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CHAPTER 321

HOUSE BILL 2360

AN ACT

AMENDING SECTIONS 42-5074 AND 42-5159, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE AND USE TAX EXEMPTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-5074, Arizona Revised Statutes, is amended to read:

42-5074. Restaurant classification

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.

2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.

3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), which do not regularly engage or continue in the restaurant business for the purpose of fund-raising.

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

5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

7. Sales to qualifying hospitals as defined in section 42-5001.

8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

9. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of

the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

10. Sales of catered food, drink and condiment to a motion picture production company. To qualify for this deduction, at the time of purchase, the motion picture production company must present to the business its certificate of qualification that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the deduction.

11. SALES OF ARTICLES OF PREPARED OR UNPREPARED FOOD, DRINK OR CONDIMENT AND ACCESSORY TANGIBLE PERSONAL PROPERTY TO A SCHOOL DISTRICT OR CHARTER SCHOOL IF THE ARTICLES AND ACCESSORY TANGIBLE PERSONAL PROPERTY ARE SERVED TO PERSONS FOR CONSUMPTION ON THE PREMISES OF A PUBLIC SCHOOL IN THE SCHOOL DISTRICT OR CHARTER SCHOOL DURING SCHOOL HOURS.

C. The tax imposed on the restaurant classification pursuant to this section does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this subsection, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

D. The department shall separately account for revenues collected under the restaurant classification for purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

E. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the restaurant classification from businesses operating restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments:

1. On the premises of a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8 for consumption on or off the premises.

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

Sec. 2. Section 42-5159, Arizona Revised Statutes, is amended to read:

42-5159. Exemptions

A. The tax levied by this article does not apply to the storage, use or consumption in this state of the following described tangible personal property:

1. Tangible personal property sold in this state, the gross receipts from the sale of which are included in the measure of the tax imposed by articles 1 and 2 of this chapter.

2. Tangible personal property the sale or use of which has already been subjected to an excise tax at a rate equal to or exceeding the tax

imposed by this article under the laws of another state of the United States. If the excise tax imposed by the other state is at a rate less than the tax imposed by this article, the tax imposed by this article is reduced by the amount of the tax already imposed by the other state.

3. Tangible personal property, the storage, use or consumption of which the constitution or laws of the United States prohibit this state from taxing or to the extent that the rate or imposition of tax is unconstitutional under the laws of the United States.

4. Tangible personal property which directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.

5. Motor vehicle fuel and use fuel, the sales, distribution or use of which in this state is subject to the tax imposed under title 28, chapter 16, article 1, use fuel which is sold to or used by a person holding a valid single trip use fuel tax permit issued under section 28-5739, aviation fuel, the sales, distribution or use of which in this state is subject to the tax imposed under section 28-8344, and jet fuel, the sales, distribution or use of which in this state is subject to the tax imposed under article 8 of this chapter.

6. Tangible personal property brought into this state by an individual who was a nonresident at the time the property was purchased for storage, use or consumption by the individual if the first actual use or consumption of the property was outside this state, unless the property is used in conducting a business in this state.

7. Purchases of implants used as growth promotants and injectable medicines, not already exempt under paragraph 16 of this subsection, for livestock and poultry owned by, or in possession of, persons who are engaged in producing livestock, poultry, or livestock or poultry products, or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

8. Livestock, poultry, supplies, feed, salts, vitamins and other additives for use or consumption in the businesses of farming, ranching and feeding livestock or poultry, not including fertilizers, herbicides and insecticides. For the purposes of this paragraph, "poultry" includes ratites.

9. Seeds, seedlings, roots, bulbs, cuttings and other propagative material for use in commercially producing agricultural, horticultural, viticultural or floricultural crops in this state.

10. Tangible personal property not exceeding two hundred dollars in any one month purchased by an individual at retail outside the continental limits of the United States for the individual's own personal use and enjoyment.

11. Advertising supplements which are intended for sale with newspapers published in this state and which have already been subjected to an excise tax under the laws of another state in the United States which equals or exceeds the tax imposed by this article.

12. Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

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

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

13. Tangible personal property purchased by:

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

(b) A hospital operated by this state or a political subdivision of this state.

(c) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

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

(e) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind, visually impaired and multihandicapped children from the time of birth to age twenty-one.

