

REFERENCE TITLE: TPT; digital goods and services.

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1392

Introduced by
Senators Farnsworth D: Yarbrough

AN ACT

AMENDING SECTIONS 42-5001, 42-5002, 42-5009, 42-5040 AND 42-5061, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6015; AMENDING SECTION 44-1263, ARIZONA REVISED STATUTES; RELATING TO STATE AND 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 42-5001, Arizona Revised Statutes, is amended to
3 read:

4 42-5001. Definitions

5 In this article and article 2 of this chapter, unless the context
6 otherwise requires:

7 1. "Business" includes all activities or acts, personal or
8 corporate, engaged in or caused to be engaged in with the object of gain,
9 benefit or advantage, either directly or indirectly, but does not include
10 either:

11 (a) Casual activities or sales.

12 (b) The transfer of electricity from a solar photovoltaic
13 generation system to an electric utility distribution system.

14 2. "COMPUTER" MEANS AN ELECTRONIC DEVICE THAT ACCEPTS INFORMATION
15 IN A DIGITAL OR SIMILAR FORM AND MANIPULATES IT FOR A RESULT BASED ON A
16 SEQUENCE OF INSTRUCTIONS.

17 3. "COMPUTER SOFTWARE" MEANS A PERPETUAL OR SUBSCRIPTION LICENSE TO
18 A SET OF CODED INSTRUCTIONS DESIGNED TO CAUSE A COMPUTER OR AUTOMATIC DATA
19 PROCESSING EQUIPMENT TO PERFORM A TASK.

20 4. "COMPUTER SOFTWARE MAINTENANCE CONTRACT" MEANS A CONTRACT THAT
21 OBLIGATES A COMPUTER SOFTWARE VENDOR TO PROVIDE CUSTOMERS WITH FUTURE
22 UPDATES OR UPGRADES TO COMPUTER SOFTWARE.

23 ~~2.~~ 5. "Distribution base" means the portion of the revenues
24 derived from the tax levied by this article and articles 5 and 8 of this
25 chapter designated for distribution to counties, municipalities and other
26 purposes according to section 42-5029, subsection D.

27 ~~3.~~ 6. "Engaging", when used with reference to engaging or
28 continuing in business, includes the exercise of corporate or franchise
29 powers.

30 ~~4.~~ 7. "Gross income" means the gross receipts of a taxpayer
31 derived from trade, business, commerce or sales and the value proceeding
32 or accruing from the sale of tangible personal property or service, or
33 both, and without any deduction on account of losses.

34 ~~5.~~ 8. "Gross proceeds of sales" means the value proceeding or
35 accruing from the sale of tangible personal property without any deduction
36 on account of the cost of property sold, expense of any kind or losses,
37 but cash discounts allowed and taken on sales are not included as gross
38 income.

39 ~~6.~~ 9. ~~"Gross income"~~ and ~~"gross proceeds of sales"~~ do not
40 include goods, wares or merchandise, or value thereof, returned by
41 customers if the sale price is refunded either in cash or by credit, nor
42 the value of merchandise traded in on the purchase of new merchandise when
43 the trade-in allowance is deducted from the sales price of the new
44 merchandise before completion of the sale.

1 ~~7-~~ 10. "Gross receipts" means the total amount of the sale, lease
2 or rental price, as the case may be, of the retail sales of retailers,
3 including any services that are a part of the sales, valued in money,
4 whether received in money or otherwise, including all receipts, cash,
5 credits and property of every kind or nature, and any amount for which
6 credit is allowed by the seller to the purchaser without any deduction
7 from the amount on account of the cost of the property sold, materials
8 used, labor or service performed, interest paid, losses or any other
9 expense. Gross receipts do not include cash discounts allowed and taken
10 nor the sale price of property returned by customers if the full sale
11 price is refunded either in cash or by credit.

12 ~~8-~~ 11. "Person" or "company" includes an individual, firm,
13 partnership, joint venture, association, corporation, estate or trust,
14 this state, any county, city, town, district, other than a school
15 district, or other political subdivision and any other group or
16 combination acting as a unit, and the plural as well as the singular
17 number.

18 12. "PREWRITTEN COMPUTER SOFTWARE":

19 (a) MEANS COMPUTER SOFTWARE THAT IS NOT DESIGNED AND DEVELOPED BY
20 THE AUTHOR OR OTHER CREATOR TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER
21 TO A SALE.

22 (b) INCLUDES:

23 (i) RELATED COMPUTER SOFTWARE MAINTENANCE CONTRACTS, WHETHER SOLD
24 TOGETHER WITH OR SEPARATELY FROM THE COMPUTER SOFTWARE.

25 (ii) COMBINATIONS OF TWO OR MORE PREWRITTEN COMPUTER SOFTWARE
26 PROGRAMS OR PREWRITTEN PORTIONS OF COMPUTER SOFTWARE PROGRAMS.

27 (iii) SOFTWARE DESIGNED AND DEVELOPED BY THE AUTHOR OR OTHER
28 CREATOR TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER IF IT IS
29 SUBSEQUENTLY SOLD TO A PERSON OTHER THAN THE ORIGINAL PURCHASER.

30 (iv) PREWRITTEN COMPUTER SOFTWARE, OR A PORTION OF PREWRITTEN
31 COMPUTER SOFTWARE, THAT IS MODIFIED OR ENHANCED TO ANY DEGREE, IF THE
32 MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
33 SPECIFICATIONS OF A SPECIFIC PURCHASER, BUT FOR WHICH THE SELLER, LESSOR
34 OR LICENSOR'S BOOKS ARE NOT KEPT SO AS TO SHOW SEPARATELY THE GROSS
35 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE MODIFICATION OR
36 ENHANCEMENT.

37 (c) DOES NOT INCLUDE PREWRITTEN COMPUTER SOFTWARE, OR A PREWRITTEN
38 PORTION OF COMPUTER SOFTWARE, THAT IS MODIFIED OR ENHANCED TO ANY DEGREE,
39 IF THE MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
40 SPECIFICATIONS OF A SPECIFIC PURCHASER, AND FOR WHICH THE SELLER, LESSOR
41 OR LICENSOR'S BOOKS ARE KEPT SO AS TO SHOW SEPARATELY THE GROSS PROCEEDS
42 OF SALES OR GROSS INCOME DERIVED FROM THE MODIFICATION OR ENHANCEMENT.

43 ~~9-~~ 13. "Qualifying community health center":

44 (a) Means an entity that is recognized as nonprofit under section
45 501(c)(3) of the United States internal revenue code, that is a

1 community-based, primary care clinic that has a community-based board of
2 directors and that is either:

3 (i) The sole provider of primary care in the community.

4 (ii) A nonhospital affiliated clinic that is located in a federally
5 designated medically underserved area in this state.

6 (b) Includes clinics that are being constructed as qualifying
7 community health centers.

8 ~~10.~~ 14. "Qualifying health care organization" means an entity that
9 is recognized as nonprofit under section 501(c) of the United States
10 internal revenue code and that uses, saves or invests at least eighty ~~per~~
11 ~~cent~~ PERCENT of all monies that it receives from all sources each year
12 only for health and medical related educational and charitable services,
13 as documented by annual financial audits prepared by an independent
14 certified public accountant, performed according to generally accepted
15 auditing standards and filed annually with the department. Monies that
16 are used, saved or invested to lease, purchase or construct a facility for
17 health and medical related education and charitable services are included
18 in the eighty ~~per cent~~ PERCENT requirement.

19 ~~11.~~ 15. "Qualifying health sciences educational institution" means
20 an entity that is recognized as nonprofit under section 501(c) of the
21 United States internal revenue code and that solely provides graduate and
22 postgraduate education in the health sciences. For the purposes of this
23 paragraph, "health sciences" includes medicine, nursing, physician's
24 assistant studies, pharmacy, physical therapy, occupational therapy,
25 biomedical sciences, podiatry, clinical psychology, cardiovascular
26 science, nurse anesthesia, dentistry, optometry and veterinary medicine.

27 ~~12.~~ 16. "Qualifying hospital" means any of the following:

28 (a) A licensed hospital ~~which~~ THAT is organized and operated
29 exclusively for charitable purposes, no part of the net earnings of which
30 inures to the benefit of any private shareholder or individual.

31 (b) A licensed nursing care institution or a licensed residential
32 care institution or a residential care facility operated in conjunction
33 with a licensed nursing care institution or a licensed kidney dialysis
34 center, ~~which~~ THAT provides medical services, nursing services or health
35 related services and is not used or held for profit.

36 (c) A hospital, nursing care institution or residential care
37 institution ~~which~~ THAT is operated by the federal government, this state
38 or a political subdivision of this state.

39 (d) A facility that is under construction and that on completion
40 will be a facility under subdivision (a), (b) or (c) of this paragraph.

41 17. "REMOTELY ACCESSED" MEANS SPECIFIED DIGITAL GOODS OR SPECIFIED
42 DIGITAL SERVICES THAT ARE STREAMED, ACCESSED OR VIEWED THROUGH THE
43 INTERNET OR AN EQUIVALENT OR SUCCESSOR PROTOCOL.

1 ~~13.~~ 18. "Retailer" includes every person engaged in the business
2 classified under the retail classification pursuant to section 42-5061
3 and, when in the opinion of the department it is necessary for the
4 efficient administration of this article, includes dealers, distributors,
5 supervisors, employers and salesmen, representatives, peddlers or
6 canvassers as the agents of the dealers, distributors, supervisors or
7 employers under whom they operate or from whom they obtain the tangible
8 personal property sold by them, whether in making sales on their own
9 behalf or on behalf of the dealers, distributors, supervisors or
10 employers.

11 ~~14.~~ 19. "Sale" means any transfer of title or possession, or both,
12 exchange, barter, lease or rental, conditional or otherwise, in any manner
13 or by any means whatever, including consignment transactions and auctions,
14 of tangible personal property or other activities taxable under this
15 chapter, for a consideration, and includes:

16 (a) Any transaction by which the possession of property is
17 transferred but the seller retains the title as security for the payment
18 of the price.

19 (b) Fabricating tangible personal property for consumers who
20 furnish either directly or indirectly the materials used in the
21 fabrication work.

22 (c) Furnishing, preparing or serving for a consideration any
23 tangible personal property consumed on the premises of the person
24 furnishing, preparing or serving the tangible personal property.

25 ~~15.~~ 20. "Solar daylighting" means a device that is specifically
26 designed to capture and redirect the visible portion of the solar beam,
27 while controlling the infrared portion, for use in illuminating interior
28 building spaces in lieu of artificial lighting.

29 ~~16.~~ 21. "Solar energy device" means a system or series of
30 mechanisms designed primarily to provide heating, to provide cooling, to
31 produce electrical power, to produce mechanical power, to provide solar
32 daylighting or to provide any combination of the foregoing by means of
33 collecting and transferring solar generated energy into such uses either
34 by active or passive means, including wind generator systems that produce
35 electricity. Solar energy systems may also have the capability of storing
36 solar energy for future use. Passive systems shall clearly be designed as
37 a solar energy device, such as a trombe wall, and not merely as a part of
38 a normal structure, such as a window.

