or combination thereof, credited by the department of revenue
29 against any tax or installment of taxes, or any penalty, interest or other
30 amount, due from the taxpayer under section 42-5071, Arizona Revised
31 Statutes, for charges for the right to make attachments to utility poles.
32 Failure to file a claim on or before December 31, 2015 constitutes a waiver
33 of the claim for refund under this section.

34 C. The burden is on the taxpayer to establish by competent evidence
35 the amount of any refund claim. The department of revenue shall:

36 1. Review all timely filed claims.

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

38 3. Notify the taxpayer of its determination. The notice is final
39 unless the taxpayer appeals pursuant to section 42-1119, Arizona Revised
40 Statutes.

41 D. Notwithstanding sections 42-1118 and 42-1119, Arizona Revised
42 Statutes, the department of revenue may not make a refund until it determines
43 the amount of all refund claims filed pursuant to this section. If a
44 taxpayer appeals the department's determination, the department, pursuant to
45 the rules protecting confidentiality under title 42, chapter 2, article 1,

1 Arizona Revised Statutes, may notify other taxpayers who have filed claims
2 under this section as to the nature and extent of the delay.

3 E. The total amount of refunds issued under this section may not
4 exceed two hundred thousand dollars. If the total amount of refundable
5 claims filed under this section exceeds two hundred thousand dollars, the
6 department shall reduce each claim proportionally so that the total amount of
7 refunds equals two hundred thousand dollars.

8 F. Interest may not be allowed or compounded on a refund paid before
9 June 30, 2016. Unpaid refund amounts from and after June 30, 2016 shall
10 accrue interest under section 42-1123, Arizona Revised Statutes.

11 G. If any part of this section is finally adjudicated invalid, the
12 entire section is void.