House Engrossed Senate Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 156

SENATE BILL 1289

AN ACT

AMENDING SECTIONS 36-798.06, 41-561, 42-3001, 42-3303, 42-3304, 42-3401, 42-3452, 42-3456, 42-5009, 42-5015, 42-5071, 42-5075, 42-5159, 42-5162, 42-6002, 42-17002, 43-1021, 43-1121, 43-1122, 43-1127 AND 43-1130.01, ARIZONA REVISED STATUTES; RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 36-798.06, Arizona Revised Statutes, is amended to read:

36-798.06. Delivery sales prohibited; common carriers; civil penalty; forfeiture; unlawful practice; exceptions; violation; classification; definitions

A. A person shall not do either of the following:

1. Cause a tobacco product to be ordered or purchased by anyone other than a licensed person or a retailer who orders or purchases from a licensed person, including by ordering or purchasing a tobacco product.

2. Knowingly provide substantial assistance to a person who violates this section.

B. A common carrier shall not knowingly transport a tobacco product for a person who is in violation of this section.

C. Each order or purchase of a tobacco product in violation of subsection A, paragraph 1 of this section constitutes a separate violation under this section.

D. In addition to any other penalty, a person who violates this section is subject to all of the following:

1. A civil penalty in an amount not to exceed five thousand dollars for each violation.

2. An injunction to restrain a threatened or actual violation of this section.

3. Recovery by this state for:

(a) The costs of any investigation related to a violation of this section.

(b) The cost of expert witness fees in any action related to a violation of this section.

(c) The cost of the action related to a violation of this section.

(d) Reasonable attorney fees.

4. All state tobacco taxes due under title 42, chapter 3, EXCEPT AS PROHIBITED UNDER SECTION 42-3402, and all transaction privilege or use taxes due under title 42, chapter 5, including any penalties and interest.

E. All tobacco products that are seized for a violation of this section shall be forfeited to the state and destroyed pursuant to section 42-1124.

F. A violation of this section is an unlawful practice under section 44-1522 and is in addition to all other causes of action, remedies and penalties that are available to this state. The attorney general may investigate and take appropriate action pursuant to title 44, chapter 10, article 7.

G. This section does not apply to either of the following:

1. The shipment of a tobacco product to a foreign trade zone that is established under 19 United States Code section 81 and title 44, chapter 18 and that is located in this state if the tobacco product is from outside of

this country, was ordered by a distributor in another state and is not distributed in this state.

2. A government employee who is acting in the course of the employee's official duties.

H. A person who violates this section is guilty of a class 6 felony.

I. For the purposes of this section:

1. "Licensed person" means a person who is required to be licensed under section 42-3401.

2. "Order or purchase" means any of the following:

(a) By mail or delivery service.

(b) Through the internet or a computer network.

(c) By telephone.

(d) Through any other electronic method.

3. "Person" means an individual, partnership, firm, association, corporation, limited liability company or partnership, joint venture or other entity.

4. "Retailer" has the same meaning prescribed in section 42-5001.

5. "Tobacco product" means all luxuries included in section 42-3052, paragraphs 5, 6 and 7. Tobacco product does not include pipe tobacco or cigars.

Sec. 2. Section 41-561, Arizona Revised Statutes, is amended to read:

41-561. Economic estimates commission; members; vacancies; limitation

A. There shall be an economic estimates commission composed of the following three members:

1. The director of the department of revenue OR THE DIRECTOR'S DESIGNEE, who shall serve as chairman.

2. One person, who shall be knowledgeable in the field of economics, appointed by the president of the senate.

3. One person, who shall be knowledgeable in the field of economics, appointed by the speaker of the house of representatives.

B. The appointive commission members shall be appointed for a term of two years and shall receive compensation determined pursuant to section 38-611.

C. Vacancies in commission membership shall be filled for the balance of the unexpired term in the same manner as the original appointment.

D. No member of the commission shall be a member of the legislature.

Sec. 3. Section 42-3001, Arizona Revised Statutes, is amended to read:

42-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Affix" and "affixed" include imprinting tax meter stamps on packages and individual containers as authorized by the department.

2. "Brand family" has the same meaning prescribed in section 44-7111.

3. "Cider" means vinous liquor that is made from the normal alcoholic fermentation of the juice of sound, ripe apples, pears or other pome fruit,

including flavored, sparkling and carbonated cider and cider made from condensed apple, pear or other pome fruit must, and that contains more than one-half of one percent of alcohol by volume but not more than seven percent of alcohol by volume.

4. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco other than any roll of tobacco that is a cigarette, as defined in paragraph 5, subdivision (b) of this section.

5. "Cigarette" means either of the following:

(a) Any roll of tobacco wrapped in paper or any substance not containing tobacco.

(b) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subdivision (a) of this paragraph. This subdivision shall be interpreted consistently with the classification guidelines established by the federal alcohol and tobacco tax and trade bureau.

6. "Consumer" means a person in this state that comes into possession of any luxury subject to the tax imposed by this chapter and that, on coming into possession of the luxury, is not a distributor intending to sell or distribute the luxury, retailer or wholesaler.

7. "Craft distiller" means a distiller in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.10.

8. "Distributor" means any person that manufactures, produces, ships, transports or imports into this state or in any manner acquires or possesses for the purpose of making the first sale of the following:

(a) Cigarettes without Arizona tax stamps affixed as required by this article.

(b) Roll-your-own tobacco or other tobacco products on which the taxes have not been paid as required by this chapter.

9. "Farm winery" has the same meaning prescribed in section 4-101.

10. "First sale" means the initial sale or distribution in intrastate commerce or the initial use or consumption of cigarettes, roll-your-own tobacco or other tobacco products.

11. "Luxury" means any article, object or device on which a tax is imposed under this chapter.

12. "Malt liquor" means any liquid that contains more than one-half of one percent alcohol by volume and that is made by the process of fermentation and not distillation of hops or grains, but not including:

(a) Liquids made by the process of distillation of such substances.

(b) Medicines that are unsuitable for beverage purposes.

13. "Master settlement agreement" has the same meaning prescribed in section 44-7101.

14. "Microbrewery" has the same meaning prescribed in section 4-101.

15. "Nonparticipating manufacturer" has the same meaning prescribed in section 44-7111.

16. "Other tobacco products" means tobacco products other than cigarettes and roll-your-own tobacco.

17. "Participating manufacturer" has the same meaning prescribed in section 44-7111.

18. "Person" means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, club, society or other group or combination acting as a unit, and the plural as well as the singular number.

19. "Place of business" means a ~~place~~ BUILDING, FACILITY SITE OR LOCATION where an order is received or where tobacco products are sold, distributed or transferred. PLACE OF BUSINESS DOES NOT INCLUDE A VEHICLE.

20. "Retailer" means any person that comes into possession of any luxury subject to the taxes imposed by this chapter for the purpose of selling it for consumption and not for resale.

21. "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes. This paragraph shall be interpreted consistently with the term as used in section 44-7101. This paragraph shall be interpreted consistently with the classification guidelines established by the federal alcohol and tobacco tax and trade bureau.

22. "SMOKING TOBACCO" MEANS ANY TOBACCO THAT, BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, LABELING OR PROMOTION, IS SUITABLE FOR USE AND LIKELY TO BE OFFERED TO OR PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING CIGARETTES OR OTHERWISE CONSUMED BY BURNING. SMOKING TOBACCO INCLUDES PIPE TOBACCO AND ROLL-YOUR-OWN TOBACCO.

~~22.~~ 23. "Spirituous liquor" means any liquid that contains more than one-half of one percent alcohol by volume, that is produced by distillation of any fermented substance and that is used or prepared for use as a beverage. Spirituous liquor does not include medicines that are unsuitable for beverage purposes.

~~23.~~ 24. "Tobacco product manufacturer" has the same meaning prescribed in section 44-7101.

~~24.~~ 25. "Tobacco products" means all luxuries included in section 42-3052, paragraphs 5 through 9.

~~25.~~ 26. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on the roads of this state regardless of the means by which it is propelled or whether it runs on a track.

~~26.~~ 27. "Vinous liquor" means any liquid that contains more than one-half of one percent alcohol by volume and that is made by the process of fermentation of grapes, berries, fruits, vegetables or other substances but does not include:

(a) Liquids in which hops or grains are used in the process of fermentation.

(b) Liquids made by the process of distillation of hops or grains.

(c) Medicines that are unsuitable for beverage purposes.

~~27.~~ 28. "Wholesaler" means a person that sells any spirituous, vinous or malt liquor taxed under this chapter to retail dealers or for the purposes of resale only.

Sec. 4. Section 42-3303, Arizona Revised Statutes, is amended to read:

42-3303. Tax on the consumer; precollection and remission by distributor

A. The taxes levied pursuant to this article are conclusively presumed to be direct taxes on the consumer but shall be precollected and remitted to the department by the distributor for purposes of convenience and facility only. The taxes that the distributor precollects and pays to the department:

1. Are considered to be an advance payment.

2. Shall be added to the price of the cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco.

3. Shall be recovered from the consumer.

B. For the purpose of the precollection and remittance of the tax imposed by this article, the distributor shall ~~purchase~~ OBTAIN and affix revenue stamps pursuant to article 11 of this chapter.