39 22. "SPECIFIED DIGITAL GOODS" MEANS:

40 (a) DIGITAL AUDIOVISUAL WORKS, WHICH MEAN A SERIES OF RELATED
41 DIGITAL IMAGES THAT, WHEN SHOWN IN SUCCESSION, IMPART AN IMPRESSION OF
42 MOTION, TOGETHER WITH ACCOMPANYING SOUNDS, IF ANY.

43 (b) DIGITAL AUDIO WORDS, WHICH MEAN WORKS THAT RESULT FROM THE
44 FIXATION OF A SERIES OF MUSICAL, SPOKEN OR OTHER DIGITAL SOUNDS, INCLUDING
45 RINGTONES. FOR THE PURPOSES OF THIS SUBDIVISION, "RINGTONES" MEANS

1 DIGITIZED SOUND FILES THAT ARE DOWNLOADED ONTO A DEVICE AND THAT MAY BE
2 USED TO ALERT THE CUSTOMER WITH RESPECT TO A COMMUNICATION.

3 (c) DIGITAL BOOKS, WHICH MEAN DIGITAL WORKS THAT ARE GENERALLY
4 RECOGNIZED IN THE ORDINARY AND USUAL SENSE AS BOOKS.

5 23. "SPECIFIED DIGITAL SERVICES" MEANS CLOUD-BASED OR REMOTELY
6 ACCESSED COMPUTING SERVICES, INCLUDING:

7 (a) SOFTWARE AS A SERVICE, WHICH MEANS THE CAPABILITY PROVIDED TO A
8 PURCHASER TO USE THE PROVIDER'S APPLICATIONS RUNNING ON A CLOUD
9 INFRASTRUCTURE AND:

10 (i) THE APPLICATIONS ARE ACCESSIBLE FROM VARIOUS CLIENT DEVICES
11 THROUGH EITHER A THIN CLIENT INTERFACE, SUCH AS A WEB BROWSER, WEB-BASED
12 E-MAIL OR A PROGRAM INTERFACE.

13 (ii) THE PURCHASER DOES NOT MANAGE OR CONTROL THE UNDERLYING CLOUD
14 INFRASTRUCTURE INCLUDING NETWORK, SERVERS, OPERATING SYSTEMS, STORAGE OR
15 INDIVIDUAL APPLICATION CAPABILITIES OTHER THAN LIMITED USER-SPECIFIC
16 APPLICATION CONFIGURATION SETTINGS.

17 (b) PLATFORM AS A SERVICE, WHICH MEANS THE CAPABILITY PROVIDED TO A
18 PURCHASER TO DEPLOY ONTO THE CLOUD INFRASTRUCTURE PURCHASER-CREATED OR
19 ACQUIRED APPLICATIONS CREATED USING PROGRAMMING LANGUAGES, LIBRARIES,
20 SERVICES AND TOOLS SUPPORTED BY THE PROVIDER AND THE PURCHASER:

21 (i) DOES NOT MANAGE OR CONTROL THE UNDERLYING CLOUD INFRASTRUCTURE
22 INCLUDING NETWORK, SERVERS, OPERATING SYSTEMS OR STORAGE.

23 (ii) HAS CONTROL OVER THE DEPLOYED APPLICATIONS AND CONFIGURATION
24 SETTINGS FOR THE APPLICATION-HOSTING ENVIRONMENT.

25 (c) INFRASTRUCTURE AS A SERVICE, WHICH MEANS THE CAPABILITY
26 PROVIDED TO THE PURCHASER TO PROVISION PROCESSING, STORAGE, NETWORKS AND
27 OTHER FUNDAMENTAL COMPUTING RESOURCES IF THE PURCHASER:

28 (i) IS ABLE TO DEPLOY AND RUN ARBITRARY SOFTWARE, WHICH MAY INCLUDE
29 OPERATING SYSTEMS AND APPLICATION.

30 (ii) DOES NOT MANAGE OR CONTROL THE UNDERLYING CLOUD
31 INFRASTRUCTURE.

32 (iii) HAS CONTROL OVER OPERATING SYSTEMS, STORAGE AND DEPLOYED
33 APPLICATIONS.

34 (iv) MAY HAVE LIMITED CONTROL OF SELECT NETWORKING COMPONENTS SUCH
35 AS FIREWALLS.

36 (d) APPLICATION SERVICE PROVIDERS, WHICH MEAN PERSONS THAT OFFER
37 PURCHASERS ACCESS TO THIRD-PARTY SOFTWARE APPLICATIONS OVER THE INTERNET
38 USING A STANDARD PROTOCOL SUCH AS HTTP.

39 (e) HOSTING SERVICES, WHICH MEAN:

40 (i) THE OPERATION OF ONE OR MORE DATA CENTERS THAT ENABLE A
41 PERSON'S CUSTOMERS TO ACCESS WEBSITES, E-MAIL, FILES, IMAGES, GAMES OR
42 OTHER APPLICATIONS OR CONTENT USING DEDICATED OR SHARED SERVERS CONNECTED
43 TO THE INTERNET.

1 (ii) PROVIDING COLOCATION SERVICES IN WHICH A PERSON PROVIDES TO
2 CUSTOMERS THE DATA CENTER ENVIRONMENT, INCLUDING THE BUILDING, AIR
3 HANDLING, POWER, INTERNET ACCESS AND PHYSICAL SECURITY, AND CUSTOMERS
4 PROVIDE THEIR OWN SERVERS.

5 (iii) PROVIDING A PERSON'S CUSTOMERS WITH ACCESS TO WEBSITES,
6 E-MAIL, FILES, IMAGES, GAMES OR OTHER APPLICATIONS OR CONTENT USING
7 DEDICATED OR SHARED SERVERS WITHIN A COLOCATION FACILITY THAT IS NOT OWNED
8 BY THE PERSON.

9 (f) DATA STORAGE MANAGEMENT, WHICH MEANS PROVIDING A PURCHASER WITH
10 SERVICES TO STORE AND RETRIEVE DATA, SOFTWARE AND OTHER DIGITAL CONTENT ON
11 THE PROVIDER'S SERVERS.

12 (g) DATA PROCESSING AND INFORMATION SERVICES, WHICH MEAN SERVICES
13 THAT ALLOW DATA TO BE GENERATED, ACQUIRED, STORED, PROCESSED OR RETRIEVED
14 AND DELIVERED BY AN ELECTRONIC TRANSMISSION TO A PURCHASER IF THE
15 PURCHASER'S PRIMARY PURPOSE FOR THE UNDERLYING TRANSACTION IS THE
16 PROCESSED DATA OR INFORMATION.

17 (h) STREAMING SERVICES, WHICH MEAN SUBSCRIPTION-BASED ACCESS TO
18 MOTION PICTURES, TELEVISION PROGRAMS, MUSIC, BOOKS OR OTHER DIGITAL
19 CONTENT THROUGH THE INTERNET OR WIRELESSLY AS A STEADY, CONTINUOUS FLOW,
20 ALLOWING PLAYBACK TO PROCEED WHILE SUBSEQUENT DATA IS BEING RECEIVED, IF
21 THE SUBSCRIPTION DOES NOT INCLUDE DIGITAL PRODUCTS THAT ARE TRANSFERRED
22 ELECTRONICALLY.

23 (i) DIGITAL AUTHENTICATION SERVICES, WHICH MEAN ELECTRONIC SERVICES
24 USED TO CONFIRM THE IDENTITY OF PERSONS OR WEBSITES IN ORDER TO PROVIDE
25 SECURE ELECTRONIC COMMERCE AND COMMUNICATIONS, INCLUDING THE SERVICES AND
26 DIGITAL SECURE SOCKET LAYER CERTIFICATES USED TO ATTEST TO THE
27 AUTHENTICITY OF WEBSITES.

28 (j) ANY OTHER CLOUD-BASED OR OTHER REMOTELY ACCESSED COMPUTING
29 SERVICE.

30 ~~17.~~ 24. "Tangible personal property" means personal property ~~which~~
31 THAT may be seen, weighed, measured, felt or touched or THAT is in any
32 other manner perceptible to the senses.

33 ~~19.~~ 25. "Taxpayer" means any person who is liable for any tax
34 ~~which~~ THAT is imposed by this article.

35 ~~18.~~ 26. "Tax year" or "taxable year" means either the calendar
36 year or the taxpayer's fiscal year, if permission is obtained from the
37 department to use a fiscal year as the tax period instead of the calendar
38 year.

39 27. "TRANSFERRED ELECTRONICALLY" MEANS THE ELECTRONIC DELIVERY OR
40 TRANSFER IN WHOLE OF SPECIFIED DIGITAL GOODS TO A PURCHASER OR TO A
41 PURCHASER'S COMPUTER OR DEVICE, AND NOT BY REMOTE ACCESS.

42 ~~20.~~ 28. "Wholesaler" or "jobber" means any person who sells
43 tangible personal property for resale and not for consumption by the
44 purchaser.

1 Sec. 2. Section 42-5002, Arizona Revised Statutes, is amended to
2 read:

3 42-5002. Exclusions from gross income, receipts or proceeds

4 A. For the purpose of this article, the total amount of gross
5 income, gross receipts or gross proceeds of sales ~~shall be~~ IS deemed to be
6 the amount received, exclusive of:

7 1. The taxes imposed by this chapter and chapter 6, article 3 of
8 this title, sales or transaction privilege taxes imposed by municipalities
9 in this state and sales or transaction privilege taxes imposed in this
10 state by Indian tribes, if the Indian tribal tax is imposed with respect
11 to sales by non-Indian or nonaffiliated Indian vendors to nonmembers of
12 the tribe. A person who imposes an added charge to cover the tax levied
13 by this article or ~~which~~ THAT is identified as being imposed to cover
14 transaction privilege tax shall not remit less than the amount so
15 collected to the department.

16 2. Freight costs billed to and collected from a purchaser by a
17 retailer for tangible personal property ~~which~~ THAT, ~~upon~~ ON the order of
18 the retailer, is shipped directly from a manufacturer or wholesaler to the
19 purchaser.

20 B. For the purposes of this article, the total amount of gross
21 income, gross receipts or gross proceeds of sales for nuclear fuel ~~shall~~
22 ~~be~~ IS deemed to be the value of the purchase price of uranium oxide used
23 in producing the fuel. The tax imposed by this article may be imposed
24 only once for any one quantity or batch of nuclear fuel regardless of the
25 number of transactions or financing arrangements ~~which~~ THAT may occur with
26 respect to that nuclear fuel.

