

REFERENCE TITLE: 2016 tax correction act

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

SB 1289

Introduced by
Senator Lesko

AN ACT

AMENDING SECTIONS 36-798.06, 41-561, 42-3001, 42-3303, 42-3304, 42-3401, 42-3406, 42-3452, 42-3456, 42-5015, 42-5071, 42-5075, 42-5159, 42-5162, 42-6002, 42-17002, 43-1021, 43-1121, 43-1122, 43-1127 AND 43-1130.01, ARIZONA REVISED STATUTES; RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 36-798.06, Arizona Revised Statutes, is amended to
3 read:
4 36-798.06. Delivery sales prohibited; common carriers; civil
5 penalty; forfeiture; unlawful practice;
6 exceptions; violation; classification; definitions
7 A. A person shall not do either of the following:
8 1. Cause a tobacco product to be ordered or purchased by anyone other
9 than a licensed person or a retailer who orders or purchases from a licensed
10 person, including by ordering or purchasing a tobacco product.
11 2. Knowingly provide substantial assistance to a person who violates
12 this section.
13 B. A common carrier shall not knowingly transport a tobacco product
14 for a person who is in violation of this section.
15 C. Each order or purchase of a tobacco product in violation of
16 subsection A, paragraph 1 of this section constitutes a separate violation
17 under this section.
18 D. In addition to any other penalty, a person who violates this
19 section is subject to all of the following:
20 1. A civil penalty in an amount not to exceed five thousand dollars
21 for each violation.
22 2. An injunction to restrain a threatened or actual violation of this
23 section.
24 3. Recovery by this state for:
25 (a) The costs of any investigation related to a violation of this
26 section.
27 (b) The cost of expert witness fees in any action related to a
28 violation of this section.
29 (c) The cost of the action related to a violation of this section.
30 (d) Reasonable attorney fees.
31 4. All state tobacco taxes due under title 42, chapter 3, **EXCEPT AS**
32 **PROHIBITED UNDER SECTION 42-3402**, and all transaction privilege or use taxes
33 due under title 42, chapter 5, including any penalties and interest.
34 E. All tobacco products that are seized for a violation of this
35 section shall be forfeited to the state and destroyed pursuant to section
36 42-1124.
37 F. A violation of this section is an unlawful practice under section
38 44-1522 and is in addition to all other causes of action, remedies and
39 penalties that are available to this state. The attorney general may
40 investigate and take appropriate action pursuant to title 44, chapter 10,
41 article 7.
42 G. This section does not apply to either of the following:
43 1. The shipment of a tobacco product to a foreign trade zone that is
44 established under 19 United States Code section 81 and title 44, chapter 18
45 and that is located in this state if the tobacco product is from outside of

1 this country, was ordered by a distributor in another state and is not
2 distributed in this state.

3 2. A government employee who is acting in the course of the employee's
4 official duties.

5 H. A person who violates this section is guilty of a class 6 felony.

6 I. For the purposes of this section:

7 1. "Licensed person" means a person who is required to be licensed
8 under section 42-3401.

9 2. "Order or purchase" means any of the following:

10 (a) By mail or delivery service.

11 (b) Through the internet or a computer network.

12 (c) By telephone.

13 (d) Through any other electronic method.

14 3. "Person" means an individual, partnership, firm, association,
15 corporation, limited liability company or partnership, joint venture or other
16 entity.

17 4. "Retailer" has the same meaning prescribed in section 42-5001.

18 5. "Tobacco product" means all luxuries included in section 42-3052,
19 paragraphs 5, 6 and 7. Tobacco product does not include pipe tobacco or
20 cigars.

21 Sec. 2. Section 41-561, Arizona Revised Statutes, is amended to read:

22 41-561. Economic estimates commission; members; vacancies;
23 limitation

24 A. There shall be an economic estimates commission composed of the
25 following three members:

26 1. The director of the department of revenue **OR THE DIRECTOR'S**
27 **DESIGNEE**, who shall serve as chairman.

28 2. One person, who shall be knowledgeable in the field of economics,
29 appointed by the president of the senate.

30 3. One person, who shall be knowledgeable in the field of economics,
31 appointed by the speaker of the house of representatives.

32 B. The appointive commission members shall be appointed for a term of
33 two years and shall receive compensation determined pursuant to section
34 38-611.

35 C. Vacancies in commission membership shall be filled for the balance
36 of the unexpired term in the same manner as the original appointment.

37 D. No member of the commission shall be a member of the legislature.

38 Sec. 3. Section 42-3001, Arizona Revised Statutes, is amended to read:
39 42-3001. Definitions

40 In this chapter, unless the context otherwise requires:

41 1. "Affix" and "affixed" include imprinting tax meter stamps on
42 packages and individual containers as authorized by the department.

43 2. "Brand family" has the same meaning prescribed in section 44-7111.

44 3. "Cider" means vinous liquor that is made from the normal alcoholic
45 fermentation of the juice of sound, ripe apples, pears or other pome fruit,

1 including flavored, sparkling and carbonated cider and cider made from
2 condensed apple, pear or other pome fruit must, and that contains more than
3 one-half of one percent of alcohol by volume but not more than seven percent
4 of alcohol by volume.

5 4. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any
6 substance containing tobacco other than any roll of tobacco that is a
7 cigarette, as defined in paragraph 5, subdivision (b) of this section.

8 5. "Cigarette" means either of the following:

9 (a) Any roll of tobacco wrapped in paper or any substance not
10 containing tobacco.

11 (b) Any roll of tobacco wrapped in any substance containing tobacco
12 that, because of its appearance, the type of tobacco used in the filler or
13 its packaging and labeling, is likely to be offered to or purchased by a
14 consumer as a cigarette described in subdivision (a) of this paragraph. This
15 subdivision shall be interpreted consistently with the classification
16 guidelines established by the federal alcohol and tobacco tax and trade
17 bureau.

18 6. "Consumer" means a person in this state that comes into possession
19 of any luxury subject to the tax imposed by this chapter and that, on coming
20 into possession of the luxury, is not a distributor intending to sell or
21 distribute the luxury, retailer or wholesaler.

22 7. "Craft distiller" means a distiller in the United States or in a
23 territory or possession of the United States that holds a license pursuant to
24 section 4-205.10.

25 8. "Distributor" means any person that manufactures, produces, ships,
26 transports or imports into this state or in any manner acquires or possesses
27 for the purpose of making the first sale of the following:

28 (a) Cigarettes without Arizona tax stamps affixed as required by this
29 article.

30 (b) Roll-your-own tobacco or other tobacco products on which the taxes
31 have not been paid as required by this chapter.

32 9. "Farm winery" has the same meaning prescribed in section 4-101.

33 10. "First sale" means the initial sale or distribution in intrastate
34 commerce or the initial use or consumption of cigarettes, roll-your-own
35 tobacco or other tobacco products.

36 11. "Luxury" means any article, object or device on which a tax is
37 imposed under this chapter.

38 12. "Malt liquor" means any liquid that contains more than one-half of
39 one percent alcohol by volume and that is made by the process of fermentation
40 and not distillation of hops or grains, but not including:

41 (a) Liquids made by the process of distillation of such substances.

42 (b) Medicines that are unsuitable for beverage purposes.

43 13. "Master settlement agreement" has the same meaning prescribed in
44 section 44-7101.

45 14. "Microbrewery" has the same meaning prescribed in section 4-101.

- 1 15. "Nonparticipating manufacturer" has the same meaning prescribed in
2 section 44-7111.
- 3 16. "Other tobacco products" means tobacco products other than
4 cigarettes and roll-your-own tobacco.
- 5 17. "Participating manufacturer" has the same meaning prescribed in
6 section 44-7111.
- 7 18. "Person" means any individual, firm, partnership, joint venture,
8 association, corporation, municipal corporation, estate, trust, club, society
9 or other group or combination acting as a unit, and the plural as well as the
10 singular number.
- 11 19. "Place of business" means a ~~place~~ BUILDING, FACILITY SITE OR
12 LOCATION where an order is received or where tobacco products are sold,
13 distributed or transferred. PLACE OF BUSINESS DOES NOT INCLUDE A VEHICLE.
- 14 20. "Retailer" means any person that comes into possession of any
15 luxury subject to the taxes imposed by this chapter for the purpose of
16 selling it for consumption and not for resale.
- 17 21. "Roll-your-own tobacco" means any tobacco that, because of its
18 appearance, type, packaging or labeling, is suitable for use and likely to be
19 offered to or purchased by consumers as tobacco for making cigarettes. This
20 paragraph shall be interpreted consistently with the term as used in section
21 44-7101. This paragraph shall be interpreted consistently with the
22 classification guidelines established by the federal alcohol and tobacco tax
23 and trade bureau.
- 24 22. "SMOKING TOBACCO" MEANS ANY TOBACCO THAT, BECAUSE OF ITS
25 APPEARANCE, TYPE, PACKAGING, LABELING OR PROMOTION, IS SUITABLE FOR USE AND
26 LIKELY TO BE OFFERED TO OR PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING
27 CIGARETTES OR PIPE TOBACCO, OR OTHERWISE CONSUMED BY BURNING AND INHALING.
- 28 ~~22.~~ 23. "Spirituous liquor" means any liquid that contains more than
29 one-half of one percent alcohol by volume, that is produced by distillation
30 of any fermented substance and that is used or prepared for use as a
31 beverage. Spirituous liquor does not include medicines that are unsuitable
32 for beverage purposes.
- 33 ~~23.~~ 24. "Tobacco product manufacturer" has the same meaning
34 prescribed in section 44-7101.
- 35 ~~24.~~ 25. "Tobacco products" means all luxuries included in section
36 42-3052, paragraphs 5 through 9.
- 37 ~~25.~~ 26. "Vehicle" means a device in, on or by which a person or
38 property is or may be transported or drawn on the roads of this state
39 regardless of the means by which it is propelled or whether it runs on a
40 track.
- 41 ~~26.~~ 27. "Vinous liquor" means any liquid that contains more than
42 one-half of one percent alcohol by volume and that is made by the process of
43 fermentation of grapes, berries, fruits, vegetables or other substances but
44 does not include:

1 (a) Liquids in which hops or grains are used in the process of
2 fermentation.

3 (b) Liquids made by the process of distillation of hops or grains.

4 (c) Medicines that are unsuitable for beverage purposes.

5 ~~27-~~ 28. "Wholesaler" means a person that sells any spirituous, vinous
6 or malt liquor taxed under this chapter to retail dealers or for the purposes
7 of resale only.

8 Sec. 4. Section 42-3303, Arizona Revised Statutes, is amended to read:

9 ~~42-3303.~~ Tax on the consumer; precollection and remission by
10 distributor

11 A. The taxes levied pursuant to this article are conclusively presumed
12 to be direct taxes on the consumer but shall be precollected and remitted to
13 the department by the distributor for purposes of convenience and facility
14 only. The taxes that the distributor precollects and pays to the department:

15 1. Are considered to be an advance payment.

16 2. Shall be added to the price of the cigarettes, cigars, smoking
17 tobacco, plug tobacco, snuff and other forms of tobacco.

18 3. Shall be recovered from the consumer.

19 B. For the purpose of the precollection and remittance of the tax
20 imposed by this article, the distributor shall ~~purchase~~ OBTAIN and affix
21 revenue stamps pursuant to article 11 of this chapter.

22 Sec. 5. Section 42-3304, Arizona Revised Statutes, is amended to read:

23 ~~42-3304.~~ Exemptions; rules

24 A. The tax levied by this article does not apply to cigarettes,
25 cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco:

26 1. For which the taxes imposed by article 6 of this chapter have been
27 paid.

28 2. That are sold by an Indian tribe, or by a federally licensed Indian
29 trader, on an Indian reservation to Indians who are enrolled members of the
30 Indian tribe for whose benefit the Indian reservation was established.

31 3. That are exempt from tax under 26 United States Code section ~~5701~~
32 ~~5704~~ and that are distributed according to federal regulations.

33 B. The department shall adopt rules prescribing the procedures for
34 claiming and verifying sales that are exempt under this section.

35 Sec. 6. Section 42-3401, Arizona Revised Statutes, is amended to read:

36 ~~42-3401.~~ Tobacco distributor licenses; application; conditions;
37 revocations, suspensions and cancellations

38 A. Every distributor acquiring or possessing for the purpose of making
39 the initial sale or distribution in this state of any tobacco products on
40 which a tax is imposed by this chapter shall obtain from the department a
41 license to sell tobacco products. The application for the license shall be
42 in the form provided by the department and shall be accompanied by a fee of
43 twenty-five dollars for each place of business listed in the application.
44 The form shall state that the identity of the applicant may be posted to the
45 department's website for public inspection. The application for a license

1 shall include the applicant's name and address, the applicant's principal
2 place of business, all other places of business where the applicant's
3 business is conducted for the purpose of making the initial sale or
4 distribution of tobacco products in this state, including any location that
5 maintains an inventory of tobacco products and any other information required
6 by the department. If the applicant is a firm, partnership, limited
7 liability company, limited liability partnership or association, the
8 applicant shall list the name and address of each of the applicant's members.
9 If the applicant is a corporation, the application shall list the name and
10 address of the applicant's officers and any person who directly or indirectly
11 owns an aggregate amount of ten percent or more of the ownership interest in
12 the corporation. If a licensee changes its business location, the licensee
13 under this subsection shall notify the department within thirty days after a
14 change in location. If the licensee is making a change in its business
15 location by adding or replacing one or more additional places of business
16 that are not currently listed on its application, the licensee must remit a
17 fee of twenty-five dollars for each additional place of business.

18 B. For the purposes of subsection A of this section, an applicant with
19 a controlling interest in more than one business engaged in activities as a
20 distributor shall apply for a single license encompassing all such businesses
21 and list each place of business in its application. For the purposes of this
22 subsection, "controlling interest" means direct or indirect ownership of at
23 least eighty percent of the voting shares of a corporation or of the
24 interests in a company, business or person other than a corporation.

25 C. The department shall issue a license authorizing the applicant to
26 acquire or possess tobacco products in this state upon the condition that the
27 applicant complies with this chapter and the rules of the department. The
28 license:

29 1. Shall be nontransferable. A licensee may not transfer its license
30 to a new owner when selling its business, and any court-appointed trustee,
31 receiver or other person shall obtain a license in its own name in cases of
32 liquidation, insolvency or bankruptcy if the business remains in operation as
33 a distributor of tobacco products. A licensee shall apply for a new license
34 if it changes its legal entity status or otherwise changes the legal
35 structure of its business.

