Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 27

HOUSE BILL 2324

AN ACT

AMENDING SECTIONS 42-5069 AND 42-6004, ARIZONA REVISED STATUTES; RELATING TO COMMERCIAL LEASES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-5069, Arizona Revised Statutes, is amended to read:

42-5069. Commercial lease classification; definitions

A. The commercial lease classification is comprised of the business of leasing for a consideration the use or occupancy of real property.

B. A person who, as a lessor, leases or rents for a consideration under one or more leases or rental agreements the use or occupancy of real property that is used by the lessee for commercial purposes is deemed to be engaged in business and subject to the tax imposed by article 1 of this chapter, but this subsection does not include leases or rentals of real property used for residential or agricultural purposes.

C. The commercial lease classification does not include:

1. Any business activities that are classified under the transient lodging classification.

2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by those entities.

3. Leasing real property to a lessee who subleases the property if the lessee is engaged in business classified under the commercial lease classification or the transient lodging classification.

4. Leasing real property pursuant to a written lease agreement entered into before December 1, 1967. This exclusion does not apply to the businesses of hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile storage garages, parking lots or tourist camps, or to the extension or renewal of any such written lease agreement.

~~5. Leasing real property by a corporation to an affiliated corporation. For the purposes of this paragraph, "affiliated corporation" means a corporation that owns or controls at least eighty per cent of the lessor, that is at least eighty per cent owned or controlled by the lessor or that is at least eighty per cent owned or controlled by a corporation that also owns or controls at least eighty per cent of the lessor. Ownership and control are determined by reference to the voting shares of a corporation.~~

5. LEASING REAL PROPERTY BETWEEN AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS. FOR THE PURPOSES OF THIS PARAGRAPH:

(a) "AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS" MEANS THE LESSOR HOLDS A CONTROLLING INTEREST IN THE LESSEE, THE LESSEE HOLDS A CONTROLLING INTEREST IN THE LESSOR, AN AFFILIATED ENTITY HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND THE LESSEE OR AN UNRELATED PERSON HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND LESSEE.

(b) "CONTROLLING INTEREST" MEANS DIRECT OR INDIRECT OWNERSHIP OF AT LEAST EIGHTY PER CENT OF THE VOTING SHARES OF A CORPORATION OR OF THE INTERESTS IN A COMPANY, BUSINESS OR PERSON OTHER THAN A CORPORATION.

(c) "RECIPROCAL INSURERS" HAS THE SAME MEANING PRESCRIBED IN SECTION 20-762.

6. Leasing real property for boarding horses.

7. Leasing or renting real property or the right to use real property at exhibition events in this state sponsored, operated or conducted 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 major league baseball teams 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.

8. Leasing or renting real property or the right to use real property for use as a rodeo featuring primarily farm and ranch animals in this state sponsored, operated or conducted 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.

9. Leasing or renting dwelling units, lodging facilities or trailer or mobile home spaces if the units, facilities or spaces are intended to serve as the principal or permanent place of residence for the lessee or renter or if the unit, facility or space is leased or rented to a single tenant thirty or more consecutive days.

10. Leasing or renting real property and improvements for use primarily for religious worship by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

11. Leasing or renting real property used for agricultural purposes under either of the following circumstances:

(a) The lease or rental is between family members, trusts, estates, corporations, partnerships, joint venturers or similar entities, or any combination thereof, if the individuals or at least eighty per cent of the beneficiaries, shareholders, partners or joint venturers share a family relationship as parents or ancestors of parents, children or descendants of children, siblings, cousins of the first degree, aunts, uncles, nieces or nephews of the first degree, spouses of any of the listed relatives and listed relatives by the half-blood or by adoption.

(b) The lessor leases or rents real property used for agricultural purposes under no more than three leases or rental agreements.

12. Leasing, renting or granting the right to use real property to vendors or exhibitors by a trade or industry association that is a qualifying organization pursuant to section 513(d)(3)(C) of the internal revenue code for a period not to exceed twenty-one days in connection with an event that meets all of the following conditions:

(a) The majority of such vending or exhibition activities relate to the nature of the trade or business sponsoring the event.

(b) The event is held in conjunction with a formal business meeting of the trade or industry association.

(c) The event is organized by the persons engaged in the particular trade or industry.

