

REFERENCE TITLE: native American tribes; TPT revenues

State of Arizona
House of Representatives
Fifty-first Legislature
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2013

HB 2522

Introduced by

Representatives Hale, Campbell, Cardenas, Peshlakai, Steele, Wheeler,
Senators Jackson Jr., Landrum Taylor: Representatives Alston, Escamilla,
Gabaldón, Gallego, Gonzales, Hernández, Miranda, Otondo, Quezada, Saldate,
Senators Ableser, Cajero Bedford, Pancrazi, Tovar

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

1 (a) Average the following proportions:
2 (i) The proportion that the assessed valuation used to determine
3 secondary property taxes of each county, after deducting that part of the
4 assessed valuation that is exempt from taxation at the beginning of the month
5 for which the amount is to be paid, bears to the total assessed valuations
6 used to determine secondary property taxes of all the counties after
7 deducting that portion of the assessed valuations that is exempt from
8 taxation at the beginning of the month for which the amount is to be paid.
9 Property of a city or town that is not within or contiguous to the municipal
10 corporate boundaries and from which water is or may be withdrawn or diverted
11 and transported for use on other property is considered to be taxable
12 property in the county for purposes of determining assessed valuation in the
13 county under this item.
14 (ii) The proportion that the distribution base monies collected during
15 the calendar month in each county under this article, section 42-5164,
16 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
17 total distribution base monies collected under this article, section 42-5164,
18 subsection B, section 42-5205, subsection B and section 42-5353 throughout
19 the state for the calendar month.
20 (b) If the proportion computed under subdivision (a) of this paragraph
21 for any county is greater than the proportion computed under paragraph 2 of
22 this subsection, the department shall compute the difference between the
23 amount distributed to that county under paragraph 2 of this subsection and
24 the amount that would have been distributed under paragraph 2 of this
25 subsection using the proportion computed under subdivision (a) of this
26 paragraph and shall pay that difference to the county from the amount
27 available for distribution under this paragraph. Any monies remaining after
28 all payments under this subdivision shall be distributed among the counties
29 according to the proportions computed under paragraph 2 of this subsection.
30 4. After any distributions required by sections 42-5030, 42-5030.01,
31 42-5031, 42-5032, 42-5032.01 and 42-5032.02, and after making any transfer to
32 the water quality assurance revolving fund as required by section 49-282,
33 subsection B, credit the remainder of the monies designated as distribution
34 base to the state general fund. From this amount the legislature shall
35 annually appropriate to:
36 (a) The department of revenue sufficient monies to administer and
37 enforce this article and articles 5 and 8 of this chapter.
38 (b) The department of economic security monies to be used for the
39 purposes stated in title 46, chapter 1.
40 (c) The firearms safety and ranges fund established by section 17-273,
41 fifty thousand dollars derived from the taxes collected from the retail
42 classification pursuant to section 42-5061 for the current fiscal year.
43 E. If approved by the qualified electors voting at a statewide general
44 election, all monies collected pursuant to section 42-5010, subsection G and
45 section 42-5155, subsection D shall be distributed each fiscal year pursuant

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

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

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

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

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

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

44 (a) In fiscal year 2001-2002, \$15,305,900.

45 (b) In fiscal year 2002-2003, \$31,530,100.

1 (c) In fiscal year 2003-2004, \$48,727,700.

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

3 (e) In fiscal year 2005-2006 and each fiscal year thereafter,
4 \$86,280,500.

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

12 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
13 subsection, no more than seven million dollars may be appropriated by the
14 legislature each fiscal year to the department of education to be used for
15 accountability purposes as described in section 15-241 and title 15, chapter
16 9, article 8.

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

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

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

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

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

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

36 F. THE TRANSACTION PRIVILEGE TAX REVENUES THAT ARE SEPARATELY
37 ACCOUNTED FOR UNDER SUBSECTION A, PARAGRAPH 3 OF THIS SECTION SHALL BE
38 DISTRIBUTED AS FOLLOWS:

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

43 2. MONIES RECEIVED UNDER THIS SUBSECTION SHALL BE USED BY THE INDIAN
44 TRIBE FOR TELECOMMUNICATION INFRASTRUCTURE DEVELOPMENT AND FOR COMMUNITY
45 DEVELOPMENT PROJECTS, INCLUDING MULTIPURPOSE BUILDINGS, INFRASTRUCTURE

1 DEVELOPMENT AND ROADS ON THE INDIAN RESERVATION THAT ARE LOCATED WITHIN THIS
2 STATE.

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

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

9 5. THIS SUBSECTION SHALL NOT BE CONSTRUED TO CHANGE THE DISTRIBUTION
10 OF ANY MONIES PRESCRIBED BY SUBSECTION E OF THIS SECTION.

