

REFERENCE TITLE: county motor vehicle fuel taxes

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

# SB 1012

Introduced by  
Senator Farley

## AN ACT

AMENDING SECTION 28-5606, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 18, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-6535; AMENDING SECTION 42-6004, ARIZONA REVISED STATUTES; RELATING TO MOTOR FUEL TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-5606, Arizona Revised Statutes, is amended to  
3 read:

4 28-5606. Imposition of motor fuel taxes

5 A. In addition to all other taxes provided by law, ~~—~~:

6 1. A tax of eighteen cents per gallon is imposed on motor vehicle fuel  
7 possessed, used or consumed in this state.

8 2. A COUNTY MAY LEVY BY ORDINANCE A TAX ON WHOLESALE MOTOR VEHICLE  
9 FUEL SOLD IN THE COUNTY NOT TO EXCEED THREE PERCENT OF THE TOTAL SALE OF  
10 MOTOR VEHICLE FUEL. THIS PARAGRAPH APPLIES ONLY TO WHOLESALE MOTOR VEHICLE  
11 FUEL THAT IS TO BE RESOLD AT RETAIL.

12 B. To partially compensate this state for the use of its highways:

13 1. A use fuel tax is imposed on use fuel used in the propulsion of a  
14 light class motor vehicle on a highway in this state at the same rate per  
15 gallon as the motor vehicle fuel tax prescribed in subsection A, PARAGRAPH 1  
16 of this section, except that there is no use fuel tax on alternative fuels.

17 2. A use fuel tax is imposed on use fuel used in the propulsion of a  
18 use class motor vehicle on a highway in this state at the rate of twenty-six  
19 cents for each gallon, except that there is no use fuel tax on alternative  
20 fuels and use class vehicles that are exempt pursuant to section 28-5432 from  
21 the weight fee prescribed in section 28-5433 are subject to the use fuel tax  
22 imposed by paragraph 1 of this subsection.

23 3. Through December 31, 2024, a use fuel tax is imposed on use fuel  
24 used in the propulsion of a motor vehicle transporting forest products in  
25 compliance with the requirements of section 41-1516 on a highway in this  
26 state at the rate of nine cents for each gallon, except that there is no use  
27 fuel tax on alternative fuels.

28 4. A COUNTY MAY LEVY BY ORDINANCE A TAX ON WHOLESALE USE FUEL SOLD IN  
29 THE COUNTY NOT TO EXCEED THREE PERCENT OF THE TOTAL SALE OF USE FUEL. THIS  
30 PARAGRAPH APPLIES ONLY TO WHOLESALE USE FUEL THAT IS TO BE RESOLD AT RETAIL.

31 C. The motor vehicle fuel and use fuel taxes imposed pursuant to this  
32 section and the aviation fuel taxes imposed pursuant to section 28-8344 are  
33 conclusively presumed to be direct taxes on the consumer or user but shall be  
34 collected and remitted to the department by suppliers for the purpose of  
35 convenience and facility only. Motor vehicle fuel, use fuel and aviation  
36 fuel taxes that are collected and paid to the department by a supplier are  
37 considered to be advance payments, shall be added to the price of motor  
38 vehicle fuel, use fuel or aviation fuel and shall be recovered from the  
39 consumer or user.

40 D. Motor vehicle fuel and use fuel taxes imposed pursuant to this  
41 section on the use of motor vehicle fuel and use fuel and the aviation fuel  
42 taxes imposed pursuant to section 28-8344 on the use of aviation fuel, other  
43 than by bulk transfer, arise at the time the motor vehicle, use or aviation  
44 fuel either:

1           1. Is imported into this state and is measured by invoiced gallons  
2 received outside this state at a refinery, terminal or bulk plant for  
3 delivery to a destination in this state.

4           2. Is removed, as measured by invoiced gallons, from the bulk transfer  
5 terminal system or from a qualified terminal in this state.

6           3. Is removed, as measured by invoiced gallons, from the bulk transfer  
7 terminal system or from a qualified terminal or refinery outside this state  
8 for delivery to a destination in this state as represented on the shipping  
9 papers if a supplier imports the motor vehicle, use or aviation fuel for the  
10 account of the supplier or the supplier has made a tax precollection election  
11 pursuant to section 28-5636.

