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)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-6004, Arizona Revised Statutes, is amended to read:

42-6004. Exemption from municipal tax; definitions

A. A city, town or special taxing district shall not levy a transaction privilege, sales, use or other similar tax on:
   1. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
   2. Interstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.
   3. Sales of warranty or service contracts.
   4. Sales of motor vehicles to nonresidents of this state for use outside this state if the motor vehicle dealer ships or delivers the motor vehicle to a destination outside this state.
   5. Interest on finance contracts.
   6. Dealer documentation fees on the sales of motor vehicles.
   7. Sales of food or other items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786) but may impose such a tax on other sales of food. If a city, town or special taxing district exempts sales of food from its tax or imposes a different transaction privilege rate on the gross proceeds of sales or gross income from sales of food and nonfood items, it shall use the definition of food prescribed by rule adopted by the department pursuant to section 42-5106.
   8. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.
   9. Sales of internet access services to the person's subscribers and customers. For the purposes of this paragraph:
      (a) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.
(b) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a 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. 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.

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.

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.

14. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. 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.

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 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 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.
   15. Monitoring services relating to an alarm system as defined
in section 32-101.
   16. 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.
   17. 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.
   18. 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 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,
however denominated, on natural gas or liquefied petroleum gas used to propel a motor vehicle.

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

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

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

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

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

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

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

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

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

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

7. Any amount attributable to fees collected by transportation network companies issued a permit pursuant to section 28-9552.
8. Transporting for hire persons by transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.

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

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

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

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

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

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

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

G. For the purposes of this section:

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

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

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

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

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

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

A. IF A CITY, TOWN OR OTHER TAXING JURISDICTION IMPOSES A TRANSACTION PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE, HOWEVER DENOMINATED, ON:
1. THE RETAIL SALE OF FOOD, THE TAX MUST BE APPLIED UNIFORMLY WITH
RESPECT TO ALL FOOD, AND AN ADDITIONAL TAX OR FEE DIFFERENTIAL MAY NOT BE
ASSESSED OR APPLIED WITH RESPECT TO ANY SPECIFIC FOOD ITEM.

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

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

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

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

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

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

4. THE SALE 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 THE RESTAURANT CLASSIFICATION PURSUANT TO
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
(7 UNITED STATES CODE SECTIONS 2011 THROUGH 2036c), IF THE PURCHASES ARE
MADE WITH THE BENEFITS ISSUED PURSUANT TO THE SUPPLEMENTAL NUTRITION
ASSISTANCE PROGRAM.