Sec. 5. Section 42-3304, Arizona Revised Statutes, is amended to read:

42-3304. Exemptions; rules

A. The tax levied by this article does not apply to cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco:

1. For which the taxes imposed by article 6 of this chapter have been paid.

2. That are sold by an Indian tribe, or by a federally licensed Indian trader, on an Indian reservation to Indians who are enrolled members of the Indian tribe for whose benefit the Indian reservation was established.

3. That are exempt from tax under 26 United States Code section ~~5701~~ 5704 and that are distributed according to federal regulations.

B. The department shall adopt rules prescribing the procedures for claiming and verifying sales that are exempt under this section.

Sec. 6. Section 42-3401, Arizona Revised Statutes, is amended to read:

42-3401. Tobacco distributor licenses; application; conditions; revocations, suspensions and cancellations

A. Every distributor acquiring or possessing for the purpose of making the initial sale or distribution in this state of any tobacco products on which a tax is imposed by this chapter shall obtain from the department a license to sell tobacco products. The application for the license shall be in the form provided by the department and shall be accompanied by a fee of twenty-five dollars for each place of business listed in the application. The form shall state that the identity of the applicant may be posted to the department's website for public inspection. The application for a license

shall include the applicant's name and address, the applicant's principal place of business, all other places of business where the applicant's business is conducted for the purpose of making the initial sale or distribution of tobacco products in this state, including any location that maintains an inventory of tobacco products and any other information required by the department. If the applicant is a firm, partnership, limited liability company, limited liability partnership or association, the applicant shall list the name and address of each of the applicant's members. If the applicant is a corporation, the application shall list the name and address of the applicant's officers and any person who directly or indirectly owns an aggregate amount of ten percent or more of the ownership interest in the corporation. If a licensee changes its business location, the licensee under this subsection shall notify the department within thirty days after a change in location. If the licensee is making a change in its business location by adding or replacing one or more additional places of business that are not currently listed on its application, the licensee must remit a fee of twenty-five dollars for each additional place of business.

B. For the purposes of subsection A of this section, an applicant with a controlling interest in more than one business engaged in activities as a distributor shall apply for a single license encompassing all such businesses and list each place of business in its application. For the purposes of this subsection, "controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

C. The department shall issue a license authorizing the applicant to acquire or possess tobacco products in this state upon the condition that the applicant complies with this chapter and the rules of the department. The license:

1. Shall be nontransferable. A licensee may not transfer its license to a new owner when selling its business, and any court-appointed trustee, receiver or other person shall obtain a license in its own name in cases of liquidation, insolvency or bankruptcy if the business remains in operation as a distributor of tobacco products. A licensee shall apply for a new license if it changes its legal entity status or otherwise changes the legal structure of its business.

2. Shall be valid for one year unless earlier revoked by the department.

3. Shall be displayed in a conspicuous place at the licensee's place of business. If the licensee operates from more than one place of business, the licensee must display a copy of its license in a conspicuous place at each location.

D. As a condition of licensure under this section, an applicant agrees to the following conditions:

1. A person may not hold or store any tobacco products, whether within or outside of this state, for sale or distribution in this state by or on behalf of a distributor at any place other than a location that has been disclosed to the department pursuant to subsection A of this section. This paragraph does not include a person holding or storing tobacco products by or on behalf of the distributor when the tobacco products are in transit to a distributor or retailer as part of a lawful sale.

2. All tobacco products held or stored, whether within or outside of this state, for sale or distribution in this state by or on behalf of a distributor shall be accessible to the department during normal business hours without a judicial warrant or prior written consent of the distributor, excluding residential locations.

E. A person who is convicted of an offense described in section 42-1127, subsection E is permanently ineligible to hold a license issued under this section.

F. The department may not issue or renew a license to an applicant and may revoke a license issued under subsection C of this section if any of the following applies:

1. The applicant owes one thousand dollars or more in delinquent cigarette taxes that are not under protest or subject to a payment agreement.

2. The department has revoked any license held by the applicant within the previous two years.

3. The applicant has been convicted of a crime that relates to stolen or counterfeit cigarettes.

4. The applicant has imported cigarettes into the United States for sale or distribution in violation of 19 United States Code section 1681a.

5. The applicant has imported cigarettes into the United States for sale or distribution without fully complying with the federal cigarette labeling and advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code section 1331).

6. The applicant is in violation of section 13-3711 or SECTION 36-798.06, subsection A.

7. Pursuant to section 44-7111, section 6(a), the applicant is in violation of section 44-7111, section 3(c).

8. The applicant's civil rights have been suspended under section 13-904. An applicant whose civil rights have been suspended will be ineligible to hold a license for a period of five years following the restoration of the applicant's civil rights.

G. In addition to any other civil or criminal penalty and except as otherwise provided in this section, the department may suspend or revoke a license issued under subsection C of this section if the person violates any requirement under this title more than two times within a three-year period.

H. The department shall publish on its website the names of each person who is issued a license under subsection C of this section, INCLUDING

ANY TRADE NAMES OR BUSINESS NAMES USED BY THE LICENSEE. The department shall update the published names at least once each month.

I. A person may not apply for or hold a distributor's license if that person does not engage in the activities described in subsection A of this section. In addition to any other applicable penalty, the department may:

1. Revoke the license of any licensee that fails to file a return or report required under this chapter for twelve consecutive months.

2. Cancel the license of any licensee that fails to incur any tax liability under this chapter for twelve consecutive months.

J. Any suspension, revocation or denial of a license issued under this section must comply with section 41-1092.11, subsection B.

K. Notwithstanding any other law, for the purposes of subsection F, paragraphs 1 and 2 of this section, section 42-1127, subsection C and section 42-3461, subsection B, if a distributor has listed in its application more than one place of business, any suspension, revocation or nonrenewal of a distributor's license shall apply only with effect to remove the place of business at which the activity occurred that resulted in the violation from the distributor's license. If such a removal occurs, the distributor shall be subject to restrictions that the department prescribes by rule.

Sec. 7. Section 42-3452, Arizona Revised Statutes, is amended to read:

42-3452. Payment of tax required to sell, distribute or transfer tobacco products

A. Except as provided in subsection B of this section, a person may not:

1. Sell, ~~or~~ offer for sale, DISTRIBUTE OR TRANSFER any ~~cigarettes upon~~ TOBACCO PRODUCTS ON which a tax is imposed by this chapter to any person within this state unless at the time of the sale, distribution or transfer the tax has been paid. ~~on the cigarettes as~~ THE DEPARTMENT SHALL CONSIDER TOBACCO TAXES PAID AT THE TIME OF THE SALE, DISTRIBUTION OR TRANSFER OF CIGARETTES IF evidenced by an Arizona tax stamp or any other official indicia AFFIXED TO THE PACKAGE BY A LICENSED DISTRIBUTOR. The department shall consider tobacco taxes paid at the time of the sale, distribution or transfer of tobacco products other than cigarettes if a licensed distributor reports and remits the taxes on the products in accordance with the manner, method and time prescribed by section 42-3501. Sworn returns that are prepared and remitted by a licensed distributor under section 42-3501 constitute official indicia that tobacco taxes have been paid on the tobacco products.

2. Sell cigarettes that have Arizona tax stamps affixed unless the tax evidenced by the stamps is actually paid. The department shall not refund any amount of that tax on the grounds that the stamps are not required to be affixed to the cigarettes.

B. A distributor licensed pursuant to section 42-3401 may not sell, distribute or transfer tobacco products for which the distributor is licensed to another such licensed distributor without paying the tax at the time of the sale, distribution or transfer.

Sec. 8. Section 42-3456, Arizona Revised Statutes, is amended to read:

42-3456. Tax stamps as indicia of taxes paid; exception; definitions

A. Except as otherwise provided in this chapter, all cigarettes on which a tax is imposed by this chapter shall be placed in packages or containers, and on each package or container shall be affixed an official stamp described in section 42-3455. An affixed stamp shall be evidence that the taxes levied by sections 42-3052, 42-3251 and 42-3251.01 are paid.

B. Distributors are liable for affixing official stamps or otherwise applying tax indicia to cigarettes that are subject to a tax imposed by this chapter. A licensed distributor shall apply a stamp to each package of cigarettes that is sold or distributed in this state and that is subject to tax under this chapter, including cigarettes that are subject to tax under section 42-3302. A licensed distributor shall apply a tax exempt stamp to cigarette packages that are not subject to tax under section 42-3304, subsection A, paragraph 2.

C. Cigarettes that are sold, distributed or transferred by a distributor licensed pursuant to section 42-3401 to sell cigarettes are required to have affixed the luxury stamps described in section 42-3455 at the time the cigarettes are sold, distributed or transferred to another licensed distributor.

D. Notwithstanding subsection C of this section, a licensed distributor can submit a written request in the form and manner prescribed by the department in rule or procedure to sell, distribute or transfer unstamped cigarettes to another licensed distributor. Once an accurate and complete request is submitted to the department, the department will approve or deny the request as prescribed in rule or procedure within ten days of receipt of the request.

E. Cigarettes that are exempt from tax under 26 United States Code section ~~5701~~ 5704 and that are distributed according to federal regulations are not subject to tax and do not require a stamp under this chapter.