36 2. Shall be valid for one year unless earlier revoked by the
37 department.

38 3. Shall be displayed in a conspicuous place at the licensee's place
39 of business. If the licensee operates from more than one place of business,
40 the licensee must display a copy of its license in a conspicuous place at
41 each location.

42 D. As a condition of licensure under this section, an applicant agrees
43 to the following conditions:

44 1. A person may not hold or store any tobacco products, whether within
45 or outside of this state, for sale or distribution in this state by or on

1 behalf of a distributor at any place other than a location that has been
2 disclosed to the department pursuant to subsection A of this section. This
3 paragraph does not include a person holding or storing tobacco products by or
4 on behalf of the distributor when the tobacco products are in transit to a
5 distributor or retailer as part of a lawful sale.

6 2. All tobacco products held or stored, whether within or outside of
7 this state, for sale or distribution in this state by or on behalf of a
8 distributor shall be accessible to the department during normal business
9 hours without a judicial warrant or prior written consent of the distributor,
10 excluding residential locations.

11 E. A person who is convicted of an offense described in section
12 42-1127, subsection E is permanently ineligible to hold a license issued
13 under this section.

14 F. The department may not issue or renew a license to an applicant and
15 may revoke a license issued under subsection C of this section if any of the
16 following applies:

17 1. The applicant owes one thousand dollars or more in delinquent
18 cigarette taxes that are not under protest or subject to a payment agreement.

19 2. The department has revoked any license held by the applicant within
20 the previous two years.

21 3. The applicant has been convicted of a crime that relates to stolen
22 or counterfeit cigarettes.

23 4. The applicant has imported cigarettes into the United States for
24 sale or distribution in violation of 19 United States Code section 1681a.

25 5. The applicant has imported cigarettes into the United States for
26 sale or distribution without fully complying with the federal cigarette
27 labeling and advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code
28 section 1331).

29 6. The applicant is in violation of section 13-3711 or **SECTION**
30 **36-798.06**, subsection A.

31 7. Pursuant to section 44-7111, section 6(a), the applicant is in
32 violation of section 44-7111, section 3(c).

33 8. The applicant's civil rights have been suspended under section
34 13-904. An applicant whose civil rights have been suspended will be
35 ineligible to hold a license for a period of five years following the
36 restoration of the applicant's civil rights.

37 G. In addition to any other civil or criminal penalty and except as
38 otherwise provided in this section, the department may suspend or revoke a
39 license issued under subsection C of this section if the person violates any
40 requirement under this title more than two times within a three-year period.

41 H. The department shall publish on its website the names of each
42 person who is issued a license under subsection C of this section, **INCLUDING**
43 **ANY TRADE NAMES OR BUSINESS NAMES USED BY THE LICENSEE**. The department shall
44 update the published names at least once each month.

1 I. A person may not apply for or hold a distributor's license if that
2 person does not engage in the activities described in subsection A of this
3 section. In addition to any other applicable penalty, the department may:

4 1. Revoke the license of any licensee that fails to file a return or
5 report required under this chapter for twelve consecutive months.

6 2. Cancel the license of any licensee that fails to incur any tax
7 liability under this chapter for twelve consecutive months.

8 J. Any suspension, revocation or denial of a license issued under this
9 section must comply with section 41-1092.11, subsection B.

10 K. Notwithstanding any other law, for the purposes of subsection F,
11 paragraphs 1 and 2 of this section, section 42-1127, subsection C and section
12 42-3461, subsection B, if a distributor has listed in its application more
13 than one place of business, any suspension, revocation or nonrenewal of a
14 distributor's license shall apply only with effect to remove the place of
15 business at which the activity occurred that resulted in the violation from
16 the distributor's license. If such a removal occurs, the distributor shall
17 be subject to restrictions that the department prescribes by rule.

18 Sec. 7. Section 42-3406, Arizona Revised Statutes, is amended to read:

19 42-3406. Refunds and rebates of tobacco taxes; supporting
20 documentation; distributor's burden of proof

21 A. Except as otherwise provided under subsection B of this section or
22 by the department for a refund or redemption ~~issued~~ under section 42-3008 or
23 42-3460, a distributor requesting any refund or rebate of taxes paid on
24 tobacco products pursuant to article 2, 6, 7 or 9 of this chapter shall
25 establish entitlement to the refund or rebate by obtaining a report executed
26 by the retailer that purchased the tobacco products on which the distributor
27 paid taxes, indicating the name and address of the retailer and the
28 quantities of tobacco products sold, separately identified by the tax
29 category of tobacco product and the necessary facts to establish the
30 appropriate amount of refund or rebate. The report is subject to the
31 following conditions:

32 1. The report shall be provided in the form and manner prescribed by
33 the department. Under such rules as it may prescribe, the department may
34 identify transactions for which a distributor may not rely solely on the
35 information in the retailer's report but must instead obtain additional
36 information as required by the rules in order to be entitled to the refund or
37 rebate.

38 2. The burden of proof for the refund or rebate is on the distributor,
39 but if the distributor complies in all other respects with this section, the
40 department may require the retailer that caused the execution of the report
41 to establish the accuracy and completeness of the information required to be
42 contained in the report that would entitle the distributor to the refund or
43 rebate. If the retailer cannot establish the accuracy and completeness of
44 the information, the retailer is liable in an amount equal to any tax,
45 penalty and interest that the distributor would have been liable for under

1 this chapter if the distributor had not otherwise complied with this section.
 2 Payment of the amount under this section by the retailer exempts the
 3 distributor from liability for the underlying tax, penalty and interest. All
 4 amounts paid by a retailer under this paragraph shall be treated as tax
 5 revenues collected from the distributor in order to designate the
 6 distribution base for the purposes of this chapter.

7 B. In its discretion and in circumstances where a retailer is
 8 uncooperative or no longer in business, the department may accept proof other
 9 than a report described in subsection A of this section if the distributor
 10 shows, to the satisfaction of the department, that it exercised ordinary
 11 business care and prudence but was unable to furnish a report executed by the
 12 retailer. Acceptable forms of proof presented by the distributor pursuant to
 13 this subsection must consist of books, records or papers **CONTAINING THE**
 14 **INFORMATION REQUIRED BY SUBSECTION A OF THIS SECTION AS** maintained by the
 15 distributor or retailer in the regular course of business.

16 Sec. 8. Section 42-3452, Arizona Revised Statutes, is amended to read:
 17 42-3452. Payment of tax required to sell, distribute or
 18 transfer tobacco products

19 A. Except as provided in subsection B of this section, a person may
 20 not:

21 1. Sell, ~~or~~ offer for sale, **DISTRIBUTE OR TRANSFER** any ~~cigarettes upon~~
 22 **TOBACCO PRODUCTS ON** which a tax is imposed by this chapter to any person
 23 within this state unless at the time of the sale, distribution or transfer
 24 the tax has been paid. ~~on the cigarettes as~~ **THE DEPARTMENT SHALL CONSIDER**
 25 **TOBACCO TAXES PAID AT THE TIME OF THE SALE, DISTRIBUTION OR TRANSFER OF**
 26 **CIGARETTES IF** evidenced by an Arizona tax stamp or any other official indicia
 27 **AFFIXED TO THE PACKAGE BY A LICENSED DISTRIBUTOR.** The department shall
 28 consider tobacco taxes paid at the time of the sale, distribution or transfer
 29 of tobacco products other than cigarettes if a licensed distributor reports
 30 and remits the taxes on the products in accordance with the manner, method
 31 and time prescribed by section 42-3501. Sworn returns that are prepared and
 32 remitted by a licensed distributor under section 42-3501 constitute official
 33 indicia that tobacco taxes have been paid on the tobacco products.

34 2. Sell cigarettes that have Arizona tax stamps affixed unless the tax
 35 evidenced by the stamps is actually paid. The department shall not refund
 36 any amount of that tax on the grounds that the stamps are not required to be
 37 affixed to the cigarettes.

38 B. A distributor licensed pursuant to section 42-3401 may not sell,
 39 distribute or transfer tobacco products for which the distributor is licensed
 40 to another such licensed distributor without paying the tax at the time of
 41 the sale, distribution or transfer.

1 assemble, process or label finished tobacco products, pursuant to 26 United
2 States Code section 5712 and 27 Code of Federal Regulations part 40.

3 Sec. 10. Section 42-5015, Arizona Revised Statutes, is amended to
4 read:

5 42-5015. Filing by electronic means

6 ~~On or before January 1, 2015,~~ A taxpayer who is required to pay any
7 transaction privilege and affiliated excise taxes to this state or a county
8 or municipality may report and pay the required tax through electronic
9 means. The electronic system shall be administered by the department of
10 revenue. The department may enter into an agreement with the cities and
11 towns that did not have an intergovernmental contract or agreement in effect
12 as of January 1, 2013 with the department to provide for unified or
13 coordinated licensing, collection and auditing programs for the cities and
14 towns to contribute to the payment of the electronic system through money or
15 resources. The electronic system shall:

16 1. Include a single point for licensing, filing a single return and
17 paying transaction privilege and affiliated excise taxes for all state,
18 county and municipal taxing jurisdictions.

19 2. Consolidate data in a manner compatible with the data systems of
20 the department of revenue.

21 3. Capture data with sufficient specificity to meet the needs of the
22 taxing jurisdictions.

23 4. Allow for identification of the correct taxing jurisdictions and
24 tax rates based on the place where the transaction is sourced.

25 Sec. 11. Section 42-5071, Arizona Revised Statutes, is amended to
26 read:

27 42-5071. Personal property rental classification: definitions

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

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

34 2. Activities engaged in by the Arizona exposition and state fair
35 board or county fair commissions in connection with events sponsored by such
36 entities.

37 3. Leasing or renting tangible personal property by a parent
38 corporation to a subsidiary corporation or by a subsidiary corporation to
39 another subsidiary of the same parent corporation if taxes were paid under
40 this chapter on the gross proceeds or gross income accruing from the initial
41 sale of the tangible personal property. For the purposes of this paragraph,
42 "subsidiary" means a corporation of which at least eighty percent of the
43 voting shares are owned by the parent corporation.

1 4. Operating coin-operated washing, drying and dry cleaning machines
2 or coin-operated car washing machines at establishments for the use of such
3 machines.

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

9 6. Leasing or renting aircraft, flight simulators or similar training
10 equipment to students or staff by nonprofit, accredited educational
11 institutions that offer associate or baccalaureate degrees in aviation or
12 aerospace related fields.

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

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

20 9. The leasing or renting of space to make attachments to utility
21 poles, as follows:

22 (a) By a person that is engaged in business under section 42-5063 or
23 42-5064 or that is a cable operator.

24 (b) To a person that is engaged in business under section 42-5063 or
25 42-5064 or that is a cable operator.

26 B. The tax base for the personal property rental classification is the
27 gross proceeds of sales or gross income derived from the business, but the
28 gross proceeds of sales or gross income derived from the following shall be
29 deducted from the tax base:

30 1. Reimbursements by the lessee to the lessor of a motor vehicle for
31 payments by the lessor of the applicable fees and taxes imposed by sections
32 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15,
33 article 2 and article IX, section 11, Constitution of Arizona, to the extent
34 such amounts are separately identified as such fees and taxes and are billed
35 to the lessee.

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

39 (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 49
40 or 53.

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

43 ~~(i)~~ section 42-5061, subsection B, paragraph 13 if the lease is for
44 less than two years.

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

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

2 (d) Section 42-5061, subsection M.

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

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

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

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

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

19 E. Until December 31, 1988, leasing or renting animals for
20 recreational purposes is exempt from the tax imposed by this section.
21 Beginning January 1, 1989, the gross proceeds or gross income from leasing or
22 renting animals for recreational purposes is subject to taxation under this
23 section. Tax liabilities, penalties and interest paid for taxable periods
24 before January 1, 1989 shall not be refunded unless the taxpayer requesting
25 the refund provides proof satisfactory to the department that the monies paid
26 as taxes will be returned to the customer.

27 F. For the purposes of this section:

28 1. "Cable operator" has the same meaning prescribed by section 9-505.

29 2. "Utility pole" means any wooden, metal or other pole used for
30 utility purposes and the pole's appurtenances that are attached or authorized
31 for attachment by the person controlling the pole.

32 Sec. 12. Section 42-5075, Arizona Revised Statutes, is amended to
33 read:

34 42-5075. Prime contracting classification; exemptions;
35 definitions

36 A. The prime contracting classification is comprised of the business
37 of prime contracting and the business of manufactured building dealer. Sales
38 for resale to another manufactured building dealer are not subject to
39 tax. Sales for resale do not include sales to a lessor of manufactured
40 buildings. The sale of a used manufactured building is not taxable under
41 this chapter.

42 B. The tax base for the prime contracting classification is sixty-five
43 percent of the gross proceeds of sales or gross income derived from the
44 business. The following amounts shall be deducted from the gross proceeds of
45 sales or gross income before computing the tax base:

1 1. The sales price of land, which shall not exceed the fair market
2 value.

3 2. Sales and installation of groundwater measuring devices required
4 under section 45-604 and groundwater monitoring wells required by law,
5 including monitoring wells installed for acquiring information for a permit
6 required by law.

7 3. The sales price of furniture, furnishings, fixtures, appliances and
8 attachments that are not incorporated as component parts of or attached to a
9 manufactured building or the setup site. The sale of such items may be
10 subject to the taxes imposed by article 1 of this chapter separately and
11 distinctly from the sale of the manufactured building.

12 4. The gross proceeds of sales or gross income received from a
13 contract entered into for the modification of any building, highway, road,
14 railroad, excavation, manufactured building or other structure, project,
15 development or improvement located in a military reuse zone for providing
16 aviation or aerospace services or for a manufacturer, assembler or fabricator
17 of aviation or aerospace products within an active military reuse zone after
18 the zone is initially established or renewed under section 41-1531. To be
19 eligible to qualify for this deduction, before beginning work under the
20 contract, the prime contractor must have applied for a letter of
21 qualification from the department of revenue.

22 5. The gross proceeds of sales or gross income derived from a contract
23 to construct a qualified environmental technology manufacturing, producing or
24 processing facility, as described in section 41-1514.02, and from subsequent
25 construction and installation contracts that begin within ten years after the
26 start of initial construction. To qualify for this deduction, before
27 beginning work under the contract, the prime contractor must obtain a letter
28 of qualification from the department of revenue. This paragraph shall apply
29 for ten full consecutive calendar or fiscal years after the start of initial
30 construction.