(f) A nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for mentally or physically handicapped persons if the programs are exclusively for training, job placement, rehabilitation or testing.

(g) A person that is subject to tax under article 1 of this chapter by reason of being engaged in business classified under the prime contracting classification under section 42-5075, or a subcontractor working under the control of a prime contractor, if the tangible personal property is any of the following:

(i) Incorporated or fabricated by the contractor into a structure, project, development or improvement in fulfillment of a contract.

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

(iii) Incorporated or fabricated by the person into any lake facility development in a commercial enhancement reuse district under conditions prescribed for the deduction allowed by section 42-5075, subsection B, paragraph 8.

(h) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code if the property is purchased

from the parent or an affiliate organization that is located outside this state.

(i) A qualifying community health center as defined in section 42-5001.

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

(k) A person engaged in business under the transient lodging classification if the property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, which are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

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

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

15. Tangible personal property sold by:

(a) Any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

(b) A nonprofit organization that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

(c) A nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

16. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

17. Prosthetic appliances, as defined in section 23-501, prescribed or recommended by a person who is licensed, registered or otherwise

professionally credentialed as a physician, dentist, podiatrist, chiropractor, naturopath, homeopath, nurse or optometrist.

18. Prescription eyeglasses and contact lenses.

19. Insulin, insulin syringes and glucose test strips.

20. Hearing aids as defined in section 36-1901.

21. Durable medical equipment which has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 13, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

22. Food, as provided in and subject to the conditions of article 3 of this chapter and section 42-5074.

23. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

24. Food and drink provided without monetary charge by a taxpayer which is subject to section 42-5074 to its employees for their own consumption on the premises during the employees' hours of employment.

25. Tangible personal property that is used or consumed in a business subject to section 42-5074 for human food, drink or condiment, whether simple, mixed or compounded.

26. Food, drink or condiment and accessory tangible personal property THAT ARE ACQUIRED FOR USE BY OR PROVIDED TO A SCHOOL DISTRICT OR CHARTER SCHOOL if they are to be EITHER SERVED OR prepared and served to persons for consumption on the premises of a public school in a school district during school hours.

27. Lottery tickets or shares purchased pursuant to title 5, chapter 5, article 1.

28. Textbooks, sold by a bookstore, that are required by any state university or community college.

29. Magazines, other periodicals or other publications produced by this state to encourage tourist travel.

30. Paper machine clothing, such as forming fabrics and dryer felts, purchased by a paper manufacturer and directly used or consumed in paper manufacturing.

31. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity purchased by a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for fifteen full consecutive calendar or fiscal years from the date the first paper

manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

32. Motor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-4301 and that are provided to:

(a) Charitable or educational institutions that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(b) Public educational institutions.

(c) State universities or affiliated organizations of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Natural gas or liquefied petroleum gas used to propel a motor vehicle.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled as defined in section 46-191, has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

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

36. Food, drink and condiment purchased for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

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

38. Tangible personal property which is or directly enters into and becomes an ingredient or component part of cards used as prescription plan identification cards.

39. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a

manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. For the purposes of this paragraph:

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

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

40. Through December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061. From and after December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061, if the gross proceeds of the sales were included in the measure of the tax imposed by article 1 of this chapter or if the personal property liquidation was a casual activity or transaction.

41. Wireless telecommunications equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064.

42. Alternative fuel, as defined in section 1-215, purchased by a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

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

44. Alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to

convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

45. Gas diverted from a pipeline, by a person engaged in the business of operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

46. Tangible personal property that is excluded, exempt or deductible from transaction privilege tax pursuant to section 42-5063.

47. Tangible personal property purchased to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

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

B. In addition to the exemptions allowed by subsection A of this section, the following categories of tangible personal property are also exempt:

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

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

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification under section 42-5064 and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media which are components of carrier systems.

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

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

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

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

(a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state.

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

9. Rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

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

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

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

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

(a) "New machinery and equipment" means machinery or equipment which has never been sold at retail except pursuant to leases or rentals which do not total two years or more.

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

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

15. Machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five years after the start of initial construction. For the purposes of this paragraph:

(a) "Motion picture, multimedia or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, CD-ROM, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.

(b) "Soundstage complex" means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.

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

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

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

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations parts 25 and 100.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data

transmission services during the test period were transmitted by the facility to or on behalf of those services.