27 C. FOR THE PURPOSES OF ARTICLES 2 AND 4 OF THIS CHAPTER AND CHAPTER
28 6 OF THIS TITLE:

29 1. GROSS INCOME, GROSS RECEIPTS OR GROSS PROCEEDS FROM SELLING,
30 LEASING OR LICENSING SPECIFIED DIGITAL SERVICES AND FROM SELLING, LEASING
31 OR LICENSING SPECIFIED DIGITAL GOODS THAT ARE REMOTELY ACCESSED BY A
32 CUSTOMER, AND NOT TRANSFERRED ELECTRONICALLY TO THE CUSTOMER, ARE EXCLUDED
33 FROM TAX. THE FOLLOWING DO NOT CHANGE THE CHARACTERIZATION OF ANY
34 SPECIFIED DIGITAL GOOD OR SPECIFIED DIGITAL SERVICE AS BEING EXCLUDED FROM
35 TAX:

36 (a) THE ABILITY TO RECEIVE, VIEW, SAVE, LISTEN TO OR PRINT A
37 SPECIFIED DIGITAL GOOD OR THE OUTPUT OF A SPECIFIED DIGITAL SERVICE.

38 (b) THE TRANSFER OF ANY TRANSITORY OR TEMPORARY DOWNLOADED FILES.

39 (c) THE TRANSFER OF ANY TRANSITORY OR AUXILIARY APPLICATION,
40 INCLUDING APPLETS, COOKIES OR PLUG-INS.

41 2. PARAGRAPH 1 OF THIS SUBSECTION DOES NOT APPLY TO SERVICES
42 PROVIDED BY A PERSON THAT IS SUBJECT TO TAX UNDER THE ONLINE LODGING
43 MARKETPLACE CLASSIFICATION PURSUANT TO SECTIONS 42-5076 AND 42-6009.

1 Sec. 3. Section 42-5009, Arizona Revised Statutes, is amended to
2 read:

3 42-5009. Certificates establishing deductions; liability for
4 making false certificate

5 A. A person who conducts any business classified under article 2 of
6 this chapter may establish entitlement to the allowable deductions from
7 the tax base of that business by both:

8 1. Marking the invoice for the transaction to indicate that the
9 gross proceeds of sales or gross income derived from the transaction was
10 deducted from the tax base.

11 2. Obtaining a certificate executed by the purchaser indicating the
12 name and address of the purchaser, the precise nature of the business of
13 the purchaser, the purpose for which the purchase was made, the necessary
14 facts to establish the appropriate deduction and the tax license number of
15 the purchaser to the extent the deduction depends on the purchaser
16 conducting business classified under article 2 of this chapter and a
17 certification that the person executing the certificate is authorized to
18 do so on behalf of the purchaser. The certificate may be disregarded if
19 the seller has reason to believe that the information contained in the
20 certificate is not accurate or complete.

21 B. A person who does not comply with subsection A of this section
22 may establish entitlement to the deduction by presenting facts necessary
23 to support the entitlement, but the burden of proof is on that person.

24 C. The department may prescribe a form for the certificate
25 described in subsection A of this section. Under such rules as it may
26 prescribe, the department may also describe transactions with respect to
27 which a person is not entitled to rely solely on the information contained
28 in the certificate provided for in subsection A of this section but must
29 instead obtain such additional information as required by the rules in
30 order to be entitled to the deduction.

31 D. If a seller is entitled to a deduction by complying with
32 subsection A of this section, the department may require the purchaser
33 that caused the execution of the certificate to establish the accuracy and
34 completeness of the information required to be contained in the
35 certificate that would entitle the seller to the deduction. If the
36 purchaser cannot establish the accuracy and completeness of the
37 information, the purchaser is liable in an amount equal to any tax,
38 penalty and interest that the seller would have been required to pay under
39 this article if the seller had not complied with subsection A of this
40 section. Payment of the amount under this subsection exempts the
41 purchaser from liability for any tax imposed under article 4 of this
42 chapter. The amount shall be treated as tax revenues collected from the
43 seller in order to designate the distribution base for purposes of section
44 42-5029.

1 E. If a seller is entitled to a deduction by complying with
2 subsection B of this section, the department may require the purchaser to
3 establish the accuracy and completeness of the information provided to the
4 seller that entitled the seller to the deduction. If the purchaser cannot
5 establish the accuracy and completeness of the information, the purchaser
6 is liable in an amount equal to any tax, penalty and interest that the
7 seller would have been required to pay under this article if the seller
8 had not complied with subsection B of this section. Payment of the amount
9 under this subsection exempts the purchaser from liability for any tax
10 imposed under article 4 of this chapter. The amount shall be treated as
11 tax revenues collected from the seller in order to designate the
12 distribution base for purposes of section 42-5029.

13 F. The department may prescribe a form for a certificate used to
14 establish entitlement to the deductions described in section 42-5061,
15 subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3.
16 Under rules the department may prescribe, the department may also require
17 additional information for the seller to be entitled to the deduction. If
18 a seller is entitled to the deductions described in section 42-5061,
19 subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3,
20 the department may require the purchaser who executed the certificate to
21 establish the accuracy and completeness of the information contained in
22 the certificate that would entitle the seller to the deduction. If the
23 purchaser cannot establish the accuracy and completeness of the
24 information, the purchaser is liable in an amount equal to any tax,
25 penalty and interest that the seller would have been required to pay under
26 this article. Payment of the amount under this subsection exempts the
27 purchaser from liability for any tax imposed under article 4 of this
28 chapter. The amount shall be treated as tax revenues collected from the
29 seller in order to designate the distribution base for purposes of section
30 42-5029.

31 G. If a seller claims a deduction under section 42-5061,
32 subsection A, paragraph 25 and establishes entitlement to the deduction
33 with an exemption letter that the purchaser received from the department
34 and the exemption letter was based on a contingent event, the department
35 may require the purchaser that received the exemption letter to establish
36 the satisfaction of the contingent event within a reasonable time. If the
37 purchaser cannot establish the satisfaction of the event, the purchaser is
38 liable in an amount equal to any tax, penalty and interest that the seller
39 would have been required to pay under this article if the seller had not
40 been furnished the exemption letter. Payment of the amount under this
41 subsection exempts the purchaser from liability for any tax imposed under
42 article 4 of this chapter. The amount shall be treated as tax revenues
43 collected from the seller in order to designate the distribution base for
44 purposes of section 42-5029. For the purposes of this subsection,

1 "reasonable time" means a time limitation that the department determines
2 and that does not exceed the time limitations pursuant to section 42-1104.

3 H. The department shall prescribe forms for certificates used to
4 establish the satisfaction of the criteria necessary to qualify the sale
5 of a motor vehicle for the deductions described in section 42-5061,
6 subsection A, paragraph 14, paragraph 28, subdivision (a) and paragraph 44
7 and subsection U. Except as provided in subsection J of this section, to
8 establish entitlement to these deductions, a motor vehicle dealer shall
9 retain:

10 1. A valid certificate as prescribed by this subsection completed
11 by the purchaser and obtained prior to the issuance of the nonresident
12 registration permit authorized by section 28-2154.

13 2. A copy of the nonresident registration permit authorized by
14 section 28-2154.

15 3. A legible copy of a current valid driver license issued to the
16 purchaser by another state or foreign country that indicates an address
17 outside of this state. For the sale of a motor vehicle to a nonresident
18 entity, the entity's representative must have a current valid driver
19 license issued by the same jurisdiction as that in which the entity is
20 located.

21 4. For the purposes of the deduction provided by section 42-5061,
22 subsection A, paragraph 14, a certificate documenting the delivery of the
23 motor vehicle to an out-of-state location.

24 I. Notwithstanding subsection A, paragraph 2 of this section, if a
25 motor vehicle dealer has established entitlement to a deduction by
26 complying with subsection H of this section, the department may require
27 the purchaser who executed the certificate to establish the accuracy and
28 completeness of the information contained in the certificate that entitled
29 the motor vehicle dealer to the deduction. If the purchaser cannot
30 establish the accuracy and completeness of the information, the purchaser
31 is liable in an amount equal to any tax, penalty and interest that the
32 motor vehicle dealer would have been required to pay under this article
33 and under articles IV and V of the model city tax code as defined in
34 section 42-6051. Payment of the amount under this subsection exempts the
35 purchaser from liability for any tax imposed under article 4 of this
36 chapter and any tax imposed under article VI of the model city tax code as
37 defined in section 42-6051. The amount shall be treated as tax revenues
38 collected from the motor vehicle dealer in order to designate the
39 distribution base for purposes of section 42-5029.

40 J. To establish entitlement to the deduction described in section
41 42-5061, subsection A, paragraph 44, a public consignment auction dealer
42 as defined in section 28-4301 shall submit the valid certificate
43 prescribed by subsection H of this section to the department and retain a
44 copy for its records.

1 K. Notwithstanding any other law, compliance with subsection H of
2 this section by a motor vehicle dealer entitles the motor vehicle dealer
3 to the exemption provided in section 42-6004, subsection A, paragraph 4.

4 L. The department shall prescribe a form for a certificate to be
5 used by a person that is not subject to tax under section 42-5075 when the
6 person is engaged by a contractor that is subject to tax under section
7 42-5075 for a project that is taxable under section 42-5075. The
8 certificate permits the person purchasing tangible personal property to be
9 incorporated or fabricated by the person into any real property,
10 structure, project, development or improvement to provide documentation to
11 a retailer that the sale of tangible personal property qualifies for the
12 deduction under section 42-5061, subsection A, paragraph 27,
13 subdivision (b). A prime contractor shall obtain the certificate from the
14 department and shall provide a copy to any such person working on the
15 project. The prime contractor shall obtain a new certificate for each
16 project to which this subsection applies. For the purposes of this
17 subsection, the following apply:

18 1. The person that is not subject to tax under section 42-5075 may
19 use the certificate issued pursuant to this subsection only with respect
20 to tangible personal property that will be incorporated into a project for
21 which the gross receipts are subject to tax under section 42-5075.

22 2. The department shall issue the certificate to the prime
23 contractor on receiving sufficient documentation to establish that the
24 prime contractor meets the requirements of this subsection.

25 3. If any person uses the certificate provided under this
26 subsection to purchase tangible personal property to be used in a project
27 that is not subject to tax under section 42-5075, the person is liable in
28 an amount equal to any tax, penalty and interest that the seller would
29 have been required to pay under this article if the seller had not
30 complied with subsection A of this section. Payment of the amount under
31 this section exempts the person from liability for any tax imposed under
32 article 4 of this chapter. The amount shall be sourced under section
33 42-5040, subsection A, paragraph 2.

34 M. Notwithstanding any other law, compliance with subsection L of
35 this section by a person that is not subject to tax under section 42-5075
36 entitles the person to the exemption allowed by section 465,
37 subsection (k) of the model city tax code when purchasing tangible
38 personal property to be incorporated or fabricated by the person into any
39 real property, structure, project, development or improvement.

