State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 229
SENATE BILL 1636

AN ACT

AMENDING SECTIONS 42-5151 AND 42-5157, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE AND USE TAX.

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

Section 1. Section 42-5151, Arizona Revised Statutes, is amended to read:

42-5151. Definitions

In this article, unless the context otherwise requires:

1. "Ancillary services" means those services so designated in federal energy regulatory commission order 888 adopted in 1996 that include the services necessary to support the transmission of electricity from resources to loads while maintaining reliable operation of the transmission system according to good utility practice.

2. "Electric distribution service" means distributing electricity to retail electric customers through the use of electric distribution facilities.

3. "Electric generation service" means providing electricity for sale to retail electric customers but excluding electric distribution or transmission services.

4. "Electric transmission service" means transmitting electricity to retail electric customers or to electric distribution facilities so classified by the federal energy regulatory commission or, to the extent permitted by law, so classified by the Arizona corporation commission.

5. "Electric utility services" means the business of providing electric ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity.

6. "Electricity" means electric energy, electric capacity or electric capacity and energy.

7. "Electricity supplier" means a person, whether acting in a principal, agent or other capacity, that offers to sell electricity to a retail electric customer in this state.

8. "Natural gas" means natural or artificial gas and includes methane and propane gas, the natural gas commodity, natural gas pipeline capacity or natural gas commodity and pipeline capacity.

9. "Natural gas utility services" means the business of selling natural gas or providing natural gas transportation services or other services related to providing natural gas.

10. "Notice" means written notice served personally or by certified mail and addressed to the last known address of the person to whom such notice is given.

11. "MOTOR VEHICLES THAT ARE REMOVED FROM INVENTORY" MEANS A MOTOR VEHICLE THAT HAS BEEN REMOVED FROM A MOTOR VEHICLE DEALER'S, AS DEFINED IN SECTION 28-4301, INVENTORY AND THAT IS NOT FOR SALE.

12. "Other services" includes metering, meter reading services, billing and collecting services.
12. “Person” means an individual, firm, partnership, joint
venture, association, corporation, estate, trust, receiver or syndicate,
this state or a county, city, municipality, district or other political
subdivision or agency thereof.
13. “Purchase” means any transfer, exchange or barter,
conditional or otherwise, in any manner or by any means, of tangible
personal property for a consideration, including transactions by which the
possession of property is transferred but the seller retains the title as
security for payment.
14. “Purchase price” or “sales price” means the total amount
for which tangible personal property is sold, including any services that
are a part of the sale, valued in money, whether paid in money or
otherwise, and any amount for which credit is given to the purchaser by
the seller without any deduction on account of the cost of the property
sold, materials used, labor or services performed, interest charged,
losses or other expenses, but does not include:
(a) Discounts allowed and taken.
(b) Charges for labor or services in installing, remodeling or
repairing.
(c) Freight costs billed to and collected from a purchaser by a
retailer for tangible personal property which, on the order of the
retailer, is shipped directly from a manufacturer or wholesaler to the
purchaser.
(d) Amounts attributable to federal excise taxes imposed by
United States Code section 4001, 4051 or 4081 on sales of heavy trucks and
trailers and automobiles or on sales of use fuel, as defined in section
28-5601.
(e) The value of merchandise that is traded in on the purchase of
new or pre-owned merchandise when the trade-in allowance is deducted from
the sales price of the new or pre-owned merchandise before the completion
of the sale.
15. “Retail electric customer” means a person who purchases
electricity for that person's own use, including use in that person's
trade or business, and not for resale, redistribution or retransmission.
16. “Retail natural gas customer” means a person who purchases
natural gas for that person's own use, including use in that person's
trade or business, and not for resale, redistribution or retransmission.
17. “Retailer” includes:
(a) Every person engaged in the business of making sales of
tangible personal property for storage, use or other consumption or in the
business of making sales at auction of tangible personal property owned by
that person or others for storage, use or other consumption. If in the
opinion of the department it is necessary for the efficient administration
of this article to regard any salesmen, representatives, peddlers or
canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this article.

(b) A person who solicits orders for tangible personal property by mail if the solicitations are substantial and recurring or if the retailer benefits from any banking, financing, debt collection, telecommunication, television shopping system, cable, optic, microwave or other communication system or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing or repair facilities.

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

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

21. "Storage" means keeping or retaining tangible personal property purchased from a retailer for any purpose except sale in the regular course of business or subsequent use solely outside this state. For the purposes of this paragraph, sale in the regular course of business does not include the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

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

(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.
21. "Taxpayer" means any retailer or person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to the tax imposed by this article when such tax was not paid to a retailer.

22. "Use or consumption" means the exercise of any right or power over tangible personal property incidental to owning the property except holding for sale or selling the property in the regular course of business. For the purposes of this paragraph, selling the property in the regular course of business does not include the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

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

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

23. "Utility business" means a person that is engaged in the business of providing electric utility services to retail electric customers or natural gas utility services to retail natural gas customers.

Sec. 2. Section 42-5157, Arizona Revised Statutes, is amended to read:

42-5157. Motor vehicles removed from inventory; service vehicles

A. The tax imposed by this article on motor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-4301, that are used directly in the conduct of the motor vehicle dealer's primary business and that are returned to the dealer's active sales inventory within one year after the date of the initial removal from inventory shall be levied and imposed on a monthly basis and shall be applied to one thirty-ninth 1/39 of the value of each new motor vehicle as determined by the manufacturer's suggested retail price and to one thirty-ninth 1/39 of the value of each used motor vehicle as determined by any industry-wide publication in common use and devoted to listing used car values.

B. A SERVICE VEHICLE IS NOT CONSIDERED TO BE REMOVED FROM INVENTORY IF THE SERVICE VEHICLE IS CONTINUOUSLY AVAILABLE FOR SALE. THE DEPARTMENT SHALL CONSIDER ANY SERVICE VEHICLE THAT REMAINS A NEW MOTOR VEHICLE AS DEFINED IN SECTION 28-4301 OR THAT IS TREATED AS A NEW MOTOR VEHICLE UNDER TITLE 28, CHAPTER 10 TO BE CONTINUOUSLY AVAILABLE FOR SALE.
Sec. 3. Purpose

The purpose of this act is to clarify the scope of section 42-5157, Arizona Revised Statutes, as added by Laws 1993, chapter 12, section 1 and the treatment of service vehicles thereunder from and after December 31, 1992.

Sec. 4. Applicability

This act applies to taxable periods beginning on or after the first day of the month following the general effective date.

APPROVED BY THE GOVERNOR MAY 16, 2022.