

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 189
SENATE BILL 1019

AN ACT

AMENDING SECTIONS 42-5040 AND 42-5064, ARIZONA REVISED STATUTES; AMENDING SECTION 42-6004, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2018, CHAPTER 17, SECTION 1, CHAPTER 249, SECTION 6 AND CHAPTER 341, SECTION 2; AMENDING SECTION 42-6004, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2018, CHAPTER 17, SECTION 1, CHAPTER 249, SECTION 6, CHAPTER 263, SECTION 3 AND CHAPTER 341, SECTION 2; RELATING TO TRANSACTION PRIVILEGE TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5040, Arizona Revised Statutes, is amended to
3 read:

4 42-5040. Sourcing of certain transactions involving tangible
5 personal property; definitions

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

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

10 2. Except as provided in section 42-5008.01, to the purchaser's
11 location in this state if the seller receives the order at a business
12 location outside this state OR, IF THERE IS NO DELIVERY ADDRESS, TO THE
13 PURCHASER'S BILLING ADDRESS.

14 B. For the purposes of this section, an order is received when all
15 of the information necessary to accept the order has been received by or
16 on behalf of the seller, regardless of where the order is accepted or
17 approved. The place of business or residence of the purchaser does not
18 determine where the order is received.

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

21 1. To the lessor's business location if the lessor has a business
22 location in this state.

23 2. To the lessee's address if the lessor does not have a business
24 location in this state OR, IF THERE IS NO LESSEE'S ADDRESS, TO THE
25 LESSEE'S BILLING ADDRESS. The gross receipts are taxable when the
26 property is shipped, delivered or otherwise brought into this state for
27 use in this state.

28 D. For the purposes of this section:

29 1. "Lessee's address" means the residential address of an
30 individual lessee and the primary business address of any other lessee.

31 2. "Lessor's business location" means the business address that
32 appears on the lessor's transaction privilege tax license.

33 Sec. 2. Section 42-5064, Arizona Revised Statutes, is amended to
34 read:

35 42-5064. Telecommunications classification; definitions

36 A. The telecommunications classification is comprised of the
37 business of providing intrastate telecommunications services. The
38 telecommunications classification does not include:

39 1. Sales of intrastate telecommunications services by a cable
40 operator or by a microwave television transmission system that transmits
41 television programming to multiple subscribers and that is operated
42 pursuant to 47 Code of Federal Regulations parts 21 and 74.

43 2. Sales of internet access or application services to the person's
44 subscribers and customers. For the purposes of this paragraph:

1 (a) "Application services" means software applications provided
2 remotely using hypertext transfer protocol or another network protocol and
3 purchased by or for any school district, charter school, community college
4 or state university to assess or test student learning or to promote
5 curriculum design or enhancement.

6 (b) "Curriculum design or enhancement" means planning, implementing
7 or reporting on courses of study, lessons, assignments or other learning
8 activities.

9 3. The leasing or renting of space to make attachments to utility
10 poles as follows:

11 (a) By a person that is engaged in business under this section.

12 (b) To a person that is engaged in business under section 42-5063
13 or this section or that is a cable operator.

14 4. OVER-THE-TOP SERVICES. FOR THE PURPOSES OF THIS PARAGRAPH,
15 "OVER-THE-TOP SERVICES" MEANS AUDIO OR VIDEO PROGRAMMING SERVICES THAT ARE
16 RECEIVED BY THE PURCHASER BY MEANS OF AN INTERNET CONNECTION, REGARDLESS
17 OF THE TECHNOLOGY USED, THAT INCLUDE LINEAR OR LIVE PROGRAMMING AND THAT
18 ARE GENERALLY CONSIDERED COMPARABLE TO PROGRAMMING PROVIDED BY A RADIO OR
19 TELEVISION BROADCAST STATION AND INCLUDES RELATED ON-DEMAND PROGRAMMING
20 THAT IS PROVIDED AT NO ADDITIONAL CHARGE, REGARDLESS OF WHETHER THE
21 SERVICES ARE PROVIDED INDEPENDENTLY OR PACKAGED WITH OTHER AUDIO OR VIDEO
22 PROGRAMMING.

23 B. The tax base for the telecommunications classification is the
24 gross proceeds of sales or gross income derived from the business,
25 including the gross income derived from tolls, subscriptions and services
26 on behalf of subscribers or from the publication of a directory of the
27 names of subscribers. However, the gross proceeds of sales or gross
28 income derived from the following shall be deducted from the tax base:

29 1. Sales of intrastate telecommunications services to:

30 (a) Other persons engaged in businesses classified under the
31 telecommunications classification for use in such business.

