

REFERENCE TITLE: Native American tribes; TPT revenues

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

## **HB 2156**

Introduced by  
Representatives Hale, Benally, Otondo, Rios, Steele, Wheeler, Senator  
Begay; Representatives Alston, Bowers, Gabaldón, Gonzales, Larkin, Meyer,  
Saldate, Sherwood, Shope

AN ACT

AMENDING SECTIONS 42-5029, 42-5031.01 AND 42-6010, ARIZONA REVISED STATUTES;  
RELATING TO TRANSACTION PRIVILEGE TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 42-5029, Arizona Revised Statutes, is amended to  
3 read:  
4 42-5029. Remission and distribution of monies; definition  
5 A. The department shall deposit, pursuant to sections 35-146 and  
6 35-147, all revenues collected under this article and articles 4, 5 and 8 of  
7 this chapter pursuant to section 42-1116, separately accounting for:  
8 1. Payments of estimated tax under section 42-5014, subsection D.  
9 2. Revenues collected pursuant to section 42-5070.  
10 3. Revenues collected under this article and article 5 of this chapter  
11 from and after June 30, 2000 from sources located on Indian reservations in  
12 this state.  
13 4. Revenues collected pursuant to section 42-5010, subsection G and  
14 section 42-5155, subsection D.  
15 B. The department shall credit payments of estimated tax to an  
16 estimated tax clearing account and each month shall transfer all monies in  
17 the estimated tax clearing account to a fund designated as the transaction  
18 privilege and severance tax clearing account. The department shall credit  
19 all other payments to the transaction privilege and severance tax clearing  
20 account, separately accounting for the monies designated as distribution base  
21 under sections 42-5010, 42-5164, 42-5205 and 42-5353. Each month the  
22 department shall report to the state treasurer the amount of monies collected  
23 pursuant to this article and articles 4, 5 and 8 of this chapter.  
24 C. On notification by the department, the state treasurer shall  
25 distribute the monies deposited in the transaction privilege and severance  
26 tax clearing account in the manner prescribed by this section and by sections  
27 42-5164, 42-5205 and 42-5353, after deducting warrants drawn against the  
28 account pursuant to sections 42-1118 and 42-1254.  
29 D. Of the monies designated as distribution base the department shall:  
30 1. Pay twenty-five per cent to the various incorporated municipalities  
31 in this state in proportion to their population to be used by the  
32 municipalities for any municipal purpose.  
33 2. Pay 38.08 per cent to the counties in this state by averaging the  
34 following proportions:  
35 (a) The proportion that the population of each county bears to the  
36 total state population.  
37 (b) The proportion that the distribution base monies collected during  
38 the calendar month in each county under this article, section 42-5164,  
39 subsection B, section 42-5205, subsection B and section 42-5353 bear to the  
40 total distribution base monies collected under this article, section 42-5164,  
41 subsection B, section 42-5205, subsection B and section 42-5353 throughout  
42 the state for the calendar month.  
43 3. Pay an additional 2.43 per cent to the counties in this state as  
44 follows:  
45 (a) Average the following proportions:

1 (i) The proportion that the assessed valuation used to determine  
2 secondary property taxes of each county, after deducting that part of the  
3 assessed valuation that is exempt from taxation at the beginning of the month  
4 for which the amount is to be paid, bears to the total assessed valuations  
5 used to determine secondary property taxes of all the counties after  
6 deducting that portion of the assessed valuations that is exempt from  
7 taxation at the beginning of the month for which the amount is to be paid.  
8 Property of a city or town that is not within or contiguous to the municipal  
9 corporate boundaries and from which water is or may be withdrawn or diverted  
10 and transported for use on other property is considered to be taxable  
11 property in the county for purposes of determining assessed valuation in the  
12 county under this item.

13 (ii) The proportion that the distribution base monies collected during  
14 the calendar month in each county under this article, section 42-5164,  
15 subsection B, section 42-5205, subsection B and section 42-5353 bear to the  
16 total distribution base monies collected under this article, section 42-5164,  
17 subsection B, section 42-5205, subsection B and section 42-5353 throughout  
18 the state for the calendar month.