F. A retailer shall not offer for sale cigarettes in quantities that are not packaged as such for sale by the manufacturer.

G. Distributors may apply stamps only to cigarette packages that the distributors have directly received from a licensed distributor, manufacturer or importer.

H. For the purposes of this section:

1. "Importer" means a person who has received approval from the federal alcohol and tobacco tax and trade bureau to directly or indirectly import finished tobacco products into the United States for sale or distribution, pursuant to 26 United States Code section 5712 and 27 Code of Federal Regulations part 41.

2. "Manufacturer" means a person who has received approval from the federal alcohol and tobacco tax and trade bureau to manufacture, fabricate,

assemble, process or label finished tobacco products, pursuant to 26 United States Code section 5712 and 27 Code of Federal Regulations part 40.

Sec. 9. Section 42-5009, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

G. If a seller claims a deduction under section 42-5061, subsection A, paragraph 25 and establishes entitlement to the deduction with an exemption letter that the purchaser received from the department and the exemption letter was based on a contingent event, the department may require the purchaser that received the exemption letter to establish the satisfaction of the contingent event within a reasonable time. If the purchaser cannot establish the satisfaction of the event, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not been furnished the exemption letter. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029. For the purposes of this subsection, "reasonable time" means a time limitation that the department determines and that does not exceed the time limitations pursuant to section 42-1104.

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

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

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

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

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

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

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

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

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

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

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

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

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

N. A VENDOR WHO HAS REASON TO BELIEVE THAT A CERTIFICATE PRESCRIBED BY THIS SECTION IS NOT ACCURATE OR COMPLETE WILL NOT BE RELIEVED OF THE BURDEN OF PROVING ENTITLEMENT TO THE EXEMPTION. A VENDOR THAT ACCEPTS A CERTIFICATE IN GOOD FAITH WILL BE RELIEVED OF THE BURDEN OF PROOF AND THE PURCHASER MAY BE REQUIRED TO ESTABLISH THE ACCURACY OF THE CLAIMED EXEMPTION. IF THE PURCHASER CANNOT ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION PROVIDED IN THE CERTIFICATE, THE PURCHASER IS LIABLE FOR AN AMOUNT EQUAL TO THE TRANSACTION PRIVILEGE TAX, PENALTY AND INTEREST THAT THE VENDOR WOULD HAVE BEEN REQUIRED TO PAY IF THE VENDOR HAD NOT ACCEPTED THE CERTIFICATE.

Sec. 10. Section 42-5015, Arizona Revised Statutes, is amended to read:

42-5015. Filing by electronic means

~~On or before January 1, 2015,~~ A taxpayer who is required to pay any transaction privilege and affiliated excise taxes to this state or a county or municipality may report and pay the required tax through electronic means. The electronic system shall be administered by the department of revenue. The department may enter into an agreement with the cities and towns that did not have an intergovernmental contract or agreement in effect as of January 1, 2013 with the department to provide for unified or coordinated licensing, collection and auditing programs for the cities and towns to contribute to the payment of the electronic system through money or resources. The electronic system shall:

1. Include a single point for licensing, filing a single return and paying transaction privilege and affiliated excise taxes for all state, county and municipal taxing jurisdictions.

2. Consolidate data in a manner compatible with the data systems of the department of revenue.

3. Capture data with sufficient specificity to meet the needs of the taxing jurisdictions.

4. Allow for identification of the correct taxing jurisdictions and tax rates based on the place where the transaction is sourced.

Sec. 11. Section 42-5071, Arizona Revised Statutes, is amended to read:

42-5071. Personal property rental classification; definitions

A. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. The tax does not apply to:

1. Leasing or renting films, tapes or slides used by theaters or movies, which are engaged in business under the amusement classification, or used by television stations or radio stations.

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

3. Leasing or renting tangible personal property by a parent corporation to a subsidiary corporation or by a subsidiary corporation to another subsidiary of the same parent corporation if taxes were paid under this chapter on the gross proceeds or gross income accruing from the initial sale of the tangible personal property. For the purposes of this paragraph, "subsidiary" means a corporation of which at least eighty percent of the voting shares are owned by the parent corporation.

4. Operating coin-operated washing, drying and dry cleaning machines or coin-operated car washing machines at establishments for the use of such machines.

5. Leasing or renting tangible personal property for incorporation into or comprising any part of a qualified environmental technology facility as described in section 41-1514.02. This paragraph shall apply for ten full consecutive calendar or fiscal years following the initial lease or rental by each qualified environmental technology manufacturer, producer or processor.

6. Leasing or renting aircraft, flight simulators or similar training equipment to students or staff by nonprofit, accredited educational institutions that offer associate or baccalaureate degrees in aviation or aerospace related fields.

7. Leasing or renting photographs, transparencies or other creative works used by this state on internet websites, in magazines or in other publications that encourage tourism.

8. Leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

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

(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

B. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Reimbursements by the lessee to the lessor of a motor vehicle for payments by the lessor of the applicable fees and taxes imposed by sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15, article 2 and article IX, section 11, Constitution of Arizona, to the extent such amounts are separately identified as such fees and taxes and are billed to the lessee.

2. Leases or rentals of tangible personal property that, if it had been purchased instead of leased or rented by the lessee, would have been exempt under:

(a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 49 or 53.

(b) Section 42-5061, subsection B, except that a lease or rental of new machinery or equipment is not exempt pursuant to~~:~~

~~(i)~~ section 42-5061, subsection B, paragraph 13 if the lease is for less than two years.

~~(ii) Section 42-5061, subsection B, paragraph 21.~~

(c) Section 42-5061, subsection I, paragraph 1.

(d) Section 42-5061, subsection M.

3. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739 and sales of aviation fuel that are subject to the tax imposed under section 28-8344.

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

5. Amounts received by a motor vehicle dealer for the first month of a lease payment if the lease and the lease payment for the first month of the lease are transferred to a third-party leasing company.

C. Sales of tangible personal property to be leased or rented to a person engaged in a business classified under the personal property rental classification are deemed to be resale sales.

D. In computing the tax base, the gross proceeds of sales or gross income from the lease or rental of a motor vehicle does not include any amount attributable to the car rental surcharge under section 5-839, 28-5810 or 48-4234.

E. Until December 31, 1988, leasing or renting animals for recreational purposes is exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from leasing or renting animals for recreational purposes is subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the monies paid as taxes will be returned to the customer.

F. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed by section 9-505.

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

Sec. 12. Section 42-5075, Arizona Revised Statutes, is amended to read:

42-5075. <u>Prime contracting classification; exemptions; definitions</u>

A. The prime contracting classification is comprised of the business of prime contracting and the business of manufactured building dealer. Sales for resale to another manufactured building dealer are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter.

B. The tax base for the prime contracting classification is sixty-five percent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

1. The sales price of land, which shall not exceed the fair market value.

2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

4. The gross proceeds of sales or gross income received from a contract entered into for the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement located in a military reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before beginning work under the contract, the prime contractor must have applied for a letter of qualification from the department of revenue.

5. The gross proceeds of sales or gross income derived from a contract to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02, and from subsequent construction and installation contracts that begin within ten years after the start of initial construction. To qualify for this deduction, before beginning work under the contract, the prime contractor must obtain a letter of qualification from the department of revenue. This paragraph shall apply for ten full consecutive calendar or fiscal years after the start of initial construction.

6. The gross proceeds of sales or gross income from a contract to provide for one or more of the following actions, or a contract for site preparation, constructing, furnishing or installing machinery, equipment or other tangible personal property, including structures necessary to protect exempt incorporated materials or installed machinery or equipment, and tangible personal property incorporated into the project, to perform one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

(a) Actions to monitor, assess and evaluate such a release or a suspected release.

(b) Excavation, removal and transportation of contaminated soil and its treatment or disposal.

(c) Treatment of contaminated soil by vapor extraction, chemical or physical stabilization, soil washing or biological treatment to reduce the concentration, toxicity or mobility of a contaminant.

(d) Pumping and treatment or in situ treatment of contaminated groundwater or surface water to reduce the concentration or toxicity of a contaminant.

(e) The installation of structures, such as cutoff walls or caps, to contain contaminants present in groundwater or soil and prevent them from reaching a location where they could threaten human health or welfare or the environment.

This paragraph does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities or other control items required or to be used by a person to prevent or control contamination before it reaches the environment.

7. The gross proceeds of sales or gross income that is derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or that is exempt from use tax under section 42-5159, subsection B and that has independent functional utility, pursuant to the following provisions:

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

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

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

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

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or exempt from use tax under section 42-5159, subsection B.

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

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

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

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

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

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

8. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under:

(a) Section 42-5061, subsection A, paragraph 25, 29, 57 or 59.

(b) Section 42-5061, subsection B.

(c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 54 or 56.

(d) Section 42-5159, subsection B.

9. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, cooling and packaging of eggs.

10. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the modification of any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

11. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, paragraph 16.

12. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

13. For taxable periods beginning from and after December 31, 1996 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department as a solar energy contractor.

By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

14. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a launch site, as defined in 14 Code of Federal Regulations section 401.5.

15. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a domestic violence shelter that is owned and operated by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

16. The gross proceeds of sales or gross income derived from contracts to perform postconstruction treatment of real property for termite and general pest control, including wood destroying organisms.

