Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 314

HOUSE BILL 2391

AN ACT

AMENDING SECTIONS 42-5061, 42-5073 AND 42-5159, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE AND AFFILIATED 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 42-5061, Arizona Revised Statutes, is amended to
3 read:
4 42-5061. Retail classification; definitions
5 A. The retail classification is comprised of the business of selling
6 tangible personal property at retail. The tax base for the retail
7 classification is the gross proceeds of sales or gross income derived from
8 the business. The tax imposed on the retail classification does not apply
9 to the gross proceeds of sales or gross income from:
10 1. Professional or personal service occupations or businesses which
11 involve sales or transfers of tangible personal property only as
12 inconsequential elements.
13 2. Services rendered in addition to selling tangible personal property
14 at retail.
15 3. Sales of warranty or service contracts. The storage, use or
16 consumption of tangible personal property provided under the conditions of
17 such contracts is subject to tax under section 42-5156.
18 4. Sales of tangible personal property by any nonprofit organization
19 organized and operated exclusively for charitable purposes and recognized by
20 the United States internal revenue service under section 501(c)(3) of the
21 internal revenue code.
22 5. Sales to persons engaged in business classified under the
23 restaurant classification of articles used by human beings for food, drink
24 or condiment, whether simple, mixed or compounded.
25 6. Business activity which is properly included in any other business
26 classification which is taxable under article 1 of this chapter.
27 7. The sale of stocks and bonds.
28 8. Drugs and medical oxygen, including delivery hose, mask or tent,
29 regulator and tank, on the prescription of a member of the medical, dental
30 or veterinarian profession who is licensed by law to administer such
31 substances.
32 9. Prosthetic appliances as defined in section 23-501 prescribed or
33 recommended by a health professional licensed pursuant to title 32, chapter
34 7, 8, 11, 13, 14, 15, 16, 17 or 29.
35 10. Insulin, insulin syringes and glucose test strips.
36 11. Prescription eyeglasses or contact lenses.
37 12. Hearing aids as defined in section 36-1901.
38 13. Durable medical equipment which has a federal health care financing
39 administration common procedure code, is designated reimbursable by medicare,
40 is prescribed by a person who is licensed under title 32, chapter 7, 8, 13,
41 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily
42 used to serve a medical purpose, is generally not useful to a person in the
43 absence of illness or injury and is appropriate for use in the home.

14. Sales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state.

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

16. 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).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person who is engaged in business which is classified under the restaurant classification and which provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district during school hours.

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

21. The sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax. In this paragraph:

(a) "Monetized bullion" means coins and other forms of money which are manufactured from gold, silver or other metals and which have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(b) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, which has been smelted or refined so that its value depends on its contents and not on its form.

22. Motor vehicle fuel and use fuel which are subject to a tax imposed under title 28, chapter 16, article 1 or 2, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739, sales of aviation fuel which are subject to the tax imposed under section 28-8344 and sales of jet fuel which are subject to the tax imposed under article 8 of this chapter.

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the Constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in section 42-5001.

(b) 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.

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

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

(e) 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.

(f) 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.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

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

(a) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.

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

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

28. The sale of a motor vehicle to:

(a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by

1 article 1 of this chapter and if the nonresident has secured a special
2 thirty-day nonresident registration of the vehicle by applying according to
3 section 28-2154.
4 (b) An enrolled member of an Indian tribe who resides on the Indian
5 reservation established for that tribe.
6 29. Tangible personal property purchased or leased in this state by a
7 nonprofit charitable organization that has qualified under section 501(c)(3)
8 of the United States internal revenue code and that engages in and uses such
9 property exclusively for training, job placement or rehabilitation programs
10 or testing for mentally or physically handicapped persons.
11 30. Sales of tangible personal property by a nonprofit organization
12 that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6)
13 of the internal revenue code if the organization is associated with a major
14 league baseball team or a national touring professional golfing association
15 and no part of the organization's net earnings inures to the benefit of any
16 private shareholder or individual.
17 31. Sales of commodities, as defined by title 7 United States Code
18 section 2, that are consigned for resale in a warehouse in this state in or
19 from which the commodity is deliverable on a contract for future delivery
20 subject to the rules of a commodity market regulated by the United States
21 commodity futures trading commission.
22 32. Sales of tangible personal property by a nonprofit organization
23 that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
24 501(c)(7) or 501(c)(8) of the internal revenue code if the organization
25 sponsors or operates a rodeo featuring primarily farm and ranch animals and
26 no part of the organization's net earnings inures to the benefit of any
27 private shareholder or individual.
28 33. Sales of new semitrailers, as defined in section 28-101,
29 manufactured in Arizona, or new parts manufactured in Arizona for
30 semitrailers sold by the manufacturer to a person who holds an interstate
31 commerce commission license for use in interstate commerce.
32 34. Sales of seeds, seedlings, roots, bulbs, cuttings and other
33 propagative material to persons who use those items to commercially produce
34 agricultural, horticultural, viticultural or floricultural crops in this
35 state.
36 35. Machinery, equipment, technology or related supplies that are only
37 useful to assist a person who is physically disabled as defined in section
38 46-191, has a developmental disability as defined in section 36-551 or has
39 a head injury as defined in section 41-3201 to be more independent and
40 functional.
41 36. Sales of tangible personal property that is shipped or delivered
42 directly to a destination outside the United States for use in that foreign
43 country.
44 37. Sales of natural gas or liquefied petroleum gas used to propel a
45 motor vehicle.

38. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

39. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for fifteen full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

40. Sales of 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 deduction for such chemicals that is otherwise provided by this section. For purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

41. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or transactions under this chapter. In this paragraph:

(a) "Personal property liquidation transaction" means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or upon the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.

(b) "Personal property liquidator" means a person who is retained to conduct a sale in a personal property liquidation transaction.

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

43. 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.

44. Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For purposes of this paragraph, "poultry" includes ratites.

45. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or 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 purposes of this paragraph, "poultry" includes ratites.

46. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.

47. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item which is furnished to and intended to be consumed by the transient during the transient's occupancy.

48. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

49. Sales of 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.

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

51. Sales of alternative fuel vehicles, as defined in section 43-1086, if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

52. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

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

54. SALES OF TANGIBLE PERSONAL PROPERTY BY A NONPROFIT ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(c)(6) OF THE INTERNAL REVENUE CODE IF THE ORGANIZATION PRODUCES, ORGANIZES OR PROMOTES CULTURAL OR CIVIC RELATED FESTIVALS OR EVENTS AND NO PART OF THE ORGANIZATION'S NET EARNINGS INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

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

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

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

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

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

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

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

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

(b) Any foreign government for use by such government outside of this state.

(c) 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. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the 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. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

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

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

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

13. New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk and for producing livestock, and machinery and equipment necessary for cooling milk and producing 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. In this paragraph:

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

1 (b) "Self-powered implements" includes machinery and equipment that
2 are electric-powered.
3 14. Machinery or equipment used in research and development. In this
4 paragraph, "research and development" means basic and applied research in the
5 sciences and engineering, and designing, developing or testing prototypes,
6 processes or new products, including research and development of computer
7 software that is embedded in or an integral part of the prototype or new
8 product or that is required for machinery or equipment otherwise exempt under
9 this section to function effectively. Research and development do not
10 include manufacturing quality control, routine consumer product testing,
11 market research, sales promotion, sales service, research in social sciences
12 or psychology, computer software research that is not included in the
13 definition of research and development, or other nontechnological activities
14 or technical services.
15 15. Machinery and equipment that are purchased by or on behalf of the
16 owners of a soundstage complex and primarily used for motion picture,
17 multimedia or interactive video production in the complex. This paragraph
18 applies only if the initial construction of the soundstage complex begins
19 after June 30, 1996 and before January 1, 2002 and the machinery and
20 equipment are purchased before the expiration of five years after the start
21 of initial construction. For purposes of this paragraph:
22 (a) "Motion picture, multimedia or interactive video production"
23 includes products for theatrical and television release, educational
24 presentations, electronic retailing, documentaries, music videos, industrial
25 films, CD-ROM, video game production, commercial advertising and television
26 episode production and other genres that are introduced through developing
27 technology.
28 (b) "Soundstage complex" means a facility of multiple stages including
29 production offices, construction shops and related areas, prop and costume
30 shops, storage areas, parking for production vehicles and areas that are
31 leased to businesses that complement the production needs and orientation of
32 the overall facility.
33 16. Tangible personal property that is used by either of the following
34 to receive, store, convert, produce, generate, decode, encode, control or
35 transmit telecommunications information:
36 (a) Any direct broadcast satellite television or data transmission
37 service that operates pursuant to 47 Code of Federal Regulations parts 25 and
38 100.
39 (b) Any satellite television or data transmission facility, if both
40 of the following conditions are met:
41 (i) Over two-thirds of the transmissions, measured in megabytes,
42 transmitted by the facility during the test period were transmitted to or on
43 behalf of one or more direct broadcast satellite television or data
44 transmission services that operate pursuant to 47 Code of Federal Regulations
45 parts 25 and 100.