31 6. The gross proceeds of sales or gross income from a contract to
32 provide for one or more of the following actions, or a contract for site
33 preparation, constructing, furnishing or installing machinery, equipment or
34 other tangible personal property, including structures necessary to protect
35 exempt incorporated materials or installed machinery or equipment, and
36 tangible personal property incorporated into the project, to perform one or
37 more of the following actions in response to a release or suspected release
38 of a hazardous substance, pollutant or contaminant from a facility to the
39 environment, unless the release was authorized by a permit issued by a
40 governmental authority:

41 (a) Actions to monitor, assess and evaluate such a release or a
42 suspected release.

43 (b) Excavation, removal and transportation of contaminated soil and
44 its treatment or disposal.

1 (c) Treatment of contaminated soil by vapor extraction, chemical or
2 physical stabilization, soil washing or biological treatment to reduce the
3 concentration, toxicity or mobility of a contaminant.

4 (d) Pumping and treatment or in situ treatment of contaminated
5 groundwater or surface water to reduce the concentration or toxicity of a
6 contaminant.

7 (e) The installation of structures, such as cutoff walls or caps, to
8 contain contaminants present in groundwater or soil and prevent them from
9 reaching a location where they could threaten human health or welfare or the
10 environment.

11 This paragraph does not include asbestos removal or the construction or use
12 of ancillary structures such as maintenance sheds, offices or storage
13 facilities for unattached equipment, pollution control equipment, facilities
14 or other control items required or to be used by a person to prevent or
15 control contamination before it reaches the environment.

16 7. The gross proceeds of sales or gross income that is derived from a
17 contract for the installation, assembly, repair or maintenance of machinery,
18 equipment or other tangible personal property that is either deducted from
19 the tax base of the retail classification under section 42-5061, subsection B
20 or that is exempt from use tax under section 42-5159, subsection B and that
21 has independent functional utility, pursuant to the following provisions:

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

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

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

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

33 (b) The deduction provided in this paragraph does not include gross
34 proceeds of sales or gross income from the portion of any contracting
35 activity that consists of the development of, or modification to, real
36 property in order to facilitate the installation, assembly, repair,
37 maintenance or removal of machinery, equipment or other tangible personal
38 property that is either deducted from the tax base of the retail
39 classification under section 42-5061, subsection B or exempt from use tax
40 under section 42-5159, subsection B.

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

44 (d) For the purposes of this paragraph, "independent functional
45 utility" means that the machinery, equipment or other tangible personal

1 property can independently perform its function without attachment to real
2 property, other than attachment for any of the following purposes:

3 (i) Assembling the machinery, equipment or other tangible personal
4 property.

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

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

10 (iv) Stabilizing or protecting the machinery, equipment or other
11 tangible personal property during operation by bolting, burying or performing
12 other similar nonpermanent connections to either real property or real
13 property improvements.

14 8. The gross proceeds of sales or gross income attributable to the
15 purchase of machinery, equipment or other tangible personal property that is
16 exempt from or deductible from transaction privilege and use tax under:

17 (a) Section 42-5061, subsection A, paragraph 25, 29, 57 or 59.

18 (b) Section 42-5061, subsection B.

19 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
20 (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 54 or 56.

21 (d) Section 42-5159, subsection B.

22 9. The gross proceeds of sales or gross income received from a
23 contract for the construction of an environmentally controlled facility for
24 the raising of poultry for the production of eggs and the sorting, cooling
25 and packaging of eggs.

26 10. The gross proceeds of sales or gross income that is derived from a
27 contract entered into with a person who is engaged in the commercial
28 production of livestock, livestock products or agricultural, horticultural,
29 viticultural or floricultural crops or products in this state for the
30 modification of any building, highway, road, excavation, manufactured
31 building or other structure, project, development or improvement used
32 directly and primarily to prevent, monitor, control or reduce air, water or
33 land pollution.

34 11. The gross proceeds of sales or gross income that is derived from
35 the installation, assembly, repair or maintenance of clean rooms that are
36 deducted from the tax base of the retail classification pursuant to section
37 42-5061, subsection B, paragraph 16.

38 12. For taxable periods beginning from and after June 30, 2001, the
39 gross proceeds of sales or gross income derived from a contract entered into
40 for the construction of a residential apartment housing facility that
41 qualifies for a federal housing subsidy for low income persons over sixty-two
42 years of age and that is owned by a nonprofit charitable organization that
43 has qualified under section 501(c)(3) of the internal revenue code.

44 13. For taxable periods beginning from and after December 31, 1996 and
45 ending before January 1, 2017, the gross proceeds of sales or gross income

1 derived from a contract to provide and install a solar energy device. The
2 contractor shall register with the department as a solar energy contractor.
3 By registering, the contractor acknowledges that it will make its books and
4 records relating to sales of solar energy devices available to the department
5 for examination.

6 14. The gross proceeds of sales or gross income derived from a
7 contract entered into for the construction of a launch site, as defined in 14
8 Code of Federal Regulations section 401.5.

9 15. The gross proceeds of sales or gross income derived from a
10 contract entered into for the construction of a domestic violence shelter
11 that is owned and operated by a nonprofit charitable organization that has
12 qualified under section 501(c)(3) of the internal revenue code.

13 16. The gross proceeds of sales or gross income derived from contracts
14 to perform postconstruction treatment of real property for termite and
15 general pest control, including wood destroying organisms.

16 17. The gross proceeds of sales or gross income received from
17 contracts entered into before July 1, 2006 for constructing a state
18 university research infrastructure project if the project has been reviewed
19 by the joint committee on capital review before the university enters into
20 the construction contract for the project. For the purposes of this
21 paragraph, "research infrastructure" has the same meaning prescribed in
22 section 15-1670.

23 18. The gross proceeds of sales or gross income received from a
24 contract for the construction of any building, or other structure, project,
25 development or improvement owned by a qualified business under section
26 41-1516 for harvesting or processing qualifying forest products removed from
27 qualifying projects as defined in section 41-1516 if actual construction
28 begins before January 1, 2024. To qualify for this deduction, the prime
29 contractor must obtain a letter of qualification from the Arizona commerce
30 authority before beginning work under the contract.

31 19. Any amount of the gross proceeds of sales or gross income
32 attributable to development fees that are incurred in relation to a contract
33 for construction, development or improvement of real property and that are
34 paid by a prime contractor or subcontractor. For the purposes of this
35 paragraph:

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

38 (b) The attributable amount is equal to the total amount of
39 development fees paid by the prime contractor or subcontractor, and the total
40 development fees credited in exchange for the construction of, contribution
41 to or dedication of real property for providing public infrastructure, public
42 safety or other public services necessary to the development. The real
43 property must be the subject of the development fees.

44 (c) "Development fees" means fees imposed to offset capital costs of
45 providing public infrastructure, public safety or other public services to a

1 development and authorized pursuant to section 9-463.05, section 11-1102 or
2 title 48 regardless of the jurisdiction to which the fees are paid.

3 20. The gross proceeds of sales or gross income derived from a
4 contract entered into for the construction of a mixed waste processing
5 facility that is located on a municipal solid waste landfill and that is
6 constructed for the purpose of recycling solid waste or producing renewable
7 energy from landfill waste. For the purposes of this paragraph:

8 (a) "Mixed waste processing facility" means a solid waste facility
9 that is owned, operated or used for the treatment, processing or disposal of
10 solid waste, recyclable solid waste, conditionally exempt small quantity
11 generator waste or household hazardous waste. For the purposes of
12 this subdivision, "conditionally exempt small quantity generator waste",
13 "household hazardous waste" and "solid waste facility" have the same meanings
14 prescribed in section 49-701, except that solid waste facility does include a
15 site that stores, treats or processes paper, glass, wood, cardboard,
16 household textiles, scrap metal, plastic, vegetative waste, aluminum, steel
17 or other recyclable material.

18 (b) "Municipal solid waste landfill" has the same meaning prescribed
19 in section 49-701.

20 (c) "Recycling" means collecting, separating, cleansing, treating and
21 reconstituting recyclable solid waste that would otherwise become solid
22 waste, but does not include incineration or other similar processes.

23 (d) "Renewable energy" has the same meaning prescribed in section
24 41-1511.

25 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
26 of this section is subject to the following provisions:

27 1. A prime contractor may establish entitlement to the deduction by
28 both:

29 (a) Marking the invoice for the transaction to indicate that the gross
30 proceeds of sales or gross income derived from the transaction was deducted
31 from the base.

32 (b) Obtaining a certificate executed by the purchaser indicating the
33 name and address of the purchaser, the precise nature of the business of the
34 purchaser, the purpose for which the purchase was made, the necessary facts
35 to establish the deductibility of the property under section 42-5061,
36 subsection B, and a certification that the person executing the certificate
37 is authorized to do so on behalf of the purchaser. The certificate may be
38 disregarded if the prime contractor has reason to believe that the
39 information contained in the certificate is not accurate or complete.

40 2. A person who does not comply with paragraph 1 of this subsection
41 may establish entitlement to the deduction by presenting facts necessary to
42 support the entitlement, but the burden of proof is on that person.

43 3. The department may prescribe a form for the certificate described
44 in paragraph 1, subdivision (b) of this subsection. The department may also
45 adopt rules that describe the transactions with respect to which a person is

1 not entitled to rely solely on the information contained in the certificate
2 provided in paragraph 1, subdivision (b) of this subsection but must instead
3 obtain such additional information as required in order to be entitled to the
4 deduction.

5 4. If a prime contractor is entitled to a deduction by complying with
6 paragraph 1 of this subsection, the department may require the purchaser who
7 caused the execution of the certificate to establish the accuracy and
8 completeness of the information required to be contained in the certificate
9 that would entitle the prime contractor to the deduction. If the purchaser
10 cannot establish the accuracy and completeness of the information, the
11 purchaser is liable in an amount equal to any tax, penalty and interest that
12 the prime contractor would have been required to pay under article 1 of this
13 chapter if the prime contractor had not complied with paragraph 1 of this
14 subsection. Payment of the amount under this paragraph exempts the purchaser
15 from liability for any tax imposed under article 4 of this chapter. The
16 amount shall be treated as a transaction privilege tax to the purchaser and
17 as tax revenues collected from the prime contractor in order to designate the
18 distribution base for purposes of section 42-5029.

19 D. Subcontractors or others who perform modification activities are
20 not subject to tax if they can demonstrate that the job was within the
21 control of a prime contractor or contractors or a dealership of manufactured
22 buildings and that the prime contractor or dealership is liable for the tax
23 on the gross income, gross proceeds of sales or gross receipts attributable
24 to the job and from which the subcontractors or others were paid.

25 E. Amounts received by a contractor for a project are excluded from
26 the contractor's gross proceeds of sales or gross income derived from the
27 business if the person who hired the contractor executes and provides a
28 certificate to the contractor stating that the person providing the
29 certificate is a prime contractor and is liable for the tax under article 1
30 of this chapter. The department shall prescribe the form of the certificate.
31 If the contractor has reason to believe that the information contained on the
32 certificate is erroneous or incomplete, the department may disregard the
33 certificate. If the person who provides the certificate is not liable for
34 the tax as a prime contractor, that person is nevertheless deemed to be the
35 prime contractor in lieu of the contractor and is subject to the tax under
36 this section on the gross receipts or gross proceeds received by the
37 contractor.

38 F. Every person engaging or continuing in this state in the business
39 of prime contracting or dealership of manufactured buildings shall present to
40 the purchaser of such prime contracting or manufactured building a written
41 receipt of the gross income or gross proceeds of sales from such activity and
42 shall separately state the taxes to be paid pursuant to this section.

43 G. For the purposes of section 42-5032.01, the department shall
44 separately account for revenues collected under the prime contracting
45 classification from any prime contractor engaged in the preparation or

1 construction of a multipurpose facility, and related infrastructure, that is
2 owned, operated or leased by the tourism and sports authority pursuant to
3 title 5, chapter 8.

4 H. For the purposes of section 42-5032.02, from and after
5 September 30, 2013, the department shall separately account for revenues
6 reported and collected under the prime contracting classification from any
7 prime contractor engaged in the construction of any buildings and associated
8 improvements that are for the benefit of a manufacturing facility. For the
9 purposes of this subsection, "associated improvements" and "manufacturing
10 facility" have the same meanings prescribed in section 42-5032.02.

11 I. The gross proceeds of sales or gross income derived from a contract
12 for lawn maintenance services are not subject to tax under this section if
13 the contract does not include landscaping activities. Lawn maintenance
14 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
15 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
16 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
17 lawn de-thatching, seeding winter lawns, leaf and debris collection and
18 removal, tree or shrub pruning or clipping, garden and gravel raking and
19 applying pesticides, as defined in section 3-361, and fertilizer materials,
20 as defined in section 3-262.

21 J. Except as provided in subsection 0 of this section, the gross
22 proceeds of sales or gross income derived from landscaping activities are
23 subject to tax under this section. Landscaping includes installing lawns,
24 grading or leveling ground, installing gravel or boulders, planting trees and
25 other plants, felling trees, removing or mulching tree stumps, removing other
26 imbedded plants, building irrigation berms, installing railroad ties and
27 installing underground sprinkler or watering systems.

28 K. The portion of gross proceeds of sales or gross income attributable
29 to the actual direct costs of providing architectural or engineering services
30 that are incorporated in a contract is not subject to tax under this section.
31 For the purposes of this subsection, "direct costs" means the portion of the
32 actual costs that are directly expended in providing architectural or
33 engineering services.

34 L. Operating a landfill or a solid waste disposal facility is not
35 subject to taxation under this section, including filling, compacting and
36 creating vehicle access to and from cell sites within the landfill.
37 Constructing roads to a landfill or solid waste disposal facility and
38 constructing cells within a landfill or solid waste disposal facility may be
39 deemed prime contracting under this section.

40 M. The following apply in determining the taxable situs of sales of
41 manufactured buildings:

42 1. For sales in this state where the manufactured building dealer
43 contracts to deliver the building to a setup site or to perform the setup in
44 this state, the taxable situs is the setup site.

1 2. For sales in this state where the manufactured building dealer does
2 not contract to deliver the building to a setup site or does not perform the
3 setup, the taxable situs is the location of the dealership where the building
4 is delivered to the buyer.