40 N. The requirements of subsections A and B of this section do not
41 apply to owners, proprietors or tenants of agricultural lands or farms who
42 sell livestock or poultry feed that is grown or raised on their lands to
43 any of the following:

44 1. Persons who feed their own livestock or poultry.

1 2. Persons who are engaged in the business of producing livestock
2 or poultry commercially.

3 3. Persons who are engaged in the business of feeding livestock or
4 poultry commercially or who board livestock noncommercially.

5 0. A vendor who has reason to believe that a certificate prescribed
6 by this section is not accurate or complete will not be relieved of the
7 burden of proving entitlement to the exemption. A vendor that accepts a
8 certificate in good faith will be relieved of the burden of proof and the
9 purchaser may be required to establish the accuracy of the claimed
10 exemption. If the purchaser cannot establish the accuracy and
11 completeness of the information provided in the certificate, the purchaser
12 is liable for an amount equal to the transaction privilege tax, penalty
13 and interest that the vendor would have been required to pay if the vendor
14 had not accepted the certificate.

15 P. Notwithstanding any other law, an online lodging operator, as
16 defined in section 42-5076, shall be entitled to an exclusion from any
17 applicable taxes for any online lodging transaction, as defined in section
18 42-5076, facilitated by an online lodging marketplace, as defined in
19 section 42-5076, for which the online lodging operator has obtained from
20 the online lodging marketplace written notice that the online lodging
21 marketplace is registered with the department to collect applicable taxes
22 for all online lodging transactions facilitated by the online lodging
23 marketplace, and transaction history documenting tax collected by the
24 online lodging marketplace, pursuant to section 42-5005, subsection L.

25 Q. The department shall prescribe the form of a certificate to be
26 used by a person purchasing an aircraft to document eligibility for a
27 deduction pursuant to section 42-5061, subsection B, paragraph 7,
28 subdivision (a), item (v) or an exemption pursuant to section 42-5159,
29 subsection B, paragraph 7, subdivision (a), item (v), relating to
30 aircraft. The person must provide this certificate and documentation
31 confirming that the operational control of the aircraft has been
32 transferred or will be transferred immediately after the purchase to one
33 or more persons described in section 42-5061, subsection B, paragraph 7,
34 subdivision (a), item (i), (ii), (iii) or (iv) or section 42-5159,
35 subsection B, paragraph 7, subdivision (a), item (i), (ii), (iii) or (iv).
36 Operational control of the aircraft must be transferred for at least fifty
37 percent of the aircraft's flight hours. If such operational control is
38 not transferred for at least fifty percent of the aircraft's flight hours
39 during the recapture period, the owner of the aircraft is liable for an
40 amount equal to any tax that the seller or purchaser would have been
41 required to pay under this chapter at the time of the sale, plus penalty
42 and interest. The recapture period begins on the date that operational
43 control of the aircraft is first transferred and ends on the later of the
44 date the aircraft is fully depreciated for federal income tax purposes or
45 five years after operational control was first transferred. For the

1 purposes of this subsection, operational control of the aircraft must be
2 within the meaning of federal aviation administration operations
3 specification A008, or its successor, except that:

4 1. If it is determined that operational control has been
5 transferred for less than fifty percent but more than forty percent of the
6 aircraft's flight hours, the owner of the aircraft is liable for an amount
7 equal to any tax that the seller or purchaser would have been required to
8 pay under this chapter at the time of the sale, plus interest.

9 2. If the aircraft is sold during the recapture period, the seller
10 is not liable for the amount determined pursuant to this subsection unless
11 the operational control of the aircraft had not been transferred for at
12 least fifty percent of the aircraft's flight hours at the time of the
13 sale.

14 R. THE DEPARTMENT SHALL PRESCRIBE THE FORM FOR A MULTIPLE POINTS OF
15 USE CERTIFICATE TO BE USED BY A PERSON THAT PURCHASES PREWRITTEN COMPUTER
16 SOFTWARE OR SPECIFIED DIGITAL GOODS FOR CONCURRENT USE AND ACCESS BY THE
17 PURCHASER'S EMPLOYEES IN MULTIPLE STATES AS DESCRIBED IN SECTION 42-5040,
18 SUBSECTION D, PARAGRAPH 2.

19 Sec. 4. Section 42-5040, Arizona Revised Statutes, is amended to
20 read:

21 42-5040. Sourcing of certain transactions involving tangible
22 personal property

23 A. Except as provided in section 42-5075, retail sales of tangible
24 personal property shall be sourced as follows:

25 1. To the seller's business location if the seller receives the
26 order at a business location in this state.

27 2. Except as provided in section 42-5008.01, to the purchaser's
28 location in this state if the seller receives the order at a business
29 location outside this state.

30 B. For the purposes of this section, an order is received when all
31 of the information necessary to accept the order has been received by or
32 on behalf of the seller, regardless of where the order is accepted or
33 approved. The place of business or residence of the purchaser does not
34 determine where the order is received.

35 C. The gross receipts from leasing or renting tangible personal
36 property shall be sourced as follows:

37 1. To the lessor's business location if the lessor has a business
38 location in this state.

39 2. To the lessee's address if the lessor does not have a business
40 location in this state. The gross receipts are taxable when the property
41 is shipped, delivered or otherwise brought into this state for use in this
42 state.

43 ~~D.~~ 3. For the purposes of this ~~section~~ SUBSECTION:

44 ~~(a)~~ (a) "Lessee's address" means the residential address of an
45 individual lessee and the primary business address of any other lessee.

1 ~~2.~~ (b) "Lessor's business location" means the business address
2 that appears on the lessor's transaction privilege tax license.

3 D. PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS SHALL
4 BE SOURCED AS FOLLOWS:

5 1. EXCEPT AS PROVIDED IN PARAGRAPH 2 OF THIS SUBSECTION:

6 (a) TO THE SELLER'S BUSINESS LOCATION IF THE SELLER RECEIVES THE
7 ORDER AT A BUSINESS LOCATION IN THIS STATE.

8 (b) TO THE PURCHASER'S LOCATION IN THIS STATE IF THE SELLER
9 RECEIVES THE ORDER AT A BUSINESS LOCATION OUTSIDE THIS STATE.

10 2. REGARDLESS OF WHETHER THE SELLER RECEIVES THE ORDER AT A
11 BUSINESS LOCATION INSIDE OR OUTSIDE THIS STATE, THE SELLER MAY DEDUCT THE
12 ENTIRE SALE OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS
13 THAT WILL BE AVAILABLE FOR CONCURRENT USE AND ACCESS BY A PURCHASER'S
14 EMPLOYEES IN MULTIPLE STATES IF THE PURCHASER PROVIDES THE SELLER WITH A
15 PROPERLY COMPLETED MULTIPLE POINTS OF USE CERTIFICATE PURSUANT TO SECTION
16 42-5009, SUBSECTION R. FOR THE PURPOSES OF THIS PARAGRAPH:

17 (a) A PURCHASER DELIVERING A MULTIPLE POINTS OF USE CERTIFICATE MAY
18 USE ANY REASONABLE, BUT CONSISTENT AND UNIFORM, METHOD OF APPORTIONMENT
19 THAT IS SUPPORTED BY THE PURCHASER'S BOOKS AND RECORDS AS THEY EXIST AT
20 THE TIME THE TRANSACTION IS REPORTED FOR TRANSACTION PRIVILEGE OR USE TAX
21 PURPOSES.

22 (b) A PURCHASER DELIVERING A MULTIPLE POINTS OF USE CERTIFICATE
23 MUST REPORT AND PAY THE APPROPRIATE TAX TO EACH JURISDICTION WHERE
24 CONCURRENT USE AND ACCESS OCCUR ON A PERIODIC BASIS. THE TAX DUE SHALL BE
25 CALCULATED AS IF THE APPORTIONED AMOUNT OF THE PREWRITTEN COMPUTER
26 SOFTWARE OR SPECIFIED DIGITAL GOODS HAD BEEN DELIVERED TO EACH
27 JURISDICTION TO WHICH THE SALE IS APPORTIONED.

28 Sec. 5. Section 42-5061, Arizona Revised Statutes, is amended to
29 read:

30 42-5061. Retail classification; definitions

31 A. The retail classification is comprised of the business of
32 selling tangible personal property at retail, LICENSING FOR USE OF
33 PREWRITTEN COMPUTER SOFTWARE, REGARDLESS OF DELIVERY METHOD, AND SELLING
34 SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY. The tax base for the
35 retail classification is the gross proceeds of sales or gross income
36 derived from the business. The tax imposed on the retail classification
37 does not apply to the gross proceeds of sales or gross income from:

38 1. Professional or personal service occupations or businesses that
39 involve sales or transfers of tangible personal property only as
40 inconsequential elements.

41 2. Services rendered in addition to selling tangible personal
42 property at retail.

43 3. Sales of warranty or service contracts. The storage, use or
44 consumption of tangible personal property provided under the conditions of
45 such contracts is subject to tax under section 42-5156.

- 1 4. Sales of tangible personal property by any nonprofit
2 organization organized and operated exclusively for charitable purposes
3 and recognized by the United States internal revenue service under section
4 501(c)(3) of the internal revenue code.
- 5 5. Sales to persons engaged in business classified under the
6 restaurant classification of articles used by human beings for food, drink
7 or condiment, whether simple, mixed or compounded.
- 8 6. Business activity that is properly included in any other
9 business classification that is taxable under this article.
- 10 7. The sale of stocks and bonds.
- 11 8. Drugs and medical oxygen, including delivery hose, mask or tent,
12 regulator and tank, on the prescription of a member of the medical, dental
13 or veterinarian profession who is licensed by law to administer such
14 substances.
- 15 9. Prosthetic appliances as defined in section 23-501 and as
16 prescribed or recommended by a health professional who is licensed
17 pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.
- 18 10. Insulin, insulin syringes and glucose test strips.
- 19 11. Prescription eyeglasses or contact lenses.
- 20 12. Hearing aids as defined in section 36-1901.
- 21 13. Durable medical equipment that has a centers for medicare and
22 medicaid services common procedure code, is designated reimbursable by
23 medicare, is prescribed by a person who is licensed under title 32,
24 chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is
25 primarily and customarily used to serve a medical purpose, is generally
26 not useful to a person in the absence of illness or injury and is
27 appropriate for use in the home.
- 28 14. Sales of motor vehicles to nonresidents of this state for use
29 outside this state if the motor vehicle dealer ships or delivers the motor
30 vehicle to a destination out of this state.
- 31 15. Food, as provided in and subject to the conditions of article 3
32 of this chapter and section 42-5074.
- 33 16. Items purchased with United States department of agriculture
34 food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113;
35 91 Stat. 958) or food instruments issued under section 17 of the child
36 nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42
37 United States Code section 1786).
- 38 17. Textbooks by any bookstore that are required by any state
39 university or community college.
- 40 18. Food and drink to a person that is engaged in a business that
41 is classified under the restaurant classification and that provides such
42 food and drink without monetary charge to its employees for their own
43 consumption on the premises during the employees' hours of employment.
- 44 19. Articles of food, drink or condiment and accessory tangible
45 personal property to a school district or charter school if such articles

1 and accessory tangible personal property are to be prepared and served to
2 persons for consumption on the premises of a public school within the
3 district or on the premises of the charter school during school hours.