17. The gross proceeds of sales or gross income received from contracts entered into before July 1, 2006 for constructing a state university research infrastructure project if the project has been reviewed by the joint committee on capital review before the university enters into the construction contract for the project. For the purposes of this paragraph, "research infrastructure" has the same meaning prescribed in section 15-1670.

18. The gross proceeds of sales or gross income received from a contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516 if actual construction begins before January 1, 2024. To qualify for this deduction, the prime contractor must obtain a letter of qualification from the Arizona commerce authority before beginning work under the contract.

19. Any amount of the gross proceeds of sales or gross income attributable to development fees that are incurred in relation to a contract for construction, development or improvement of real property and that are paid by a prime contractor or subcontractor. 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 prime contractor or subcontractor, 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.

1 20. The gross proceeds of sales or gross income derived from a
2 contract entered into for the construction of a mixed waste processing
3 facility that is located on a municipal solid waste landfill and that is
4 constructed for the purpose of recycling solid waste or producing renewable
5 energy from landfill waste. For the purposes of this paragraph:
6 (a) "Mixed waste processing facility" means a solid waste facility
7 that is owned, operated or used for the treatment, processing or disposal of
8 solid waste, recyclable solid waste, conditionally exempt small quantity
9 generator waste or household hazardous waste. For the purposes of
10 this subdivision, "conditionally exempt small quantity generator waste",
11 "household hazardous waste" and "solid waste facility" have the same meanings
12 prescribed in section 49-701, except that solid waste facility does include a
13 site that stores, treats or processes paper, glass, wood, cardboard,
14 household textiles, scrap metal, plastic, vegetative waste, aluminum, steel
15 or other recyclable material.
16 (b) "Municipal solid waste landfill" has the same meaning prescribed
17 in section 49-701.
18 (c) "Recycling" means collecting, separating, cleansing, treating and
19 reconstituting recyclable solid waste that would otherwise become solid
20 waste, but does not include incineration or other similar processes.
21 (d) "Renewable energy" has the same meaning prescribed in section
22 41-1511.
23 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
24 of this section is subject to the following provisions:
25 1. A prime contractor may establish entitlement to the deduction by
26 both:
27 (a) Marking the invoice for the transaction to indicate that the gross
28 proceeds of sales or gross income derived from the transaction was deducted
29 from the base.
30 (b) Obtaining a certificate executed by the purchaser indicating the
31 name and address of the purchaser, the precise nature of the business of the
32 purchaser, the purpose for which the purchase was made, the necessary facts
33 to establish the deductibility of the property under section 42-5061,
34 subsection B, and a certification that the person executing the certificate
35 is authorized to do so on behalf of the purchaser. The certificate may be
36 disregarded if the prime contractor has reason to believe that the
37 information contained in the certificate is not accurate or complete.
38 2. A person who does not comply with paragraph 1 of this subsection
39 may establish entitlement to the deduction by presenting facts necessary to
40 support the entitlement, but the burden of proof is on that person.
41 3. The department may prescribe a form for the certificate described
42 in paragraph 1, subdivision (b) of this subsection. The department may also
43 adopt rules that describe the transactions with respect to which a person is
44 not entitled to rely solely on the information contained in the certificate
45 provided in paragraph 1, subdivision (b) of this subsection but must instead

1 obtain such additional information as required in order to be entitled to the
2 deduction.
3 4. If a prime contractor is entitled to a deduction by complying with
4 paragraph 1 of this subsection, the department may require the purchaser who
5 caused the execution of the certificate to establish the accuracy and
6 completeness of the information required to be contained in the certificate
7 that would entitle the prime contractor to the deduction. If the purchaser
8 cannot establish the accuracy and completeness of the information, the
9 purchaser is liable in an amount equal to any tax, penalty and interest that
10 the prime contractor would have been required to pay under article 1 of this
11 chapter if the prime contractor had not complied with paragraph 1 of this
12 subsection. Payment of the amount under this paragraph exempts the purchaser
13 from liability for any tax imposed under article 4 of this chapter. The
14 amount shall be treated as a transaction privilege tax to the purchaser and
15 as tax revenues collected from the prime contractor in order to designate the
16 distribution base for purposes of section 42-5029.
17 D. Subcontractors or others who perform modification activities are
18 not subject to tax if they can demonstrate that the job was within the
19 control of a prime contractor or contractors or a dealership of manufactured
20 buildings and that the prime contractor or dealership is liable for the tax
21 on the gross income, gross proceeds of sales or gross receipts attributable
22 to the job and from which the subcontractors or others were paid.
23 E. Amounts received by a contractor for a project are excluded from
24 the contractor's gross proceeds of sales or gross income derived from the
25 business if the person who hired the contractor executes and provides a
26 certificate to the contractor stating that the person providing the
27 certificate is a prime contractor and is liable for the tax under article 1
28 of this chapter. The department shall prescribe the form of the certificate.
29 If the contractor has reason to believe that the information contained on the
30 certificate is erroneous or incomplete, the department may disregard the
31 certificate. If the person who provides the certificate is not liable for
32 the tax as a prime contractor, that person is nevertheless deemed to be the
33 prime contractor in lieu of the contractor and is subject to the tax under
34 this section on the gross receipts or gross proceeds received by the
35 contractor.
36 F. Every person engaging or continuing in this state in the business
37 of prime contracting or dealership of manufactured buildings shall present to
38 the purchaser of such prime contracting or manufactured building a written
39 receipt of the gross income or gross proceeds of sales from such activity and
40 shall separately state the taxes to be paid pursuant to this section.
41 G. For the purposes of section 42-5032.01, the department shall
42 separately account for revenues collected under the prime contracting
43 classification from any prime contractor engaged in the preparation or
44 construction of a multipurpose facility, and related infrastructure, that is

owned, operated or leased by the tourism and sports authority pursuant to title 5, chapter 8.

H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues reported and collected under the prime contracting classification from any prime contractor engaged in the construction of any buildings and associated improvements that are for the benefit of a manufacturing facility. For the purposes of this subsection, "associated improvements" and "manufacturing facility" have the same meanings prescribed in section 42-5032.02.

I. The gross proceeds of sales or gross income derived from a contract for lawn maintenance services are not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.

J. Except as provided in subsection O of this section, the gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building irrigation berms, installing railroad ties and installing underground sprinkler or watering systems.

K. The portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

L. Operating a landfill or a solid waste disposal facility is not subject to taxation under this section, including filling, compacting and creating vehicle access to and from cell sites within the landfill. Constructing roads to a landfill or solid waste disposal facility and constructing cells within a landfill or solid waste disposal facility may be deemed prime contracting under this section.

M. The following apply in determining the taxable situs of sales of manufactured buildings:

1. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site or to perform the setup in this state, the taxable situs is the setup site.

2. For sales in this state where the manufactured building dealer does not contract to deliver the building to a setup site or does not perform the

setup, the taxable situs is the location of the dealership where the building is delivered to the buyer.

3. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site that is outside this state, the situs is outside this state and the transaction is excluded from tax.

N. The gross proceeds of sales or gross income attributable to a written contract for design phase services or professional services, executed before modification begins and with terms, conditions and pricing of all of these services separately stated in the contract from those for construction phase services, is not subject to tax under this section, regardless of whether the services are provided sequential to or concurrent with prime contracting activities that are subject to tax under this section. This subsection does not include the gross proceeds of sales or gross income attributable to construction phase services. For the purposes of this subsection:

1. "Construction phase services" means services for the execution and completion of any modification, including the following:

(a) Administration or supervision of any modification performed on the project, including team management and coordination, scheduling, cost controls, submittal process management, field management, safety program, close-out process and warranty period services.

(b) Administration or supervision of any modification performed pursuant to a punch list. For the purposes of this subdivision, "punch list" means minor items of modification work performed after substantial completion and before final completion of the project.

(c) Administration or supervision of any modification performed pursuant to change orders. For the purposes of this subdivision, "change order" means a written instrument issued after execution of a contract for modification work, providing for all of the following:

(i) The scope of a change in the modification work, contract for modification work or other contract documents.

(ii) The amount of an adjustment, if any, to the guaranteed maximum price as set in the contract for modification work. For the purposes of this item, "guaranteed maximum price" means the amount guaranteed to be the maximum amount due to a prime contractor for the performance of all modification work for the project.

(iii) The extent of an adjustment, if any, to the contract time of performance set forth in the contract.

(d) Administration or supervision of any modification performed pursuant to change directives. For the purposes of this subdivision, "change directive" means a written order directing a change in modification work before agreement on an adjustment of the guaranteed maximum price or contract time.

(e) Inspection to determine the dates of substantial completion or final completion.

(f) Preparation of any manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work. For the purposes of this subdivision, "as-built drawing" means a drawing that indicates field changes made to adapt to field conditions, field changes resulting from change orders or buried and concealed installation of piping, conduit and utility services.

(g) Preparation of status reports after modification work has begun detailing the progress of work performed, including preparation of any of the following:

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

(iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.

(v) Identification of any health and safety issues that have arisen in connection with the modification work.

(h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.

(i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.