1 (ii) Over two-thirds of the transmissions, measured in megabytes,
2 transmitted by or on behalf of those direct broadcast television or data
3 transmission services during the test period were transmitted by the facility
4 to or on behalf of those services.
5 For purposes of subdivision (b) of this paragraph, "test period" means the
6 three hundred sixty-five day period beginning on the later of the date on
7 which the tangible personal property is purchased or the date on which the
8 direct broadcast satellite television or data transmission service first
9 transmits information to its customers.
10 17. Clean rooms that are used for manufacturing, processing,
11 fabrication or research and development, as defined in paragraph 14 of this
12 subsection, of semiconductor products. For purposes of this paragraph,
13 "clean room" means all property that comprises or creates an environment
14 where humidity, temperature, particulate matter and contamination are
15 precisely controlled within specified parameters, without regard to whether
16 the property is actually contained within that environment or whether any of
17 the property is affixed to or incorporated into real property. Clean room:
18 (a) Includes the integrated systems, fixtures, piping, movable
19 partitions, lighting and all property that is necessary or adapted to reduce
20 contamination or to control airflow, temperature, humidity, chemical purity
21 or other environmental conditions or manufacturing tolerances, as well as the
22 production machinery and equipment operating in conjunction with the clean
23 room environment.
24 (b) Does not include the building or other permanent, nonremovable
25 component of the building that houses the clean room environment.
26 18. Machinery and equipment used directly in the feeding of poultry,
27 the environmental control of housing for poultry, the movement of eggs within
28 a production and packaging facility or the sorting or cooling of eggs. This
29 exemption does not apply to vehicles used for transporting eggs.
30 19. Machinery or equipment, including related structural components,
31 that is employed in connection with manufacturing, processing, fabricating,
32 job printing, refining, mining, natural gas pipelines, metallurgical
33 operations, telecommunications, producing or transmitting electricity or
34 research and development and that is used directly to meet or exceed rules
35 or regulations adopted by the federal energy regulatory commission, the
36 United States environmental protection agency, the United States nuclear
37 regulatory commission, the Arizona department of environmental quality or a
38 political subdivision of this state to prevent, monitor, control or reduce
39 land, water or air pollution.
40 20. Machinery and equipment that are sold to a person engaged in the
41 commercial production of livestock, livestock products or agricultural,
42 horticultural, viticultural or floricultural crops or products in this state
43 and that are used directly and primarily to prevent, monitor, control or
44 reduce air, water or land pollution.

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

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

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

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

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

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

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

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

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

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

7. Motors and pumps used in drip irrigation systems.

D. In computing the tax base, gross proceeds of sales or gross income from retail sales of automobiles does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4001.

E. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in section 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

F. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4051.

G. In computing the tax base, gross proceeds of sales or gross income from the sale of use fuel, as defined in section 28-5701, does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4091.

H. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

I. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

J. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to businesses classified under the:

1. Transporting classification.
2. Utility classification.
3. Telecommunications classification.
4. Pipeline classification.
5. Private car line classification.
6. Publication classification.
7. Job printing classification.
8. Prime contracting classification.
9. Owner builder sales classification.
10. Restaurant classification.

K. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.

3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.

4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.

L. There shall be deducted from the tax base fifty per cent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies, which is not deducted under subsection K of this section.

M. The department shall require every person claiming a deduction provided by subsection K or L of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

N. In computing the tax base, gross proceeds of sales or gross income does not include:

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

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

O. There shall be deducted from the tax base the amount received from sales of solar energy devices, but the deduction shall not exceed five thousand dollars for each solar energy device. Before deducting any amount under this subsection, the retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

P. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under section 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

Q. For the purposes of this section, a sale of wireless telecommunications equipment to a person who holds the equipment for sale or