32 (b) A direct broadcast satellite television or data transmission
33 service that operates pursuant to 47 Code of Federal Regulations part 25
34 for use in its direct broadcast satellite television or data transmission
35 operation by a facility described in section 42-5061, subsection B,
36 paragraph 15, subdivision (b).

37 2. End user common line charges established by federal
38 communications commission regulations (47 Code of Federal Regulations
39 section 69.104(a)).

40 3. Carrier access charges established by federal communications
41 commission regulations (47 Code of Federal Regulations sections 69.105(a)
42 through 69.118).

43 4. Sales of direct broadcast satellite television services pursuant
44 to 47 Code of Federal Regulations part 25 by a direct broadcast satellite

1 television service that operates pursuant to 47 Code of Federal
2 Regulations part 25.

3 5. Telecommunications services purchased with a prepaid calling
4 card, or a prepaid authorization number for telecommunications services,
5 that is taxable under section 42-5061.

6 C. A person that is engaged in a transient lodging business subject
7 to taxation under section 42-5070 and that provides telephone, fax or
8 internet access services to its customers at an additional charge, which
9 is separately stated on the customer invoice, is considered to be engaged
10 in business subject to taxation under this section for the purposes of
11 taxing the gross proceeds of sales or gross income derived from providing
12 those services.

13 D. The gross proceeds of sales or gross income derived from a
14 bundled transaction of services that are taxable pursuant to section
15 42-5023 are subject to the following:

16 1. A telecommunications service provider who can reasonably
17 identify the portion of the sales price of the bundled transaction derived
18 from charges for nontaxable services is subject to tax only on the gross
19 proceeds of sales or gross income derived from the taxable services. For
20 the purposes of this section, the telecommunications service provider may
21 elect to reasonably identify the portion of the sales price of the bundled
22 transaction derived from charges for nontaxable services by using
23 allocation percentages derived from the telecommunications service
24 provider's entire service area, including territories outside of this
25 state. On request, the department may require the telecommunications
26 service provider to provide this allocation information. The
27 reasonableness of the allocation is subject to audit by the department.

28 2. Notwithstanding sections 42-1118, 42-1120 and 42-1121, the
29 telecommunications service provider shall waive the right to file a claim
30 for a refund of taxes paid on the bundled transaction if the taxes paid
31 are based on the allocation percentage the telecommunications service
32 provider had determined to be reasonable at the beginning of the tax
33 period at issue.

34 3. The burden of proof is on the telecommunications service
35 provider to establish that the gross proceeds of sales or gross income is
36 derived from charges for nontaxable services.

37 E. For the purposes of this section:

38 1. "Bundled transaction" means a sale of multiple services in which
39 both of the following apply:

40 (a) The sale consists of both taxable and nontaxable services.

41 (b) The telecommunications service provider charges a customer one
42 sales price for all services that are sold instead of separately charging
43 for each individual service.

44 2. "Cable operator" has the same meaning prescribed in section
45 9-505.

1 3. "Internet" means the computer and telecommunications facilities
2 that comprise the interconnected worldwide network of networks that employ
3 the transmission control protocol or internet protocol, or any predecessor
4 or successor protocol, to communicate information of all kinds by wire or
5 radio.

6 4. "Internet access" means a service that enables users to access
7 content, information, ~~electronic mail~~ E-MAIL or other services over the
8 internet. Internet access does not include telecommunications services
9 provided by a common carrier.

10 5. "Intrastate telecommunications services" means transmitting
11 signs, signals, writings, images, sounds, messages, data or other
12 information of any nature by wire, radio waves, light waves or other
13 electromagnetic means if the information transmitted originates and
14 terminates in this state.

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

18 Sec. 3. Section 42-6004, Arizona Revised Statutes, as amended by
19 Laws 2018, chapter 17, section 1, chapter 249, section 6 and chapter 341,
20 section 2, is amended to read:

21 42-6004. Exemption from municipal tax; definitions

22 A. A city, town or special taxing district shall not levy a
23 transaction privilege, sales, use or other similar tax on:

24 1. Exhibition events in this state sponsored, conducted or operated
25 by a nonprofit organization that is exempt from taxation under section
26 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
27 organization is associated with a major league baseball team or a national
28 touring professional golfing association and no part of the organization's
29 net earnings inures to the benefit of any private shareholder or
30 individual. This paragraph does not apply to an organization that is
31 owned, managed or controlled, in whole or in part, by a major league
32 baseball team, or its owners, officers, employees or agents, or by a major
33 league baseball association or professional golfing association, or its
34 owners, officers, employees or agents, unless the organization conducted
35 or operated exhibition events in this state before January 1, 2018 that
36 were exempt from state transaction privilege tax under section 42-5073.

