State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2056

Introduced by
Representatives Cardenas: Espinoza

AN ACT

AMENDING SECTION 42-5010, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5077; RELATING TO TRANSACTION PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-5010, Arizona Revised Statutes, is amended to read:

42-5010. Rates; distribution base
A. The tax imposed by this article is levied and shall be collected at the following rates:
1. Five percent of the tax base as computed for the business of every person engaging or continuing in this state in the following business classifications described in article 2 of this chapter:
   (a) Transporting classification.
   (b) Utilities classification.
   (c) Telecommunications classification.
   (d) Pipeline classification.
   (e) Private car line classification.
   (f) Publication classification.
   (g) Job printing classification.
   (h) Prime contracting classification.
   (i) Amusement classification.
   (j) Restaurant classification.
   (k) Personal property rental classification.
   (l) Retail classification and amounts equal to retail transaction privilege tax due pursuant to section 42-5008.01.
   (m) DIGITAL PROPERTY CLASSIFICATION.
2. Five and one-half percent of the tax base as computed for the business of every person engaging or continuing in this state in:
   (a) The transient lodging classification described in section 42-5070.
   (b) The online lodging marketplace classification described in section 42-5076 who has entered into an agreement with the department to register for, or has otherwise obtained from the department, a license to collect tax pursuant to section 42-5005, subsection L.
3. Three and one-eighth percent of the tax base as computed for the business of every person engaging or continuing in this state in the mining classification described in section 42-5072.
4. Zero percent of the tax base as computed for the business of every person engaging or continuing in this state in the commercial lease classification described in section 42-5069.
B. Except as provided by subsection J of this section, twenty percent of the tax revenues collected at the rate prescribed by subsection A, paragraph 1 of this section from persons on account of engaging in business under the business classifications listed in subsection A, paragraph 1, subdivisions (a) through (h) of this section is designated as distribution base for purposes of section 42-5029.
C. Forty percent of the tax revenues collected at the rate prescribed by subsection A, paragraph 1 of this section from persons on account of engaging in business under the business classifications listed in subsection A, paragraph 1, subdivisions (i) through (m) of this section is designated as distribution base for purposes of section 42-5029.

D. Thirty-two percent of the tax revenues collected from persons on account of engaging in business under the business classification listed in subsection A, paragraph 3 of this section is designated as distribution base for purposes of section 42-5029.

E. Fifty-three and one-third percent of the tax revenues collected from persons on account of engaging in business under the business classification listed in subsection A, paragraph 4 of this section is designated as distribution base for purposes of section 42-5029.

F. Fifty percent of the tax revenues collected from persons on account of engaging in business under the business classification listed in subsection A, paragraph 2 of this section is designated as distribution base for purposes of section 42-5029.

G. In addition to the rates prescribed by subsection A of this section, if approved by the qualified electors voting at a statewide general election, an additional rate increment is imposed and shall be collected through June 30, 2021. The taxpayer shall pay taxes pursuant to this subsection at the same time and in the same manner as under subsection A of this section. The department shall separately account for the revenues collected with respect to the rates imposed pursuant to this subsection and the state treasurer shall distribute all of those revenues in the manner prescribed by section 42-5029, subsection E. The rates imposed pursuant to this subsection shall not be considered local revenues for purposes of article IX, section 21, Constitution of Arizona. The additional tax rate increment is levied at the rate of six-tenths of one per cent of the tax base of every person engaging or continuing in this state in a business classification listed in subsection A, paragraph 1 of this section.

H. Any increase in the rate of tax that is imposed by this chapter and that is enacted by the legislature or by a vote of the people does not apply with respect to contracts entered into by prime contractors or pursuant to written bids made by prime contractors on or before the effective date of the legislation or the date of the election enacting the increase. To qualify for the exemption under this subsection, the prime contractor must maintain sufficient documentation, in a manner and form prescribed by the department, to verify the date of the contract or written bid.
I. For taxpayers taxable under this chapter other than prime contractors taxable pursuant to section 42-5075:
   1. Any increase in the rate of tax that is levied by this article or article 2 of this chapter enacted by the legislature or by a vote of the people does not apply for a period of one hundred twenty days from the date of the tax rate increase to the gross proceeds of sales or gross income from the business of the taxpayer with respect to written contracts entered into before the effective date of the tax rate increase unless the taxpayer has entered into a contract that contains a provision that entitles the taxpayer to recover from the purchaser the amount of the additional tax levied.

   2. The provisions of this subsection apply without regard to the accounting method used by the taxpayer to report the taxes imposed under article 2 of this chapter.

   3. The provisions of this subsection shall not be considered in determining the rate of tax imposed under chapter 6, article 3 of this title.