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

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

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

1 were issued before the date of the loan repayment agreement or bonds and that
2 have been secured by a pledge of distributions made pursuant to this section.

3 ~~I.~~ J. Except as provided by sections 42-5033 and 42-5033.01, the
4 population of a county, city or town as determined by the most recent United
5 States decennial census plus any revisions to the decennial census certified
6 by the United States bureau of the census shall be used as the basis for
7 apportioning monies pursuant to subsection D of this section.

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

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

31 ~~L.~~ M. For the purposes of this section, "community college district"
32 means a community college district that is established pursuant to sections
33 15-1402 and 15-1403 and that is a political subdivision of this state and,
34 unless otherwise specified, includes a community college district established
35 pursuant to section 15-1402.01 and a provisional community college district
36 established pursuant to section 15-1409.

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

39 42-5031.01. Distribution of revenues for Indian tribal
40 postsecondary educational institutions;
41 definition

42 A. Subject to **THE LIMITATION UNDER** subsection C of this section, each
43 month the state treasurer shall transmit to the treasurer or other designated
44 depository of each qualifying Indian tribe the amount of transaction
45 privilege tax revenues received pursuant to this article in the preceding

1 month from all sources located on the Indian reservation established for the
2 qualifying Indian tribe as determined pursuant to section 42-5029, subsection
3 A, paragraph 3.

4 B. The monies distributed pursuant to this section are for the
5 exclusive purpose of supporting the maintenance, renewal and capital expenses
6 of one or more community colleges in this state that are owned, operated or
7 chartered by each qualifying Indian tribe on its own Indian reservation.
8 Before receiving any monies under this section, a qualifying Indian tribe
9 shall enter into an initial compact with this state on or before September 1,
10 2012, signed by the governor, to account for the use of monies distributed
11 pursuant to this section. The compact shall:

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

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

20 3. Provide for audits by the auditor general of the use of the monies.
21 The auditor general shall submit copies of each audit to the joint
22 legislative budget committee.

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

27 C. ~~Notwithstanding subsection A of this section,~~ The state treasurer
28 shall not transmit **UNDER THIS SECTION** in any fiscal year more than one
29 million seven hundred fifty thousand dollars or more than one-tenth of
30 transaction privilege tax revenues received pursuant to this article from all
31 sources located on the reservation, whichever is less.

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

36 Sec. 3. Section 42-6010, Arizona Revised Statutes, is amended to read:
37 **42-6010. Retail business location municipal tax incentives;**
38 **prohibition; penalty; exceptions; definitions**

39 A. If at least sixty-five per cent of the land area within a city's or
40 town's exterior boundaries is located within the exterior boundary of a
41 metropolitan statistical area having a population of more than two million
42 persons, the city or town shall not offer or provide a tax incentive to a
43 business entity as an inducement or in exchange for locating or relocating a
44 retail business facility in the city or town.

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

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

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

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

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

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

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

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

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

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

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

1 G. For the purposes of this section:
2 1. "Metropolitan statistical area" means a geographical area
3 consisting of cities, towns and other populated areas defined for federal
4 statistical and census purposes by the United States office of management and
5 budget with technical assistance from the United States bureau of the census.
6 2. "Retail business facility" means a store, warehouse or other
7 improvement to real estate where at least one-half of the business conducted
8 on the premises consists of retail sales of tangible personal property to the
9 ultimate consumer, measured by either the number of employees assigned to
10 retail sales or the square footage of the facility used for retail sales.
11 For the purposes of this paragraph, retail sales do not include:
12 (a) Sales of food and beverage for consumption on the premises of the
13 facility.
14 (b) The distribution without charge of promotional products that
15 display the company logo or trademark.
16 (c) Sales solely to company employees.
17 3. "Tax incentive" means any waiver, exemption, deduction, credit,
18 rebate, discount, deferral or other abatement or reduction of the normal
19 municipal tax liability of an individual taxpayer that otherwise applies to
20 similar existing taxpayers and properties in the city or town, however
21 denominated, computed or applied, and generally understood as an inducement
22 for the taxpayer to locate a business facility or other operation in the city
23 or town.