5 3. For sales in this state where the manufactured building dealer
6 contracts to deliver the building to a setup site that is outside this state,
7 the situs is outside this state and the transaction is excluded from tax.

8 N. The gross proceeds of sales or gross income attributable to a
9 written contract for design phase services or professional services, executed
10 before modification begins and with terms, conditions and pricing of all of
11 these services separately stated in the contract from those for construction
12 phase services, is not subject to tax under this section, regardless of
13 whether the services are provided sequential to or concurrent with prime
14 contracting activities that are subject to tax under this section. This
15 subsection does not include the gross proceeds of sales or gross income
16 attributable to construction phase services. For the purposes of this
17 subsection:

18 1. "Construction phase services" means services for the execution and
19 completion of any modification, including the following:

20 (a) Administration or supervision of any modification performed on the
21 project, including team management and coordination, scheduling, cost
22 controls, submittal process management, field management, safety program,
23 close-out process and warranty period services.

24 (b) Administration or supervision of any modification performed
25 pursuant to a punch list. For the purposes of this subdivision, "punch list"
26 means minor items of modification work performed after substantial completion
27 and before final completion of the project.

28 (c) Administration or supervision of any modification performed
29 pursuant to change orders. For the purposes of this subdivision, "change
30 order" means a written instrument issued after execution of a contract for
31 modification work, providing for all of the following:

32 (i) The scope of a change in the modification work, contract for
33 modification work or other contract documents.

34 (ii) The amount of an adjustment, if any, to the guaranteed maximum
35 price as set in the contract for modification work. For the purposes of this
36 item, "guaranteed maximum price" means the amount guaranteed to be the
37 maximum amount due to a prime contractor for the performance of all
38 modification work for the project.

39 (iii) The extent of an adjustment, if any, to the contract time of
40 performance set forth in the contract.

41 (d) Administration or supervision of any modification performed
42 pursuant to change directives. For the purposes of this subdivision, "change
43 directive" means a written order directing a change in modification work
44 before agreement on an adjustment of the guaranteed maximum price or contract
45 time.

1 (e) Inspection to determine the dates of substantial completion or
2 final completion.

3 (f) Preparation of any manuals, warranties, as-built drawings, spares
4 or other items the prime contractor must furnish pursuant to the contract for
5 modification work. For the purposes of this subdivision, "as-built drawing"
6 means a drawing that indicates field changes made to adapt to field
7 conditions, field changes resulting from change orders or buried and
8 concealed installation of piping, conduit and utility services.

9 (g) Preparation of status reports after modification work has begun
10 detailing the progress of work performed, including preparation of any of the
11 following:

12 (i) Master schedule updates.

13 (ii) Modification work cash flow projection updates.

14 (iii) Site reports made on a periodic basis.

15 (iv) Identification of discrepancies, conflicts or ambiguities in
16 modification work documents that require resolution.

17 (v) Identification of any health and safety issues that have arisen in
18 connection with the modification work.

19 (h) Preparation of daily logs of modification work, including
20 documentation of personnel, weather conditions and on-site occurrences.

21 (i) Preparation of any submittals or shop drawings used by the prime
22 contractor to illustrate details of the modification work performed.

23 (j) Administration or supervision of any other activities for which a
24 prime contractor receives a certificate for payment or certificate for final
25 payment based on the progress of modification work performed on the project.

26 2. "Design phase services" means services for developing and
27 completing a design for a project that are not construction phase services,
28 including the following:

29 (a) Evaluating surveys, reports, test results or any other information
30 on-site conditions for the project, including physical characteristics, legal
31 limitations and utility locations for the site.

32 (b) Evaluating any criteria or programming objectives for the project
33 to ascertain requirements for the project, such as physical requirements
34 affecting cost or projected utilization of the project.

35 (c) Preparing drawings and specifications for architectural program
36 documents, schematic design documents, design development documents,
37 modification work documents or documents that identify the scope of or
38 materials for the project.

39 (d) Preparing an initial schedule for the project, excluding the
40 preparation of updates to the master schedule after modification work has
41 begun.

42 (e) Preparing preliminary estimates of costs of modification work
43 before completion of the final design of the project, including an estimate
44 or schedule of values for any of the following:

1 (i) Labor, materials, machinery and equipment, tools, water, heat,
2 utilities, transportation and other facilities and services used in the
3 execution and completion of modification work, regardless of whether they are
4 temporary or permanent or whether they are incorporated in the modifications.

5 (ii) The cost of labor and materials to be furnished by the owner of
6 the real property.

7 (iii) The cost of any equipment of the owner of the real property to
8 be assigned by the owner to the prime contractor.

9 (iv) The cost of any labor for installation of equipment separately
10 provided by the owner of the real property that has been designed, specified,
11 selected or specifically provided for in any design document for the project.

12 (v) Any fee paid by the owner of the real property to the prime
13 contractor pursuant to the contract for modification work.

14 (vi) Any bond and insurance premiums.

15 (vii) Any applicable taxes.

16 (viii) Any contingency fees for the prime contractor that may be used
17 before final completion of the project.

18 (f) Reviewing and evaluating cost estimates and project documents to
19 prepare recommendations on site use, site improvements, selection of
20 materials, building systems and equipment, modification feasibility,
21 availability of materials and labor, local modification activity as related
22 to schedules and time requirements for modification work.

23 (g) Preparing the plan and procedures for selection of subcontractors,
24 including any prequalification of subcontractor candidates.

25 3. "Professional services" means architect services, assayer services,
26 engineer services, geologist services, land surveying services or landscape
27 architect services that are within the scope of those services as provided in
28 title 32, chapter 1 and for which gross proceeds of sales or gross income has
29 not otherwise been deducted under subsection K of this section.

30 0. The gross proceeds of sales or gross income derived from a contract
31 with the owner of real property or improvements to real property for the
32 maintenance, repair, replacement or alteration of existing property is not
33 subject to tax under this section if the contract does not include
34 modification activities, except as specified in this subsection. The gross
35 proceeds of sales or gross income derived from a de minimis amount of
36 modification activity does not subject the contract or any part of the
37 contract to tax under this section. For the purposes of this subsection:

38 1. Tangible personal property that is incorporated or fabricated into
39 a project described in this subsection may be subject to the amount
40 prescribed in section 42-5008.01.

41 2. Each contract is independent of any other contract, except that any
42 change order that directly relates to the scope of work of the original
43 contract shall be treated the same as the original contract under this
44 chapter, regardless of the amount of modification activities included in the
45 change order. If a change order does not directly relate to the scope of

1 work of the original contract, the change order shall be treated as a new
2 contract, with the tax treatment of any subsequent change order to follow the
3 tax treatment of the contract to which the scope of work of the subsequent
4 change order directly relates.

5 P. Notwithstanding subsection O of this section, a contract that
6 primarily involves surface or subsurface improvements to land and that is
7 subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is
8 taxable under this section, even if the contract also includes vertical
9 improvements. Agencies that are subject to procurement processes under those
10 provisions shall include in the request for proposals a notice to bidders
11 when those projects are subject to this section. This subsection does not
12 apply to contracts with:

13 1. Community facilities districts, fire districts, county television
14 improvement districts, community park maintenance districts, cotton pest
15 control districts, hospital districts, pest abatement districts, health
16 service districts, agricultural improvement districts, county free library
17 districts, county jail districts, county stadium districts, special health
18 care districts, public health services districts, theme park districts,
19 regional attraction districts or revitalization districts.

20 2. Any special taxing district not specified in paragraph 1 of this
21 subsection if the district does not substantially engage in the modification,
22 maintenance, repair, replacement or alteration of surface or subsurface
23 improvements to land.

24 Q. Notwithstanding subsection R, paragraph 10 of this section, a
25 person owning real property who enters into a contract for sale of the real
26 property, who is responsible to the new owner of the property for
27 modifications made to the property in the period subsequent to the transfer
28 of title and who receives a consideration for the modifications is considered
29 a prime contractor solely for purposes of taxing the gross proceeds of sale
30 or gross income received for the modifications made subsequent to the
31 transfer of title. The original owner's gross proceeds of sale or gross
32 income received for the modifications shall be determined according to the
33 following methodology:

34 1. If any part of the contract for sale of the property specifies
35 amounts to be paid to the original owner for the modifications to be made in
36 the period subsequent to the transfer of title, the amounts are included in
37 the original owner's gross proceeds of sale or gross income under this
38 section. Proceeds from the sale of the property that are received after
39 transfer of title and that are unrelated to the modifications made subsequent
40 to the transfer of title are not considered gross proceeds of sale or gross
41 income from the modifications.

42 2. If the original owner enters into an agreement separate from the
43 contract for sale of the real property providing for amounts to be paid to
44 the original owner for the modifications to be made in the period subsequent
45 to the transfer of title to the property, the amounts are included in the

1 original owner's gross proceeds of sale or gross income received for the
2 modifications made subsequent to the transfer of title.

3 3. If the original owner is responsible to the new owner for
4 modifications made to the property in the period subsequent to the transfer
5 of title and derives any gross proceeds of sale or gross income from the
6 project subsequent to the transfer of title other than a delayed disbursement
7 from escrow unrelated to the modifications, it is presumed that the amounts
8 are received for the modifications made subsequent to the transfer of title
9 unless the contrary is established by the owner through its books, records
10 and papers kept in the regular course of business.

11 4. The tax base of the original owner is computed in the same manner
12 as a prime contractor under this section.

13 R. For the purposes of this section:

14 1. "Alteration" means an activity or action that causes a direct
15 physical change to existing property. For the purposes of this paragraph:

16 (a) For existing property that is properly classified as class two
17 property under section 42-12002, paragraph 1, subdivision (c) or paragraph 2,
18 subdivision (c) and that is used for residential purposes, class three
19 property under section 42-12003 or class four property under 42-12004, this
20 paragraph does not apply if the contract amount is more than twenty-five
21 percent of the most recent full cash value established under chapter 13,
22 article 2 of this title as of the date of any bid for the work or the date of
23 the contract, whichever value is higher.

24 (b) For all existing property other than existing property described
25 in subdivision (a) of this paragraph, this paragraph does not apply if any of
26 the following is true:

27 (i) The contract amount is more than seven hundred fifty thousand
28 dollars.

29 (ii) The scope of work directly relates to more than forty percent of
30 the existing square footage of the existing property.

31 (iii) The scope of work involves expanding the square footage of more
32 than ten percent of the existing property.

33 (c) Project elements may not be artificially separated from a contract
34 to cause a project to qualify as an alteration. The department has the
35 burden of proof that project elements have been artificially separated from a
36 contract.

37 (d) If a project for which the owner and the person performing the
38 work reasonably believed, at the inception of the contract, would be treated
39 as an alteration under this paragraph and, on completion of the project, the
40 project exceeded the applicable threshold described in either subdivision (a)
41 or (b) of this paragraph by no more than twenty-five percent of the
42 applicable threshold for any reason, the work performed under the contract
43 qualifies as an alteration.

44 (e) A change order that directly relates to the scope of work of the
45 original contract shall be treated as part of the original contract, and the

1 contract amount shall include any amount attributable to a change order that
2 directly relates to the scope of work of the original contract.

3 (f) Alteration does not include maintenance, repair or replacement.

4 2. "Contracting" means engaging in business as a contractor.

5 3. "Contractor" is synonymous with the term "builder" and means any
6 person or organization that undertakes to or offers to undertake to, or
7 purports to have the capacity to undertake to, or submits a bid to, or does
8 personally or by or through others, modify any building, highway, road,
9 railroad, excavation, manufactured building or other structure, project,
10 development or improvement, or to do any part of such a project, including
11 the erection of scaffolding or other structure or works in connection with
12 such a project, and includes subcontractors and specialty contractors. For
13 all purposes of taxation or deduction, this definition shall govern without
14 regard to whether or not such contractor is acting in fulfillment of a
15 contract.

16 4. "Manufactured building" means a manufactured home, mobile home or
17 factory-built building, as defined in section 41-2142.

18 5. "Manufactured building dealer" means a dealer who either:

19 (a) Is licensed pursuant to title 41, chapter 16 and who sells
20 manufactured buildings to the final consumer.

21 (b) Supervises, performs or coordinates the excavation and completion
22 of site improvements or the setup ~~or moving~~ of a manufactured building,
23 including the contracting, if any, with any subcontractor or specialty
24 contractor for the completion of the contract.

25 6. "Modification" means construction, grading and leveling ground,
26 wreckage or demolition. Modification does not include:

27 (a) Any project described in subsection 0 of this section.

28 (b) Any wreckage or demolition of existing property, or any other
29 activity that is a necessary component of a project described in subsection 0
30 of this section.

31 (c) Any mobilization or demobilization related to a project described
32 in subsection 0 of this section, such as the erection or removal of temporary
33 facilities to be used by those persons working on the project.

34 7. "Modify" means to make a modification or cause a modification to be
35 made.

36 8. "Owner" means the person that holds title to the real property or
37 improvements to real property that is the subject of the work, as well as an
38 agent of the title holder and any person with the authority to perform or
39 authorize work on the real property or improvements, including a tenant and a
40 property manager. For the purposes of subsection 0 of this section, a person
41 who is hired by a general contractor that is hired by an owner, or a
42 subcontractor of a general contractor that is hired by an owner, is
43 considered to be hired by the owner.

44 9. "Prime contracting" means engaging in business as a prime
45 contractor.

1 10. "Prime contractor" means a contractor who supervises, performs or
2 coordinates the modification of any building, highway, road, railroad,
3 excavation, manufactured building or other structure, project, development or
4 improvement, including the contracting, if any, with any subcontractors or
5 specialty contractors and who is responsible for the completion of the
6 contract. Except as provided in subsections E and Q of this section, a
7 person who owns real property, who engages one or more contractors to modify
8 that real property and who does not itself modify that real property is not a
9 prime contractor within the meaning of this paragraph regardless of the
10 existence of a contract for sale or the subsequent sale of that real
11 property.

12 11. "Replacement" means the removal from service of one component or
13 system of existing property or tangible personal property installed in
14 existing property, including machinery or equipment, and the installation of
15 a new component or system or new tangible personal property, including
16 machinery or equipment, that provides the same similar or upgraded design or
17 functionality, regardless of the contract amount and regardless of whether
18 the existing component or system or existing tangible personal property is
19 physically removed from the existing property.

20 12. "Sale of a used manufactured building" does not include a lease of
21 a used manufactured building.