4 20. Lottery tickets or shares pursuant to title 5, chapter 5.1,
5 article 1.

6 21. The sale of cash equivalents and the sale of precious metal
7 bullion and monetized bullion to the ultimate consumer, but the sale of
8 coins or other forms of money for manufacture into jewelry or works of art
9 is subject to the tax and the gross proceeds of sales or gross income
10 derived from the redemption of any cash equivalent by the holder as a
11 means of payment for goods or services that are taxable under this article
12 is subject to the tax. For the purposes of this paragraph:

13 (a) "Cash equivalents" means items or intangibles, whether or not
14 negotiable, that are sold to one or more persons, through which a value
15 denominated in money is purchased in advance and may be redeemed in full
16 or in part for tangible personal property, intangibles or services. Cash
17 equivalents include gift cards, stored value cards, gift certificates,
18 vouchers, traveler's checks, money orders or other instruments, orders or
19 electronic mechanisms, such as an electronic code, personal identification
20 number or digital payment mechanism, or any other prepaid intangible right
21 to acquire tangible personal property, intangibles or services in the
22 future, whether from the seller of the cash equivalent or from another
23 person. Cash equivalents do not include either of the following:

24 (i) Items or intangibles that are sold to one or more persons,
25 through which a value is not denominated in money.

26 (ii) Prepaid calling cards or prepaid authorization numbers for
27 telecommunications services made taxable by subsection P of this section.

28 (b) "Monetized bullion" means coins and other forms of money that
29 are manufactured from gold, silver or other metals and that have been or
30 are used as a medium of exchange in this or another state, the United
31 States or a foreign nation.

32 (c) "Precious metal bullion" means precious metal, including gold,
33 silver, platinum, rhodium and palladium, that has been smelted or refined
34 so that its value depends on its contents and not on its form.

35 22. Motor vehicle fuel and use fuel that are subject to a tax
36 imposed under title 28, chapter 16, article 1, sales of use fuel to a
37 holder of a valid single trip use fuel tax permit issued under section
38 28-5739, sales of aviation fuel that are subject to the tax imposed under
39 section 28-8344 and sales of jet fuel that are subject to the tax imposed
40 under article 8 of this chapter.

41 23. Tangible personal property sold to a person engaged in the
42 business of leasing or renting such property under the personal property
43 rental classification if such property is to be leased or rented by such
44 person.

1 24. Tangible personal property sold in interstate or foreign
2 commerce if prohibited from being so taxed by the constitution of the
3 United States or the constitution of this state.

4 25. Tangible personal property sold to:

5 (a) A qualifying hospital as defined in section 42-5001.

6 (b) A qualifying health care organization as defined in section
7 42-5001 if the tangible personal property is used by the organization
8 solely to provide health and medical related educational and charitable
9 services.

10 (c) A qualifying health care organization as defined in section
11 42-5001 if the organization is dedicated to providing educational,
12 therapeutic, rehabilitative and family medical education training for
13 blind and visually impaired children and children with multiple
14 disabilities from the time of birth to age twenty-one.

15 (d) A qualifying community health center as defined in section
16 42-5001.

17 (e) A nonprofit charitable organization that has qualified under
18 section 501(c)(3) of the internal revenue code and that regularly serves
19 meals to the needy and indigent on a continuing basis at no cost.

20 (f) For taxable periods beginning from and after June 30, 2001, a
21 nonprofit charitable organization that has qualified under section
22 501(c)(3) of the internal revenue code and that provides residential
23 apartment housing for low income persons over sixty-two years of age in a
24 facility that qualifies for a federal housing subsidy, if the tangible
25 personal property is used by the organization solely to provide
26 residential apartment housing for low income persons over sixty-two years
27 of age in a facility that qualifies for a federal housing subsidy.

28 (g) A qualifying health sciences educational institution as defined
29 in section 42-5001.

30 (h) Any person representing or working on behalf of another person
31 described in subdivisions (a) through (g) of this paragraph if the
32 tangible personal property is incorporated or fabricated into a project
33 described in section 42-5075, subsection 0.

34 26. Magazines or other periodicals or other publications by this
35 state to encourage tourist travel.

36 27. Tangible personal property sold to:

37 (a) A person that is subject to tax under this article by reason of
38 being engaged in business classified under section 42-5075 or to a
39 subcontractor working under the control of a person engaged in business
40 classified under section 42-5075, if the property so sold is any of the
41 following:

42 (i) Incorporated or fabricated by the person into any real
43 property, structure, project, development or improvement as part of the
44 business.

1 (ii) Incorporated or fabricated by the person into any project
2 described in section 42-5075, subsection 0.

3 (iii) Used in environmental response or remediation activities
4 under section 42-5075, subsection B, paragraph 6.

5 (b) A person that is not subject to tax under section 42-5075 and
6 that has been provided a copy of a certificate under section 42-5009,
7 subsection L, if the property so sold is incorporated or fabricated by the
8 person into the real property, structure, project, development or
9 improvement described in the certificate.

10 28. The sale of a motor vehicle to:

11 (a) A nonresident of this state if the purchaser's state of
12 residence does not allow a corresponding use tax exemption to the tax
13 imposed by article 1 of this chapter and if the nonresident has secured a
14 special ninety day nonresident registration permit for the vehicle as
15 prescribed by sections 28-2154 and 28-2154.01.

16 (b) An enrolled member of an Indian tribe who resides on the Indian
17 reservation established for that tribe.

18 29. Tangible personal property purchased in this state by a
19 nonprofit charitable organization that has qualified under section
20 501(c)(3) of the United States internal revenue code and that engages in
21 and uses such property exclusively in programs for persons with mental or
22 physical disabilities if the programs are exclusively for training, job
23 placement, rehabilitation or testing.

24 30. Sales of tangible personal property by a nonprofit organization
25 that is exempt from taxation under section 501(c)(3), 501(c)(4) or
26 501(c)(6) of the internal revenue code if the organization is associated
27 with a major league baseball team or a national touring professional
28 golfing association and no part of the organization's net earnings inures
29 to the benefit of any private shareholder or individual.

30 31. Sales of commodities, as defined by title 7 United States Code
31 section 2, that are consigned for resale in a warehouse in this state in
32 or from which the commodity is deliverable on a contract for future
33 delivery subject to the rules of a commodity market regulated by the
34 United States commodity futures trading commission.

35 32. Sales of tangible personal property by a nonprofit organization
36 that is exempt from taxation under section 501(c)(3), 501(c)(4),
37 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the
38 organization sponsors or operates a rodeo featuring primarily farm and
39 ranch animals and no part of the organization's net earnings inures to the
40 benefit of any private shareholder or individual.

41 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
42 propagative material to persons who use those items to commercially
43 produce agricultural, horticultural, viticultural or floricultural crops
44 in this state.

1 34. Machinery, equipment, technology or related supplies that are
2 only useful to assist a person with a physical disability as defined in
3 section 46-191 or a person who has a developmental disability as defined
4 in section 36-551 or has a head injury as defined in section 41-3201 to be
5 more independent and functional.

6 35. Sales of natural gas or liquefied petroleum gas used to propel
7 a motor vehicle.

8 36. Paper machine clothing, such as forming fabrics and dryer
9 felts, sold to a paper manufacturer and directly used or consumed in paper
10 manufacturing.

11 37. Coal, petroleum, coke, natural gas, virgin fuel oil and
12 electricity sold to a qualified environmental technology manufacturer,
13 producer or processor as defined in section 41-1514.02 and directly used
14 or consumed in the generation or provision of on-site power or energy
15 solely for environmental technology manufacturing, producing or processing
16 or environmental protection. This paragraph shall apply for twenty full
17 consecutive calendar or fiscal years from the date the first paper
18 manufacturing machine is placed in service. In the case of an
19 environmental technology manufacturer, producer or processor who does not
20 manufacture paper, the time period shall begin with the date the first
21 manufacturing, processing or production equipment is placed in service.

22 38. Sales of liquid, solid or gaseous chemicals used in
23 manufacturing, processing, fabricating, mining, refining, metallurgical
24 operations, research and development and, beginning on January 1, 1999,
25 printing, if using or consuming the chemicals, alone or as part of an
26 integrated system of chemicals, involves direct contact with the materials
27 from which the product is produced for the purpose of causing or
28 permitting a chemical or physical change to occur in the materials as part
29 of the production process. This paragraph does not include chemicals that
30 are used or consumed in activities such as packaging, storage or
31 transportation but does not affect any deduction for such chemicals that
32 is otherwise provided by this section. For the purposes of this
33 paragraph, "printing" means a commercial printing operation and includes
34 job printing, engraving, embossing, copying and bookbinding.

35 39. Through December 31, 1994, personal property liquidation
36 transactions, conducted by a personal property liquidator. From and after
37 December 31, 1994, personal property liquidation transactions shall be
38 taxable under this section provided that nothing in this subsection shall
39 be construed to authorize the taxation of casual activities or
40 transactions under this chapter. For the purposes of this paragraph:

41 (a) "Personal property liquidation transaction" means a sale of
42 personal property made by a personal property liquidator acting solely on
43 behalf of the owner of the personal property sold at the dwelling of the
44 owner or on the death of any owner, on behalf of the surviving spouse, if

1 any, any devisee or heir or the personal representative of the estate of
2 the deceased, if one has been appointed.

3 (b) "Personal property liquidator" means a person who is retained
4 to conduct a sale in a personal property liquidation transaction.

5 40. Sales of food, drink and condiment for consumption within the
6 premises of any prison, jail or other institution under the jurisdiction
7 of the state department of corrections, the department of public safety,
8 the department of juvenile corrections or a county sheriff.

9 41. A motor vehicle and any repair and replacement parts and
10 tangible personal property becoming a part of such motor vehicle sold to a
11 motor carrier who is subject to a fee prescribed in title 28, chapter 16,
12 article 4 and who is engaged in the business of leasing or renting such
13 property.

14 42. Sales of:

15 (a) Livestock and poultry to persons engaging in the businesses of
16 farming, ranching or producing livestock or poultry.

17 (b) Livestock and poultry feed, salts, vitamins and other additives
18 for livestock or poultry consumption that are sold to persons for use or
19 consumption by their own livestock or poultry, for use or consumption in
20 the businesses of farming, ranching and producing or feeding livestock,
21 poultry, or livestock or poultry products or for use or consumption in
22 noncommercial boarding of livestock. For the purposes of this paragraph,
23 "poultry" includes ratites.