J. Zero percent of the tax revenues that are collected at the rate prescribed by subsection A, paragraph 1 of this section from persons on account of engaging in business under the business classification listed in subsection A, paragraph 1, subdivision (h) of this section, and that are subject to any distribution required by section 42-5032.02, is designated as distribution base for the purposes of section 42-5029 until the total amount subject to distribution pursuant to section 42-5032.02 has reached the maximum amount prescribed by section 42-5032.02, subsection C. Thereafter, twenty percent of the remaining tax revenues is designated as distribution base for the purposes of section 42-5029 as provided by subsection B of this section.

Sec. 2. Title 42, chapter 5, article 2, Arizona Revised Statutes, is amended by adding section 42-5077, to read:

42-5077. Digital property classification; definition

A. THE DIGITAL PROPERTY CLASSIFICATION IS COMPRISED OF THE BUSINESS OF REMOTELY SELLING, INSTALLING, MAINTAINING, SERVICING OR REPAIRING DIGITAL PROPERTY TO LOCATIONS IN THIS STATE. THE TAX BASE FOR THE DIGITAL PROPERTY CLASSIFICATION IS THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED BY THE REMOTE SELLER FROM SALES OF DIGITAL PROPERTY TO LOCATIONS IN THIS STATE.

B. THE DIGITAL PROPERTY CLASSIFICATION DOES NOT INCLUDE REMOTE SELLERS THAT HAD GROSS ANNUAL RECEIPTS IN TOTAL REMOTE SALES OF DIGITAL PROPERTY IN THE UNITED STATES IN THE PRECEDING CALENDAR YEAR OF LESS THAN ONE MILLION DOLLARS. FOR THE PURPOSES OF DETERMINING WHETHER THE THRESHOLD PRESCRIBED IN THIS SUBSECTION IS MET, THE GROSS ANNUAL RECEIPTS FROM REMOTE SALES OF TWO OR MORE PERSONS SHALL BE AGGREGATED IF THE PERSONS EITHER:
1. ARE RELATED TO THE REMOTE SELLER WITHIN THE MEANING OF SECTION
2 267(b) AND (c) OR SECTION 707(b)(1) OF THE INTERNAL REVENUE CODE.
3 2. HAVE ONE OR MORE OWNERSHIP RELATIONSHIPS AND THOSE RELATIONSHIPS
4 WERE DESIGNED WITH A PRINCIPAL PURPOSE OF AVOIDING THIS SECTION.
5 C. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TYPES OF
6 PROPERTY CONSTITUTE DIGITAL PROPERTY IF TRANSFERRED ELECTRONICALLY AS
7 DIGITALLY ENCODED FILES BY THE REMOTE SELLER AND RECEIVED BY A PURCHASER
8 ON ELECTRONIC EQUIPMENT THAT STORES, ORGANIZES AND PLAYS ELECTRONIC FILES:
9 1. MUSIC.
10 2. RINGTONES.
11 3. MOTION PICTURES AND VIDEOS.
12 4. DIGITAL BOOKS.
13 5. AUDIO AND VIDEO WORKS AND SIMILAR PRODUCTS.
14 6. ONLINE NEWSPAPERS AND MAGAZINES.
15 D. THE FOLLOWING TYPES OF PROPERTY DO NOT CONSTITUTE DIGITAL
16 PROPERTY FOR THE PURPOSES OF THIS SECTION:
17 1. TANGIBLE PREWRITTEN COMPUTER SOFTWARE.
18 2. VIDEO PROGRAMMING SERVICES, INCLUDING VIDEO ON DEMAND TELEVISION
19 SERVICES.
20 3. BROADCASTING SERVICES, INCLUDING CONTENT TO PROVIDE BROADCASTING
21 SERVICES.
22 4. PERSONAL DIGITAL PHOTOGRAPHY.
23 E. THE TAX PURSUANT TO THE DIGITAL PROPERTY CLASSIFICATION APPLIES
24 WITH RESPECT TO TRANSACTIONS INVOLVING ELECTRONIC DELIVERY AT AN ADDRESS
25 IN THIS STATE. IF THE PROPERTY IS NOT RECEIVED BY THE PURCHASER AT THE
26 PURCHASER'S ADDRESS IN THIS STATE, THE TRANSACTION IS SUBJECT TO THE TAX
27 IF EITHER THE SELLER'S BUSINESS RECORDS OR THE ADDRESS PROVIDED BY THE
28 PURCHASER DURING THE SALE INDICATES A BILLING ADDRESS IN THIS STATE.
29 F. FOR THE PURPOSES OF THIS SECTION, "REMOTE SALE" MEANS A TRANSFER
30 OF DIGITAL FILES FOR CONSIDERATION TO A LOCATION IN THIS STATE FROM A
31 SELLER LOCATED OUTSIDE THIS STATE.