(j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

2. "Design phase services" means services for developing and completing a design for a project that are not construction phase services, including the following:

(a) Evaluating surveys, reports, test results or any other information on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.

(b) Evaluating any criteria or programming objectives for the project to ascertain requirements for the project, such as physical requirements affecting cost or projected utilization of the project.

(c) Preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.

(d) Preparing an initial schedule for the project, excluding the preparation of updates to the master schedule after modification work has begun.

(e) Preparing preliminary estimates of costs of modification work before completion of the final design of the project, including an estimate or schedule of values for any of the following:

(i) Labor, materials, machinery and equipment, tools, water, heat, utilities, transportation and other facilities and services used in the

execution and completion of modification work, regardless of whether they are temporary or permanent or whether they are incorporated in the modifications.

(ii) The cost of labor and materials to be furnished by the owner of the real property.

(iii) The cost of any equipment of the owner of the real property to be assigned by the owner to the prime contractor.

(iv) The cost of any labor for installation of equipment separately provided by the owner of the real property that has been designed, specified, selected or specifically provided for in any design document for the project.

(v) Any fee paid by the owner of the real property to the prime contractor pursuant to the contract for modification work.

(vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

(viii) Any contingency fees for the prime contractor that may be used before final completion of the project.

(f) Reviewing and evaluating cost estimates and project documents to prepare recommendations on site use, site improvements, selection of materials, building systems and equipment, modification feasibility, availability of materials and labor, local modification activity as related to schedules and time requirements for modification work.

(g) Preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.

3. "Professional services" means architect services, assayer services, engineer services, geologist services, land surveying services or landscape architect services that are within the scope of those services as provided in title 32, chapter 1 and for which gross proceeds of sales or gross income has not otherwise been deducted under subsection K of this section.

O. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this subsection. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section. For the purposes of this subsection:

1. Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in section 42-5008.01.

2. Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the

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

P. Notwithstanding subsection O of this section, a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is taxable under this section, even if the contract also includes vertical improvements. Agencies that are subject to procurement processes under those provisions shall include in the request for proposals a notice to bidders when those projects are subject to this section. This subsection does not apply to contracts with:

1. Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.

2. Any special taxing district not specified in paragraph 1 of this subsection if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

Q. Notwithstanding subsection R, paragraph 10 of this section, a person owning real property who enters into a contract for sale of the real property, who is responsible to the new owner of the property for modifications made to the property in the period subsequent to the transfer of title and who receives a consideration for the modifications is considered a prime contractor solely for purposes of taxing the gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title. The original owner's gross proceeds of sale or gross income received for the modifications shall be determined according to the following methodology:

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

2. If the original owner enters into an agreement separate from the contract for sale of the real property providing for amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title to the property, the amounts are included in the original owner's gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title.

3. If the original owner is responsible to the new owner for modifications made to the property in the period subsequent to the transfer of title and derives any gross proceeds of sale or gross income from the project subsequent to the transfer of title other than a delayed disbursement from escrow unrelated to the modifications, it is presumed that the amounts are received for the modifications made subsequent to the transfer of title unless the contrary is established by the owner through its books, records and papers kept in the regular course of business.

4. The tax base of the original owner is computed in the same manner as a prime contractor under this section.

R. For the purposes of this section:

1. "Alteration" means an activity or action that causes a direct physical change to existing property. For the purposes of this paragraph:

(a) For existing property that is properly classified as class two property under section 42-12002, paragraph 1, subdivision (c) or paragraph 2, subdivision (c) and that is used for residential purposes, class three property under section 42-12003 or class four property under 42-12004, this paragraph does not apply if the contract amount is more than twenty-five percent of the most recent full cash value established under chapter 13, article 2 of this title as of the date of any bid for the work or the date of the contract, whichever value is higher.

(b) For all existing property other than existing property described in subdivision (a) of this paragraph, this paragraph does not apply if any of the following is true:

(i) The contract amount is more than seven hundred fifty thousand dollars.

(ii) The scope of work directly relates to more than forty percent of the existing square footage of the existing property.

(iii) The scope of work involves expanding the square footage of more than ten percent of the existing property.

(c) Project elements may not be artificially separated from a contract to cause a project to qualify as an alteration. The department has the burden of proof that project elements have been artificially separated from a contract.

(d) If a project for which the owner and the person performing the work reasonably believed, at the inception of the contract, would be treated as an alteration under this paragraph and, on completion of the project, the project exceeded the applicable threshold described in either subdivision (a) or (b) of this paragraph by no more than twenty-five percent of the applicable threshold for any reason, the work performed under the contract qualifies as an alteration.

(e) A change order that directly relates to the scope of work of the original contract shall be treated as part of the original contract, and the contract amount shall include any amount attributable to a change order that directly relates to the scope of work of the original contract.

(f) Alteration does not include maintenance, repair or replacement.

2. "Contracting" means engaging in business as a contractor.

3. "Contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part of such a project, including the erection of scaffolding or other structure or works in connection with such a project, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not such contractor is acting in fulfillment of a contract.

4. "Manufactured building" means a manufactured home, mobile home or factory-built building, as defined in section 41-2142.

5. "Manufactured building dealer" means a dealer who either:

(a) Is licensed pursuant to title 41, chapter 16 and who sells manufactured buildings to the final consumer.

(b) Supervises, performs or coordinates the excavation and completion of site improvements or the setup ~~or moving~~ of a manufactured building, including the contracting, if any, with any subcontractor or specialty contractor for the completion of the contract.

6. "Modification" means construction, grading and leveling ground, wreckage or demolition. Modification does not include:

(a) Any project described in subsection O of this section.

(b) Any wreckage or demolition of existing property, or any other activity that is a necessary component of a project described in subsection O of this section.

(c) Any mobilization or demobilization related to a project described in subsection O of this section, such as the erection or removal of temporary facilities to be used by those persons working on the project.

7. "Modify" means to make a modification or cause a modification to be made.

8. "Owner" means the person that holds title to the real property or improvements to real property that is the subject of the work, as well as an agent of the title holder and any person with the authority to perform or authorize work on the real property or improvements, including a tenant and a property manager. For the purposes of subsection O of this section, a person who is hired by a general contractor that is hired by an owner, or a subcontractor of a general contractor that is hired by an owner, is considered to be hired by the owner.

9. "Prime contracting" means engaging in business as a prime contractor.

10. "Prime contractor" means a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad,

excavation, manufactured building or other structure, project, development or improvement, including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract. Except as provided in subsections E and Q of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.

11. "Replacement" means the removal from service of one component or system of existing property or tangible personal property installed in existing property, including machinery or equipment, and the installation of a new component or system or new tangible personal property, including machinery or equipment, that provides the same similar or upgraded design or functionality, regardless of the contract amount and regardless of whether the existing component or system or existing tangible personal property is physically removed from the existing property.

12. "Sale of a used manufactured building" does not include a lease of a used manufactured building.

Sec. 13. 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 that 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 that 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 that are intended for sale with newspapers published in this state and that have already been subjected to an excise tax under the laws of another state in the United States that 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 and visually impaired children and children with multiple disabilities 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 persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

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

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

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

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

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

(i) 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.

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

(k) 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.

(l) 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.

(m) 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.

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

(o) A person representing or working on behalf of any person described in subdivision (a), (b), (c), (d), (e), (f), (i), (j), (k), (m) or (n) of this paragraph, if the tangible personal property is incorporated or fabricated into a project described in section 42-5075, subsection O.

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), 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.

(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 that 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 that 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 the school district or on the premises of the charter school during school hours.

27. Lottery tickets or shares purchased pursuant to title 5, chapter 5.1, 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 twenty 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 with a physical disability as defined in section 46-191 or a person who 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 that 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

1 under the terms of the contract or subcontract. For the purposes of this
2 paragraph:
3 (a) "Overhead materials" means tangible personal property, the gross
4 proceeds of sales or gross income derived from which would otherwise be
5 included in the retail classification, that is used or consumed in the
6 performance of a contract, the cost of which is charged to an overhead
7 expense account and allocated to various contracts based on generally
8 accepted accounting principles and consistent with government contract
9 accounting standards.
10 (b) "Subcontract" means an agreement between a contractor and any
11 person who is not an employee of the contractor for furnishing of supplies or
12 services that, in whole or in part, are necessary to the performance of one
13 or more government contracts, or under which any portion of the contractor's
14 obligation under one or more government contracts is performed, undertaken or
15 assumed, and that includes provisions causing title to overhead materials or
16 other tangible personal property used in the performance of the subcontract
17 to pass to the government or that includes provisions incorporating such
18 title passing clauses in a government contract into the subcontract.
19 40. Through December 31, 1994, tangible personal property sold
20 pursuant to a personal property liquidation transaction, as defined in
21 section 42-5061. From and after December 31, 1994, tangible personal
22 property sold pursuant to a personal property liquidation transaction, as
23 defined in section 42-5061, if the gross proceeds of the sales were included
24 in the measure of the tax imposed by article 1 of this chapter or if the
25 personal property liquidation was a casual activity or transaction.
26 41. Wireless telecommunications equipment that is held for sale or
27 transfer to a customer as an inducement to enter into or continue a contract
28 for telecommunications services that are taxable under section 42-5064.
29 42. Alternative fuel, as defined in section 1-215, purchased by a used
30 oil fuel burner who has received a permit to burn used oil or used oil fuel
31 under section 49-426 or 49-480.
32 43. Tangible personal property purchased by a commercial airline and
33 consisting of food, beverages and condiments and accessories used for serving
34 the food and beverages, if those items are to be provided without additional
35 charge to passengers for consumption in flight. For the purposes of this
36 paragraph, "commercial airline" means a person holding a federal certificate
37 of public convenience and necessity or foreign air carrier permit for air
38 transportation to transport persons, property or United States mail in
39 intrastate, interstate or foreign commerce.
40 44. Alternative fuel vehicles if the vehicle was manufactured as a
41 diesel fuel vehicle and converted to operate on alternative fuel and
42 equipment that is installed in a conventional diesel fuel motor vehicle to
43 convert the vehicle to operate on an alternative fuel, as defined in section
44 1-215.