13. Leasing, renting or granting the right to use real property for a period not to exceed twenty-one days by a coliseum, civic center, civic plaza, convention center, auditorium or arena owned by this state or any of its political subdivisions.

14. Leasing or subleasing real property used by a nursing care institution as defined in section 36-401 that is licensed pursuant to title 36, chapter 4.

15. Leasing or renting an eligible facility as defined in section 28-7701.

16. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à prendre, but the tax base for the grant of such a leasehold right, if the gross income derived from the grant is not separately stated from the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. For the purposes of this paragraph, "profit à prendre" means a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit.

D. The tax base for the commercial lease classification is the gross proceeds of sales or gross income derived from the business, but reimbursements to the lessor for utility service shall be deducted from the tax base.

E. Notwithstanding section 42-1104, subsection B, paragraph 1, subdivision (b) and paragraph 2, the failure to file tax returns for the commercial lease classification that report gross income derived from any agreement that constitutes, in whole or in part, a grant of a right of profit à prendre for the severance of minerals does not constitute an exception to the general rule for the statute of limitations.

F. For the purposes of this section:

1. "Leasing" includes renting.

2. "Real property" includes any improvements, rights or interest in such property.

Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to read:

42-6004. Exemption from municipal tax

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

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

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

3. Sales of warranty or service contracts.

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

5. Interest on finance contracts.

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

7. Sales of food or other items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786) but may impose such a tax on other sales of food. If a city, town or special taxing district exempts sales of food from its tax or imposes a different transaction privilege rate on the gross proceeds of sales or gross income from sales of food and nonfood items, it shall use the definition of food prescribed by rule adopted by the department pursuant to section 42-5106.

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

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

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

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

10. Through August 31, 2014, sales of Arizona centennial medallions by the historical advisory commission.

~~11. The gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation. For the purposes of this paragraph:~~

~~(a) "Affiliated corporation" means a corporation that meets one of the following conditions:~~

~~(i) The corporation owns or controls at least eighty per cent of the lessor.~~

~~(ii) The corporation is at least eighty per cent owned or controlled by the lessor.~~

~~(iii) The corporation is at least eighty per cent owned or controlled by a corporation that also owns or controls at least eighty per cent of the lessor.~~

~~(iv) The corporation is at least eighty per cent owned or controlled by a corporation that is at least eighty per cent owned or controlled by a reciprocal insurer.~~

~~(b) For the purposes of subdivision (a) of this paragraph, ownership and control are determined by reference to the voting shares of a corporation.~~

~~(c) "Reciprocal insurer" has the same meaning prescribed in section 20-762.~~

~~12. The gross proceeds of sales or gross income derived from a commercial lease in which a corporation leases real property to a corporation of which at least eighty per cent of the voting shares of each corporation are owned by the same shareholders.~~

11. LEASING REAL PROPERTY BETWEEN AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS. FOR THE PURPOSES OF THIS PARAGRAPH:

(a) "AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS" MEANS THE LESSOR HOLDS A CONTROLLING INTEREST IN THE LESSEE, THE LESSEE HOLDS A CONTROLLING INTEREST IN THE LESSOR, AN AFFILIATED ENTITY HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND THE LESSEE OR AN UNRELATED PERSON HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND LESSEE.

(b) "CONTROLLING INTEREST" MEANS DIRECT OR INDIRECT OWNERSHIP OF AT LEAST EIGHTY PER CENT OF THE VOTING SHARES OF A CORPORATION OR OF THE INTERESTS IN A COMPANY, BUSINESS OR PERSON OTHER THAN A CORPORATION.

(c) "RECIPROCAL INSURER" HAS THE SAME MEANING PRESCRIBED IN SECTION 20-762.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 1. A manufacturer's cash rebate on the sales price of a motor vehicle
2 if the buyer assigns the buyer's right in the rebate to the retailer.
3 2. The waste tire disposal fee imposed pursuant to section 44-1302.
4 F. A city or town shall not levy a use tax on the storage, use or
5 consumption of tangible personal property in the city or town by a school
6 district or charter school.

APPROVED BY THE GOVERNOR APRIL 3, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2013.

Passed the House February 11, 2013

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 21, 2013

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Chapman Bellington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2324

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

March 28, 2013,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Lauber

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28 day of March, 2013,

at 2:45 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 3rd. day of

April, 2013,

at 9:37 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4th day of April, 2013,

at 8:49 o'clock a M.

Secretary of State

H.B. 2324