12           E. If motor fuel is removed from the bulk transfer terminal system or  
13 from a qualified terminal or is imported into this state, the original  
14 removal, transfer or importation of the motor fuel is subject to the  
15 collection of the tax. If this motor fuel is transported to another  
16 qualified terminal or reenters the bulk transfer terminal system, the  
17 subsequent sale of the motor fuel on which tax has been collected is not  
18 subject to collection of an additional tax if proper documentation is  
19 retained to support the transaction.

20           Sec. 2. Title 28, chapter 18, article 2, Arizona Revised Statutes, is  
21 amended by adding section 28-6535, to read:

22           28-6535. Arizona highway user revenue fund distribution; county  
23           fuel tax; counties; council of governments

24           NO LATER THAN JUNE 15 OF EACH FISCAL YEAR, THE DEPARTMENT SHALL  
25 ALLOCATE AND TRANSFER MONIES THAT ARE DEPOSITED IN THE ARIZONA HIGHWAY USER  
26 REVENUE FUND AS A RESULT OF A COUNTY-IMPOSED FUEL TAX TO THE COUNTY IN WHICH  
27 THE TAX WAS COLLECTED. THE COUNTY SHALL TRANSFER THE MONIES TO THE COUNCIL  
28 OF GOVERNMENTS FOR THE COUNTY. THE COUNCIL OF GOVERNMENTS SHALL DISTRIBUTE  
29 THE MONIES.

30           Sec. 3. Section 42-6004, Arizona Revised Statutes, is amended to read:

31           42-6004. Exemption from municipal tax; definitions

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

34           1. Exhibition events in this state sponsored, conducted or operated by  
35 a nonprofit organization that is exempt from taxation under section  
36 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the  
37 organization is associated with a major league baseball team or a national  
38 touring professional golfing association and no part of the organization's  
39 net earnings inures to the benefit of any private shareholder or individual.

40           2. Interstate telecommunications services, which include that portion  
41 of telecommunications services, such as subscriber line service, allocable by  
42 federal law to interstate telecommunications service.

43           3. Sales of warranty or service contracts.

1           4. Sales of motor vehicles to nonresidents of this state for use  
2 outside this state if the motor vehicle dealer ships or delivers the motor  
3 vehicle to a destination outside this state.

4           5. Interest on finance contracts.

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

6           7. Sales of food or other items purchased with United States  
7 department of agriculture food stamp coupons issued under the food stamp act  
8 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section  
9 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,  
10 section 4302; 42 United States Code section 1786) but may impose such a tax  
11 on other sales of food. If a city, town or special taxing district exempts  
12 sales of food from its tax or imposes a different transaction privilege rate  
13 on the gross proceeds of sales or gross income from sales of food and nonfood  
14 items, it shall use the definition of food prescribed by rule adopted by the  
15 department pursuant to section 42-5106.

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

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

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

25           (b) "Internet access" means a service that enables users to access  
26 content, information, electronic mail or other services over the internet.  
27 Internet access does not include telecommunication services provided by a  
28 common carrier.

29           10. The gross proceeds of sales or gross income retained by the Arizona  
30 exposition and state fair board from ride ticket sales at the annual Arizona  
31 state fair.

32           ~~11. Through August 31, 2014, sales of Arizona centennial medallions by  
33 the historical advisory commission.~~

34           ~~12.~~ 11. Leasing real property between affiliated companies,  
35 businesses, persons or reciprocal insurers. For the purposes of this  
36 paragraph:

37           (a) "Affiliated companies, businesses, persons or reciprocal insurers"  
38 means the lessor holds a controlling interest in the lessee, the lessee holds  
39 a controlling interest in the lessor, affiliated persons hold a controlling  
40 interest in both the lessor and the lessee, or an unrelated person holds a  
41 controlling interest in both the lessor and lessee.