45. Gas diverted from a pipeline, by a person engaged in the business of:

(a) Operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

(b) Converting natural gas into liquefied natural gas, and used or consumed for the sole purpose of fueling compressor equipment used in the conversion process.

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.

49. Prepared food, drink or condiment donated by a restaurant as classified in section 42-5074, subsection A to 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.

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

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

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

51. Motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

52. Repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

53. Renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power entity to track kilowatt hours of electricity derived from a renewable energy resource or the

1 kilowatt hour equivalent of conventional energy resources displaced by
2 distributed renewable energy resources.
3 54. Computer data center equipment purchased by the owner, operator or
4 qualified colocation tenant of the computer data center or an authorized
5 agent of the owner, operator or qualified colocation tenant during the
6 qualification period for use in a computer data center that is certified by
7 the Arizona commerce authority under section 41-1519. To qualify for this
8 deduction, at the time of purchase, the owner, operator or qualified
9 colocation tenant must present to the retailer its certificate that is issued
10 pursuant to section 41-1519 and that establishes its qualification for the
11 deduction. For the purposes of this paragraph, "computer data center",
12 "computer data center equipment", "qualification period" and "qualified
13 colocation tenant" have the same meanings prescribed in section 41-1519.
14 55. Coal acquired from an owner or operator of a power plant by a
15 person who is responsible for refining coal if both of the following apply:
16 (a) The transfer of title or possession of the coal is for the purpose
17 of refining the coal.
18 (b) The title or possession of the coal is transferred back to the
19 owner or operator of the power plant after completion of the coal refining
20 process. For the purposes of this subdivision, "coal refining process" means
21 the application of a coal additive system that aids the reduction of power
22 plant emissions during the combustion of coal and the treatment of flue gas.
23 56. Tangible personal property incorporated or fabricated into a
24 project described in section 42-5075, subsection O, that is located within
25 the exterior boundaries of an Indian reservation for which the owner, as
26 defined in section 42-5075, of the project is an Indian tribe or an
27 affiliated Indian. For the purposes of this paragraph:
28 (a) "Affiliated Indian" means an individual native American Indian who
29 is duly registered on the tribal rolls of the Indian tribe for whose benefit
30 the Indian reservation was established.
31 (b) "Indian reservation" means all lands that are within the limits of
32 areas set aside by the United States for the exclusive use and occupancy of
33 an Indian tribe by treaty, law or executive order and that are recognized as
34 Indian reservations by the United States department of the interior.
35 (c) "Indian tribe" means any organized nation, tribe, band or
36 community that is recognized as an Indian tribe by the United States
37 department of the interior and includes any entity formed under the laws of
38 the Indian tribe.
39 57. CASH EQUIVALENTS, PRECIOUS METAL BULLION AND MONETIZED BULLION
40 PURCHASED BY THE ULTIMATE CONSUMER, BUT COINS OR OTHER FORMS OF MONEY FOR
41 MANUFACTURE INTO JEWELRY OR WORKS OF ART ARE SUBJECT TO TAX, AND TANGIBLE
42 PERSONAL PROPERTY THAT IS PURCHASED THROUGH THE REDEMPTION OF ANY CASH
43 EQUIVALENT BY THE HOLDER AS A MEANS OF PAYMENT FOR GOODS THAT ARE SUBJECT TO
44 TAX UNDER THIS ARTICLE IS SUBJECT TO TAX. FOR THE PURPOSES OF THIS
45 PARAGRAPH:

1 (a) "CASH EQUIVALENTS" MEANS ITEMS, WHETHER OR NOT NEGOTIABLE, THAT
2 ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE DENOMINATED IN MONEY
3 IS PURCHASED IN ADVANCE AND THAT MAY BE REDEEMED IN FULL OR IN PART FOR
4 TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES. CASH EQUIVALENTS
5 INCLUDE GIFT CARDS, STORED VALUE CARDS, GIFT CERTIFICATES, VOUCHERS,
6 TRAVELER'S CHECKS, MONEY ORDERS OR OTHER TANGIBLE INSTRUMENTS OR
7 ORDERS. CASH EQUIVALENTS DO NOT INCLUDE EITHER OF THE FOLLOWING:
8 (i) ITEMS THAT ARE SOLD TO ONE OR MORE PERSONS AND THROUGH WHICH A
9 VALUE IS NOT DENOMINATED IN MONEY.
10 (ii) PREPAID CALLING CARDS FOR TELECOMMUNICATIONS SERVICES.
11 (b) "MONETIZED BULLION" MEANS COINS AND OTHER FORMS OF MONEY THAT ARE
12 MANUFACTURED FROM GOLD, SILVER OR OTHER METALS AND THAT HAVE BEEN OR ARE USED
13 AS A MEDIUM OF EXCHANGE IN THIS OR ANOTHER STATE, THE UNITED STATES OR A
14 FOREIGN NATION.
15 (c) "PRECIOUS METAL BULLION" MEANS PRECIOUS METAL, INCLUDING GOLD,
16 SILVER, PLATINUM, RHODIUM AND PALLADIUM, THAT HAS BEEN SMELTED OR REFINED SO
17 THAT ITS VALUE DEPENDS ON ITS CONTENTS AND NOT ON ITS FORM.
18 B. In addition to the exemptions allowed by subsection A of this
19 section, the following categories of tangible personal property are also
20 exempt:
21 1. Machinery, or equipment, used directly in manufacturing,
22 processing, fabricating, job printing, refining or metallurgical operations.
23 The terms "manufacturing", "processing", "fabricating", "job printing",
24 "refining" and "metallurgical" as used in this paragraph refer to and include
25 those operations commonly understood within their ordinary meaning.
26 "Metallurgical operations" includes leaching, milling, precipitating,
27 smelting and refining.
28 2. Machinery, or equipment, used directly in the process of extracting
29 ores or minerals from the earth for commercial purposes, including equipment
30 required to prepare the materials for extraction and handling, loading or
31 transporting such extracted material to the surface. "Mining" includes
32 underground, surface and open pit operations for extracting ores and
33 minerals.
34 3. Tangible personal property sold to persons engaged in business
35 classified under the telecommunications classification under section 42-5064,
36 including a person representing or working on behalf of such a person in a
37 manner described in section 42-5075, subsection O, and consisting of central
38 office switching equipment, switchboards, private branch exchange equipment,
39 microwave radio equipment and carrier equipment including optical fiber,
40 coaxial cable and other transmission media that are components of carrier
41 systems.
42 4. Machinery, equipment or transmission lines used directly in
43 producing or transmitting electrical power, but not including distribution.
44 Transformers and control equipment used at transmission substation sites
45 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, 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 that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that 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 that has never been sold at retail except pursuant to leases or rentals that 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. 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 part 25.

(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 part 25.

(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.

16. 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.

17. 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.

18. 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.

19. 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~~ INCLUDING PRODUCTION BY A PERSON REPRESENTING OR WORKING ON BEHALF OF SUCH A PERSON IN A MANNER DESCRIBED IN SECTION 42-5075, SUBSECTION O, IF THE MACHINERY AND EQUIPMENT are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

20. 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.

21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing 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 Arizona commerce authority at the time of purchase.

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 15 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.

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

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 the purchase of solar energy devices from a retailer that is registered with the department as a solar energy retailer or a solar energy contractor.

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. The tax levied by this article does not apply to the purchase price of electricity or natural gas by:

1. A business that is principally engaged in manufacturing or smelting operations and that uses at least fifty-one percent of the electricity or natural gas in the manufacturing or smelting operations. This paragraph does not apply to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include processing, fabricating, job printing, mining, generating electricity or operating a restaurant.

(c) "Principally engaged" means at least fifty-one percent of the business is a manufacturing or smelting operation.

(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

2. A business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.

H. 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.

I. 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. 14. Section 42-5162, Arizona Revised Statutes, is amended to read:

42-5162. Monthly return; time for payment; extension of time; quarterly payment

A. Every retailer engaged in the business of making sales of tangible personal property the use, storage or consumption of which is subject to the tax imposed by this article, and every person who purchases for use, storage or consumption any such property for which the tax is not paid to the retailer, shall file a return with the department on or before the twentieth day of the month next succeeding the month in which the ~~tax accrues~~ TANGIBLE PERSONAL PROPERTY IS BROUGHT INTO THIS STATE FOR USE, STORAGE OR CONSUMPTION. The return shall be on a form prescribed by the department and shall show the tangible personal property sold for use, storage or consumption or purchased for use, storage or consumption within the state during the preceding calendar month. Such return shall be verified by oath or affirmation of the retailer or person making the report, or his agent, and shall be accompanied by payment of the tax shown to be due. The return and tax are delinquent ~~if not postmarked on or before the twenty-fifth day of the month when due or~~ if not received by the department on or before the business day preceding the last business day of ~~that month for those taxpayers electing to file by mail, or are delinquent if not received by the department on the business day preceding the last business day of~~ the month when due ~~for those taxpayers electing to file in person~~.