22 Sec. 13. Section 42-5159, Arizona Revised Statutes, is amended to
23 read:

24 42-5159. Exemptions

25 A. The tax levied by this article does not apply to the storage, use
26 or consumption in this state of the following described tangible personal
27 property:

28 1. Tangible personal property, sold in this state, the gross receipts
29 from the sale of which are included in the measure of the tax imposed by
30 articles 1 and 2 of this chapter.

31 2. Tangible personal property, the sale or use of which has already
32 been subjected to an excise tax at a rate equal to or exceeding the tax
33 imposed by this article under the laws of another state of the United States.
34 If the excise tax imposed by the other state is at a rate less than the tax
35 imposed by this article, the tax imposed by this article is reduced by the
36 amount of the tax already imposed by the other state.

37 3. Tangible personal property, the storage, use or consumption of
38 which the constitution or laws of the United States prohibit this state from
39 taxing or to the extent that the rate or imposition of tax is
40 unconstitutional under the laws of the United States.

41 4. Tangible personal property that directly enters into and becomes an
42 ingredient or component part of any manufactured, fabricated or processed
43 article, substance or commodity for sale in the regular course of business.

44 5. Motor vehicle fuel and use fuel, the sales, distribution or use of
45 which in this state is subject to the tax imposed under title 28, chapter 16,

1 article 1, use fuel that is sold to or used by a person holding a valid
2 single trip use fuel tax permit issued under section 28-5739, aviation fuel,
3 the sales, distribution or use of which in this state is subject to the tax
4 imposed under section 28-8344, and jet fuel, the sales, distribution or use
5 of which in this state is subject to the tax imposed under article 8 of this
6 chapter.

7 6. Tangible personal property brought into this state by an individual
8 who was a nonresident at the time the property was purchased for storage, use
9 or consumption by the individual if the first actual use or consumption of
10 the property was outside this state, unless the property is used in
11 conducting a business in this state.

12 7. Purchases of implants used as growth promotants and injectable
13 medicines, not already exempt under paragraph 16 of this subsection, for
14 livestock and poultry owned by, or in possession of, persons who are engaged
15 in producing livestock, poultry, or livestock or poultry products, or who are
16 engaged in feeding livestock or poultry commercially. For the purposes of
17 this paragraph, "poultry" includes ratites.

18 8. Livestock, poultry, supplies, feed, salts, vitamins and other
19 additives for use or consumption in the businesses of farming, ranching and
20 feeding livestock or poultry, not including fertilizers, herbicides and
21 insecticides. For the purposes of this paragraph, "poultry" includes
22 ratites.

23 9. Seeds, seedlings, roots, bulbs, cuttings and other propagative
24 material for use in commercially producing agricultural, horticultural,
25 viticultural or floricultural crops in this state.

26 10. Tangible personal property not exceeding two hundred dollars in
27 any one month purchased by an individual at retail outside the continental
28 limits of the United States for the individual's own personal use and
29 enjoyment.

30 11. Advertising supplements that are intended for sale with newspapers
31 published in this state and that have already been subjected to an excise tax
32 under the laws of another state in the United States that equals or exceeds
33 the tax imposed by this article.

34 12. Materials that are purchased by or for publicly funded libraries
35 including school district libraries, charter school libraries, community
36 college libraries, state university libraries or federal, state, county or
37 municipal libraries for use by the public as follows:

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

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

40 13. Tangible personal property purchased by:

41 (a) A hospital organized and operated exclusively for charitable
42 purposes, no part of the net earnings of which inures to the benefit of any
43 private shareholder or individual.

44 (b) A hospital operated by this state or a political subdivision of
45 this state.

1 (c) A licensed nursing care institution or a licensed residential care
2 institution or a residential care facility operated in conjunction with a
3 licensed nursing care institution or a licensed kidney dialysis center, which
4 provides medical services, nursing services or health related services and is
5 not used or held for profit.

6 (d) A qualifying health care organization, as defined in section
7 42-5001, if the tangible personal property is used by the organization solely
8 to provide health and medical related educational and charitable services.

9 (e) A qualifying health care organization as defined in section
10 42-5001 if the organization is dedicated to providing educational,
11 therapeutic, rehabilitative and family medical education training for blind
12 and visually impaired children and children with multiple disabilities from
13 the time of birth to age twenty-one.

14 (f) A nonprofit charitable organization that has qualified under
15 section 501(c)(3) of the United States internal revenue code and that engages
16 in and uses such property exclusively in programs for persons with mental or
17 physical disabilities if the programs are exclusively for training, job
18 placement, rehabilitation or testing.

19 (g) A person that is subject to tax under this chapter by reason of
20 being engaged in business classified under section 42-5075, or a
21 subcontractor working under the control of a person that is engaged in
22 business classified under section 42-5075, if the tangible personal property
23 is any of the following:

24 (i) Incorporated or fabricated by the person into a structure,
25 project, development or improvement in fulfillment of a contract.

26 (ii) Incorporated or fabricated by the person into any project
27 described in section 42-5075, subsection 0.

28 (iii) Used in environmental response or remediation activities under
29 section 42-5075, subsection B, paragraph 6.

30 (h) A person that is not subject to tax under section 42-5075 and that
31 has been provided a copy of a certificate described in section 42-5009,
32 subsection L, if the property purchased is incorporated or fabricated by the
33 person into the real property, structure, project, development or improvement
34 described in the certificate.

35 (i) A nonprofit charitable organization that has qualified under
36 section 501(c)(3) of the internal revenue code if the property is purchased
37 from the parent or an affiliate organization that is located outside this
38 state.

39 (j) A qualifying community health center as defined in section
40 42-5001.

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

44 (l) A person engaged in business under the transient lodging
45 classification if the property is a personal hygiene item or articles used by

1 human beings for food, drink or condiment, except alcoholic beverages, which
2 are furnished without additional charge to and intended to be consumed by the
3 transient during the transient's occupancy.

4 (m) For taxable periods beginning from and after June 30, 2001, a
5 nonprofit charitable organization that has qualified under section 501(c)(3)
6 of the internal revenue code and that provides residential apartment housing
7 for low income persons over sixty-two years of age in a facility that
8 qualifies for a federal housing subsidy, if the tangible personal property is
9 used by the organization solely to provide residential apartment housing for
10 low income persons over sixty-two years of age in a facility that qualifies
11 for a federal housing subsidy.

12 (n) A qualifying health sciences educational institution as defined in
13 section 42-5001.

14 (o) A person representing or working on behalf of any person described
15 in subdivision (a), (b), (c), (d), (e), (f), (i), (j), (k), (m) or (n) of
16 this paragraph, if the tangible personal property is incorporated or
17 fabricated into a project described in section 42-5075, subsection 0.

18 14. Commodities, as defined by title 7 United States Code section 2,
19 that are consigned for resale in a warehouse in this state in or from which
20 the commodity is deliverable on a contract for future delivery subject to the
21 rules of a commodity market regulated by the United States commodity futures
22 trading commission.

23 15. Tangible personal property sold by:

24 (a) Any nonprofit organization organized and operated exclusively for
25 charitable purposes and recognized by the United States internal revenue
26 service under section 501(c)(3) of the internal revenue code.

27 (b) A nonprofit organization that is exempt from taxation under
28 section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
29 organization is associated with a major league baseball team or a national
30 touring professional golfing association and no part of the organization's
31 net earnings inures to the benefit of any private shareholder or individual.

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

37 16. Drugs and medical oxygen, including delivery hose, mask or tent,
38 regulator and tank, on the prescription of a member of the medical, dental or
39 veterinarian profession who is licensed by law to administer such substances.

40 17. Prosthetic appliances, as defined in section 23-501, prescribed or
41 recommended by a person who is licensed, registered or otherwise
42 professionally credentialed as a physician, dentist, podiatrist,
43 chiropractor, naturopath, homeopath, nurse or optometrist.

44 18. Prescription eyeglasses and contact lenses.

45 19. Insulin, insulin syringes and glucose test strips.

1 20. Hearing aids as defined in section 36-1901.

2 21. Durable medical equipment that has a centers for medicare and
3 medicaid services common procedure code, is designated reimbursable by
4 medicare, is prescribed by a person who is licensed under title 32, chapter
5 7, 13, 17 or 29, can withstand repeated use, is primarily and customarily
6 used to serve a medical purpose, is generally not useful to a person in the
7 absence of illness or injury and is appropriate for use in the home.

8 22. Food, as provided in and subject to the conditions of article 3 of
9 this chapter and section 42-5074.

10 23. Items purchased with United States department of agriculture food
11 stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat.
12 958) or food instruments issued under section 17 of the child nutrition act
13 (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code
14 section 1786).

15 24. Food and drink provided without monetary charge by a taxpayer that
16 is subject to section 42-5074 to its employees for their own consumption on
17 the premises during the employees' hours of employment.

18 25. Tangible personal property that is used or consumed in a business
19 subject to section 42-5074 for human food, drink or condiment, whether
20 simple, mixed or compounded.

21 26. Food, drink or condiment and accessory tangible personal property
22 that are acquired for use by or provided to a school district or charter
23 school if they are to be either served or prepared and served to persons for
24 consumption on the premises of a public school in the school district or on
25 the premises of the charter school during school hours.

26 27. Lottery tickets or shares purchased pursuant to title 5, chapter
27 5.1, article 1.

28 28. Textbooks, sold by a bookstore, that are required by any state
29 university or community college.

30 29. Magazines, other periodicals or other publications produced by
31 this state to encourage tourist travel.

32 30. Paper machine clothing, such as forming fabrics and dryer felts,
33 purchased by a paper manufacturer and directly used or consumed in paper
34 manufacturing.

35 31. Coal, petroleum, coke, natural gas, virgin fuel oil and
36 electricity purchased by a qualified environmental technology manufacturer,
37 producer or processor as defined in section 41-1514.02 and directly used or
38 consumed in the generation or provision of on-site power or energy solely for
39 environmental technology manufacturing, producing or processing or
40 environmental protection. This paragraph shall apply for twenty full
41 consecutive calendar or fiscal years from the date the first paper
42 manufacturing machine is placed in service. In the case of an environmental
43 technology manufacturer, producer or processor who does not manufacture
44 paper, the time period shall begin with the date the first manufacturing,
45 processing or production equipment is placed in service.

1 32. Motor vehicles that are removed from inventory by a motor vehicle
2 dealer as defined in section 28-4301 and that are provided to:

3 (a) Charitable or educational institutions that are exempt from
4 taxation under section 501(c)(3) of the internal revenue code.

5 (b) Public educational institutions.

6 (c) State universities or affiliated organizations of a state
7 university if no part of the organization's net earnings inures to the
8 benefit of any private shareholder or individual.

9 33. Natural gas or liquefied petroleum gas used to propel a motor
10 vehicle.

11 34. Machinery, equipment, technology or related supplies that are only
12 useful to assist a person with a physical disability as defined in section
13 46-191 or a person who has a developmental disability as defined in section
14 36-551 or has a head injury as defined in section 41-3201 to be more
15 independent and functional.

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

29 36. Food, drink and condiment purchased for consumption within the
30 premises of any prison, jail or other institution under the jurisdiction of
31 the state department of corrections, the department of public safety, the
32 department of juvenile corrections or a county sheriff.

33 37. A motor vehicle and any repair and replacement parts and tangible
34 personal property becoming a part of such motor vehicle sold to a motor
35 carrier who is subject to a fee prescribed in title 28, chapter 16, article 4
36 and who is engaged in the business of leasing or renting such property.

37 38. Tangible personal property that is or directly enters into and
38 becomes an ingredient or component part of cards used as prescription plan
39 identification cards.

40 39. Overhead materials or other tangible personal property that is
41 used in performing a contract between the United States government and a
42 manufacturer, modifier, assembler or repairer, including property used in
43 performing a subcontract with a government contractor who is a manufacturer,
44 modifier, assembler or repairer, to which title passes to the government

1 under the terms of the contract or subcontract. For the purposes of this
2 paragraph:

3 (a) "Overhead materials" means tangible personal property, the gross
4 proceeds of sales or gross income derived from which would otherwise be
5 included in the retail classification, that is used or consumed in the
6 performance of a contract, the cost of which is charged to an overhead
7 expense account and allocated to various contracts based on generally
8 accepted accounting principles and consistent with government contract
9 accounting standards.

10 (b) "Subcontract" means an agreement between a contractor and any
11 person who is not an employee of the contractor for furnishing of supplies or
12 services that, in whole or in part, are necessary to the performance of one
13 or more government contracts, or under which any portion of the contractor's
14 obligation under one or more government contracts is performed, undertaken or
15 assumed, and that includes provisions causing title to overhead materials or
16 other tangible personal property used in the performance of the subcontract
17 to pass to the government or that includes provisions incorporating such
18 title passing clauses in a government contract into the subcontract.

19 40. Through December 31, 1994, tangible personal property sold
20 pursuant to a personal property liquidation transaction, as defined in
21 section 42-5061. From and after December 31, 1994, tangible personal
22 property sold pursuant to a personal property liquidation transaction, as
23 defined in section 42-5061, if the gross proceeds of the sales were included
24 in the measure of the tax imposed by article 1 of this chapter or if the
25 personal property liquidation was a casual activity or transaction.

26 41. Wireless telecommunications equipment that is held for sale or
27 transfer to a customer as an inducement to enter into or continue a contract
28 for telecommunications services that are taxable under section 42-5064.

29 42. Alternative fuel, as defined in section 1-215, purchased by a used
30 oil fuel burner who has received a permit to burn used oil or used oil fuel
31 under section 49-426 or 49-480.

32 43. Tangible personal property purchased by a commercial airline and
33 consisting of food, beverages and condiments and accessories used for serving
34 the food and beverages, if those items are to be provided without additional
35 charge to passengers for consumption in flight. For the purposes of this
36 paragraph, "commercial airline" means a person holding a federal certificate
37 of public convenience and necessity or foreign air carrier permit for air
38 transportation to transport persons, property or United States mail in
39 intrastate, interstate or foreign commerce.

40 44. Alternative fuel vehicles if the vehicle was manufactured as a
41 diesel fuel vehicle and converted to operate on alternative fuel and
42 equipment that is installed in a conventional diesel fuel motor vehicle to
43 convert the vehicle to operate on an alternative fuel, as defined in section
44 1-215.