19 (b) If the proportion computed under subdivision (a) of this paragraph  
20 for any county is greater than the proportion computed under paragraph 2 of  
21 this subsection, the department shall compute the difference between the  
22 amount distributed to that county under paragraph 2 of this subsection and  
23 the amount that would have been distributed under paragraph 2 of this  
24 subsection using the proportion computed under subdivision (a) of this  
25 paragraph and shall pay that difference to the county from the amount  
26 available for distribution under this paragraph. Any monies remaining after  
27 all payments under this subdivision shall be distributed among the counties  
28 according to the proportions computed under paragraph 2 of this subsection.

29 4. After any distributions required by sections 42-5030, 42-5030.01,  
30 42-5031, 42-5032, 42-5032.01 and 42-5032.02, and after making any transfer to  
31 the water quality assurance revolving fund as required by section 49-282,  
32 subsection B, credit the remainder of the monies designated as distribution  
33 base to the state general fund. From this amount the legislature shall  
34 annually appropriate to:

35 (a) The department of revenue sufficient monies to administer and  
36 enforce this article and articles 5 and 8 of this chapter.

37 (b) The department of economic security monies to be used for the  
38 purposes stated in title 46, chapter 1.

39 (c) The firearms safety and ranges fund established by section 17-273,  
40 fifty thousand dollars derived from the taxes collected from the retail  
41 classification pursuant to section 42-5061 for the current fiscal year.

42 E. If approved by the qualified electors voting at a statewide general  
43 election, all monies collected pursuant to section 42-5010, subsection G and  
44 section 42-5155, subsection D shall be distributed each fiscal year pursuant  
45 to this subsection. The monies distributed pursuant to this subsection are

1 in addition to any other appropriation, transfer or other allocation of  
2 public or private monies from any other source and shall not supplant,  
3 replace or cause a reduction in other school district, charter school,  
4 university or community college funding sources. The monies shall be  
5 distributed as follows:

6 1. If there are outstanding state school facilities revenue bonds  
7 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the  
8 amount that is necessary to pay the fiscal year's debt service on outstanding  
9 state school improvement revenue bonds for the current fiscal year shall be  
10 transferred each month to the school improvement revenue bond debt service  
11 fund established by section 15-2084. The total amount of bonds for which  
12 these monies may be allocated for the payment of debt service shall not  
13 exceed a principal amount of eight hundred million dollars exclusive of  
14 refunding bonds and other refinancing obligations.

15 2. After any transfer of monies pursuant to paragraph 1 of this  
16 subsection, twelve per cent of the remaining monies collected during the  
17 preceding month shall be transferred to the technology and research  
18 initiative fund established by section 15-1648 to be distributed among the  
19 universities for the purpose of investment in technology and research-based  
20 initiatives.

21 3. After the transfer of monies pursuant to paragraph 1 of this  
22 subsection, three per cent of the remaining monies collected during the  
23 preceding month shall be transferred to the workforce development account  
24 established in each community college district pursuant to section 15-1472  
25 for the purpose of investment in workforce development programs.

26 4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
27 subsection, one-twelfth of the amount a community college that is owned,  
28 operated or chartered by a qualifying Indian tribe on its own Indian  
29 reservation would receive pursuant to section 15-1472, subsection D,  
30 paragraph 2 if it were a community college district shall be distributed each  
31 month to the treasurer or other designated depository of a qualifying Indian  
32 tribe. Monies distributed pursuant to this paragraph are for the exclusive  
33 purpose of providing support to one or more community colleges owned,  
34 operated or chartered by a qualifying Indian tribe and shall be used in a  
35 manner consistent with section 15-1472, subsection B. For the purposes of  
36 this paragraph, "qualifying Indian tribe" has the same meaning as defined in  
37 section 42-5031.01, subsection D.