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

1 (c) "Controlling interest" means direct or indirect ownership of at  
2 least eighty percent of the voting shares of a corporation or of the  
3 interests in a company, business or person other than a corporation.

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

7 (e) "Reciprocal insurer" has the same meaning prescribed in section  
8 20-762.

9 ~~13.~~ 12. The gross proceeds of sales or gross income derived from a  
10 contract for the installation, assembly, repair or maintenance of machinery,  
11 equipment or other tangible personal property that is described in section  
12 42-5061, subsection B and that has independent functional utility, pursuant  
13 to the following provisions:

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

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

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

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

25 (b) The deduction provided in this paragraph does not include gross  
26 proceeds of sales or gross income from the portion of any contracting  
27 activity that consists of the development of, or modification to, real  
28 property in order to facilitate the installation, assembly, repair,  
29 maintenance or removal of machinery, equipment or other tangible personal  
30 property described in section 42-5061, subsection B.

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

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

38 (i) Assembling the machinery, equipment or other tangible personal  
39 property.

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

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

1 (iv) Stabilizing or protecting the machinery, equipment or other  
2 tangible personal property during operation by bolting, burying or performing  
3 other dissimilar nonpermanent connections to either real property or real  
4 property improvements.

5 ~~14-~~ 13. The leasing or renting of certified ignition interlock devices  
6 installed pursuant to the requirements prescribed by section 28-1461. For  
7 the purposes of this paragraph, "certified ignition interlock device" has the  
8 same meaning prescribed in section 28-1301.

9 ~~15-~~ 14. Computer data center equipment purchased by the owner,  
10 operator or qualified colocation tenant of the computer data center or an  
11 authorized agent of the owner, operator or qualified colocation tenant during  
12 the qualification period for use in a computer data center that is certified  
13 by the Arizona commerce authority under section 41-1519. To qualify for this  
14 deduction, at the time of purchase, the owner, operator or qualified  
15 colocation tenant must present to the retailer its certificate that is issued  
16 pursuant to section 41-1519 and that establishes its qualification for the  
17 deduction. For the purposes of this paragraph, "computer data center",  
18 "computer data center equipment", "qualification period" and "qualified  
19 colocation tenant" have the same meanings prescribed in section 41-1519.

20 ~~16-~~ 15. The gross proceeds of sales or gross income derived from a  
21 contract with the owner of real property or improvements to real property for  
22 the maintenance, repair, replacement or alteration of existing property,  
23 except as specified in this paragraph. The gross proceeds of sales or gross  
24 income derived from a de minimis amount of modification activity does not  
25 subject the contract or any part of the contract to tax. For the purposes of  
26 this paragraph:

27 (a) Each contract is independent of another contract, except that any  
28 change order that directly relates to the scope of work of the original  
29 contract shall be treated the same as the original contract under this  
30 ~~chapter~~ PARAGRAPH, regardless of the amount of modification activities  
31 included in the change order. If a change order does not directly relate to  
32 the scope of work of the original contract, the change order shall be treated  
33 as a new contract, with the tax treatment of any subsequent change order to  
34 follow the tax treatment of the contract to which the scope of work of the  
35 subsequent change order directly relates.

36 (b) Any term not defined in this paragraph that is defined in section  
37 42-5075 has the same meaning prescribed in section 42-5075.

38 (c) This paragraph does not apply to a contract that primarily  
39 involves surface or subsurface improvements to land and that is subject to  
40 title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 even if the  
41 contract also includes vertical improvements. If a city or town imposes a  
42 tax on contracts that are subject to procurement processes under those  
43 provisions, the city or town shall include in the request for proposals a  
44 notice to bidders when those projects are subject to the tax. This  
45 subdivision does not apply to contracts with:

1 (i) Community facilities districts, fire districts, county television  
2 improvement districts, community park maintenance districts, cotton pest  
3 control districts, hospital districts, pest abatement districts, health  
4 service districts, agricultural improvement districts, county free library  
5 districts, county jail districts, county stadium districts, special health  
6 care districts, public health services districts, theme park districts,  
7 regional attraction districts or revitalization districts.

