

REFERENCE TITLE: technical corrections; taxation

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

SB 1350

Introduced by
Senator Lesko

AN ACT

AMENDING SECTIONS 42-6004 AND 42-12001, 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 42-6004, Arizona Revised Statutes, is amended to
3 read:

4 42-6004. Exemption from municipal tax: definitions

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

7 1. Exhibition events in this state sponsored, conducted or operated by
8 a nonprofit organization that is exempt from taxation under section
9 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
10 organization is associated with a major league baseball team or a national
11 touring professional golfing association and no part of the organization's
12 net earnings inures to the benefit of any private shareholder or individual.

13 2. Interstate telecommunications services, which include that portion
14 of telecommunications services, such as subscriber line service, allocable by
15 federal law to interstate telecommunications service.

16 3. Sales of warranty or service contracts.

17 4. Sales of motor vehicles to nonresidents of this state for use
18 outside this state if the motor vehicle dealer ships or delivers the motor
19 vehicle to a destination outside this state.

20 5. Interest on finance contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~14.~~ 13. The leasing or renting of certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461.

For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

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

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

(a) Each contract is independent of another contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this ~~chapter~~ PARAGRAPH, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to

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

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

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

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

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

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

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

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

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

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

~~20-~~ 19. The gross proceeds of sales or gross income from sales of low or reduced cost articles of food or drink to eligible elderly or homeless persons or persons with a disability by a business subject to tax under section 42-5074 that contracts with the department of economic security and

1 that is approved by the food and nutrition service of the United States
 2 department of agriculture pursuant to the supplemental nutrition assistance
 3 program established by the food and nutrition act of 2008 (P.L. 110-246; 122
 4 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the
 5 purchases are made with the benefits issued pursuant to the supplemental
 6 nutrition assistance program.

7 ~~21.~~ 20. Tangible personal property incorporated or fabricated into a
 8 project described in paragraph ~~16~~ 15 of this subsection, that is located
 9 within the exterior boundaries of an Indian reservation for which the owner,
 10 as defined in section 42-5075, of the project is an Indian tribe or an
 11 affiliated Indian. For the purposes of this paragraph:

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

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

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

23 ~~22.~~ 21. The charges for the leasing or renting of space to make
 24 attachments to utility poles as follows:

25 (a) By a person that is engaged in the business of providing or
 26 furnishing electrical services or telecommunication services or that is a
 27 cable operator.

28 (b) To a person that is engaged in the business of providing or
 29 furnishing electrical services or telecommunication services or that is a
 30 cable operator.

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

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

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

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

44 3. The sale of a motor vehicle and any repair and replacement parts
 45 and tangible personal property becoming a part of such motor vehicle to a

1 motor carrier who is subject to a fee prescribed in title 28, chapter 16,
2 article 4 and who is engaged in the business of leasing, renting or licensing
3 such property.

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

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

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

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

16 (b) The attributable amount is equal to the total amount of
17 development fees paid by the taxpayer or by a contractor providing services
18 to the taxpayer and the total development fees credited in exchange for the
19 construction of, contribution to or dedication of real property for providing
20 public infrastructure, public safety or other public services necessary to
21 the development. The real property must be the subject of the development
22 fees.

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

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

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

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

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

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

43 G. For the purposes of this section:

44 1. "Cable operator" has the same meaning prescribed ~~by~~ IN section
45 9-505.

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

3 3. "Telecommunication services" means transmitting or relaying sound,
4 visual image, data, information, images or material over lines, wires or
5 cables by radio signal, light beam, telephone, telegraph or any other
6 electromagnetic means.

7 4. "Utility pole" means any wooden, metal or other pole used for
8 utility purposes and the pole's appurtenances that are attached or authorized
9 for attachment by the person controlling the pole.

10 Sec. 2. Section 42-12001, Arizona Revised Statutes, is amended to
11 read:

12 42-12001. Class one property

13 For THE purposes of taxation, class one is established consisting of
14 the following subclasses:

15 1. Producing mines and mining claims, personal property used on mines
16 and mining claims, improvements to mines and mining claims and mills and
17 smelters operated in conjunction with mines and mining claims that are valued
18 at full cash value pursuant to section 42-14053.

19 2. Standing timber that is valued at full cash value.

20 3. Real and personal property of gas distribution companies, electric
21 transmission companies, electric distribution companies, combination gas and
22 electric transmission and distribution companies, and companies engaged in
23 the generation of electricity that are valued at full cash value pursuant to
24 section 42-14151.

25 4. Real and personal property of airport fuel delivery companies that
26 are valued pursuant to section 42-14503.

27 5. Real and personal property that ~~is~~ ARE used by producing oil, gas
28 and geothermal resource interests that are valued at full cash value pursuant
29 to section 42-14102.

30 6. Real and personal property of water, sewer and wastewater utility
31 companies that are valued at full cash value pursuant to section 42-14151.

32 7. Real and personal property of pipeline companies that are valued at
33 full cash value pursuant to section 42-14201.

34 8. Real and personal property of shopping centers that are valued at
35 full cash value or pursuant to chapter 13, article 5 of this title, as
36 applicable, other than property that is included in class nine.

37 9. Real and personal property of golf courses that are valued at full
38 cash value or pursuant to chapter 13, article 4 of this title.

39 10. All property, both real and personal, of manufacturers, assemblers
40 or fabricators, other than property that is specifically included in another
41 class described in this article, that is valued under this title.

42 11. Real and personal property that is used in communications
43 transmission facilities and that provides public telephone or
44 telecommunications exchange or interexchange access for compensation to
45 effect two-way communication to, from, through or within this state.

1 12. Real property and improvements that are devoted to any other
2 commercial or industrial use, other than property that is specifically
3 included in another class described in this article, and that are valued at
4 full cash value.

5 13. Personal property that is devoted to any other commercial or
6 industrial use, other than property that is specifically included in another
7 class described in this article, and that is valued at full cash value.

8 14. Real and personal property of electric cooperatives that are
9 valued at full cash value pursuant to section 42-14159.