1 45. Gas diverted from a pipeline, by a person engaged in the business
2 of:

3 (a) Operating a natural or artificial gas pipeline, and used or
4 consumed for the sole purpose of fueling compressor equipment that
5 pressurizes the pipeline.

6 (b) Converting natural gas into liquefied natural gas, and used or
7 consumed for the sole purpose of fueling compressor equipment used in the
8 conversion process.

9 46. Tangible personal property that is excluded, exempt or deductible
10 from transaction privilege tax pursuant to section 42-5063.

11 47. Tangible personal property purchased to be incorporated or
12 installed as part of environmental response or remediation activities under
13 section 42-5075, subsection B, paragraph 6.

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

19 49. Prepared food, drink or condiment donated by a restaurant as
20 classified in section 42-5074, subsection A to a nonprofit charitable
21 organization that has qualified under section 501(c)(3) of the internal
22 revenue code and that regularly serves meals to the needy and indigent on a
23 continuing basis at no cost.

24 50. Application services that are designed to assess or test student
25 learning or to promote curriculum design or enhancement purchased by or for
26 any school district, charter school, community college or state university.
27 For the purposes of this paragraph:

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

30 (b) "Curriculum design or enhancement" means planning, implementing or
31 reporting on courses of study, lessons, assignments or other learning
32 activities.

33 51. Motor vehicle fuel and use fuel to a qualified business under
34 section 41-1516 for off-road use in harvesting, processing or transporting
35 qualifying forest products removed from qualifying projects as defined in
36 section 41-1516.

37 52. Repair parts installed in equipment used directly by a qualified
38 business under section 41-1516 in harvesting, processing or transporting
39 qualifying forest products removed from qualifying projects as defined in
40 section 41-1516.

41 53. Renewable energy credits or any other unit created to track energy
42 derived from renewable energy resources. For the purposes of this paragraph,
43 "renewable energy credit" means a unit created administratively by the
44 corporation commission or governing body of a public power entity to track
45 kilowatt hours of electricity derived from a renewable energy resource or the

1 kilowatt hour equivalent of conventional energy resources displaced by
2 distributed renewable energy resources.

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

14 55. Coal acquired from an owner or operator of a power plant by a
15 person who is responsible for refining coal if both of the following apply:

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

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

23 56. Tangible personal property incorporated or fabricated into a
24 project described in section 42-5075, subsection 0, that is located within
25 the exterior boundaries of an Indian reservation for which the owner, as
26 defined in section 42-5075, of the project is an Indian tribe or an
27 affiliated Indian. For the purposes of this paragraph:

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

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

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

39 57. CASH EQUIVALENTS, PRECIOUS METAL BULLION AND MONETIZED BULLION
40 PURCHASED BY THE ULTIMATE CONSUMER, BUT COINS OR OTHER FORMS OF MONEY FOR
41 MANUFACTURE INTO JEWELRY OR WORKS OF ART ARE SUBJECT TO TAX, AND TANGIBLE
42 PERSONAL PROPERTY THAT IS PURCHASED THROUGH THE REDEMPTION OF ANY CASH
43 EQUIVALENT BY THE HOLDER AS A MEANS OF PAYMENT FOR GOODS THAT ARE SUBJECT TO
44 TAX UNDER THIS ARTICLE IS SUBJECT TO TAX. FOR THE PURPOSES OF THIS
45 PARAGRAPH:

1 (a) "CASH EQUIVALENTS" MEANS ITEMS, WHETHER OR NOT NEGOTIABLE, THAT
2 ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE DENOMINATED IN MONEY
3 IS PURCHASED IN ADVANCE AND THAT MAY BE REDEEMED IN FULL OR IN PART FOR
4 TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES. CASH EQUIVALENTS
5 INCLUDE GIFT CARDS, STORED VALUE CARDS, GIFT CERTIFICATES, VOUCHERS,
6 TRAVELER'S CHECKS, MONEY ORDERS OR OTHER TANGIBLE INSTRUMENTS OR
7 ORDERS. CASH EQUIVALENTS DO NOT INCLUDE EITHER OF THE FOLLOWING:

8 (i) ITEMS THAT ARE SOLD TO ONE OR MORE PERSONS AND THROUGH WHICH A
9 VALUE IS NOT DENOMINATED IN MONEY.

10 (ii) PREPAID CALLING CARDS FOR TELECOMMUNICATIONS SERVICES.

11 (b) "MONETIZED BULLION" MEANS COINS AND OTHER FORMS OF MONEY THAT ARE
12 MANUFACTURED FROM GOLD, SILVER OR OTHER METALS AND THAT HAVE BEEN OR ARE USED
13 AS A MEDIUM OF EXCHANGE IN THIS OR ANOTHER STATE, THE UNITED STATES OR A
14 FOREIGN NATION.

15 (c) "PRECIOUS METAL BULLION" MEANS PRECIOUS METAL, INCLUDING GOLD,
16 SILVER, PLATINUM, RHODIUM AND PALLADIUM, THAT HAS BEEN SMELTED OR REFINED SO
17 THAT ITS VALUE DEPENDS ON ITS CONTENTS AND NOT ON ITS FORM.

18 B. In addition to the exemptions allowed by subsection A of this
19 section, the following categories of tangible personal property are also
20 exempt:

21 1. Machinery, or equipment, used directly in manufacturing,
22 processing, fabricating, job printing, refining or metallurgical operations.
23 The terms "manufacturing", "processing", "fabricating", "job printing",
24 "refining" and "metallurgical" as used in this paragraph refer to and include
25 those operations commonly understood within their ordinary meaning.
26 "Metallurgical operations" includes leaching, milling, precipitating,
27 smelting and refining.

28 2. Machinery, or equipment, used directly in the process of extracting
29 ores or minerals from the earth for commercial purposes, including equipment
30 required to prepare the materials for extraction and handling, loading or
31 transporting such extracted material to the surface. "Mining" includes
32 underground, surface and open pit operations for extracting ores and
33 minerals.

34 3. Tangible personal property sold to persons engaged in business
35 classified under the telecommunications classification under section 42-5064,
36 including a person representing or working on behalf of such a person in a
37 manner described in section 42-5075, subsection 0, and consisting of central
38 office switching equipment, switchboards, private branch exchange equipment,
39 microwave radio equipment and carrier equipment including optical fiber,
40 coaxial cable and other transmission media that are components of carrier
41 systems.

42 4. Machinery, equipment or transmission lines used directly in
43 producing or transmitting electrical power, but not including distribution.
44 Transformers and control equipment used at transmission substation sites
45 constitute equipment used in producing or transmitting electrical power.

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

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

8 7. Aircraft, navigational and communication instruments and other
9 accessories and related equipment sold to:

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

16 (b) Any foreign government, or sold to persons who are not residents
17 of this state and who will not use such property in this state other than in
18 removing such property from this state.

19 8. Machinery, tools, equipment and related supplies used or consumed
20 directly in repairing, remodeling or maintaining aircraft, aircraft engines
21 or aircraft component parts by or on behalf of a certificated or licensed
22 carrier of persons or property.

23 9. Rolling stock, rails, ties and signal control equipment used
24 directly to transport persons or property.

25 10. Machinery or equipment used directly to drill for oil or gas or
26 used directly in the process of extracting oil or gas from the earth for
27 commercial purposes.

28 11. Buses or other urban mass transit vehicles that are used directly
29 to transport persons or property for hire or pursuant to a governmentally
30 adopted and controlled urban mass transportation program and that are sold to
31 bus companies holding a federal certificate of convenience and necessity or
32 operated by any city, town or other governmental entity or by any person
33 contracting with such governmental entity as part of a governmentally adopted
34 and controlled program to provide urban mass transportation.

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

36 13. New machinery and equipment consisting of tractors, tractor-drawn
37 implements, self-powered implements, machinery and equipment necessary for
38 extracting milk, and machinery and equipment necessary for cooling milk and
39 livestock, and drip irrigation lines not already exempt under paragraph 6 of
40 this subsection and that are used for commercial production of agricultural,
41 horticultural, viticultural and floricultural crops and products in this
42 state. For the purposes of this paragraph:

43 (a) "New machinery and equipment" means machinery or equipment that
44 has never been sold at retail except pursuant to leases or rentals that do
45 not total two years or more.

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

3 14. Machinery or equipment used in research and development. For the
4 purposes of this paragraph, "research and development" means basic and
5 applied research in the sciences and engineering, and designing, developing
6 or testing prototypes, processes or new products, including research and
7 development of computer software that is embedded in or an integral part of
8 the prototype or new product or that is required for machinery or equipment
9 otherwise exempt under this section to function effectively. Research and
10 development do not include manufacturing quality control, routine consumer
11 product testing, market research, sales promotion, sales service, research in
12 social sciences or psychology, computer software research that is not
13 included in the definition of research and development, or other
14 nontechnological activities or technical services.

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

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

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

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

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

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

36 16. Clean rooms that are used for manufacturing, processing,
37 fabrication or research and development, as defined in paragraph 14 of this
38 subsection, of semiconductor products. For the purposes of this paragraph,
39 "clean room" means all property that comprises or creates an environment
40 where humidity, temperature, particulate matter and contamination are
41 precisely controlled within specified parameters, without regard to whether
42 the property is actually contained within that environment or whether any of
43 the property is affixed to or incorporated into real property. Clean room:

44 (a) Includes the integrated systems, fixtures, piping, movable
45 partitions, lighting and all property that is necessary or adapted to reduce

1 contamination or to control airflow, temperature, humidity, chemical purity
2 or other environmental conditions or manufacturing tolerances, as well as the
3 production machinery and equipment operating in conjunction with the clean
4 room environment.

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

7 17. Machinery and equipment that are used directly in the feeding of
8 poultry, the environmental control of housing for poultry, the movement of
9 eggs within a production and packaging facility or the sorting or cooling of
10 eggs. This exemption does not apply to vehicles used for transporting eggs.

11 18. Machinery or equipment, including related structural components,
12 that is employed in connection with manufacturing, processing, fabricating,
13 job printing, refining, mining, natural gas pipelines, metallurgical
14 operations, telecommunications, producing or transmitting electricity or
15 research and development and that is used directly to meet or exceed rules or
16 regulations adopted by the federal energy regulatory commission, the United
17 States environmental protection agency, the United States nuclear regulatory
18 commission, the Arizona department of environmental quality or a political
19 subdivision of this state to prevent, monitor, control or reduce land, water
20 or air pollution.

21 19. Machinery and equipment that are used in the commercial production
22 of livestock, livestock products or agricultural, horticultural, viticultural
23 or floricultural crops or products in this state, ~~and that~~ **INCLUDING**
24 **PRODUCTION BY A PERSON REPRESENTING OR WORKING ON BEHALF OF SUCH A PERSON IN**
25 **A MANNER DESCRIBED IN SECTION 42-5075, SUBSECTION O, IF THE MACHINERY AND**
26 **EQUIPMENT** are used directly and primarily to prevent, monitor, control or
27 reduce air, water or land pollution.

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

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

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

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

42 21. Qualifying equipment that is purchased from and after June 30,
43 2004 through June 30, 2024 by a qualified business under section 41-1516 for
44 harvesting or processing qualifying forest products removed from qualifying
45 projects as defined in section 41-1516. To qualify for this exemption, the

1 qualified business must obtain and present its certification from the Arizona
2 commerce authority at the time of purchase.

3 C. The exemptions provided by subsection B of this section do not
4 include:

5 1. Expendable materials. For the purposes of this paragraph,
6 expendable materials do not include any of the categories of tangible
7 personal property specified in subsection B of this section regardless of the
8 cost or useful life of that property.

9 2. Janitorial equipment and hand tools.

10 3. Office equipment, furniture and supplies.

11 4. Tangible personal property used in selling or distributing
12 activities, other than the telecommunications transmissions described in
13 subsection B, paragraph 15 of this section.

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

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

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

21 8. Machinery and equipment or tangible personal property used by a
22 contractor in the performance of a contract.

23 D. The following shall be deducted in computing the purchase price of
24 electricity by a retail electric customer from a utility business:

25 1. Revenues received from sales of ancillary services, electric
26 distribution services, electric generation services, electric transmission
27 services and other services related to providing electricity to a retail
28 electric customer who is located outside this state for use outside this
29 state if the electricity is delivered to a point of sale outside this state.

30 2. Revenues received from providing electricity, including ancillary
31 services, electric distribution services, electric generation services,
32 electric transmission services and other services related to providing
33 electricity with respect to which the transaction privilege tax imposed under
34 section 42-5063 has been paid.

35 E. The tax levied by this article does not apply to the purchase of
36 solar energy devices from a retailer that is registered with the department
37 as a solar energy retailer or a solar energy contractor.

38 F. The following shall be deducted in computing the purchase price of
39 electricity by a retail electric customer from a utility business:

40 1. Fees charged by a municipally owned utility to persons constructing
41 residential, commercial or industrial developments or connecting residential,
42 commercial or industrial developments to a municipal utility system or
43 systems if the fees are segregated and used only for capital expansion,
44 system enlargement or debt service of the utility system or systems.

1 2. Reimbursement or contribution compensation to any person or persons
2 owning a utility system for property and equipment installed to provide
3 utility access to, on or across the land of an actual utility consumer if the
4 property and equipment become the property of the utility. This deduction
5 shall not exceed the value of such property and equipment.

6 G. The tax levied by this article does not apply to the purchase price
7 of electricity or natural gas by:

8 1. A business that is principally engaged in manufacturing or smelting
9 operations and that uses at least fifty-one percent of the electricity or
10 natural gas in the manufacturing or smelting operations. This paragraph does
11 not apply to gas transportation services. For the purposes of this
12 paragraph:

13 (a) "Gas transportation services" means the services of transporting
14 natural gas to a natural gas customer or to a natural gas distribution
15 facility if the natural gas was purchased from a supplier other than the
16 utility.

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

23 (c) "Principally engaged" means at least fifty-one percent of the
24 business is a manufacturing or smelting operation.

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

27 2. A business that operates an international operations center in this
28 state and that is certified by the Arizona commerce authority pursuant to
29 section 41-1520.

30 H. For the purposes of subsection B of this section:

31 1. "Aircraft" includes:

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

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

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

41 I. For the purposes of subsection D of this section, "ancillary
42 services", "electric distribution service", "electric generation service",
43 "electric transmission service" and "other services" have the same meanings
44 prescribed in section 42-5063.