1 transfer to a customer as an inducement to enter into or continue a contract
2 for telecommunications services that are taxable under section 42-5064 is
3 considered to be a sale for resale in the regular course of business.
4 R. Retail sales of prepaid calling cards or prepaid authorization
5 numbers for telecommunications services, including sales of reauthorization
6 of a prepaid card or authorization number, are subject to tax under this
7 section.
8 S. For the purposes of this section, the diversion of gas from a
9 pipeline by a person engaged in the business of operating a natural or
10 artificial gas pipeline, for the sole purpose of fueling compressor equipment
11 to pressurize the pipeline, is not a sale of the gas to the operator of the
12 pipeline.
13 T. If a seller is entitled to a deduction pursuant to subsection B,
14 paragraph 16, subdivision (b) of this section, the department may require the
15 purchaser to establish that the requirements of subsection B, paragraph 16,
16 subdivision (b) of this section have been satisfied. If the purchaser cannot
17 establish that the requirements of subsection B, paragraph 16, subdivision
18 (b) of this section have been satisfied, the purchaser is liable in an amount
19 equal to any tax, penalty and interest which the seller would have been
20 required to pay under article 1 of this chapter if the seller had not made
21 a deduction pursuant to subsection B, paragraph 16, subdivision (b) of this
22 section. Payment of the amount under this subsection exempts the purchaser
23 from liability for any tax imposed under article 4 of this chapter and
24 related to the tangible personal property purchased. The amount shall be
25 treated as transaction privilege tax to the purchaser and as tax revenues
26 collected from the seller to designate the distribution base pursuant to
27 section 42-5029.
28 U. For purposes of section 42-5032.01, the department shall separately
29 account for revenues collected under the retail classification from
30 businesses selling tangible personal property at retail:
31 1. On the premises of a multipurpose facility that is owned, leased
32 or operated by the tourism and sports authority pursuant to title 5,
33 chapter 8.
34 2. At professional football contests that are held in a stadium
35 located on the campus of an institution under the jurisdiction of the Arizona
36 board of regents.
37 V. For the purposes of this section:
38 1. "Aircraft" includes:
39 (a) An airplane flight simulator that is approved by the federal
40 aviation administration for use as a phase II or higher flight simulator
41 under appendix H, 14 Code of Federal Regulations part 121.
42 (b) Tangible personal property that is permanently affixed or attached
43 as a component part of an aircraft that is owned or operated by a
44 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.

3. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

W. For purposes of subsection K of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

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

5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

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

Sec. 2. Section 42-5073, Arizona Revised Statutes, is amended to read:

42-5073. <u>Amusement classification</u>

A. The amusement classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, except as provided in subsection B of this section,

1 video games, pinball machines, sports events or any other business charging
2 admission or user fees for exhibition, amusement or entertainment, including
3 the operation or sponsorship of events by a tourism and sports authority
4 under title 5, chapter 8. For purposes of this section, admission or user
5 fees include, but are not limited to, any revenues derived from any form of
6 contractual agreement for rights to or use of premium or special seating
7 facilities or arrangements. The amusement classification does not include:
8 1. Activities or projects of bona fide religious or educational
9 institutions.
10 2. Private or group instructional activities. For purposes of this
11 paragraph, "private or group instructional activities" includes, but is not
12 limited to, performing arts, martial arts, gymnastics and aerobic
13 instruction.
14 3. The operation or sponsorship of events by the Arizona exposition
15 and state fair board or county fair commissions.
16 4. A musical, dramatic or dance group or a botanical garden, museum
17 or zoo that is qualified as a nonprofit charitable organization under section
18 501(c)(3) of the United States internal revenue code and if no part of its
19 net income inures to the benefit of any private shareholder or individual.
20 5. Exhibition events in this state sponsored, conducted or operated
21 by a nonprofit organization that is exempt from taxation under section
22 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
23 organization is associated with major league baseball teams or a national
24 touring professional golfing association and no part of the organization's
25 net earnings inures to the benefit of any private shareholder or individual.
26 6. Operating or sponsoring rodeos that feature primarily farm and
27 ranch animals in this state and that are sponsored, conducted or operated by
28 a nonprofit organization that is exempt from taxation under section
29 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal
30 revenue code and no part of the organization's net earnings inures to the
31 benefit of any private shareholder or individual.
32 7. Sales of admissions to intercollegiate football contests if the
33 contests are both:
34 (a) Operated by a nonprofit organization that is exempt from taxation
35 under section 501(c)(3) of the internal revenue code and no part of the
36 organization's net earnings inures to the benefit of any private shareholder
37 or individual.
38 (b) Not held in a multipurpose facility that is owned or operated by
39 the tourism and sports authority pursuant to title 5, chapter 8.
40 8. Activities and events of, or fees and assessments received by, a
41 homeowners organization from persons who are members of the organization or
42 accompanied guests of members. For purposes of this paragraph, "homeowners
43 organization" means a mandatory membership organization comprised of owners
44 of residential property within a specified residential real estate