24 43. Sales of implants used as growth promotants and injectable
25 medicines, not already exempt under paragraph 8 of this subsection, for
26 livestock or poultry owned by or in possession of persons who are engaged
27 in producing livestock, poultry, or livestock or poultry products or who
28 are engaged in feeding livestock or poultry commercially. For the
29 purposes of this paragraph, "poultry" includes ratites.

30 44. Sales of motor vehicles at auction to nonresidents of this
31 state for use outside this state if the vehicles are shipped or delivered
32 out of this state, regardless of where title to the motor vehicles passes
33 or its free on board point.

34 45. Tangible personal property sold to a person engaged in business
35 and subject to tax under the transient lodging classification if the
36 tangible personal property is a personal hygiene item or articles used by
37 human beings for food, drink or condiment, except alcoholic beverages,
38 that are furnished without additional charge to and intended to be
39 consumed by the transient during the transient's occupancy.

40 46. Sales of alternative fuel, as defined in section 1-215, to a
41 used oil fuel burner who has received a permit to burn used oil or used
42 oil fuel under section 49-426 or 49-480.

43 47. Sales of materials that are purchased by or for publicly funded
44 libraries including school district libraries, charter school libraries,

1 community college libraries, state university libraries or federal, state,
2 county or municipal libraries for use by the public as follows:

3 (a) Printed or photographic materials, beginning August 7, 1985.

4 (b) Electronic or digital media materials, beginning July 17, 1994.

5 48. Tangible personal property sold to a commercial airline and
6 consisting of food, beverages and condiments and accessories used for
7 serving the food and beverages, if those items are to be provided without
8 additional charge to passengers for consumption in flight. For the
9 purposes of this paragraph, "commercial airline" means a person holding a
10 federal certificate of public convenience and necessity or foreign air
11 carrier permit for air transportation to transport persons, property or
12 United States mail in intrastate, interstate or foreign commerce.

13 49. Sales of alternative fuel vehicles if the vehicle was
14 manufactured as a diesel fuel vehicle and converted to operate on
15 alternative fuel and equipment that is installed in a conventional diesel
16 fuel motor vehicle to convert the vehicle to operate on an alternative
17 fuel, as defined in section 1-215.

18 50. Sales of any spirituous, vinous or malt liquor by a person that
19 is licensed in this state as a wholesaler by the department of liquor
20 licenses and control pursuant to title 4, chapter 2, article 1.

21 51. Sales of tangible personal property to be incorporated or
22 installed as part of environmental response or remediation activities
23 under section 42-5075, subsection B, paragraph 6.

24 52. Sales of tangible personal property by a nonprofit organization
25 that is exempt from taxation under section 501(c)(6) of the internal
26 revenue code if the organization produces, organizes or promotes cultural
27 or civic related festivals or events and no part of the organization's net
28 earnings inures to the benefit of any private shareholder or individual.

29 53. Application services that are designed to assess or test
30 student learning or to promote curriculum design or enhancement purchased
31 by or for any school district, charter school, community college or state
32 university. For the purposes of this paragraph:

33 (a) "Application services" means software applications provided
34 remotely using hypertext transfer protocol or another network protocol.

35 (b) "Curriculum design or enhancement" means planning, implementing
36 or reporting on courses of study, lessons, assignments or other learning
37 activities.

38 54. Sales of motor vehicle fuel and use fuel to a qualified
39 business under section 41-1516 for off-road use in harvesting, processing
40 or transporting qualifying forest products removed from qualifying
41 projects as defined in section 41-1516.

42 55. Sales of repair parts installed in equipment used directly by a
43 qualified business under section 41-1516 in harvesting, processing or
44 transporting qualifying forest products removed from qualifying projects
45 as defined in section 41-1516.

1 56. Sales or other transfers of renewable energy credits or any
2 other unit created to track energy derived from renewable energy
3 resources. For the purposes of this paragraph, "renewable energy credit"
4 means a unit created administratively by the corporation commission or
5 governing body of a public power utility to track kilowatt hours of
6 electricity derived from a renewable energy resource or the kilowatt hour
7 equivalent of conventional energy resources displaced by distributed
8 renewable energy resources.

9 57. Computer data center equipment sold to the owner, operator or
10 qualified colocation tenant of a computer data center that is certified by
11 the Arizona commerce authority under section 41-1519 or an authorized
12 agent of the owner, operator or qualified colocation tenant during the
13 qualification period for use in the qualified computer data center. For
14 the purposes of this paragraph, "computer data center", "computer data
15 center equipment", "qualification period" and "qualified colocation
16 tenant" have the same meanings prescribed in section 41-1519.

17 58. Orthodontic devices dispensed by a dental professional who is
18 licensed under title 32, chapter 11 to a patient as part of the practice
19 of dentistry.

20 59. Sales of tangible personal property incorporated or fabricated
21 into a project described in section 42-5075, subsection 0, that is located
22 within the exterior boundaries of an Indian reservation for which the
23 owner, as defined in section 42-5075, of the project is an Indian tribe or
24 an affiliated Indian. For the purposes of this paragraph:

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

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

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

37 60. Sales of works of fine art, as defined in section 44-1771, at
38 an art auction or gallery in this state to nonresidents of this state for
39 use outside this state if the vendor ships or delivers the work of fine
40 art to a destination outside this state.

41 B. In addition to the deductions from the tax base prescribed by
42 subsection A of this section, the gross proceeds of sales or gross income
43 derived from sales of the following categories of tangible personal
44 property shall be deducted from the tax base:

1 1. Machinery, or equipment, used directly in manufacturing,
2 processing, fabricating, job printing, refining or metallurgical
3 operations. The terms "manufacturing", "processing", "fabricating", "job
4 printing", "refining" and "metallurgical" as used in this paragraph refer
5 to and include those operations commonly understood within their ordinary
6 meaning. "Metallurgical operations" includes leaching, milling,
7 precipitating, smelting and refining.

8 2. Mining machinery, or equipment, used directly in the process of
9 extracting ores or minerals from the earth for commercial purposes,
10 including equipment required to prepare the materials for extraction and
11 handling, loading or transporting such extracted material to the surface.
12 "Mining" includes underground, surface and open pit operations for
13 extracting ores and minerals.

14 3. Tangible personal property sold to persons engaged in business
15 classified under the telecommunications classification, including a person
16 representing or working on behalf of such a person in a manner described
17 in section 42-5075, subsection 0, and consisting of central office
18 switching equipment, switchboards, private branch exchange equipment,
19 microwave radio equipment and carrier equipment including optical fiber,
20 coaxial cable and other transmission media that are components of carrier
21 systems.

22 4. Machinery, equipment or transmission lines used directly in
23 producing or transmitting electrical power, but not including
24 distribution. Transformers and control equipment used at transmission
25 substation sites constitute equipment used in producing or transmitting
26 electrical power.

27 5. Neat animals, horses, asses, sheep, ratites, swine or goats used
28 or to be used as breeding or production stock, including sales of
29 breedings or ownership shares in such animals used for breeding or
30 production.

31 6. Pipes or valves four inches in diameter or larger used to
32 transport oil, natural gas, artificial gas, water or coal slurry,
33 including compressor units, regulators, machinery and equipment, fittings,
34 seals and any other part that is used in operating the pipes or valves.

35 7. Aircraft, navigational and communication instruments and other
36 accessories and related equipment sold to:

37 (a) A person:

38 (i) Holding, or exempted by federal law from obtaining, a federal
39 certificate of public convenience and necessity for use as, in conjunction
40 with or becoming part of an aircraft to be used to transport persons for
41 hire in intrastate, interstate or foreign commerce.

42 (ii) That is certificated or licensed under federal aviation
43 administration regulations (14 Code of Federal Regulations part 121 or
44 135) as a scheduled or unscheduled carrier of persons for hire for use as

1 or in conjunction with or becoming part of an aircraft to be used to
2 transport persons for hire in intrastate, interstate or foreign commerce.

3 (iii) Holding a foreign air carrier permit for air transportation
4 for use as or in conjunction with or becoming a part of aircraft to be
5 used to transport persons, property or United States mail in intrastate,
6 interstate or foreign commerce.

7 (iv) Operating an aircraft to transport persons in any manner for
8 compensation or hire, or for use in a fractional ownership program that
9 meets the requirements of federal aviation administration regulations (14
10 Code of Federal Regulations part 91, subpart K), including as an air
11 carrier, a foreign air carrier or a commercial operator or under a
12 restricted category, within the meaning of 14 Code of Federal Regulations,
13 regardless of whether the operation or aircraft is regulated or certified
14 under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code
15 of Federal Regulations.

16 (v) That will lease or otherwise transfer operational control,
17 within the meaning of federal aviation administration operations
18 specification A008, or its successor, of the aircraft, instruments or
19 accessories to one or more persons described in item (i), (ii), (iii) or
20 (iv) of this subdivision, subject to section 42-5009, subsection Q.

21 (b) Any foreign government.

22 (c) Persons who are not residents of this state and who will not
23 use such property in this state other than in removing such property from
24 this state. This subdivision also applies to corporations that are not
25 incorporated in this state, regardless of maintaining a place of business
26 in this state, if the principal corporate office is located outside this
27 state and the property will not be used in this state other than in
28 removing the property from this state.

29 8. Machinery, tools, equipment and related supplies used or
30 consumed directly in repairing, remodeling or maintaining aircraft,
31 aircraft engines or aircraft component parts by or on behalf of a
32 certificated or licensed carrier of persons or property.

33 9. Railroad rolling stock, rails, ties and signal control equipment
34 used directly to transport persons or property.

35 10. Machinery or equipment used directly to drill for oil or gas or
36 used directly in the process of extracting oil or gas from the earth for
37 commercial purposes.

38 11. Buses or other urban mass transit vehicles that are used
39 directly to transport persons or property for hire or pursuant to a
40 governmentally adopted and controlled urban mass transportation program
41 and that are sold to bus companies holding a federal certificate of
42 convenience and necessity or operated by any city, town or other
43 governmental entity or by any person contracting with such governmental
44 entity as part of a governmentally adopted and controlled program to
45 provide urban mass transportation.

1 12. Groundwater measuring devices required under section 45-604.

2 13. New machinery and equipment consisting of agricultural
3 aircraft, tractors, tractor-drawn implements, self-powered implements,
4 machinery and equipment necessary for extracting milk, and machinery and
5 equipment necessary for cooling milk and livestock, and drip irrigation
6 lines not already exempt under paragraph 6 of this subsection and that are
7 used for commercial production of agricultural, horticultural,
8 viticultural and floricultural crops and products in this state. For the
9 purposes of this paragraph:

10 (a) "New machinery and equipment" means machinery and equipment
11 that have never been sold at retail except pursuant to leases or rentals
12 that do not total two years or more.

13 (b) "Self-powered implements" includes machinery and equipment that
14 are electric-powered.

