

REFERENCE TITLE: local food tax; equality

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

## **HB 2484**

Introduced by  
Representatives Shope: Allen J, Coleman, John, Mitchell

AN ACT

AMENDING SECTION 42-6004, ARIZONA REVISED STATUTES; AMENDING TITLE 42,  
CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6015;  
RELATING TO LOCAL TRANSACTION PRIVILEGE TAX.

(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  
8 by 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  
13 individual.

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

17 3. Sales of warranty or service contracts.

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

21 5. Interest on finance contracts.

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

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

33 ~~8.~~ 7. Orthodontic devices dispensed by a dental professional who  
34 is licensed under title 32, chapter 11 to a patient as part of the  
35 practice of dentistry.

36 ~~9.~~ 8. Sales of internet access services to the person's  
37 subscribers and customers. For the purposes of this paragraph:

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

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

5 ~~10.~~ 9. The gross proceeds of sales or gross income retained by the  
6 Arizona exposition and state fair board from ride ticket sales at the  
7 annual Arizona state fair.

8 ~~11.~~ 10. Leasing real property between affiliated companies,  
9 businesses, persons or reciprocal insurers. For the purposes of this  
10 paragraph:

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

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

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

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

24 (e) "Reciprocal insurer" has the same meaning prescribed in section  
25 20-762.

26 ~~12.~~ 11. The gross proceeds of sales or gross income derived from a  
27 contract for the installation, assembly, repair or maintenance of  
28 machinery, equipment or other tangible personal property that is described  
29 in section 42-5061, subsection B and that has independent functional  
30 utility, pursuant to the following provisions:

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

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

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

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

43 (b) The deduction provided in this paragraph does not include gross  
44 proceeds of sales or gross income from the portion of any contracting  
45 activity that consists of the development of, or modification to, real

1 property in order to facilitate the installation, assembly, repair,  
2 maintenance or removal of machinery, equipment or other tangible personal  
3 property described in section 42-5061, subsection B.

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

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

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

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

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

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

22 ~~13.~~ 12. The leasing or renting of certified ignition interlock  
23 devices installed pursuant to the requirements prescribed by section  
24 28-1461. For the purposes of this paragraph, "certified ignition  
25 interlock device" has the same meaning prescribed in section 28-1301.

26 ~~14.~~ 13. Computer data center equipment sold to the owner, operator  
27 or qualified colocation tenant of a computer data center that is certified  
28 by the Arizona commerce authority under section 41-1519 or an authorized  
29 agent of the owner, operator or qualified colocation tenant during the  
30 qualification period for use in the qualified computer data center. For  
31 the purposes of this paragraph, "computer data center", "computer data  
32 center equipment", "qualification period" and "qualified colocation  
33 tenant" have the same meanings prescribed in section 41-1519.

34 ~~15.~~ 14. The gross proceeds of sales or gross income derived from a  
35 contract with the owner of real property or improvements to real property  
36 for the maintenance, repair, replacement or alteration of existing  
37 property, except as specified in this paragraph. The gross proceeds of  
38 sales or gross income derived from a de minimis amount of modification  
39 activity does not subject the contract or any part of the contract to tax.  
40 For the purposes of this paragraph:

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

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

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

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

15 (i) Community facilities districts, fire districts, county  
16 television improvement districts, community park maintenance districts,  
17 cotton pest control districts, hospital districts, pest abatement  
18 districts, health service districts, agricultural improvement districts,  
19 county free library districts, county jail districts, county stadium  
20 districts, special health care districts, public health services  
21 districts, theme park districts or revitalization districts.

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

26 ~~16.~~ 15. Monitoring services relating to an alarm system as defined  
27 in section 32-101.

28 ~~17.~~ 16. Tangible personal property, job printing or publications  
29 sold to or purchased by, or tangible personal property leased, rented or  
30 licensed for use to or by, a qualifying health sciences educational  
31 institution as defined in section 42-5001.

32 ~~18.~~ 17. The transfer of title or possession of coal back and forth  
33 between an owner or operator of a power plant and a person who is  
34 responsible for refining coal if both of the following apply:

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

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

43 ~~19. The gross proceeds of sales or gross income from sales of low or~~  
44 ~~reduced cost articles of food or drink to eligible elderly or homeless~~  
45 ~~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 that is approved by the food and nutrition service of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases are made with the benefits issued pursuant to the supplemental nutrition assistance program.~~

~~20.~~ 18. Tangible personal property incorporated or fabricated into a project described in paragraph ~~15~~ 14 of this subsection, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

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

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

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

~~21.~~ 19. The charges for the leasing or renting of space to make attachments to utility poles as follows:

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

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

~~22.~~ 20. Until March 1, 2017, the gross proceeds of sales or gross income derived from entry fees paid by participants for events that consist of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

~~23.~~ 21. The gross proceeds of sales or gross income derived from entry fees paid by participants for events that are operated or conducted by nonprofit organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code and of which no part of the organization's net earnings inures to the benefit of any private shareholder or individual, if the event consists of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

B. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee,

1 however denominated, on natural gas or liquefied petroleum gas used to  
2 propel a motor vehicle.

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

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

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

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

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

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

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

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

30 (b) The attributable amount is equal to the total amount of  
31 development fees paid by the taxpayer or by a contractor providing  
32 services to the taxpayer and the total development fees credited in  
33 exchange for the construction of, contribution to or dedication of real  
34 property for providing public infrastructure, public safety or other  
35 public services necessary to the development. The real property must be  
36 the subject of the development fees.