37 2. Interstate telecommunications services, which include that
38 portion of telecommunications services, such as subscriber line service,
39 allocable by federal law to interstate telecommunications service.

40 3. Sales of warranty or service contracts.

41 4. Sales of motor vehicles to nonresidents of this state for use
42 outside this state if the motor vehicle dealer ships or delivers the motor
43 vehicle to a destination outside this state.

44 5. Interest on finance contracts.

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

1 7. Orthodontic devices dispensed by a dental professional who is
2 licensed under title 32, chapter 11 to a patient as part of the practice
3 of dentistry.

4 8. Sales of internet access services to the person's subscribers
5 and customers. For the purposes of this paragraph:

6 (a) "Internet" means the computer and telecommunications facilities
7 that comprise the interconnected worldwide network of networks that employ
8 the transmission control protocol or internet protocol, or any predecessor
9 or successor protocol, to communicate information of all kinds by wire or
10 radio.

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

15 9. The gross proceeds of sales or gross income retained by the
16 Arizona exposition and state fair board from ride ticket sales at the
17 annual Arizona state fair.

18 10. Leasing real property between affiliated companies, businesses,
19 persons or reciprocal insurers. For the purposes of this paragraph:

20 (a) "Affiliated companies, businesses, persons or reciprocal
21 insurers" means the lessor holds a controlling interest in the lessee, the
22 lessee holds a controlling interest in the lessor, affiliated persons hold
23 a controlling interest in both the lessor and the lessee, or an unrelated
24 person holds a controlling interest in both the lessor and lessee.

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

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

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

33 (e) "Reciprocal insurer" has the same meaning prescribed in section
34 20-762.

35 11. The gross proceeds of sales or gross income derived from a
36 contract for the installation, assembly, repair or maintenance of
37 machinery, equipment or other tangible personal property that is described
38 in section 42-5061, subsection B and that has independent functional
39 utility, pursuant to the following provisions:

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

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

44 (ii) Any activity performed on any tangible personal property
45 relating to machinery, equipment or other tangible personal property with

1 independent functional utility in furtherance of any of the purposes
2 provided for under subdivision (d) of this paragraph.

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

7 (b) The deduction provided in this paragraph does not include gross
8 proceeds of sales or gross income from the portion of any contracting
9 activity that consists of the development of, or modification to, real
10 property in order to facilitate the installation, assembly, repair,
11 maintenance or removal of machinery, equipment or other tangible personal
12 property described in section 42-5061, subsection B.

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

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

20 (i) Assembling the machinery, equipment or other tangible personal
21 property.

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

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

27 (iv) Stabilizing or protecting the machinery, equipment or other
28 tangible personal property during operation by bolting, burying or
29 performing other dissimilar nonpermanent connections to either real
30 property or real property improvements.

31 12. The leasing or renting of certified ignition interlock devices
32 installed pursuant to the requirements prescribed by section 28-1461. For
33 the purposes of this paragraph, "certified ignition interlock device" has
34 the same meaning prescribed in section 28-1301.

35 13. Computer data center equipment sold to the owner, operator or
36 qualified colocation tenant of a computer data center that is certified by
37 the Arizona commerce authority under section 41-1519 or an authorized
38 agent of the owner, operator or qualified colocation tenant during the
39 qualification period for use in the qualified computer data center. For
40 the purposes of this paragraph, "computer data center", "computer data
41 center equipment", "qualification period" and "qualified colocation
42 tenant" have the same meanings prescribed in section 41-1519.

43 14. The gross proceeds of sales or gross income derived from a
44 contract with the owner of real property or improvements to real property
45 for the maintenance, repair, replacement or alteration of existing

1 property, except as specified in this paragraph. The gross proceeds of
2 sales or gross income derived from a de minimis amount of modification
3 activity does not subject the contract or any part of the contract to tax.
4 For the purposes of this paragraph:

5 (a) Each contract is independent of another contract, except that
6 any change order that directly relates to the scope of work of the
7 original contract shall be treated the same as the original contract under
8 this paragraph, regardless of the amount of modification activities
9 included in the change order. If a change order does not directly relate
10 to the scope of work of the original contract, the change order shall be
11 treated as a new contract, with the tax treatment of any subsequent change
12 order to follow the tax treatment of the contract to which the scope of
13 work of the subsequent change order directly relates.

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

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

24 (i) Community facilities districts, fire districts, county
25 television improvement districts, community park maintenance districts,
26 cotton pest control districts, hospital districts, pest abatement
27 districts, health service districts, agricultural improvement districts,
28 county free library districts, county jail districts, county stadium
29 districts, special health care districts, public health services
30 districts, theme park districts or revitalization districts.