1 subdivision development or similar area and established to own property for
2 the benefit of its members where both of the following apply:
3 (a) No part of the organization's net earnings inures to the benefit
4 of any private shareholder or individual.
5 (b) The primary purpose of the organization is to provide for the
6 acquisition, construction, management, maintenance or care of organization
7 property.
8 9. ACTIVITIES AND EVENTS OF, OR FEES RECEIVED BY, A NONPROFIT
9 ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(c)(6) OF THE
10 INTERNAL REVENUE CODE IF THE ORGANIZATION PRODUCES, ORGANIZES OR PROMOTES
11 CULTURAL OR CIVIC RELATED FESTIVALS OR EVENTS AND NO PART OF THE
12 ORGANIZATION'S NET EARNINGS INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER
13 OR INDIVIDUAL.
14 B. The tax base for the amusement classification is the gross proceeds
15 of sales or gross income derived from the business, except that the following
16 shall be deducted from the tax base:
17 1. The gross proceeds of sales or gross income derived from
18 memberships, including initiation fees, which provide for the right to use
19 a health or fitness establishment or a private recreational establishment,
20 or any portion of an establishment, including tennis and other racquet courts
21 at that establishment, for participatory purposes for twenty-eight days or
22 more and fees charged for use of the health or fitness establishment or
23 private recreational establishment by bona fide accompanied guests of
24 members, except that this paragraph does not include additional fees, other
25 than initiation fees, charged by a health or fitness establishment or a
26 private recreational establishment for purposes other than memberships which
27 provide for the right to use a health or fitness establishment or private
28 recreational establishment, or any portion of an establishment, for
29 participatory purposes for twenty-eight days or more and accompanied guest
30 use fees.
31 2. Amounts that are exempt under section 5-111, subsection H.
32 3. The gross proceeds of sales or gross income derived from membership
33 fees, including initiation fees, that provide for the right to use a
34 transient lodging recreational establishment, including golf courses and
35 tennis and other racquet courts at that establishment, for participatory
36 purposes for twenty-eight days or more, except that this paragraph does not
37 include additional fees, other than initiation fees, that are charged by a
38 transient lodging recreational establishment for purposes other than
39 memberships and that provide for the right to use a transient lodging
40 recreational establishment or any portion of the establishment for
41 participatory purposes for twenty-eight days or more.
42 4. The gross proceeds of sales or gross income derived from sales to
43 persons engaged in the business of transient lodging classified under section
44 42-5070, if all of the following apply:

1 (a) The persons who are engaged in the transient lodging business sell
2 the amusement to another person for consideration.
3 (b) The consideration received by the transient lodging business is
4 equal to or greater than the amount to be deducted under this subsection.
5 (c) The transient lodging business has provided an exemption
6 certificate to the person engaging in business under this section.
7 5. The gross proceeds of sales or gross income derived from:
8 (a) Business activity that is properly included in any other business
9 classification under this article and that is taxable to the person engaged
10 in that classification, but the gross proceeds of sales or gross income to
11 be deducted shall not exceed the consideration paid to the person conducting
12 the activity.
13 (b) Business activity that is arranged by the person who is subject
14 to tax under this section and that is not taxable to the person conducting
15 the activity due to an exclusion, exemption or deduction under this section
16 or section 42-5062, but the gross proceeds of sales or gross income to be
17 deducted shall not exceed the consideration paid to the person conducting the
18 activity.
19 (c) Business activity that is arranged by a person who is subject to
20 tax under this section and that is taxable to another person under this
21 section who conducts the activity, but the gross proceeds of sales or gross
22 income to be deducted shall not exceed the consideration paid to the person
23 conducting the activity.
24 C. For purposes of subsection B of this section:
25 1. "Health or fitness establishment" means a facility whose primary
26 purpose is to provide facilities, equipment, instruction or education to
27 promote the health and fitness of its members and at least eighty per cent
28 of the monthly gross revenue of the facility is received through accounts of
29 memberships and accompanied guest use fees which provide for the right to use
30 the facility, or any portion of the facility, under the terms of the
31 membership agreement for participatory purposes for twenty-eight days or
32 more.
33 2. "Private recreational establishment" means a facility whose primary
34 purpose is to provide recreational facilities, such as tennis, golf and
35 swimming, for its members and where at least eighty per cent of the monthly
36 gross revenue of the facility is received through accounts of memberships and
37 accompanied guest use fees which provide for the right to use the facility,
38 or any portion of the facility, for participatory purposes for twenty-eight
39 days or more.
40 3. "Transient lodging recreational establishment" means a facility
41 whose primary purpose is to provide facilities for transient lodging, that
42 is subject to taxation under this chapter and that also provides recreational
43 facilities, such as tennis, golf and swimming, for members for a period of
44 twenty-eight days or more.