15 14. Machinery or equipment used in research and development. For
16 the purposes of this paragraph, "research and development" means basic and
17 applied research in the sciences and engineering, and designing,
18 developing or testing prototypes, processes or new products, including
19 research and development of computer software that is embedded in or an
20 integral part of the prototype or new product or that is required for
21 machinery or equipment otherwise exempt under this section to function
22 effectively. Research and development do not include manufacturing
23 quality control, routine consumer product testing, market research, sales
24 promotion, sales service, research in social sciences or psychology,
25 computer software research that is not included in the definition of
26 research and development, or other nontechnological activities or
27 technical services.

28 15. Tangible personal property that is used by either of the
29 following to receive, store, convert, produce, generate, decode, encode,
30 control or transmit telecommunications information:

31 (a) Any direct broadcast satellite television or data transmission
32 service that operates pursuant to 47 Code of Federal Regulations part 25.

33 (b) Any satellite television or data transmission facility, if both
34 of the following conditions are met:

35 (i) Over two-thirds of the transmissions, measured in megabytes,
36 transmitted by the facility during the test period were transmitted to or
37 on behalf of one or more direct broadcast satellite television or data
38 transmission services that operate pursuant to 47 Code of Federal
39 Regulations part 25.

40 (ii) Over two-thirds of the transmissions, measured in megabytes,
41 transmitted by or on behalf of those direct broadcast television or data
42 transmission services during the test period were transmitted by the
43 facility to or on behalf of those services.

44 For the purposes of subdivision (b) of this paragraph, "test period" means
45 the three hundred sixty-five day period beginning on the later of the date

1 on which the tangible personal property is purchased or the date on which
2 the direct broadcast satellite television or data transmission service
3 first transmits information to its customers.

4 16. Clean rooms that are used for manufacturing, processing,
5 fabrication or research and development, as defined in paragraph 14 of
6 this subsection, of semiconductor products. For the purposes of this
7 paragraph, "clean room" means all property that comprises or creates an
8 environment where humidity, temperature, particulate matter and
9 contamination are precisely controlled within specified parameters,
10 without regard to whether the property is actually contained within that
11 environment or whether any of the property is affixed to or incorporated
12 into real property. Clean room:

13 (a) Includes the integrated systems, fixtures, piping, movable
14 partitions, lighting and all property that is necessary or adapted to
15 reduce contamination or to control airflow, temperature, humidity,
16 chemical purity or other environmental conditions or manufacturing
17 tolerances, as well as the production machinery and equipment operating in
18 conjunction with the clean room environment.

19 (b) Does not include the building or other permanent, nonremovable
20 component of the building that houses the clean room environment.

21 17. Machinery and equipment used directly in the feeding of
22 poultry, the environmental control of housing for poultry, the movement of
23 eggs within a production and packaging facility or the sorting or cooling
24 of eggs. This exemption does not apply to vehicles used for transporting
25 eggs.

26 18. Machinery or equipment, including related structural
27 components, that is employed in connection with manufacturing, processing,
28 fabricating, job printing, refining, mining, natural gas pipelines,
29 metallurgical operations, telecommunications, producing or transmitting
30 electricity or research and development and that is used directly to meet
31 or exceed rules or regulations adopted by the federal energy regulatory
32 commission, the United States environmental protection agency, the United
33 States nuclear regulatory commission, the Arizona department of
34 environmental quality or a political subdivision of this state to prevent,
35 monitor, control or reduce land, water or air pollution.

36 19. Machinery and equipment that are sold to a person engaged in
37 the commercial production of livestock, livestock products or
38 agricultural, horticultural, viticultural or floricultural crops or
39 products in this state, including a person representing or working on
40 behalf of such a person in a manner described in section 42-5075,
41 subsection 0, if the machinery and equipment are used directly and
42 primarily to prevent, monitor, control or reduce air, water or land
43 pollution.

44 20. Machinery or equipment that enables a television station to
45 originate and broadcast or to receive and broadcast digital television

1 signals and that was purchased to facilitate compliance with the
2 telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United
3 States Code section 336) and the federal communications commission order
4 issued April 21, 1997 (47 Code of Federal Regulations part 73). This
5 paragraph does not exempt any of the following:

6 (a) Repair or replacement parts purchased for the machinery or
7 equipment described in this paragraph.

8 (b) Machinery or equipment purchased to replace machinery or
9 equipment for which an exemption was previously claimed and taken under
10 this paragraph.

11 (c) Any machinery or equipment purchased after the television
12 station has ceased analog broadcasting, or purchased after November 1,
13 2009, whichever occurs first.

14 21. Qualifying equipment that is purchased from and after June 30,
15 2004 through June 30, 2024 by a qualified business under section 41-1516
16 for harvesting or processing qualifying forest products removed from
17 qualifying projects as defined in section 41-1516. To qualify for this
18 deduction, the qualified business at the time of purchase must present its
19 certification approved by the department.

20 C. The deductions provided by subsection B of this section do not
21 include sales of:

22 1. Expendable materials. For the purposes of this paragraph,
23 expendable materials do not include any of the categories of tangible
24 personal property specified in subsection B of this section regardless of
25 the cost or useful life of that property.

26 2. Janitorial equipment and hand tools.

27 3. Office equipment, furniture and supplies.

28 4. Tangible personal property used in selling or distributing
29 activities, other than the telecommunications transmissions described in
30 subsection B, paragraph 15 of this section.

31 5. Motor vehicles required to be licensed by this state, except
32 buses or other urban mass transit vehicles specifically exempted pursuant
33 to subsection B, paragraph 11 of this section, without regard to the use
34 of such motor vehicles.

35 6. Shops, buildings, docks, depots and all other materials of
36 whatever kind or character not specifically included as exempt.

37 7. Motors and pumps used in drip irrigation systems.

38 8. Machinery and equipment or other tangible personal property used
39 by a contractor in the performance of a contract.

40 D. In addition to the deductions from the tax base prescribed by
41 subsection A of this section, there shall be deducted from the tax base
42 the gross proceeds of sales or gross income derived from sales of
43 machinery, equipment, materials and other tangible personal property used
44 directly and predominantly to construct a qualified environmental
45 technology manufacturing, producing or processing facility as described in

1 section 41-1514.02. This subsection applies for ten full consecutive
2 calendar or fiscal years after the start of initial construction.

3 E. In computing the tax base, gross proceeds of sales or gross
4 income from retail sales of heavy trucks and trailers does not include any
5 amount attributable to federal excise taxes imposed by 26 United States
6 Code section 4051.

7 F. If a person is engaged in an occupation or business to which
8 subsection A of this section applies, the person's books shall be kept so
9 as to show separately the gross proceeds of sales of tangible personal
10 property and the gross income from sales of services, and if not so kept
11 the tax shall be imposed on the total of the person's gross proceeds of
12 sales of tangible personal property and gross income from services.

13 G. If a person is engaged in the business of selling tangible
14 personal property at both wholesale and retail, the tax under this section
15 applies only to the gross proceeds of the sales made other than at
16 wholesale if the person's books are kept so as to show separately the
17 gross proceeds of sales of each class, and if the books are not so kept,
18 the tax under this section applies to the gross proceeds of every sale so
19 made.

20 H. A person who engages in manufacturing, baling, crating, boxing,
21 barreling, canning, bottling, sacking, preserving, processing or otherwise
22 preparing for sale or commercial use any livestock, agricultural or
23 horticultural product or any other product, article, substance or
24 commodity and who sells the product of such business at retail in this
25 state is deemed, as to such sales, to be engaged in business classified
26 under the retail classification. This subsection does not apply to:

27 1. Agricultural producers who are owners, proprietors or tenants of
28 agricultural lands, orchards, farms or gardens where agricultural products
29 are grown, raised or prepared for market and who are marketing their own
30 agricultural products.

31 2. Businesses classified under the:

32 (a) Transporting classification.

33 (b) Utilities classification.

34 (c) Telecommunications classification.

35 (d) Pipeline classification.

36 (e) Private car line classification.

37 (f) Publication classification.

38 (g) Job printing classification.

39 (h) Prime contracting classification.

40 (i) Restaurant classification.

41 I. The gross proceeds of sales or gross income derived from the
42 following shall be deducted from the tax base for the retail
43 classification:

1 1. Sales made directly to the United States government or its
2 departments or agencies by a manufacturer, modifier, assembler or
3 repairer.

4 2. Sales made directly to a manufacturer, modifier, assembler or
5 repairer if such sales are of any ingredient or component part of products
6 sold directly to the United States government or its departments or
7 agencies by the manufacturer, modifier, assembler or repairer.

8 3. Overhead materials or other tangible personal property that is
9 used in performing a contract between the United States government and a
10 manufacturer, modifier, assembler or repairer, including property used in
11 performing a subcontract with a government contractor who is a
12 manufacturer, modifier, assembler or repairer, to which title passes to
13 the government under the terms of the contract or subcontract.

14 4. Sales of overhead materials or other tangible personal property
15 to a manufacturer, modifier, assembler or repairer if the gross proceeds
16 of sales or gross income derived from the property by the manufacturer,
17 modifier, assembler or repairer will be exempt under paragraph 3 of this
18 subsection.

19 J. There shall be deducted from the tax base fifty percent of the
20 gross proceeds or gross income from any sale of tangible personal property
21 made directly to the United States government or its departments or
22 agencies that is not deducted under subsection I of this section.

23 K. The department shall require every person claiming a deduction
24 provided by subsection I or J of this section to file on forms prescribed
25 by the department at such times as the department directs a sworn
26 statement disclosing the name of the purchaser and the exact amount of
27 sales on which the exclusion or deduction is claimed.

28 L. In computing the tax base, gross proceeds of sales or gross
29 income does not include:

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

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

34 M. There shall be deducted from the tax base the amount received
35 from sales of solar energy devices. The retailer shall register with the
36 department as a solar energy retailer. By registering, the retailer
37 acknowledges that it will make its books and records relating to sales of
38 solar energy devices available to the department for examination.

39 N. In computing the tax base in the case of the sale or transfer of
40 wireless telecommunications equipment as an inducement to a customer to
41 enter into or continue a contract for telecommunications services that are
42 taxable under section 42-5064, gross proceeds of sales or gross income
43 does not include any sales commissions or other compensation received by
44 the retailer as a result of the customer entering into or continuing a
45 contract for the telecommunications services.

1 O. For the purposes of this section, a sale of wireless
2 telecommunications equipment to a person who holds the equipment for sale
3 or transfer to a customer as an inducement to enter into or continue a
4 contract for telecommunications services that are taxable under section
5 42-5064 is considered to be a sale for resale in the regular course of
6 business.

7 P. Retail sales of prepaid calling cards or prepaid authorization
8 numbers for telecommunications services, including sales of
9 reauthorization of a prepaid card or authorization number, are subject to
10 tax under this section.

11 Q. For the purposes of this section, the diversion of gas from a
12 pipeline by a person engaged in the business of:

13 1. Operating a natural or artificial gas pipeline, for the sole
14 purpose of fueling compressor equipment to pressurize the pipeline, is not
15 a sale of the gas to the operator of the pipeline.