37 (c) "Development fees" means fees imposed to offset capital costs  
38 of providing public infrastructure, public safety or other public services  
39 to a development and authorized pursuant to section 9-463.05, section  
40 11-1102 or title 48 regardless of the jurisdiction to which the fees are  
41 paid.

42 7. Any amount attributable to fees collected by transportation  
43 network companies issued a permit pursuant to section 28-9552.

1           8. Transporting for hire persons by transportation network company  
2 drivers on transactions involving transportation network services as  
3 defined in section 28-9551.

4           9. Transporting for hire persons by vehicle for hire companies that  
5 are issued permits pursuant to section 28-9503.

6           10. Transporting for hire persons by vehicle for hire drivers on  
7 transactions involving vehicle for hire services as defined in section  
8 28-9501.

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

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

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

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

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

26           G. For the purposes of this section:

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

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

32           3. "Telecommunication services" means transmitting or relaying  
33 sound, visual image, data, information, images or material over lines,  
34 wires or cables by radio signal, light beam, telephone, telegraph or other  
35 electromagnetic means.

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

39           Sec. 2. Title 42, chapter 6, article 1, Arizona Revised Statutes,  
40 is amended by adding section 42-6015, to read:

41           42-6015. Municipal transaction privilege tax; food; exemption

42           A. IF A CITY, TOWN OR OTHER TAXING JURISDICTION IMPOSES A  
43 TRANSACTION PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE,  
44 HOWEVER DENOMINATED, ON:



1           1. THE RETAIL SALE OF FOOD, THE TAX MUST BE APPLIED UNIFORMLY WITH  
2 RESPECT TO ALL FOOD, AND AN ADDITIONAL TAX OR FEE DIFFERENTIAL MAY NOT BE  
3 ASSESSED OR APPLIED WITH RESPECT TO ANY SPECIFIC FOOD ITEM.

4           2. THE SALE OF FOOD FOR CONSUMPTION ON THE PREMISES, AS DEFINED IN  
5 SECTION 42-5101, THE TAX MUST BE APPLIED UNIFORMLY WITH RESPECT TO ALL  
6 FOOD ITEMS, AND AN ADDITIONAL TAX OR FEE DIFFERENTIAL MAY NOT BE ASSESSED  
7 OR APPLIED WITH RESPECT TO ANY SPECIFIC FOOD ITEM.

8           B. IF A CITY, TOWN OR OTHER TAXING JURISDICTION EXEMPTS SALES OF  
9 FOOD FROM ITS TAX OR IMPOSES A DIFFERENT TAX RATE WITH RESPECT TO SALES OF  
10 FOOD AND NONFOOD ITEMS, IT MUST USE THE DEFINITION OF FOOD PRESCRIBED IN  
11 RULE ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 42-5106.

12           C. A CITY, TOWN OR OTHER TAXING JURISDICTION MAY NOT LEVY A  
13 TRANSACTION PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE,  
14 HOWEVER DENOMINATED, WITH RESPECT TO:

15           1. THE MANUFACTURE, WHOLESALE OR DISTRIBUTION TO OR AMONG ANY  
16 WHOLESALERS, DISTRIBUTORS OR RETAILERS, OF FOOD OR FOOD FOR CONSUMPTION ON  
17 THE PREMISES AS DEFINED IN SECTION 42-5101 AND DESCRIBED PURSUANT TO  
18 SECTION 42-5106.

19           2. ANY CONTAINER OR PACKAGING FOR TRANSPORTING, PROTECTING OR  
20 CONSUMING FOOD OR FOOD FOR CONSUMPTION ON THE PREMISES AS DEFINED IN  
21 SECTION 42-5101 AND DESCRIBED IN SECTION 42-5106.

22           3. THE SALE OF FOOD OR OTHER ITEMS PURCHASED WITH UNITED STATES  
23 DEPARTMENT OF AGRICULTURE FOOD STAMP COUPONS ISSUED UNDER THE FOOD STAMP  
24 ACT OF 1977 (P.L. 95-113; 91 STAT. 958) OR FOOD INSTRUMENTS ISSUED UNDER  
25 SECTION 17 OF THE CHILD NUTRITION ACT (P.L. 95-627; 92 STAT. 3603;  
26 P.L. 99-661, SECTION 4302; 42 UNITED STATES CODE SECTION 1786) BUT MAY  
27 IMPOSE SUCH A TAX CONSISTENT WITH THIS SECTION ON OTHER SALES OF FOOD.

28           4. THE SALE OF LOW OR REDUCED-COST ARTICLES OF FOOD OR DRINK TO  
29 ELIGIBLE ELDERLY OR HOMELESS PERSONS OR PERSONS WITH A DISABILITY BY A  
30 BUSINESS SUBJECT TO TAX UNDER THE RESTAURANT CLASSIFICATION PURSUANT TO  
31 SECTION 42-5074 THAT CONTRACTS WITH THE DEPARTMENT OF ECONOMIC SECURITY  
32 AND THAT IS APPROVED BY THE FOOD AND NUTRITION SERVICE OF THE UNITED  
33 STATES DEPARTMENT OF AGRICULTURE PURSUANT TO THE SUPPLEMENTAL NUTRITION  
34 ASSISTANCE PROGRAM ESTABLISHED BY THE FOOD AND NUTRITION ACT OF 2008  
35 (7 UNITED STATES CODE SECTIONS 2011 THROUGH 2036c), IF THE PURCHASES ARE  
36 MADE WITH THE BENEFITS ISSUED PURSUANT TO THE SUPPLEMENTAL NUTRITION  
37 ASSISTANCE PROGRAM.