

REFERENCE TITLE: **municipal tax exemption; residential lease**

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2254

Introduced by
Representative Mitchell

AN ACT

AMENDING SECTION 42-6004, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL EXCISE TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-6004, Arizona Revised Statutes, is amended to
3 read:
4 42-6004. Exemption from municipal tax
5 A. A city, town or special taxing district shall not levy a
6 transaction privilege, sales, use or other similar tax on:
7 1. Exhibition events in this state sponsored, conducted or operated by
8 a nonprofit organization that is exempt from taxation under section
9 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
10 organization is associated with a major league baseball team or a national
11 touring professional golfing association and no part of the organization's
12 net earnings inures to the benefit of any private shareholder or individual.
13 2. Interstate telecommunications services, which include that portion
14 of telecommunications services, such as subscriber line service, allocable by
15 federal law to interstate telecommunications service.
16 3. Sales of warranty or service contracts.
17 4. Sales of motor vehicles to nonresidents of this state for use
18 outside this state if the motor vehicle dealer ships or delivers the motor
19 vehicle to a destination outside this state.
20 5. Interest on finance contracts.
21 6. Dealer documentation fees on the sales of motor vehicles.
22 7. Sales of food or other items purchased with United States
23 department of agriculture food stamp coupons issued under the food stamp act
24 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section
25 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,
26 section 4302; 42 United States Code section 1786) but may impose such a tax
27 on other sales of food. If a city, town or special taxing district exempts
28 sales of food from its tax or imposes a different transaction privilege rate
29 on the gross proceeds of sales or gross income from sales of food and nonfood
30 items, it shall use the definition of food prescribed by rule adopted by the
31 department pursuant to section 42-5106.
32 8. Orthodontic devices dispensed by a dental professional who is
33 licensed under title 32, chapter 11 to a patient as part of the practice of
34 dentistry.
35 9. Sales of internet access services to the person's subscribers and
36 customers. For the purposes of this paragraph:
37 (a) "Internet" means the computer and telecommunications facilities
38 that comprise the interconnected worldwide network of networks that employ
39 the transmission control protocol or internet protocol, or any predecessor or
40 successor protocol, to communicate information of all kinds by wire or radio.
41 (b) "Internet access" means a service that enables users to access
42 content, information, electronic mail or other services over the internet.
43 Internet access does not include telecommunication services provided by a
44 common carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 15. Computer data center equipment purchased by the owner, operator or
24 qualified colocation tenant of the computer data center or an authorized
25 agent of the owner, operator or qualified colocation tenant during the
26 qualification period for use in a computer data center that is certified by
27 the Arizona commerce authority under section 41-1519. To qualify for this
28 deduction, at the time of purchase, the owner, operator or qualified
29 colocation tenant must present to the retailer its certificate that is issued
30 pursuant to section 41-1519 and that establishes its qualification for the
31 deduction. For the purposes of this paragraph, "computer data center",
32 "computer data center equipment", "qualification period" and "qualified
33 colocation tenant" have the same meanings prescribed in section 41-1519.

34 16. The gross proceeds of sales or gross income derived from a contract
35 with the owner of real property or the person owning the improvements to the
36 real property for the maintenance, repair, ~~or~~ replacement or alteration of
37 existing property ~~is not subject to tax under this section~~ if the contract
38 does not include modification activities, except as specified in this
39 paragraph. The gross proceeds of sales or gross income derived from a
40 de minimis amount of modification activity that is essential to the
41 completion of the maintenance, repair, replacement or alteration contract
42 does not subject the entire contract to tax under this section. For the
43 purposes of this paragraph:

44 (a) Each contract or project is independent of another contract.

1 (b) "Modification" means construction, alteration, addition,
2 subtraction, improvement, movement, wreckage or demolition.

3 17. Monitoring services relating to an alarm system as defined in
4 section 32-101.

5 18. Tangible personal property, job printing or publications sold to or
6 purchased by, or tangible personal property leased, rented or licensed for
7 use to or by, a qualifying health sciences educational institution as defined
8 in section 42-5001.

9 19. The transfer of title or possession of coal back and forth between
10 an owner or operator of a power plant and a person who is responsible for
11 refining coal if both of the following apply:

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

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

19 20. The gross proceeds of sales or gross income from sales of low or
20 reduced cost articles of food or drink to eligible elderly, ~~disabled~~ or
21 homeless persons **OR PERSONS WITH A DISABILITY** by a business subject to tax
22 under section 42-5074 that contracts with the department of economic security
23 and that is approved by the food and nutrition service of the United States
24 department of agriculture pursuant to the supplemental nutrition assistance
25 program established by the food and nutrition act of 2008 (P.L. 110-246; 122
26 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the
27 purchases are made with the benefits issued pursuant to the supplemental
28 nutrition assistance program.

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

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

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

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

42 3. The sale of a motor vehicle and any repair and replacement parts
43 and tangible personal property becoming a part of such motor vehicle to a
44 motor carrier who is subject to a fee prescribed in title 28, chapter 16,

1 article 4 and who is engaged in the business of leasing, renting or licensing
2 such property.

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

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

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

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

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

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

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

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

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

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

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

42 G. A CITY, TOWN OR OTHER TAXING JURISDICTION SHALL NOT LEVY A
43 TRANSACTION PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE,
44 HOWEVER DENOMINATED, ON THE BUSINESS OF RENTING OR LEASING REAL PROPERTY FOR
45 RESIDENTIAL PURPOSES, EXCEPT THAT A CITY, TOWN OR OTHER TAXING JURISDICTION

1 THAT LEVIES A TAX OR FEE ON THE BUSINESS OF RENTING OR LEASING REAL PROPERTY
2 FOR RESIDENTIAL PURPOSES ON JANUARY 1, 2015 SHALL NOT THEREAFTER INCREASE THE
3 RATE OF THE TAX OR FEE BUT SHALL ANNUALLY REDUCE THE RATE BY TWENTY-FIVE
4 PERCENT OF THE INITIAL RATE FOR FOUR CONSECUTIVE YEARS BEGINNING ON JULY 1,
5 2016 AND EACH JULY 1 THEREAFTER. BEGINNING FROM AND AFTER JUNE 30, 2019, A
6 CITY, TOWN OR OTHER TAXING JURISDICTION SHALL REPEAL ANY TAX OR FEE ON THE
7 BUSINESS OF RENTING OR LEASING REAL PROPERTY FOR RESIDENTIAL PURPOSES. THIS
8 SUBSECTION APPLIES REGARDLESS OF WHETHER A CITY OR TOWN HAS ADOPTED THE MODEL
9 CITY TAX CODE PURSUANT TO ARTICLE 2 OF THIS CHAPTER. FOR THE PURPOSES OF
10 THIS SUBSECTION, REAL PROPERTY FOR RESIDENTIAL PURPOSES:

11 1. INCLUDES A DWELLING UNIT, LODGING FACILITY OR TRAILER OR MOBILE
12 HOME SPACE IF THE UNIT, FACILITY OR SPACE IS INTENDED TO SERVE AS THE
13 PRINCIPAL OR PERMANENT PLACE OF RESIDENCE FOR THE LESSEE OR RENTER OR IS
14 LEASED OR RENTED TO A SINGLE TENANT FOR AT LEAST THIRTY CONSECUTIVE DAYS.

15 2. DOES NOT INCLUDE HEALTH CARE FACILITIES, LONG-TERM CARE FACILITIES
16 OR HOTEL, MOTEL OR OTHER TRANSIENT LODGING BUSINESSES.

17 Sec. 2. Retroactivity

18 This act applies retroactively to from and after December 31, 2014.