D. Until December 31, 1988, the revenues from hayrides and other animal-drawn amusement rides, from horseback riding and riding instruction and from recreational tours using motor vehicles designed to operate on and off public highways are exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from hayrides and other animal-drawn amusement rides, from horseback riding and from recreational tours using motor vehicles designed to operate on and off public highways are 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 taxes will be returned to the customer.

E. If a person is engaged in the business of offering both exhibition, amusement or entertainment and private or group instructional activities, the person's books shall be kept to show separately the gross income from exhibition, amusement or entertainment and the gross income from instructional activities. If the books do not provide this separate accounting, the tax is imposed on the person's total gross income from the business.

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

G. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the amusement classification from sales of admissions to:

1. Events that are held in a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8, including intercollegiate football contests that are operated by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.

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

Sec. 3. Section 42-5159, Arizona Revised Statutes, is amended to read:

42-5159. <u>Exemptions</u>

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.

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

5. Motor vehicle fuel and use fuel, the sales, distribution or use of which in this state is subject to the tax imposed under the provisions of title 28, chapter 16, article 1 or 2, use fuel which is sold to or used by a person holding a valid single trip use fuel tax permit issued under section 28-5739, aviation fuel, the sales, distribution or use of which in this state is subject to the tax imposed under section 28-8344, and jet fuel, the sales, distribution or use of which in this state is subject to the tax imposed under article 8 of this chapter.

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

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

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

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

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

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

1 (a) Printed or photographic materials, beginning August 7, 1985.
2 (b) Electronic or digital media materials, beginning July 17, 1994.
3 13. Tangible personal property purchased by:
4 (a) A hospital organized and operated exclusively for charitable
5 purposes, no part of the net earnings of which inures to the benefit of any
6 private shareholder or individual.
7 (b) A hospital operated by this state or a political subdivision of
8 this state.
9 (c) A licensed nursing care institution or a licensed residential care
10 institution or a residential care facility operated in conjunction with a
11 licensed nursing care institution or a licensed kidney dialysis center, which
12 provides medical services, nursing services or health related services and
13 is not used or held for profit.
14 (d) A qualifying health care organization, as defined in section
15 42-5001, if the tangible personal property is used by the organization solely
16 to provide health and medical related educational and charitable services.
17 (e) A qualifying health care organization as defined in section
18 42-5001 if the organization is dedicated to providing educational,
19 therapeutic, rehabilitative and family medical education training for blind,
20 visually impaired and multihandicapped children from the time of birth to age
21 twenty-one.
22 (f) A nonprofit charitable organization that has qualified under
23 section 501(c)(3) of the United States internal revenue code and that engages
24 in and uses such property exclusively for training, job placement or
25 rehabilitation programs or testing for mentally or physically handicapped
26 persons.
27 (g) A person that is subject to tax under article 1 of this chapter
28 by reason of being engaged in business classified under the prime contracting
29 classification under section 42-5075, or a subcontractor working under the
30 control of a prime contractor, if the tangible personal property is any of
31 the following:
32 (i) Incorporated or fabricated by the contractor into a structure,
33 project, development or improvement in fulfillment of a contract.
34 (ii) Used in environmental response or remediation activities under
35 section 42-5075, subsection B, paragraph 6.
36 (iii) Incorporated or fabricated by the person into any lake facility
37 development in a commercial enhancement reuse district under conditions
38 prescribed for the deduction allowed by section 42-5075, subsection B,
39 paragraph 8.
40 (h) A nonprofit charitable organization that has qualified under
41 section 501(c)(3) of the internal revenue code if the property is purchased
42 from the parent or an affiliate organization that is located outside this
43 state.
44 (i) A qualifying community health center as defined in section
45 42-5001.