38 5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
39 subsection, one-twelfth of the following amounts shall be transferred each  
40 month to the department of education for the increased cost of basic state  
41 aid under section 15-971 due to added school days and associated teacher  
42 salary increases enacted in 2000:

- 43 (a) In fiscal year 2001-2002, \$15,305,900.
- 44 (b) In fiscal year 2002-2003, \$31,530,100.
- 45 (c) In fiscal year 2003-2004, \$48,727,700.

1 (d) In fiscal year 2004-2005, \$66,957,200.

2 (e) In fiscal year 2005-2006 and each fiscal year thereafter,  
3 \$86,280,500.

4 6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
5 subsection, seven million eight hundred thousand dollars is appropriated each  
6 fiscal year, to be paid in monthly installments, to the department of  
7 education to be used for school safety as provided in section 15-154 and two  
8 hundred thousand dollars is appropriated each fiscal year, to be paid in  
9 monthly installments to the department of education to be used for the  
10 character education matching grant program as provided in section 15-154.01.

11 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
12 subsection, no more than seven million dollars may be appropriated by the  
13 legislature each fiscal year to the department of education to be used for  
14 accountability purposes as described in section 15-241 and title 15, chapter  
15 9, article 8.

16 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
17 subsection, one million five hundred thousand dollars is appropriated each  
18 fiscal year, to be paid in monthly installments, to the failing schools  
19 tutoring fund established by section 15-241.

20 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
21 subsection, twenty-five million dollars shall be transferred each fiscal year  
22 to the state general fund to reimburse the general fund for the cost of the  
23 income tax credit allowed by section 43-1072.01.

24 10. After the payment of monies pursuant to paragraphs 1 through 9 of  
25 this subsection, the remaining monies collected during the preceding month  
26 shall be transferred to the classroom site fund established by section  
27 15-977. The monies shall be allocated as follows in the manner prescribed by  
28 section 15-977:

29 (a) Forty per cent shall be allocated for teacher compensation based  
30 on performance.

31 (b) Twenty per cent shall be allocated for increases in teacher base  
32 compensation and employee related expenses.

33 (c) Forty per cent shall be allocated for maintenance and operation  
34 purposes.

35 F. THE FOLLOWING APPLY TO THE TRANSACTION PRIVILEGE TAX REVENUES THAT  
36 ARE SEPARATELY ACCOUNTED FOR UNDER SUBSECTION A, PARAGRAPH 3 OF THIS SECTION:

37 1. EACH MONTH THE DEPARTMENT SHALL TRANSMIT TO THE TREASURER OR OTHER  
38 DESIGNATED DEPOSITORY OF EACH INDIAN TRIBE FIFTY PER CENT OF THE TRANSACTION  
39 PRIVILEGE TAX REVENUES THAT ARE RECEIVED IN THE PRECEDING MONTH FROM ALL  
40 SOURCES LOCATED ON THE INDIAN RESERVATION PURSUANT TO THIS ARTICLE.

41 2. MONIES RECEIVED UNDER THIS SUBSECTION SHALL BE USED BY THE INDIAN  
42 TRIBE FOR TELECOMMUNICATION INFRASTRUCTURE DEVELOPMENT AND FOR COMMUNITY  
43 DEVELOPMENT PROJECTS, INCLUDING MULTIPURPOSE BUILDINGS, INFRASTRUCTURE  
44 DEVELOPMENT AND ROADS ON THE INDIAN RESERVATION THAT ARE LOCATED WITHIN THIS  
45 STATE.

1           3. AN INDIAN TRIBE MAY USE THE MONIES RECEIVED UNDER THIS SUBSECTION  
2 FOR BONDING OR AS COLLATERAL FOR LOANS FOR THE PURPOSES STATED IN PARAGRAPH 2  
3 OF THIS SUBSECTION.

4           4. AFTER PAYMENT OF MONIES PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION,  
5 THE DEPARTMENT SHALL CREDIT THE REMAINDER OF THE MONIES TO THE STATE GENERAL  
6 FUND.