For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

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

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

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

18. Machinery and equipment that are used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

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

20. Machinery and equipment that are used in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state and that are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the

telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

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

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

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

22. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2014 by a qualified business under section 41-1516 for harvesting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this exemption, the qualified business must obtain and present its certification from the department of commerce at the time of purchase.

23. Machinery, equipment and other tangible personal property used directly in motion picture production by a motion picture production company. To qualify for this ~~deduction~~ EXEMPTION, at the time of purchase, the motion picture production company must present to the retailer its certificate that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the ~~deduction~~ EXEMPTION.

C. The exemptions provided by subsection B of this section do not include:

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

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 16 of this section.

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

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

7. Motors and pumps used in drip irrigation systems.

D. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

1. Revenues received from sales of ancillary services, electric distribution services, electric generation services, electric transmission

services and other services related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

2. Revenues received from providing electricity, including ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity with respect to which the transaction privilege tax imposed under section 42-5063 has been paid.

E. The tax levied by this article does not apply to:

1. The storage, use or consumption in Arizona of machinery, equipment, materials or other tangible personal property if used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02. This paragraph applies for ten full consecutive calendar or fiscal years after the start of initial construction.

2. The purchase of electricity by a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 that is used directly in environmental technology manufacturing, producing or processing. This paragraph shall apply for fifteen full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

F. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

1. Fees charged by a municipally owned utility to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

2. Reimbursement or contribution compensation to any person or persons owning a utility system for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This deduction shall not exceed the value of such property and equipment.

G. For the purposes of subsection B of this section:

1. "Aircraft" includes:

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

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

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

H. For the purposes of subsection D of this section, "ancillary services", "electric distribution service", "electric generation service", "electric transmission service" and "other services" have the same meanings prescribed in section 42-5063.

Sec. 3. Retroactivity; refunds; nonseverability

A. Section 42-5074, subsection B, paragraph 11 and section 42-5159, subsection A, paragraph 26, Arizona Revised Statutes, as amended by this act, apply retroactively to taxable periods beginning from and after December 31, 1999.

B. Any claim for refund of transaction privilege tax based on the retroactive application of section 42-5074, subsection B, paragraph 11 and section 42-5159, subsection A, paragraph 26, Arizona Revised Statutes, as amended by this act, shall be submitted to the department of revenue on or before December 31, 2006, pursuant to section 42-1118, Arizona Revised Statutes. A failure to file a claim on or before December 31, 2006 constitutes a waiver of the claim for refund under this section.

C. The burden is on the taxpayer to establish by competent evidence the amount of tax paid for all taxable periods and the amount, if any, attributable to gross proceeds of sales or gross income and purchases attributable to articles of food, drink or condiment and accessory tangible personal property provided to or used by a school district that qualify for exemption under the amendments to sections 42-5074 and 42-5159, Arizona Revised Statutes, as provided by this act. The department of revenue shall:

1. Review all timely filed claims.

2. Determine, on audit if necessary, the correct amount of each claim.

3. Notify the taxpayer of its determination. The notice is final unless a taxpayer appeals in the manner provided in section 42-1119, Arizona Revised Statutes.

D. Notwithstanding section 42-1119, Arizona Revised Statutes, the department of revenue shall not make a refund until after determination of the amount of all refund claims filed pursuant to this section. If a taxpayer appeals the department's determination, the department, pursuant to the rules protecting confidentiality under title 42, chapter 2, article 1, Arizona Revised Statutes, may notify other taxpayers who have filed claims as to the nature of any delay and, if possible, estimate the possible extent of the delay.

E. The aggregate amount of the refund under this section shall not exceed one hundred thousand dollars. If the aggregate amount of claims under this section that are ultimately determined to be correct exceeds one hundred thousand dollars, the department shall reduce each claim proportionately so that the total refund amount equals one hundred thousand dollars.

F. Interest shall not be allowed or compounded on any refundable amount if paid before July 1, 2007, but if the amount cannot be determined or paid until after June 30, 2007, interest accrues thereafter under section 42-1123, Arizona Revised Statutes.

G. If any part of this section is finally adjudicated to be invalid, this entire section is void. The provisions of this section are intended to be nonseverable.

APPROVED BY THE GOVERNOR JUNE 15, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 15, 2006.