~~B. The department, for any taxpayer whose estimated annual liability for taxes imposed by this article is between five hundred and one thousand two hundred fifty dollars, may authorize such taxpayer to pay such taxes on a quarterly basis. The department, for any taxpayer whose estimated annual liability for taxes imposed by this article is five hundred dollars or less, may authorize such taxpayer to pay such taxes on an annual basis.~~

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A PERSON WHO IS REQUIRED TO FILE A RETURN UNDER CHAPTER 5, ARTICLE 1 OF THIS TITLE MAY REPORT AND PAY THE TAX LIABILITY UNDER THIS ARTICLE ON THE SAME RETURN AND FILING BASIS AS THE TAXES REPORTED UNDER CHAPTER 5, ARTICLE 1 OF THIS TITLE.

C. For good cause shown the department may extend the time for making a return and paying the tax, but the time for filing the return shall not be extended beyond the first day of the third month next succeeding the regular due date of the return.

Sec. 15. Section 42-6002, Arizona Revised Statutes, is amended to read:

42-6002. Administration; procedures for levy, collection and enforcement applicable to cities and towns; definition

A. Unless the context otherwise requires, chapter 1 and chapter 5, article 1 of this title govern the administration of the municipal privilege taxes levied by a city or town.

B. The procedures for levy, collection and enforcement of payment of transaction privilege and affiliated excise taxes, including use tax, severance tax, jet fuel excise and use tax, and rental occupancy tax, levied by a city or town shall be in the same manner as authorized by chapter 5 of this title. This subsection does not preclude a city or town from levying a transaction privilege, sales, use or other similar tax as a result of a person's business activities as provided in ~~articles 1~~ THIS ARTICLE and ARTICLE 2 of this chapter.

C. An intergovernmental contract or agreement entered into pursuant to section 42-6001, subsection A shall include the following provisions:

1. All audits shall be conducted in accordance with standard audit procedures defined in the department of revenue audit manual.

2. All auditors shall be trained in accordance with the policies of the department.

3. An auditor that is trained and authorized to conduct an audit may not represent any taxpayer in any tax matter.

4. Except as provided in paragraph 5 of this subsection, the audit of a taxpayer that has locations in two or more cities or towns shall be conducted by the department.

5. All audits shall include all taxing jurisdictions in this state regardless of which jurisdiction conducts the audit. A city or town may conduct an audit of any taxpayer that is engaged in business in only one city or town and any other taxpayer authorized by the department.

6. The department shall issue all audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.

7. Appeals of audit assessments shall be directed to the department.

8. Appeals of audit assessments shall be administered pursuant to chapter 1, article 6 of this title.

9. The department shall notify all affected cities and towns before entering into any compromise, closing, settlement or other agreement with a person related to the tax levied and imposed by the cities and towns.

D. FOR THE PURPOSES OF THIS SECTION, "TRANSACTION PRIVILEGE, SALES, USE OR OTHER SIMILAR TAX" MEANS ANY TAX IMPOSED UNDER THE MODEL CITY TAX CODE.

Sec. 16. Section 42-17002, Arizona Revised Statutes, is amended to read:

42-17002. <u>Property tax oversight commission</u>

A. The property tax oversight commission is established to:

1. Further the public confidence in property tax limitations.

2. Provide a uniform methodology for determining those limitations.

3. Provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws.

B. The commission consists of:

1. The director of the department of revenue OR THE DIRECTOR'S DESIGNEE, who serves as chairman.

2. Four persons who are knowledgeable in the area of property tax assessment and levy, one appointed by the governor and three appointed jointly by the president of the senate and the speaker of the house of representatives. The appointive members' terms are three years.

C. An appointment to fill a vacancy on the commission resulting from other than expiration of a term is for the unexpired portion of the term only.

D. The department shall provide secretarial and staff support services to the commission.

E. The private citizen members of the commission shall receive fifty dollars per day for time spent in performing their duties.

F. The commission shall meet at least annually and, in addition, at the call of the chairman. The commission shall meet at such other times and places as convenient or necessary to conduct its affairs and shall render its findings, reports and recommendations in writing to the governor, to the director of the department of revenue and to the legislature.

Sec. 17. Section 43-1021, Arizona Revised Statutes, is amended to read:

43-1021. Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the ordinary income portion of a lump sum distribution that was excluded from federal adjusted gross income pursuant to the special rule for individuals who attained fifty years of age before January 1, 1986 under Public Law 99-514, section 1122(h)(3).

3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona, reduced, for tax years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

5. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

6. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the

income tax act of 1954, as amended. This paragraph shall apply to all property that is held for the production of income and that is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

7. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

8. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

9. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and that is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

10. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

11. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02, 43-1081 or 43-1081.01 and that is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

12. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

13. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

14. Any amount deducted in computing Arizona gross income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1090.

15. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1087 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

16. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

17. With respect to property for which an expense deduction was taken pursuant to section 179 of the internal revenue code in a taxable year beginning before January 1, 2013, the amount in excess of twenty-five thousand dollars.

18. The amount of a nonqualified withdrawal, as defined in section 15-1871, from a college savings plan established pursuant to section 529 of the internal revenue code that is made to a distributee to the extent the amount is not included in computing federal adjusted gross income, except that the amount added under this paragraph shall not exceed the difference between the amount subtracted under section 43-1022 in prior taxable years and the amount added under this section in any prior taxable years.

19. The amount of discharge of indebtedness income that is deferred and excluded from the computation of federal adjusted gross income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

20. The amount of any previously deferred original issue discount that was deducted in computing federal adjusted gross income in the current year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the amount was previously subtracted from Arizona gross income pursuant to section 43-1022, paragraph 24.

~~21. For taxable years beginning from and after December 31, 2011 through December 31, 2014, the amount of any deduction that is claimed in computing federal adjusted gross income for health insurance premiums or contributions to a health savings account for which a credit is claimed under section 43-1087.01.~~

~~22.~~ 21. Amounts that are considered to be income under section 43-1032, subsection D because the amount is withdrawn from a long-term health care savings account and not used to pay the taxpayer's long-term health care expenses.

Sec. 18. Section 43-1121, Arizona Revised Statutes, is amended to read:

43-1121. <u>Additions to Arizona gross income; corporations</u>

In computing Arizona taxable income for a corporation, the following amounts shall be added to Arizona gross income:

1. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside this state, reduced, for tax years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

2. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

3. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

4. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph applies to all property that is held for the production of income and that is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

5. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

6. With respect to property for which an expense deduction was taken pursuant to section 179 of the internal revenue code in a taxable year beginning before January 1, 2013, the amount in excess of twenty-five thousand dollars.

7. The amount of discharge of indebtedness income that is deferred and excluded from the computation of federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

8. The amount of any previously deferred original issue discount that was deducted in computing federal taxable income in the current year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the amount was previously subtracted from Arizona gross income pursuant to section 43-1122, paragraph 8.

~~9. For taxable years beginning from and after December 31, 2011 through December 31, 2014, the amount of any deduction that is claimed in computing federal taxable income for health insurance premiums or contributions to a health savings account for which a credit is claimed under section 43-1185.~~

~~10.~~ 9. The amount of dividend income received from corporations and allowed as a deduction pursuant to sections 243, 244 and 245 of the internal revenue code.

~~11.~~ 10. Taxes ~~which~~ THAT are based on income paid to states, local governments or foreign governments and ~~which~~ THAT were deducted in computing federal taxable income.

~~12.~~ 11. Expenses and interest relating to tax-exempt income on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the tax imposed by this title. Financial institutions, as defined in section 6-101, shall be governed by section 43-961, paragraph 2.

~~13.~~ 12. Commissions, rentals and other amounts paid or accrued to a domestic international sales corporation controlled by the payor corporation if the domestic international sales corporation is not required to report its taxable income to this state because its income is not derived from or attributable to sources within this state. If the domestic international sales corporation is subject to article 4 of this chapter, the department shall prescribe by rule the method of determining the portion of the commissions, rentals and other amounts ~~which~~ THAT are paid or accrued to the controlled domestic international sales corporation and ~~which~~ THAT shall be deducted by the payor. For the purposes of this paragraph, "control" means direct or indirect ownership or control of fifty per cent or more of the voting stock of the domestic international sales corporation by the payor corporation.

~~14.~~ 13. The amount of net operating loss taken pursuant to section 172 of the internal revenue code.

~~15.~~ 14. The amount of exploration expenses determined pursuant to section 617 of the internal revenue code to the extent that they exceed seventy-five thousand dollars and to the extent that the election is made to defer those expenses not in excess of seventy-five thousand dollars.