7           5. THIS SUBSECTION DOES NOT CHANGE THE DISTRIBUTION OF ANY MONIES  
8 PRESCRIBED BY SUBSECTION E OF THIS SECTION.

9           ~~F.~~ G. The department shall credit the remainder of the monies in the  
10 transaction privilege and severance tax clearing account to the state general  
11 fund, subject to any distribution required by section 42-5030.01.

12           ~~G.~~ H. Notwithstanding subsection D of this section, if a court of  
13 competent jurisdiction finally determines that tax monies distributed under  
14 this section were illegally collected under this article or articles 5 and 8  
15 of this chapter and orders the monies to be refunded to the taxpayer, the  
16 department shall compute the amount of such monies that was distributed to  
17 each city, town and county under this section. Each city's, town's and  
18 county's proportionate share of the costs shall be based on the amount of the  
19 original tax payment each municipality and county received. Each month the  
20 state treasurer shall reduce the amount otherwise distributable to the city,  
21 town and county under this section by one thirty-sixth of the total amount to  
22 be recovered from the city, town or county until the total amount has been  
23 recovered, but the monthly reduction for any city, town or county shall not  
24 exceed ten per cent of the full monthly distribution to that entity. The  
25 reduction shall begin for the first calendar month after the final  
26 disposition of the case and shall continue until the total amount, including  
27 interest and costs, has been recovered.

28           ~~H.~~ I. On receiving a certificate of default from the greater Arizona  
29 development authority pursuant to section 41-2257 or 41-2258 and to the  
30 extent not otherwise expressly prohibited by law, the state treasurer shall  
31 withhold from the next succeeding distribution of monies pursuant to this  
32 section due to the defaulting political subdivision the amount specified in  
33 the certificate of default and immediately deposit the amount withheld in the  
34 greater Arizona development authority revolving fund. The state treasurer  
35 shall continue to withhold and deposit the monies until the greater Arizona  
36 development authority certifies to the state treasurer that the default has  
37 been cured. In no event may the state treasurer withhold any amount that the  
38 defaulting political subdivision certifies to the state treasurer and the  
39 authority as being necessary to make any required deposits then due for the  
40 payment of principal and interest on bonds of the political subdivision that  
41 were issued before the date of the loan repayment agreement or bonds and that  
42 have been secured by a pledge of distributions made pursuant to this section.

43           ~~I.~~ J. Except as provided by sections 42-5033 and 42-5033.01, the  
44 population of a county, city or town as determined by the most recent United  
45 States decennial census plus any revisions to the decennial census certified

1 by the United States bureau of the census shall be used as the basis for  
2 apportioning monies pursuant to subsection D of this section.

3 ~~J~~ K. Except as otherwise provided by this subsection, on notice from  
4 the department of revenue pursuant to section 42-6010, subsection B, the  
5 state treasurer shall withhold from the distribution of monies pursuant to  
6 this section to the affected city or town the amount of the penalty for  
7 business location municipal tax incentives provided by the city or town to a  
8 business entity that locates a retail business facility in the city or town.  
9 The state treasurer shall continue to withhold monies pursuant to this  
10 subsection until the entire amount of the penalty has been withheld. The  
11 state treasurer shall credit any monies withheld pursuant to this subsection  
12 to the state general fund as provided by subsection D, paragraph 4 of this  
13 section. The state treasurer shall not withhold any amount that the city or  
14 town certifies to the department of revenue and the state treasurer as being  
15 necessary to make any required deposits or payments for debt service on bonds  
16 or other long-term obligations of the city or town that were issued or  
17 incurred before the location incentives provided by the city or town.

18 ~~K~~ L. On notice from the auditor general pursuant to section 9-626,  
19 subsection D, the state treasurer shall withhold from the distribution of  
20 monies pursuant to this section to the affected city the amount computed  
21 pursuant to section 9-626, subsection D. The state treasurer shall continue  
22 to withhold monies pursuant to this subsection until the entire amount  
23 specified in the notice has been withheld. The state treasurer shall credit  
24 any monies withheld pursuant to this subsection to the state general fund as  
25 provided by subsection D, paragraph 4 of this section.