1 Sec. 14. Section 42-5162, Arizona Revised Statutes, is amended to
2 read:

3 42-5162. Monthly return; time for payment; extension of time;
4 quarterly payment

5 A. Every retailer engaged in the business of making sales of tangible
6 personal property the use, storage or consumption of which is subject to the
7 tax imposed by this article, and every person who purchases for use, storage
8 or consumption any such property for which the tax is not paid to the
9 retailer, shall file a return with the department on or before the twentieth
10 day of the month next succeeding the month in which the ~~tax accrues~~ TANGIBLE
11 PERSONAL PROPERTY IS BROUGHT INTO THIS STATE FOR USE, STORAGE OR
12 CONSUMPTION. The return shall be on a form prescribed by the department and
13 shall show the tangible personal property sold for use, storage or
14 consumption or purchased for use, storage or consumption within the state
15 during the preceding calendar month. Such return shall be verified by oath
16 or affirmation of the retailer or person making the report, or his agent, and
17 shall be accompanied by payment of the tax shown to be due. The return and
18 tax are delinquent ~~if not postmarked on or before the twenty-fifth day of the~~
19 ~~month when due or~~ if not received by the department on or before the business
20 day preceding the last business day of ~~that month for those taxpayers~~
21 ~~electing to file by mail, or are delinquent if not received by the department~~
22 ~~on the business day preceding the last business day of~~ the month when due ~~for~~
23 ~~those taxpayers electing to file in person.~~

24 ~~B. The department, for any taxpayer whose estimated annual liability~~
25 ~~for taxes imposed by this article is between five hundred and one thousand~~
26 ~~two hundred fifty dollars, may authorize such taxpayer to pay such taxes on a~~
27 ~~quarterly basis. The department, for any taxpayer whose estimated annual~~
28 ~~liability for taxes imposed by this article is five hundred dollars or less,~~
29 ~~may authorize such taxpayer to pay such taxes on an annual basis.~~

30 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A PERSON WHO IS
31 REQUIRED TO FILE A RETURN UNDER CHAPTER 5, ARTICLE 1 OF THIS TITLE MAY REPORT
32 AND PAY THE TAX LIABILITY UNDER THIS ARTICLE ON THE SAME RETURN AND FILING
33 BASIS AS THE TAXES REPORTED UNDER CHAPTER 5, ARTICLE 1 OF THIS TITLE.

34 C. For good cause shown the department may extend the time for making
35 a return and paying the tax, but the time for filing the return shall not be
36 extended beyond the first day of the third month next succeeding the regular
37 due date of the return.

38 Sec. 15. Section 42-6002, Arizona Revised Statutes, is amended to
39 read:

40 42-6002. Administration; procedures for levy, collection and
41 enforcement applicable to cities and towns;
42 definition

43 A. Unless the context otherwise requires, chapter 1 and chapter 5,
44 article 1 of this title govern the administration of the municipal privilege
45 taxes levied by a city or town.

1 B. The procedures for levy, collection and enforcement of payment of
2 transaction privilege and affiliated excise taxes, including use tax,
3 severance tax, jet fuel excise and use tax, and rental occupancy tax, levied
4 by a city or town shall be in the same manner as authorized by chapter 5 of
5 this title. This subsection does not preclude a city or town from levying a
6 transaction privilege, sales, use or other similar tax as a result of a
7 person's business activities as provided in ~~articles 1~~ THIS ARTICLE and
8 ARTICLE 2 of this chapter.

9 C. An intergovernmental contract or agreement entered into pursuant to
10 section 42-6001, subsection A shall include the following provisions:

11 1. All audits shall be conducted in accordance with standard audit
12 procedures defined in the department of revenue audit manual.

13 2. All auditors shall be trained in accordance with the policies of
14 the department.

15 3. An auditor that is trained and authorized to conduct an audit may
16 not represent any taxpayer in any tax matter.

17 4. Except as provided in paragraph 5 of this subsection, the audit of
18 a taxpayer that has locations in two or more cities or towns shall be
19 conducted by the department.

20 5. All audits shall include all taxing jurisdictions in this state
21 regardless of which jurisdiction conducts the audit. A city or town may
22 conduct an audit of any taxpayer that is engaged in business in only one city
23 or town and any other taxpayer authorized by the department.

24 6. The department shall issue all audit assessments on behalf of all
25 taxing jurisdictions in a single notice to the taxpayer.

26 7. Appeals of audit assessments shall be directed to the department.

27 8. Appeals of audit assessments shall be administered pursuant to
28 chapter 1, article 6 of this title.

29 9. The department shall notify all affected cities and towns before
30 entering into any compromise, closing, settlement or other agreement with a
31 person related to the tax levied and imposed by the cities and towns.

32 D. FOR THE PURPOSES OF THIS SECTION, "TRANSACTION PRIVILEGE, SALES,
33 USE OR OTHER SIMILAR TAX" MEANS ANY TAX IMPOSED UNDER THE MODEL CITY TAX
34 CODE.

35 Sec. 16. Section 42-17002, Arizona Revised Statutes, is amended to
36 read:

37 42-17002. Property tax oversight commission

38 A. The property tax oversight commission is established to:

39 1. Further the public confidence in property tax limitations.

40 2. Provide a uniform methodology for determining those limitations.

41 3. Provide a continuing review of practices for ensuring a fair and
42 equitable administration of the property tax laws.

43 B. The commission consists of:

44 1. The director of the department of revenue OR THE DIRECTOR'S
45 DESIGNEE, who serves as chairman.

1 2. Four persons who are knowledgeable in the area of property tax
2 assessment and levy, one appointed by the governor and three appointed
3 jointly by the president of the senate and the speaker of the house of
4 representatives. The appointive members' terms are three years.

5 C. An appointment to fill a vacancy on the commission resulting from
6 other than expiration of a term is for the unexpired portion of the term
7 only.

8 D. The department shall provide secretarial and staff support services
9 to the commission.

10 E. The private citizen members of the commission shall receive fifty
11 dollars per day for time spent in performing their duties.

12 F. The commission shall meet at least annually and, in addition, at
13 the call of the chairman. The commission shall meet at such other times and
14 places as convenient or necessary to conduct its affairs and shall render its
15 findings, reports and recommendations in writing to the governor, to the
16 director of the department of revenue and to the legislature.

17 Sec. 17. Section 43-1021, Arizona Revised Statutes, is amended to
18 read:

19 43-1021. Additions to Arizona gross income

20 In computing Arizona adjusted gross income, the following amounts shall
21 be added to Arizona gross income:

22 1. A beneficiary's share of the fiduciary adjustment to the extent
23 that the amount determined by section 43-1333 increases the beneficiary's
24 Arizona gross income.

25 2. An amount equal to the ordinary income portion of a lump sum
26 distribution that was excluded from federal adjusted gross income pursuant to
27 the special rule for individuals who attained fifty years of age before
28 January 1, 1986 under Public Law 99-514, section 1122(h)(3).

29 3. The amount of interest income received on obligations of any state,
30 territory or possession of the United States, or any political subdivision
31 thereof, located outside the state of Arizona, reduced, for tax years
32 beginning from and after December 31, 1996, by the amount of any interest on
33 indebtedness and other related expenses that were incurred or continued to
34 purchase or carry those obligations and that are not otherwise deducted or
35 subtracted in arriving at Arizona gross income.

36 4. The excess of a partner's share of partnership taxable income
37 required to be included under chapter 14, article 2 of this title over the
38 income required to be reported under section 702(a)(8) of the internal
39 revenue code.

40 5. The excess of a partner's share of partnership losses determined
41 pursuant to section 702(a)(8) of the internal revenue code over the losses
42 allowable under chapter 14, article 2 of this title.

43 6. The amount by which the adjusted basis of property described in
44 this paragraph and computed pursuant to the internal revenue code exceeds the
45 adjusted basis of such property computed pursuant to this title and the

1 income tax act of 1954, as amended. This paragraph shall apply to all
2 property that is held for the production of income and that is sold or
3 otherwise disposed of during the taxable year, except depreciable property
4 used in a trade or business.

5 7. Any amount of agricultural water conservation expenses that were
6 deducted pursuant to the internal revenue code for which a credit is claimed
7 under section 43-1084.

8 8. The amount by which the depreciation or amortization computed under
9 the internal revenue code with respect to property for which a credit was
10 taken under section 43-1080 exceeds the amount of depreciation or
11 amortization computed pursuant to the internal revenue code on the Arizona
12 adjusted basis of the property.

13 9. The amount by which the adjusted basis computed under the internal
14 revenue code with respect to property for which a credit was claimed under
15 section 43-1080 and that is sold or otherwise disposed of during the taxable
16 year exceeds the adjusted basis of the property computed under section
17 43-1080.

18 10. The amount by which the depreciation or amortization computed under
19 the internal revenue code with respect to property for which a credit was
20 taken under either section 43-1081 or 43-1081.01 exceeds the amount of
21 depreciation or amortization computed pursuant to the internal revenue code
22 on the Arizona adjusted basis of the property.

23 11. The amount by which the adjusted basis computed under the internal
24 revenue code with respect to property for which a credit was claimed under
25 section 43-1074.02, 43-1081 or 43-1081.01 and that is sold or otherwise
26 disposed of during the taxable year exceeds the adjusted basis of the
27 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as
28 applicable.

29 12. The deduction referred to in section 1341(a)(4) of the internal
30 revenue code for restoration of a substantial amount held under a claim of
31 right.

32 13. The amount by which a net operating loss carryover or capital loss
33 carryover allowable pursuant to section 1341(b)(5) of the internal revenue
34 code exceeds the net operating loss carryover or capital loss carryover
35 allowable pursuant to section 43-1029, subsection F.

36 14. Any amount deducted in computing Arizona gross income as expenses
37 for installing solar stub outs or electric vehicle recharge outlets in this
38 state with respect to which a credit is claimed pursuant to section 43-1090.

39 15. Any wage expenses deducted pursuant to the internal revenue code
40 for which a credit is claimed under section 43-1087 and representing net
41 increases in qualified employment positions for employment of temporary
42 assistance for needy families recipients.

43 16. The amount of any depreciation allowance allowed pursuant to
44 section 167(a) of the internal revenue code to the extent not previously
45 added.

1 17. With respect to property for which an expense deduction was taken
2 pursuant to section 179 of the internal revenue code in a taxable year
3 beginning before January 1, 2013, the amount in excess of twenty-five
4 thousand dollars.

5 18. The amount of a nonqualified withdrawal, as defined in section
6 15-1871, from a college savings plan established pursuant to section 529 of
7 the internal revenue code that is made to a distributee to the extent the
8 amount is not included in computing federal adjusted gross income, except
9 that the amount added under this paragraph shall not exceed the difference
10 between the amount subtracted under section 43-1022 in prior taxable years
11 and the amount added under this section in any prior taxable years.

12 19. The amount of discharge of indebtedness income that is deferred and
13 excluded from the computation of federal adjusted gross income in the current
14 taxable year pursuant to section 108(i) of the internal revenue code as added
15 by section 1231 of the American recovery and reinvestment act of 2009
16 (P.L. 111-5).

17 20. The amount of any previously deferred original issue discount that
18 was deducted in computing federal adjusted gross income in the current year
19 pursuant to section 108(i) of the internal revenue code as added by section
20 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to
21 the extent that the amount was previously subtracted from Arizona gross
22 income pursuant to section 43-1022, paragraph 24.

23 ~~21. For taxable years beginning from and after December 31, 2011~~
24 ~~through December 31, 2014, the amount of any deduction that is claimed in~~
25 ~~computing federal adjusted gross income for health insurance premiums or~~
26 ~~contributions to a health savings account for which a credit is claimed under~~
27 ~~section 43-1087.01.~~

28 ~~22.~~ 21. Amounts that are considered to be income under section
29 43-1032, subsection D because the amount is withdrawn from a long-term health
30 care savings account and not used to pay the taxpayer's long-term health care
31 expenses.

32 Sec. 18. Section 43-1121, Arizona Revised Statutes, is amended to
33 read:

34 43-1121. Additions to Arizona gross income: corporations

35 In computing Arizona taxable income for a corporation, the following
36 amounts shall be added to Arizona gross income:

37 1. The amount of interest income received on obligations of any state,
38 territory or possession of the United States, or any political subdivision
39 thereof, located outside this state, reduced, for tax years beginning from
40 and after December 31, 1996, by the amount of any interest on indebtedness
41 and other related expenses that were incurred or continued to purchase or
42 carry those obligations and that are not otherwise deducted or subtracted in
43 arriving at Arizona gross income.

1 2. The excess of a partner's share of partnership taxable income
2 required to be included under chapter 14, article 2 of this title over the
3 income required to be reported under section 702(a)(8) of the internal
4 revenue code.

5 3. The excess of a partner's share of partnership losses determined
6 pursuant to section 702(a)(8) of the internal revenue code over the losses
7 allowable under chapter 14, article 2 of this title.

8 4. The amount by which the adjusted basis of property described in
9 this paragraph and computed pursuant to the internal revenue code exceeds the
10 adjusted basis of such property computed pursuant to this title and the
11 income tax act of 1954, as amended. This paragraph applies to all property
12 that is held for the production of income and that is sold or otherwise
13 disposed of during the taxable year, except depreciable property used in a
14 trade or business.

15 5. The amount of any depreciation allowance allowed pursuant to
16 section 167(a) of the internal revenue code to the extent not previously
17 added.

18 6. With respect to property for which an expense deduction was taken
19 pursuant to section 179 of the internal revenue code in a taxable year
20 beginning before January 1, 2013, the amount in excess of twenty-five
21 thousand dollars.

22 7. The amount of discharge of indebtedness income that is deferred and
23 excluded from the computation of federal taxable income in the current
24 taxable year pursuant to section 108(i) of the internal revenue code as added
25 by section 1231 of the American recovery and reinvestment act of 2009
26 (P.L. 111-5).

27 8. The amount of any previously deferred original issue discount that
28 was deducted in computing federal taxable income in the current year pursuant
29 to section 108(i) of the internal revenue code as added by section 1231 of
30 the American recovery and reinvestment act of 2009 (P.L. 111-5), to the
31 extent that the amount was previously subtracted from Arizona gross income
32 pursuant to section 43-1122, paragraph 8.

33 ~~9. For taxable years beginning from and after December 31, 2011~~
34 ~~through December 31, 2014, the amount of any deduction that is claimed in~~
35 ~~computing federal taxable income for health insurance premiums or~~
36 ~~contributions to a health savings account for which a credit is claimed under~~
37 ~~section 43-1185.~~

38 ~~10.~~ 9. The amount of dividend income received from corporations and
39 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal
40 revenue code.