~~16.~~ 15. Amortization of costs incurred to install pollution control devices and deducted pursuant to the internal revenue code or the amount of deduction for depreciation taken pursuant to the internal revenue code on pollution control devices for which an election is made pursuant to section 43-1129.

~~17.~~ 16. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which an election is made to amortize pursuant to section 43-1130.

~~18.~~ 17. The loss of an insurance company that is exempt under section 43-1201 to the extent that it is included in computing Arizona gross income on a consolidated return pursuant to section 43-947.

~~19.~~ 18. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1169 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~20.~~ 19. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1169 and ~~which~~ THAT is sold or otherwise disposed of during

the taxable year exceeds the adjusted basis of the property computed under section 43-1169.

~~21.~~ 20. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1170 or 43-1170.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~22.~~ 21. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under either section 43-1170 or 43-1170.01 and ~~which~~ THAT is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1170 or 43-1170.01, as applicable.

~~23.~~ 22. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

~~24.~~ 23. The amount by which a capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the capital loss carryover allowable pursuant to section 43-1130.01, subsection F.

~~25.~~ 24. Any amount deducted in computing Arizona taxable income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1176.

~~26.~~ 25. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1175 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

~~27.~~ 26. Any amount of expenses that were deducted pursuant to the internal revenue code and for which a credit is claimed under section 43-1178.

~~28.~~ 27. The amount of any deduction that is claimed in computing Arizona gross income and that represents a donation of a school site for which a credit is claimed under section 43-1181.

~~29.~~ 28. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization for which a credit is claimed under section 43-1183 or 43-1184.

Sec. 19. Section 43-1122, Arizona Revised Statutes, is amended to read:

43-1122. <u>Subtractions from Arizona gross income; corporations</u>

In computing Arizona taxable income for a corporation, the following amounts shall be subtracted from Arizona gross income:

1. The excess of a partner's share of income required to be included under section 702(a)(8) of the internal revenue code over the income required to be included under chapter 14, article 2 of this title.

2. The excess of a partner's share of partnership losses determined pursuant to chapter 14, article 2 of this title over the losses allowable under section 702(a)(8) of the internal revenue code.

3. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to this title and the income tax act of 1954, as amended, exceeds the adjusted basis of such property computed pursuant to the internal revenue code. This paragraph applies to all property that is held for the production of income and that is sold or otherwise disposed of during the taxable year other than depreciable property used in a trade or business.

4. The amount allowed by section 43-1025 for contributions during the taxable year of agricultural crops to charitable organizations.

5. The portion of any wages or salaries paid or incurred by the taxpayer for the taxable year that is equal to the amount of the federal work opportunity credit, the empowerment zone employment credit, the credit for employer paid social security taxes on employee cash tips and the Indian employment credit that the taxpayer received under sections 45A, 45B, 51(a) and 1396 of the internal revenue code.

6. With respect to property that is sold or otherwise disposed of during the taxable year by a taxpayer that complied with section 43-1121, paragraph 5 with respect to that property, the amount of depreciation that has been allowed pursuant to section 167(a) of the internal revenue code to the extent that the amount has not already reduced Arizona taxable income in the current TAXABLE YEAR or prior taxable years.

7. With respect to property for which an adjustment was made under section 43-1121, paragraph 6, an amount equal to one-fifth of the amount of the adjustment pursuant to section 43-1121, paragraph 6 in the year in which the amount was adjusted under section 43-1121, paragraph 6 and in each of the following four years.

8. The amount of any original issue discount that was deferred and not allowed to be deducted in computing federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

9. The amount of previously deferred discharge of indebtedness income that is included in the computation of federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the amount was previously added to Arizona gross income pursuant to section 43-1121, paragraph 7.

10. With respect to a financial institution as defined in section 6-101, expenses and interest relating to tax-exempt income disallowed pursuant to section 265 of the internal revenue code.

11. Dividends received from another corporation owned or controlled directly or indirectly by a recipient corporation. For the purposes of this

paragraph, "control" means direct or indirect ownership or control of fifty ~~per cent~~ PERCENT or more of the voting stock of the payor corporation by the recipient corporation. Dividends shall have the meaning provided in section 316 of the internal revenue code. This subtraction shall apply without regard to section 43-961, paragraph 2 and article 4 of this chapter.

12. Interest income received on obligations of the United States.

13. The amount of dividend income from foreign corporations.

14. The amount of net operating loss allowed by section 43-1123.

15. The amount of any state income tax refunds received ~~which~~ THAT were included as income in computing federal taxable income.

16. The amount of expense recapture included in income pursuant to section 617 of the internal revenue code for mine exploration expenses.

17. The amount of deferred exploration expenses allowed by section 43-1127.

18. The amount of exploration expenses related to the exploration of oil, gas or geothermal resources, computed in the same manner and on the same basis as a deduction for mine exploration pursuant to section 617 of the internal revenue code. This computation is subject to the adjustments contained in section 43-1121, paragraph ~~15~~ 14 and paragraphs 16 and 17 of this section relating to exploration expenses.

19. The amortization of pollution control devices allowed by section 43-1129.

20. The amount of amortization of the cost of child care facilities pursuant to section 43-1130.

21. The amount of income from a domestic international sales corporation required to be included in the income of its shareholders pursuant to section 995 of the internal revenue code.

22. The income of an insurance company that is exempt under section 43-1201 to the extent that it is included in computing Arizona gross income on a consolidated return pursuant to section 43-947.

23. The amount by which a capital loss carryover allowable pursuant to section 43-1130.01, subsection F exceeds the capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code.

24. An amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year computed as if the election described in section 168(k)(2)(D)(iii) of the internal revenue code had been made for each applicable class of property in the year the property was placed in service.

Sec. 20. Section 43-1127, Arizona Revised Statutes, is amended to read:

43-1127. <u>Deferred exploration expenses</u>

A. The amount of exploration expenses added to Arizona gross income pursuant to section 43-1121, paragraph ~~15~~ 14 may be subtracted on a ratable basis as the units of produced ores or minerals discovered or explored by

reason of such expenditures are sold. An election made for any taxable year shall be binding for such year.

B. If such property is sold, it shall be treated in the same manner and on the same basis as property held for the production of income pursuant to section 43-1121, paragraph 4 or section 43-1122, paragraph 3.

Sec. 21. Section 43-1130.01, Arizona Revised Statutes, is amended to read:

43-1130.01. Restoration of a substantial amount held under claim of right; computation of tax

A. This section applies if:

1. An item of income was included in gross income for a prior taxable year or years because it appeared that the taxpayer had an unrestricted right to the item.

2. A deduction would be allowable under the internal revenue code or this title for the taxable year, without application of section 1341(b)(3) of the internal revenue code or section 43-1121, paragraph ~~23~~ 22, because after the close of the prior taxable year or years it was established that the taxpayer did not have an unrestricted right to all or part of the item.

3. The amount of the deduction exceeds three thousand dollars.

B. If all of the conditions in subsection A of this section apply, the tax imposed by this chapter for the taxable year is an amount equal to the tax for the taxable year computed without the deduction, minus the decrease in tax under this chapter for the prior taxable year or years that would result solely from excluding the item or portion of the item from gross income for the prior taxable year or years.

C. If the decrease in tax exceeds the tax imposed by this chapter for the taxable year, computed without the deduction, the excess is considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

D. Subsection B of this section does not apply to any deduction that is allowable with respect to an item that was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer, or other property of a kind that would properly have been included in the inventory of the taxpayer on hand at the close of the prior taxable year, or property that is held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. This subsection does not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility that is listed in section 7701(a)(33)(A) through (H) of the internal revenue code, if the refunds or repayments are:

1. Required to be made by the government, political subdivision, agency or instrumentality referred to in that section.

2. Required to be made by an order of a court.

3. Made in settlement of litigation or under threat or imminence of litigation.

E. If the exclusion under subsection B of this section results in:

1. A net operating loss for the prior taxable year or years for purposes of computing the decrease in tax for the prior year or years under subsection B of this section:

(a) The loss shall be carried over under this chapter to the same extent and in the same manner as provided under section 43-1123, and under prior law.

(b) No carryover beyond the taxable year may be taken into account.

2. A capital loss for the prior taxable year or years, for purposes of computing the decrease in tax for the prior taxable year or years under subsection B of this section:

(a) The loss shall be:

(i) Carried over under this chapter to the same extent and in the same manner as was provided under prior law for taxable years beginning on or before December 31, 1987.

(ii) Carried back and carried over to the same extent and in the same manner as provided under section 1212 of the internal revenue code for taxable years beginning from and after December 31, 1987.

(b) No carryover beyond the taxable year may be taken into account.

F. In computing Arizona taxable income for taxable years subsequent to the current taxable year, the net operating loss or capital loss determined in subsection E of this section shall be taken into account to the same extent and in the same manner as a net operating loss or capital loss sustained for prior taxable years.

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.

Passed the House March 30, 2016,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Acting Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate February 25, 2016,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1289

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 4, 2016

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Susan Acers
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

4th day of May, 2016

at 4:26 o'clock P. M.

Secretary to the Governor

Approved this 11th day of

May

at 9:34 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12 day of May, 2016

at 10:16 o'clock A M.

Michele Reagan
Secretary of State

S.B. 1289