26 ~~L~~ M. For the purposes of this section, "community college district"  
27 means a community college district that is established pursuant to sections  
28 15-1402 and 15-1403 and that is a political subdivision of this state and,  
29 unless otherwise specified, includes a community college district established  
30 pursuant to section 15-1402.01 and a provisional community college district  
31 established pursuant to section 15-1409.

32 Sec. 2. Section 42-5031.01, Arizona Revised Statutes, is amended to  
33 read:

34 42-5031.01. Distribution of revenues for Indian tribal  
35 postsecondary educational institutions:  
36 definition

37 A. Subject to THE LIMITATION UNDER subsection C of this section, each  
38 month the state treasurer shall transmit to the treasurer or other designated  
39 depository of each qualifying Indian tribe the amount of transaction  
40 privilege tax revenues received pursuant to this article in the preceding  
41 month from all sources located on the Indian reservation established for the  
42 qualifying Indian tribe as determined pursuant to section 42-5029, subsection  
43 A, paragraph 3.

44 B. The monies distributed pursuant to this section are for the  
45 exclusive purpose of supporting the maintenance, renewal and capital expenses

1 of one or more community college campuses in this state that are owned,  
2 operated or chartered by each qualifying Indian tribe on its own Indian  
3 reservation. Before receiving any monies under this section, a qualifying  
4 Indian tribe shall enter into an initial compact with this state on or before  
5 September 1, 2012, signed by the governor, to account for the use of monies  
6 distributed pursuant to this section. The compact shall:

7 1. Be for a term of at least ten years. After a hearing and review of  
8 the compact by the joint legislative budget committee held during the last  
9 year of the compact's term, a compact may be renewed for an additional term  
10 of up to ten years.

11 2. Require the monies to be used primarily for capital needs,  
12 including maintenance and renewal of existing facilities at designated  
13 community college campuses on the qualifying Indian tribe's own reservation  
14 in this state.

15 3. Provide for audits by the auditor general of the use of the  
16 monies. The auditor general shall submit copies of each audit to the joint  
17 legislative budget committee.

18 4. If necessary, provide for reimbursement to the department of  
19 revenue of costs associated with implementing this section, not to exceed one  
20 hundred fifty thousand dollars, from revenues that would otherwise be paid to  
21 the qualifying Indian tribe pursuant to this section.

22 C. ~~Notwithstanding subsection A of this section,~~ The state treasurer  
23 shall not transmit UNDER THIS SECTION in any fiscal year more than the sum of  
24 the following amounts:

25 1. With respect to a single community college, one million seven  
26 hundred fifty thousand dollars or more than ten ~~per-cent~~ PERCENT of  
27 transaction privilege tax revenues received pursuant to this article from all  
28 sources located on the reservation, whichever is less.

29 2. With respect to an additional technical college located on the same  
30 Indian reservation, eight hundred seventy-five thousand dollars or more than  
31 five ~~per-cent~~ PERCENT of transaction privilege tax revenues received pursuant  
32 to this article from all sources located on the reservation, whichever is  
33 less.

34 D. For the purposes of this section, "qualifying Indian tribe" means  
35 an Indian tribe that owns, operates and charters any community college or  
36 postsecondary educational institution located on its own reservation in this  
37 state.

38 Sec. 3. Section 42-6010, Arizona Revised Statutes, is amended to read:  
39 42-6010. Retail business location municipal tax incentives;  
40 prohibition; penalty; exceptions; definitions

41 A. If at least sixty-five ~~per-cent~~ PERCENT of the land area within a  
42 city's or town's exterior boundaries is located within the exterior boundary  
43 of a metropolitan statistical area having a population of more than two  
44 million persons, the city or town shall not offer or provide a tax incentive

1 to a business entity as an inducement or in exchange for locating or  
2 relocating a retail business facility in the city or town.