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

35 15. Monitoring services relating to an alarm system as defined in
36 section 32-101.

37 16. Tangible personal property, job printing or publications sold
38 to or purchased by, or tangible personal property leased, rented or
39 licensed for use to or by, a qualifying health sciences educational
40 institution as defined in section 42-5001.

41 17. The transfer of title or possession of coal back and forth
42 between an owner or operator of a power plant and a person who is
43 responsible for refining coal if both of the following apply:

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

1 (b) The title or possession of the coal is transferred back to the
2 owner or operator of the power plant after completion of the coal refining
3 process. For the purposes of this subdivision, "coal refining process"
4 means the application of a coal additive system that aids the reduction of
5 power plant emissions during the combustion of coal and the treatment of
6 flue gas.

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

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

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

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

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

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

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

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

36 21. The gross proceeds of sales or gross income derived from entry
37 fees paid by participants for events that are operated or conducted by
38 nonprofit organizations that are exempt from taxation under section
39 501(c)(3) of the internal revenue code and of which no part of the
40 organization's net earnings inures to the benefit of any private
41 shareholder or individual, if the event consists of a run, walk, swim or
42 bicycle ride or a similar event, or any combination of these events.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 G. A CITY, TOWN OR TAXING JURISDICTION SHALL NOT LEVY A TRANSACTION
27 PRIVILEGE, SALES, GROSS RECEIPTS, USE, FRANCHISE OR OTHER SIMILAR TAX OR
28 FEE, HOWEVER DENOMINATED, ON GROSS PROCEEDS OF SALES OR GROSS INCOME
29 DERIVED FROM OVER-THE-TOP SERVICES. FOR THE PURPOSES OF THIS SUBSECTION,
30 "OVER-THE-TOP SERVICES" MEANS AUDIO OR VIDEO PROGRAMMING SERVICES THAT ARE
31 RECEIVED BY THE PURCHASER BY MEANS OF AN INTERNET CONNECTION, REGARDLESS
32 OF THE TECHNOLOGY USED, THAT INCLUDE LINEAR OR LIVE PROGRAMMING AND THAT
33 ARE GENERALLY CONSIDERED COMPARABLE TO PROGRAMMING PROVIDED BY A RADIO OR
34 TELEVISION BROADCAST STATION AND INCLUDES RELATED ON-DEMAND PROGRAMMING
35 THAT IS PROVIDED AT NO ADDITIONAL CHARGE, REGARDLESS OF WHETHER THE
36 SERVICES ARE PROVIDED INDEPENDENTLY OR PACKAGED WITH OTHER AUDIO OR VIDEO
37 PROGRAMMING.

38 ~~G.~~ H. For the purposes of this section:

39 1. "Cable operator" has the same meaning prescribed in section
40 9-505.

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

44 3. "Telecommunication services" means transmitting or relaying
45 sound, visual image, data, information, images or material over lines,

1 wires or cables by radio signal, light beam, telephone, telegraph or other
2 electromagnetic means.

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

6 Sec. 4. Section 42-6004, Arizona Revised Statutes, as amended by
7 Laws 2018, chapter 17, section 1, chapter 249, section 6, chapter 263,
8 section 3 and chapter 341, section 2, is amended to read:

9 42-6004. Exemption from municipal tax; definitions

10 A. A city, town or special taxing district shall not levy a
11 transaction privilege, sales, use or other similar tax on:

12 1. Exhibition events in this state sponsored, conducted or operated
13 by a nonprofit organization that is exempt from taxation under section
14 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
15 organization is associated with a major league baseball team or a national
16 touring professional golfing association and no part of the organization's
17 net earnings inures to the benefit of any private shareholder or
18 individual. This paragraph does not apply to an organization that is
19 owned, managed or controlled, in whole or in part, by a major league
20 baseball team, or its owners, officers, employees or agents, or by a major
21 league baseball association or professional golfing association, or its
22 owners, officers, employees or agents, unless the organization conducted
23 or operated exhibition events in this state before January 1, 2018 that
24 were exempt from state transaction privilege tax under section 42-5073.

25 2. Interstate telecommunications services, which include that
26 portion of telecommunications services, such as subscriber line service,
27 allocable by federal law to interstate telecommunications service.

28 3. Sales of warranty or service contracts.

29 4. Sales of motor vehicles to nonresidents of this state for use
30 outside this state if the motor vehicle dealer ships or delivers the motor
31 vehicle to a destination outside this state.

32 5. Interest on finance contracts.

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

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

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

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

44 (b) "Internet access" means a service that enables users to access
45 content, information, electronic mail or other services over the internet.