16 2. Converting natural gas into liquefied natural gas, for the sole
17 purpose of fueling compressor equipment used in the conversion process, is
18 not a sale of gas to the operator of the compressor equipment.

19 R. For the purposes of this section, the transfer of title or
20 possession of coal from an owner or operator of a power plant to a person
21 in the business of refining coal is not a sale of coal if both of the
22 following apply:

23 1. The transfer of title or possession of the coal is for the
24 purpose of refining the coal.

25 2. The title or possession of the coal is transferred back to the
26 owner or operator of the power plant after completion of the coal refining
27 process. For the purposes of this paragraph, "coal refining process"
28 means the application of a coal additive system that aids in the reduction
29 of power plant emissions during the combustion of coal and the treatment
30 of flue gas.

31 S. If a seller is entitled to a deduction pursuant to subsection B,
32 paragraph 15, subdivision (b) of this section, the department may require
33 the purchaser to establish that the requirements of subsection B,
34 paragraph 15, subdivision (b) of this section have been satisfied. If the
35 purchaser cannot establish that the requirements of subsection B,
36 paragraph 15, subdivision (b) of this section have been satisfied, the
37 purchaser is liable in an amount equal to any tax, penalty and interest
38 that the seller would have been required to pay under article 1 of this
39 chapter if the seller had not made a deduction pursuant to subsection B,
40 paragraph 15, subdivision (b) of this section. Payment of the amount
41 under this subsection exempts the purchaser from liability for any tax
42 imposed under article 4 of this chapter and related to the tangible
43 personal property purchased. The amount shall be treated as transaction
44 privilege tax to the purchaser and as tax revenues collected from the
45 seller to designate the distribution base pursuant to section 42-5029.

1 T. For the purposes of section 42-5032.01, the department shall
2 separately account for revenues collected under the retail classification
3 from businesses selling tangible personal property at retail:

4 1. On the premises of a multipurpose facility that is owned, leased
5 or operated by the tourism and sports authority pursuant to title 5,
6 chapter 8.

7 2. At professional football contests that are held in a stadium
8 located on the campus of an institution under the jurisdiction of the
9 Arizona board of regents.

10 U. In computing the tax base for the sale of a motor vehicle to a
11 nonresident of this state, if the purchaser's state of residence allows a
12 corresponding use tax exemption to the tax imposed by article 1 of this
13 chapter and the rate of the tax in the purchaser's state of residence is
14 lower than the rate prescribed in article 1 of this chapter or if the
15 purchaser's state of residence does not impose an excise tax, and the
16 nonresident has secured a special ninety day nonresident registration
17 permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01,
18 there shall be deducted from the tax base a portion of the gross proceeds
19 or gross income from the sale so that the amount of transaction privilege
20 tax that is paid in this state is equal to the excise tax that is imposed
21 by the purchaser's state of residence on the nonexempt sale or use of the
22 motor vehicle.

23 V. For the purposes of this section:

24 1. "Agricultural aircraft" means an aircraft that is built for
25 agricultural use for the aerial application of pesticides or fertilizer or
26 for aerial seeding.

27 2. "Aircraft" includes:

28 (a) An airplane flight simulator that is approved by the federal
29 aviation administration for use as a phase II or higher flight simulator
30 under appendix H, 14 Code of Federal Regulations part 121.

31 (b) Tangible personal property that is permanently affixed or
32 attached as a component part of an aircraft that is owned or operated by a
33 certificated or licensed carrier of persons or property.

34 3. "Other accessories and related equipment" includes aircraft
35 accessories and equipment such as ground service equipment that physically
36 contact aircraft at some point during the overall carrier operation.

37 4. "Selling at retail" means a sale for any purpose other than for
38 resale in the regular course of business in the form of tangible personal
39 property, but transfer of possession, lease and rental as used in the
40 definition of sale mean only such transactions as are found on
41 investigation to be in lieu of sales as defined without the words lease or
42 rental.

43 W. For the purposes of subsection I of this section:

1 1. "Assembler" means a person who unites or combines products,
2 wares or articles of manufacture so as to produce a change in form or
3 substance without changing or altering the component parts.

4 2. "Manufacturer" means a person who is principally engaged in the
5 fabrication, production or manufacture of products, wares or articles for
6 use from raw or prepared materials, imparting to those materials new
7 forms, qualities, properties and combinations.

8 3. "Modifier" means a person who reworks, changes or adds to
9 products, wares or articles of manufacture.

10 4. "Overhead materials" means tangible personal property, the gross
11 proceeds of sales or gross income derived from that would otherwise be
12 included in the retail classification, and that are used or consumed in
13 the performance of a contract, the cost of which is charged to an overhead
14 expense account and allocated to various contracts based on generally
15 accepted accounting principles and consistent with government contract
16 accounting standards.

17 5. "Repairer" means a person who restores or renews products, wares
18 or articles of manufacture.

19 6. "Subcontract" means an agreement between a contractor and any
20 person who is not an employee of the contractor for furnishing of supplies
21 or services that, in whole or in part, are necessary to the performance of
22 one or more government contracts, or under which any portion of the
23 contractor's obligation under one or more government contracts is
24 performed, undertaken or assumed and that includes provisions causing
25 title to overhead materials or other tangible personal property used in
26 the performance of the subcontract to pass to the government or that
27 includes provisions incorporating such title passing clauses in a
28 government contract into the subcontract.

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

31 42-6015. Municipal tax on digital goods and services;
32 definitions

33 A. A CITY OR TOWN MAY IMPOSE A TAX ON LICENSES FOR THE USE OF
34 PREWRITTEN COMPUTER SOFTWARE, REGARDLESS OF DELIVERY METHOD, AND SPECIFIED
35 DIGITAL GOODS TRANSFERRED ELECTRONICALLY, BUT ONLY AS RETAIL TRANSACTION
36 PRIVILEGE OR USE TAX UNDER THE MODEL CITY TAX CODE. ALL TAXES ON
37 PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS TRANSFERRED
38 ELECTRONICALLY SHALL BE SOURCED AS PROVIDED IN SECTION 42-5040 BASED ON
39 THE CERTIFICATE PROVIDED PURSUANT TO SECTION 42-5009, SUBSECTION R, IF
40 APPLICABLE.

41 B. A CITY, TOWN OR OTHER TAXING JURISDICTION MAY NOT LEVY A
42 TRANSACTION PRIVILEGE, SALES, USE OR OTHER SIMILAR TAX, HOWEVER
43 DENOMINATED, ON SPECIFIED DIGITAL SERVICES, OR ON SPECIFIED DIGITAL GOODS
44 THAT ARE REMOTELY ACCESSED AND NOT TRANSFERRED ELECTRONICALLY. THE
45 ABILITY TO RECEIVE, SAVE OR PRINT AN OUTPUT FILE OR ANY TEMPORARY

1 DOWNLOADED FILE FROM ANY SPECIFIED DIGITAL SERVICE DOES NOT CHANGE ITS
2 CHARACTERIZATION AS AN EXCLUDED SERVICE.

3 C. THIS SECTION DOES NOT APPLY WITH RESPECT TO SERVICES PROVIDED BY
4 A PERSON THAT IS SUBJECT TO TAX UNDER THE ONLINE LODGING MARKETPLACE
5 CLASSIFICATION PURSUANT TO SECTIONS 42-5076 AND 42-6009.

6 D. FOR THE PURPOSES OF THIS SECTION, "PREWRITTEN COMPUTER
7 SOFTWARE", "REMOTELY ACCESSED", "SPECIFIED DIGITAL GOODS", "SPECIFIED
8 DIGITAL SERVICES" AND "TRANSFERRED ELECTRONICALLY" HAVE THE SAME MEANINGS
9 PRESCRIBED IN SECTION 42-5001.

10 Sec. 7. Section 44-1263, Arizona Revised Statutes, is amended to
11 read:

12 44-1263. Inability to conform motor vehicle to express
13 warranty; replacement of vehicle or refund of
14 monies; affirmative defenses; tax refund

15 A. If the manufacturer, its agents or its authorized dealers are
16 unable to conform the motor vehicle to any applicable express warranty by
17 repairing or correcting any defect or condition which substantially
18 impairs the use and value of the motor vehicle to the consumer after a
19 reasonable number of attempts, the manufacturer shall replace the motor
20 vehicle with a new motor vehicle or accept return of the motor vehicle
21 from the consumer and refund to the consumer the full purchase price,
22 including all collateral charges, less a reasonable allowance for the
23 consumer's use of the vehicle. The manufacturer shall make refunds to the
24 consumer and lienholder, if any, as their interests appear. A reasonable
25 allowance for use is that amount directly attributable to use by the
26 consumer before his first written report of the nonconformity to the
27 manufacturer, agent or dealer and during any subsequent period when the
28 vehicle is not out of service by reason of repair.

29 B. It is an affirmative defense to any claim under this article
30 that either:

31 1. An alleged nonconformity does not substantially impair the use
32 and market value of the motor vehicle.

33 2. A nonconformity is the result of abuse, neglect or unauthorized
34 modifications or alterations of the motor vehicle.

35 C. In the case of taxes paid pursuant to title 42, chapter 5, if
36 the manufacturer:

37 1. Accepts return of a motor vehicle from a consumer without
38 replacing the motor vehicle, the manufacturer shall refund the amount of
39 tax attributed to the sale of the vehicle to that consumer.

40 2. Replaces a motor vehicle with a new motor vehicle of lesser
41 value, the manufacturer shall refund the difference between the original
42 amount of tax attributed to the sale of that vehicle and the amount of tax
43 attributed to the sale of the replacement vehicle, excluding the value of
44 the motor vehicle being replaced.

1 3. Replaces a motor vehicle with a new motor vehicle of greater
2 value, the manufacturer shall calculate the gross proceeds of sales
3 pursuant to section 42-5001, paragraph ~~6~~ 9.

4 D. Pursuant to section 42-1118, subsection F, the manufacturer may
5 apply to the department of revenue for a refund for the amount of tax that
6 the manufacturer properly refunds to the consumer.

7 Sec. 8. Legislative intent

8 A. It is the intent of the legislature in enacting this act that
9 from and after the effective date of this act:

10 1. Proceeds from licenses for the use of prewritten computer
11 software, regardless of delivery method, and specified digital goods that
12 are transferred electronically to the purchaser be subject to transaction
13 privilege tax as provided by statute.

14 2. Proceeds from sales, leasing or licensing specified digital
15 services, regardless of delivery method, and specified digital goods that
16 are remotely accessed by the purchaser and not transferred electronically
17 be excluded from state and local transaction privilege taxes as provided
18 by statute.

19 B. This act and statutory provisions added by this act are not
20 intended to affect, and may not be cited or applied in, any administrative
21 or judicial action pending on the effective date of this act that
22 considers the construction, interpretation or application of any statutory
23 or administrative provision regarding the taxation of digital goods and
24 services.