41 ~~11.~~ 10. Taxes ~~which~~ THAT are based on income paid to states, local
42 governments or foreign governments and ~~which~~ THAT were deducted in computing
43 federal taxable income.

1 ~~12-~~ 11. Expenses and interest relating to tax-exempt income on
2 indebtedness incurred or continued to purchase or carry obligations the
3 interest on which is wholly exempt from the tax imposed by this title.
4 Financial institutions, as defined in section 6-101, shall be governed by
5 section 43-961, paragraph 2.

6 ~~13-~~ 12. Commissions, rentals and other amounts paid or accrued to a
7 domestic international sales corporation controlled by the payor corporation
8 if the domestic international sales corporation is not required to report its
9 taxable income to this state because its income is not derived from or
10 attributable to sources within this state. If the domestic international
11 sales corporation is subject to article 4 of this chapter, the department
12 shall prescribe by rule the method of determining the portion of the
13 commissions, rentals and other amounts ~~which~~ THAT are paid or accrued to the
14 controlled domestic international sales corporation and ~~which~~ THAT shall be
15 deducted by the payor. For the purposes of this paragraph, "control" means
16 direct or indirect ownership or control of fifty per cent or more of the
17 voting stock of the domestic international sales corporation by the payor
18 corporation.

19 ~~14-~~ 13. The amount of net operating loss taken pursuant to section 172
20 of the internal revenue code.

21 ~~15-~~ 14. The amount of exploration expenses determined pursuant to
22 section 617 of the internal revenue code to the extent that they exceed
23 seventy-five thousand dollars and to the extent that the election is made to
24 defer those expenses not in excess of seventy-five thousand dollars.

25 ~~16-~~ 15. Amortization of costs incurred to install pollution control
26 devices and deducted pursuant to the internal revenue code or the amount of
27 deduction for depreciation taken pursuant to the internal revenue code on
28 pollution control devices for which an election is made pursuant to section
29 43-1129.

30 ~~17-~~ 16. The amount of depreciation or amortization of costs of child
31 care facilities deducted pursuant to section 167 or 188 of the internal
32 revenue code for which an election is made to amortize pursuant to section
33 43-1130.

34 ~~18-~~ 17. The loss of an insurance company that is exempt under section
35 43-1201 to the extent that it is included in computing Arizona gross income
36 on a consolidated return pursuant to section 43-947.

37 ~~19-~~ 18. The amount by which the depreciation or amortization computed
38 under the internal revenue code with respect to property for which a credit
39 was taken under section 43-1169 exceeds the amount of depreciation or
40 amortization computed pursuant to the internal revenue code on the Arizona
41 adjusted basis of the property.

42 ~~20-~~ 19. The amount by which the adjusted basis computed under the
43 internal revenue code with respect to property for which a credit was claimed
44 under section 43-1169 and ~~which~~ THAT is sold or otherwise disposed of during

1 the taxable year exceeds the adjusted basis of the property computed under
2 section 43-1169.

3 ~~21-~~ 20. The amount by which the depreciation or amortization computed
4 under the internal revenue code with respect to property for which a credit
5 was taken under either section 43-1170 or 43-1170.01 exceeds the amount of
6 depreciation or amortization computed pursuant to the internal revenue code
7 on the Arizona adjusted basis of the property.

8 ~~22-~~ 21. The amount by which the adjusted basis computed under the
9 internal revenue code with respect to property for which a credit was claimed
10 under either section 43-1170 or 43-1170.01 and ~~which~~ THAT is sold or
11 otherwise disposed of during the taxable year exceeds the adjusted basis of
12 the property computed under section 43-1170 or 43-1170.01, as applicable.

13 ~~23-~~ 22. The deduction referred to in section 1341(a)(4) of the
14 internal revenue code for restoration of a substantial amount held under a
15 claim of right.

16 ~~24-~~ 23. The amount by which a capital loss carryover allowable
17 pursuant to section 1341(b)(5) of the internal revenue code exceeds the
18 capital loss carryover allowable pursuant to section 43-1130.01,
19 subsection F.

20 ~~25-~~ 24. Any amount deducted in computing Arizona taxable income as
21 expenses for installing solar stub outs or electric vehicle recharge outlets
22 in this state with respect to which a credit is claimed pursuant to section
23 43-1176.

24 ~~26-~~ 25. Any wage expenses deducted pursuant to the internal revenue
25 code for which a credit is claimed under section 43-1175 and representing net
26 increases in qualified employment positions for employment of temporary
27 assistance for needy families recipients.

28 ~~27-~~ 26. Any amount of expenses that were deducted pursuant to the
29 internal revenue code and for which a credit is claimed under section
30 43-1178.

31 ~~28-~~ 27. The amount of any deduction that is claimed in computing
32 Arizona gross income and that represents a donation of a school site for
33 which a credit is claimed under section 43-1181.

34 ~~29-~~ 28. Any amount deducted pursuant to section 170 of the internal
35 revenue code representing contributions to a school tuition organization for
36 which a credit is claimed under section 43-1183 or 43-1184.

37 Sec. 19. Section 43-1122, Arizona Revised Statutes, is amended to
38 read:

39 43-1122. Subtractions from Arizona gross income; corporations

40 In computing Arizona taxable income for a corporation, the following
41 amounts shall be subtracted from Arizona gross income:

42 1. The excess of a partner's share of income required to be included
43 under section 702(a)(8) of the internal revenue code over the income required
44 to be included under chapter 14, article 2 of this title.

1 2. The excess of a partner's share of partnership losses determined
2 pursuant to chapter 14, article 2 of this title over the losses allowable
3 under section 702(a)(8) of the internal revenue code.

4 3. The amount by which the adjusted basis of property described in
5 this paragraph and computed pursuant to this title and the income tax act of
6 1954, as amended, exceeds the adjusted basis of such property computed
7 pursuant to the internal revenue code. This paragraph applies to all
8 property that is held for the production of income and that is sold or
9 otherwise disposed of during the taxable year other than depreciable property
10 used in a trade or business.

11 4. The amount allowed by section 43-1025 for contributions during the
12 taxable year of agricultural crops to charitable organizations.

13 5. The portion of any wages or salaries paid or incurred by the
14 taxpayer for the taxable year that is equal to the amount of the federal work
15 opportunity credit, the empowerment zone employment credit, the credit for
16 employer paid social security taxes on employee cash tips and the Indian
17 employment credit that the taxpayer received under sections 45A, 45B, 51(a)
18 and 1396 of the internal revenue code.

19 6. With respect to property that is sold or otherwise disposed of
20 during the taxable year by a taxpayer that complied with section 43-1121,
21 paragraph 5 with respect to that property, the amount of depreciation that
22 has been allowed pursuant to section 167(a) of the internal revenue code to
23 the extent that the amount has not already reduced Arizona taxable income in
24 the current **TAXABLE YEAR** or prior taxable years.

25 7. With respect to property for which an adjustment was made under
26 section 43-1121, paragraph 6, an amount equal to one-fifth of the amount of
27 the adjustment pursuant to section 43-1121, paragraph 6 in the year in which
28 the amount was adjusted under section 43-1121, paragraph 6 and in each of the
29 following four years.

30 8. The amount of any original issue discount that was deferred and not
31 allowed to be deducted in computing federal taxable income in the current
32 taxable year pursuant to section 108(i) of the internal revenue code as added
33 by section 1231 of the American recovery and reinvestment act of 2009
34 (P.L. 111-5).

35 9. The amount of previously deferred discharge of indebtedness income
36 that is included in the computation of federal taxable income in the current
37 taxable year pursuant to section 108(i) of the internal revenue code as added
38 by section 1231 of the American recovery and reinvestment act of 2009
39 (P.L. 111-5), to the extent that the amount was previously added to Arizona
40 gross income pursuant to section 43-1121, paragraph 7.

41 10. With respect to a financial institution as defined in section
42 6-101, expenses and interest relating to tax-exempt income disallowed
43 pursuant to section 265 of the internal revenue code.

44 11. Dividends received from another corporation owned or controlled
45 directly or indirectly by a recipient corporation. For the purposes of this

1 paragraph, "control" means direct or indirect ownership or control of fifty
 2 ~~per-cent~~ PERCENT or more of the voting stock of the payor corporation by the
 3 recipient corporation. Dividends shall have the meaning provided in section
 4 316 of the internal revenue code. This subtraction shall apply without
 5 regard to section 43-961, paragraph 2 and article 4 of this chapter.

6 12. Interest income received on obligations of the United States.

7 13. The amount of dividend income from foreign corporations.

8 14. The amount of net operating loss allowed by section 43-1123.

9 15. The amount of any state income tax refunds received ~~which~~ THAT
 10 were included as income in computing federal taxable income.

11 16. The amount of expense recapture included in income pursuant to
 12 section 617 of the internal revenue code for mine exploration expenses.

13 17. The amount of deferred exploration expenses allowed by section
 14 43-1127.

15 18. The amount of exploration expenses related to the exploration of
 16 oil, gas or geothermal resources, computed in the same manner and on the same
 17 basis as a deduction for mine exploration pursuant to section 617 of the
 18 internal revenue code. This computation is subject to the adjustments
 19 contained in section 43-1121, paragraph ~~15~~ 14 and paragraphs 16 and 17 of
 20 this section relating to exploration expenses.

21 19. The amortization of pollution control devices allowed by section
 22 43-1129.

23 20. The amount of amortization of the cost of child care facilities
 24 pursuant to section 43-1130.

25 21. The amount of income from a domestic international sales
 26 corporation required to be included in the income of its shareholders
 27 pursuant to section 995 of the internal revenue code.

28 22. The income of an insurance company that is exempt under section
 29 43-1201 to the extent that it is included in computing Arizona gross income
 30 on a consolidated return pursuant to section 43-947.

31 23. The amount by which a capital loss carryover allowable pursuant to
 32 section 43-1130.01, subsection F exceeds the capital loss carryover allowable
 33 pursuant to section 1341(b)(5) of the internal revenue code.

34 24. An amount equal to the depreciation allowable pursuant to section
 35 167(a) of the internal revenue code for the taxable year computed as if the
 36 election described in section 168(k)(2)(D)(iii) of the internal revenue code
 37 had been made for each applicable class of property in the year the property
 38 was placed in service.

39 Sec. 20. Section 43-1127, Arizona Revised Statutes, is amended to
 40 read:

41 43-1127. Deferred exploration expenses

42 A. The amount of exploration expenses added to Arizona gross income
 43 pursuant to section 43-1121, paragraph ~~15~~ 14 may be subtracted on a ratable
 44 basis as the units of produced ores or minerals discovered or explored by

1 reason of such expenditures are sold. An election made for any taxable year
2 shall be binding for such year.

3 B. If such property is sold, it shall be treated in the same manner
4 and on the same basis as property held for the production of income pursuant
5 to section 43-1121, paragraph 4 or section 43-1122, paragraph 3.

6 Sec. 21. Section 43-1130.01, Arizona Revised Statutes, is amended to
7 read:

8 43-1130.01. Restoration of a substantial amount held under
9 claim of right; computation of tax

10 A. This section applies if:

11 1. An item of income was included in gross income for a prior taxable
12 year or years because it appeared that the taxpayer had an unrestricted right
13 to the item.

14 2. A deduction would be allowable under the internal revenue code or
15 this title for the taxable year, without application of section 1341(b)(3) of
16 the internal revenue code or section 43-1121, paragraph ~~23~~ 22, because after
17 the close of the prior taxable year or years it was established that the
18 taxpayer did not have an unrestricted right to all or part of the item.

19 3. The amount of the deduction exceeds three thousand dollars.

20 B. If all of the conditions in subsection A of this section apply, the
21 tax imposed by this chapter for the taxable year is an amount equal to the
22 tax for the taxable year computed without the deduction, minus the decrease
23 in tax under this chapter for the prior taxable year or years that would
24 result solely from excluding the item or portion of the item from gross
25 income for the prior taxable year or years.

26 C. If the decrease in tax exceeds the tax imposed by this chapter for
27 the taxable year, computed without the deduction, the excess is considered to
28 be a payment of tax on the last day prescribed by law for the payment of tax
29 for the taxable year and shall be refunded or credited in the same manner as
30 if it were an overpayment for the taxable year.

31 D. Subsection B of this section does not apply to any deduction that
32 is allowable with respect to an item that was included in gross income by
33 reason of the sale or other disposition of stock in trade of the taxpayer, or
34 other property of a kind that would properly have been included in the
35 inventory of the taxpayer on hand at the close of the prior taxable year, or
36 property that is held by the taxpayer primarily for sale to customers in the
37 ordinary course of the taxpayer's trade or business. This subsection does
38 not apply if the deduction arises out of refunds or repayments with respect
39 to rates made by a regulated public utility that is listed in section
40 7701(a)(33)(A) through (H) of the internal revenue code, if the refunds or
41 repayments are:

42 1. Required to be made by the government, political subdivision,
43 agency or instrumentality referred to in that section.

44 2. Required to be made by an order of a court.

1 3. Made in settlement of litigation or under threat or imminence of
2 litigation.
3 E. If the exclusion under subsection B of this section results in:
4 1. A net operating loss for the prior taxable year or years for
5 purposes of computing the decrease in tax for the prior year or years under
6 subsection B of this section:
7 (a) The loss shall be carried over under this chapter to the same
8 extent and in the same manner as provided under section 43-1123, and under
9 prior law.
10 (b) No carryover beyond the taxable year may be taken into account.
11 2. A capital loss for the prior taxable year or years, for purposes of
12 computing the decrease in tax for the prior taxable year or years under
13 subsection B of this section:
14 (a) The loss shall be:
15 (i) Carried over under this chapter to the same extent and in the same
16 manner as was provided under prior law for taxable years beginning on or
17 before December 31, 1987.
18 (ii) Carried back and carried over to the same extent and in the same
19 manner as provided under section 1212 of the internal revenue code for
20 taxable years beginning from and after December 31, 1987.
21 (b) No carryover beyond the taxable year may be taken into account.
22 F. In computing Arizona taxable income for taxable years subsequent to
23 the current taxable year, the net operating loss or capital loss determined
24 in subsection E of this section shall be taken into account to the same
25 extent and in the same manner as a net operating loss or capital loss
26 sustained for prior taxable years.