8 (ii) Any special taxing district not specified in item (i) of this  
9 subdivision if the district does not substantially engage in the  
10 modification, maintenance, repair, replacement or alteration of surface or  
11 subsurface improvements to land.

12 ~~17.~~ 16. Monitoring services relating to an alarm system as defined in  
13 section 32-101.

14 ~~18.~~ 17. Tangible personal property, job printing or publications sold  
15 to or purchased by, or tangible personal property leased, rented or licensed  
16 for use to or by, a qualifying health sciences educational institution as  
17 defined in section 42-5001.

18 ~~19.~~ 18. The transfer of title or possession of coal back and forth  
19 between an owner or operator of a power plant and a person who is responsible  
20 for refining coal if both of the following apply:

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

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

28 ~~20.~~ 19. The gross proceeds of sales or gross income from sales of low  
29 or reduced cost articles of food or drink to eligible elderly or homeless  
30 persons or persons with a disability by a business subject to tax under  
31 section 42-5074 that contracts with the department of economic security and  
32 that is approved by the food and nutrition service of the United States  
33 department of agriculture pursuant to the supplemental nutrition assistance  
34 program established by the food and nutrition act of 2008 (P.L. 110-246; 122  
35 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the  
36 purchases are made with the benefits issued pursuant to the supplemental  
37 nutrition assistance program.

38 ~~21.~~ 20. Tangible personal property incorporated or fabricated into a  
39 project described in paragraph ~~16~~ 15 of this subsection, that is located  
40 within the exterior boundaries of an Indian reservation for which the owner,  
41 as defined in section 42-5075, of the project is an Indian tribe or an  
42 affiliated Indian. For the purposes of this paragraph:

43 (a) "Affiliated Indian" means an individual native American Indian who  
44 is duly registered on the tribal rolls of the Indian tribe for whose benefit  
45 the Indian reservation was established.

1 (b) "Indian reservation" means all lands that are within the limits of  
2 areas set aside by the United States for the exclusive use and occupancy of  
3 an Indian tribe by treaty, law or executive order and that are recognized as  
4 Indian reservations by the United States department of the interior.

5 (c) "Indian tribe" means any organized nation, tribe, band or  
6 community that is recognized as an Indian tribe by the United States  
7 department of the interior and includes any entity formed under the laws of  
8 that Indian tribe.

9 ~~22-~~ 21. The charges for the leasing or renting of space to make  
10 attachments to utility poles as follows:

11 (a) By a person that is engaged in the business of providing or  
12 furnishing electrical services or telecommunication services or that is a  
13 cable operator.

14 (b) To a person that is engaged in the business of providing or  
15 furnishing electrical services or telecommunication services or that is a  
16 cable operator.

17 B. EXCEPT AS PROVIDED IN SECTION 28-5606, a city, town or other taxing  
18 jurisdiction shall not levy a transaction privilege, sales, use, franchise or  
19 other similar tax or fee, however denominated, on natural gas or liquefied  
20 petroleum gas used to propel a motor vehicle.

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

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

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

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

35 4. Incarcerating or detaining in a privately operated prison, jail or  
36 detention facility prisoners who are under the jurisdiction of the United  
37 States, this state or any other state or a political subdivision of this  
38 state or of any other state.

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

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

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

3 (b) The attributable amount is equal to the total amount of  
4 development fees paid by the taxpayer or by a contractor providing services  
5 to the taxpayer and the total development fees credited in exchange for the  
6 construction of, contribution to or dedication of real property for providing  
7 public infrastructure, public safety or other public services necessary to  
8 the development. The real property must be the subject of the development  
9 fees.

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

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

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

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

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

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

30 G. For the purposes of this section:

31 1. "Cable operator" has the same meaning prescribed ~~by~~ IN section  
32 9-505.

33 2. "Electrical services" means transmitting or distributing  
34 electricity, electric lights, current or power over lines, wires or cables.

35 3. "Telecommunication services" means transmitting or relaying sound,  
36 visual image, data, information, images or material over lines, wires or  
37 cables by radio signal, light beam, telephone, telegraph or ~~any~~ other  
38 electromagnetic means.

39 4. "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.