3 B. A city or town that violates this section is subject to a penalty  
4 equal to the amount of the incentive realized by the taxpayer, extended over  
5 a period of sixty months. The department of revenue shall notify the state  
6 treasurer to withhold the amount of the penalty from monies otherwise payable  
7 to the city or town as provided by section 42-5029, subsection ~~J~~ K.

8 C. The city or town shall report to the department of revenue the  
9 value of any tax incentive used as an inducement or in exchange for locating  
10 or relocating a retail business facility in the city or town. For the  
11 purposes of this subsection, the value includes all negotiated amounts, in  
12 any form and whether actual, realized or contingent, over the term of the  
13 incentive agreement.

14 D. This section does not apply with respect to:

15 1. Municipal services and benefits generally afforded by ordinance to  
16 all new businesses in the city or town, having no direct ~~affect~~ EFFECT on  
17 municipal tax levies.

18 2. Tax incentives that are afforded to all existing retail business  
19 facilities in the city or town.

20 3. Tax incentives for locating retail business facilities in an area  
21 designated as a redevelopment project pursuant to title 36, chapter 12,  
22 article 3 where the average household income is less than the average city  
23 household income as determined by the United States census bureau.

24 4. Incentives consisting of reimbursement for public infrastructure  
25 dedicated to and accepted and controlled upon completion of the project by  
26 the city or town, county, state or a private utility where no other political  
27 subdivision provides such utility for transportation, water, sewer,  
28 electrical, drainage, the fair market value of real property necessary for  
29 the public infrastructure and other necessary public infrastructure. This  
30 paragraph does not apply to parking lots, parking structures or parking  
31 facilities or other structures or amenities owned or controlled by a private  
32 entity.

33 5. Incentives that are offered for the purpose of preserving  
34 historical buildings and other structures.

35 6. Incentives that are offered for cleanup or other remediation  
36 activities at a brownfields site under title 49, chapter 2, article 1.1 or  
37 the comprehensive environmental response, compensation, and liability act of  
38 1980 (P.L. 96-510, 94 Stat. 2767; 42 United States Code sections 9601 through  
39 9657), commonly known as "superfund".

40 E. To qualify as exempt from the penalty, an incentive under  
41 subsection D of this section that is offered in exchange for expenses  
42 incurred by the business entity must be in the form of a reimbursement of the  
43 expenses and may not exceed or otherwise be disproportional to the actual  
44 cost incurred.

1 F. This section does not apply to tax incentives that were referred to  
2 a vote of the qualified electors of the city or town before July 1, 2007 and  
3 approved by the qualified electors of the city or town.

4 G. For the purposes of this section:

5 1. "Metropolitan statistical area" means a geographical area  
6 consisting of cities, towns and other populated areas defined for federal  
7 statistical and census purposes by the United States office of management and  
8 budget with technical assistance from the United States bureau of the census.

9 2. "Retail business facility" means a store, warehouse or other  
10 improvement to real estate where at least one-half of the business conducted  
11 on the premises consists of retail sales of tangible personal property to the  
12 ultimate consumer, measured by either the number of employees assigned to  
13 retail sales or the square footage of the facility used for retail sales.  
14 For the purposes of this paragraph, retail sales do not include:

15 (a) Sales of food and beverage for consumption on the premises of the  
16 facility.

17 (b) The distribution without charge of promotional products that  
18 display the company logo or trademark.

19 (c) Sales solely to company employees.

20 3. "Tax incentive" means any waiver, exemption, deduction, credit,  
21 rebate, discount, deferral or other abatement or reduction of the normal  
22 municipal tax liability of an individual taxpayer that otherwise applies to  
23 similar existing taxpayers and properties in the city or town, however  
24 denominated, computed or applied, and generally understood as an inducement  
25 for the taxpayer to locate a business facility or other operation in the city  
26 or town.