1 Internet access does not include telecommunication services provided by a
2 common carrier.

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

6 10. Leasing real property between affiliated companies, businesses,
7 persons or reciprocal insurers. For the purposes of this paragraph:

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

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

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

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

21 (e) "Reciprocal insurer" has the same meaning prescribed in section
22 20-762.

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

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

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

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

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

40 (b) The deduction provided in this paragraph does not include gross
41 proceeds of sales or gross income from the portion of any contracting
42 activity that consists of the development of, or modification to, real
43 property in order to facilitate the installation, assembly, repair,
44 maintenance or removal of machinery, equipment or other tangible personal
45 property described in section 42-5061, subsection B.

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

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

8 (i) Assembling the machinery, equipment or other tangible personal
9 property.

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

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

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

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

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

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

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

1 order to follow the tax treatment of the contract to which the scope of
2 work of the subsequent change order directly relates.

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

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

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

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

24 15. Monitoring services relating to an alarm system as defined in
25 section 32-101.

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

30 17. The sale of coal.

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

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

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

44 (c) "Indian tribe" means any organized nation, tribe, band or
45 community that is recognized as an Indian tribe by the United States

1 department of the interior and includes any entity formed under the laws
2 of that Indian tribe.

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

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

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

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

15 21. The gross proceeds of sales or gross income derived from entry
16 fees paid by participants for events that are operated or conducted by
17 nonprofit organizations that are exempt from taxation under section
18 501(c)(3) of the internal revenue code and of which no part of the
19 organization's net earnings inures to the benefit of any private
20 shareholder or individual, if the event consists of a run, walk, swim or
21 bicycle ride or a similar event, or any combination of these events.

22 B. A city, town or other taxing jurisdiction shall not levy a
23 transaction privilege, sales, use, franchise or other similar tax or fee,
24 however denominated, on natural gas or liquefied petroleum gas used to
25 propel a motor vehicle.

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

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

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

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

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

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

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

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

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

15 (c) "Development fees" means fees imposed to offset capital costs
16 of providing public infrastructure, public safety or other public services
17 to a development and authorized pursuant to section 9-463.05, section
18 11-1102 or title 48 regardless of the jurisdiction to which the fees are
19 paid.

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

22 8. Transporting for hire persons by transportation network company
23 drivers on transactions involving transportation network services as
24 defined in section 28-9551.

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

27 10. Transporting for hire persons by vehicle for hire drivers on
28 transactions involving vehicle for hire services as defined in section
29 28-9501.

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

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

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

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

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

4 G. A CITY, TOWN OR TAXING JURISDICTION SHALL NOT LEVY A TRANSACTION
5 PRIVILEGE, SALES, GROSS RECEIPTS, USE, FRANCHISE OR OTHER SIMILAR TAX OR
6 FEE, HOWEVER DENOMINATED, ON GROSS PROCEEDS OF SALES OR GROSS INCOME
7 DERIVED FROM OVER-THE-TOP SERVICES. FOR THE PURPOSES OF THIS SUBSECTION,
8 "OVER-THE-TOP SERVICES" MEANS AUDIO OR VIDEO PROGRAMMING SERVICES THAT ARE
9 RECEIVED BY THE PURCHASER BY MEANS OF AN INTERNET CONNECTION, REGARDLESS
10 OF THE TECHNOLOGY USED, THAT INCLUDE LINEAR OR LIVE PROGRAMMING AND THAT
11 ARE GENERALLY CONSIDERED COMPARABLE TO PROGRAMMING PROVIDED BY A RADIO OR
12 TELEVISION BROADCAST STATION AND INCLUDES RELATED ON-DEMAND PROGRAMMING
13 THAT IS PROVIDED AT NO ADDITIONAL CHARGE, REGARDLESS OF WHETHER THE
14 SERVICES ARE PROVIDED INDEPENDENTLY OR PACKAGED WITH OTHER AUDIO OR VIDEO
15 PROGRAMMING.

16 ~~G.~~ H. For the purposes of this section:

17 1. "Cable operator" has the same meaning prescribed in section
18 9-505.

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

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

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

29 Sec. 5. Conditional enactment

30 Section 42-6004, Arizona Revised Statutes, as amended by Laws 2018,
31 chapter 17, section 1, chapter 249, section 6, chapter 263, section 3 and
32 chapter 341, section 2 and this act, becomes effective on the date
33 prescribed by Laws 2018, chapter 263, section 5 but only on the occurrence
34 of the condition prescribed in Laws 2018, chapter 263, section 5.

APPROVED BY THE GOVERNOR MAY 8, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2019.