1 (j) A nonprofit charitable organization that has qualified under
2 section 501(c)(3) of the internal revenue code and that regularly serves
3 meals to the needy and indigent on a continuing basis at no cost.
4 (k) A person engaged in business under the transient lodging
5 classification if the property is a personal hygiene product which is
6 furnished without additional charge to and intended to be consumed by the
7 transient during the transient's occupancy.
8 (l) For taxable periods beginning from and after June 30, 2001, a
9 nonprofit charitable organization that has qualified under section 501(c)(3)
10 of the internal revenue code and that provides residential apartment housing
11 for low income persons over sixty-two years of age in a facility that
12 qualifies for a federal housing subsidy, if the tangible personal property
13 is used by the organization solely to provide residential apartment housing
14 for low income persons over sixty-two years of age in a facility that
15 qualifies for a federal housing subsidy.
16 14. Commodities, as defined by title 7 United States Code section 2,
17 that are consigned for resale in a warehouse in this state in or from which
18 the commodity is deliverable on a contract for future delivery subject to the
19 rules of a commodity market regulated by the United States commodity futures
20 trading commission.
21 15. Tangible personal property sold by:
22 (a) Any nonprofit organization organized and operated exclusively for
23 charitable purposes and recognized by the United States internal revenue
24 service under section 501(c)(3) of the internal revenue code.
25 (b) A nonprofit organization that is exempt from taxation under
26 section 501(c)(3) or 501(c)(6) of the internal revenue code if the
27 organization is associated with a major league baseball team or a national
28 touring professional golfing association and no part of the organization's
29 net earnings inures to the benefit of any private shareholder or individual.
30 (c) A nonprofit organization that is exempt from taxation under
31 section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the
32 internal revenue code if the organization sponsors or operates a rodeo
33 featuring primarily farm and ranch animals and no part of the organization's
34 net earnings inures to the benefit of any private shareholder or individual.
35 16. Drugs and medical oxygen, including delivery hose, mask or tent,
36 regulator and tank, on the prescription of a member of the medical, dental
37 or veterinarian profession who is licensed by law to administer such
38 substances.
39 17. Prosthetic appliances, as defined in section 23-501, prescribed or
40 recommended by a person who is licensed, registered or otherwise
41 professionally credentialed as a physician, dentist, podiatrist,
42 chiropractor, naturopath, homeopath, nurse or optometrist.
43 18. Prescription eyeglasses and contact lenses.
44 19. Insulin, insulin syringes and glucose test strips.
45 20. Hearing aids as defined in section 36-1901.

1 21. Durable medical equipment which has a federal health care financing
2 administration common procedure code, is designated reimbursable by medicare,
3 is prescribed by a person who is licensed under title 32, chapter 7, 13, 17
4 or 29, can withstand repeated use, is primarily and customarily used to serve
5 a medical purpose, is generally not useful to a person in the absence of
6 illness or injury and is appropriate for use in the home.
7 22. Food, as provided in and subject to the conditions of article 3 of
8 this chapter and section 42-5074.
9 23. Items purchased with United States department of agriculture food
10 stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat.
11 958) or food instruments issued under section 17 of the child nutrition act
12 (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code
13 section 1786).
14 24. Food and drink provided without monetary charge by a taxpayer which
15 is subject to section 42-5074 to its employees for their own consumption on
16 the premises during the employees' hours of employment.
17 25. Tangible personal property that is used or consumed in a business
18 subject to section 42-5074 for human food, drink or condiment, whether
19 simple, mixed or compounded.
20 26. Food, drink or condiment and accessory tangible personal property
21 if they are to be prepared and served to persons for consumption on the
22 premises of a public school in a school district during school hours.
23 27. Lottery tickets or shares purchased pursuant to title 5, chapter
24 5, article 1.
25 28. Textbooks, sold by a bookstore, that are required by any state
26 university or community college.
27 29. Magazines, other periodicals or other publications produced by this
28 state to encourage tourist travel.
29 30. Paper machine clothing, such as forming fabrics and dryer felts,
30 purchased by a paper manufacturer and directly used or consumed in paper
31 manufacturing.
32 31. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity
33 purchased by a qualified environmental technology manufacturer, producer or
34 processor as defined in section 41-1514.02 and directly used or consumed in
35 the generation or provision of on-site power or energy solely for
36 environmental technology manufacturing, producing or processing or
37 environmental protection. This paragraph shall apply for fifteen full
38 consecutive calendar or fiscal years from the date the first paper
39 manufacturing machine is placed in service. In the case of an environmental
40 technology manufacturer, producer or processor who does not manufacture
41 paper, the time period shall begin with the date the first manufacturing,
42 processing or production equipment is placed in service.
43 32. Motor vehicles that are removed from inventory by a motor vehicle
44 dealer as defined in section 28-4301 and that are provided to:

1 (a) Charitable or educational institutions that are exempt from
2 taxation under section 501(c)(3) of the internal revenue code.
3 (b) Public educational institutions.
4 (c) State universities or affiliated organizations of a state
5 university if no part of the organization's net earnings inures to the
6 benefit of any private shareholder or individual.
7 33. Natural gas or liquefied petroleum gas used to propel a motor
8 vehicle.
9 34. Machinery, equipment, technology or related supplies that are only
10 useful to assist a person who is physically disabled as defined in section
11 46-191, has a developmental disability as defined in section 36-551 or has
12 a head injury as defined in section 41-3201 to be more independent and
13 functional.
14 35. Liquid, solid or gaseous chemicals used in manufacturing,
15 processing, fabricating, mining, refining, metallurgical operations, research
16 and development and, beginning on January 1, 1999, printing, if using or
17 consuming the chemicals, alone or as part of an integrated system of
18 chemicals, involves direct contact with the materials from which the product
19 is produced for the purpose of causing or permitting a chemical or physical
20 change to occur in the materials as part of the production process. This
21 paragraph does not include chemicals that are used or consumed in activities
22 such as packaging, storage or transportation but does not affect any
23 exemption for such chemicals that is otherwise provided by this section. For
24 purposes of this paragraph "printing" means a commercial printing operation
25 and includes job printing, engraving, embossing, copying and bookbinding.
26 36. Food, drink and condiment purchased for consumption within the
27 premises of any prison, jail or other institution under the jurisdiction of
28 the state department of corrections, the department of public safety, the
29 department of juvenile corrections or a county sheriff.
30 37. A motor vehicle and any repair and replacement parts and tangible
31 personal property becoming a part of such motor vehicle sold to a motor
32 carrier who is subject to a fee prescribed in title 28, chapter 16, article
33 4 and who is engaged in the business of leasing or renting such property.
34 38. Tangible personal property which is or directly enters into and
35 becomes an ingredient or component part of cards used as prescription plan
36 identification cards.
37 39. Overhead materials or other tangible personal property that is used
38 in performing a contract between the United States government and a
39 manufacturer, modifier, assembler or repairer, including property used in
40 performing a subcontract with a government contractor who is a manufacturer,
41 modifier, assembler or repairer, to which title passes to the government
42 under the terms of the contract or subcontract. For purposes of this
43 paragraph:
44 (a) "Overhead materials" means tangible personal property, the gross
45 proceeds of sales or gross income derived from which would otherwise be

1 included in the retail classification, and which are used or consumed in the
2 performance of a contract, the cost of which is charged to an overhead
3 expense account and allocated to various contracts based upon generally
4 accepted accounting principles and consistent with government contract
5 accounting standards.
6 (b) "Subcontract" means an agreement between a contractor and any
7 person who is not an employee of the contractor for furnishing of supplies
8 or services that, in whole or in part, are necessary to the performance of
9 one or more government contracts, or under which any portion of the
10 contractor's obligation under one or more government contracts is performed,
11 undertaken or assumed, and that includes provisions causing title to overhead
12 materials or other tangible personal property used in the performance of the
13 subcontract to pass to the government or that includes provisions
14 incorporating such title passing clauses in a government contract into the
15 subcontract.
16 40. Through December 31, 1994, tangible personal property sold pursuant
17 to a personal property liquidation transaction, as defined in section
18 42-5061. From and after December 31, 1994, tangible personal property sold
19 pursuant to a personal property liquidation transaction, as defined in
20 section 42-5061, if the gross proceeds of the sales were included in the
21 measure of the tax imposed by article 1 of this chapter or if the personal
22 property liquidation was a casual activity or transaction.
23 41. Wireless telecommunications equipment that is held for sale or
24 transfer to a customer as an inducement to enter into or continue a contract
25 for telecommunications services that are taxable under section 42-5064.
26 42. Alternative fuel, as defined in section 1-215, purchased by a used
27 oil fuel burner who has received a permit to burn used oil or used oil fuel
28 under section 49-426 or 49-480.
29 43. Tangible personal property purchased by a commercial airline and
30 consisting of food, beverages and condiments and accessories used for serving
31 the food and beverages, if those items are to be provided without additional
32 charge to passengers for consumption in flight. For purposes of this
33 paragraph, "commercial airline" means a person holding a federal certificate
34 of public convenience and necessity or foreign air carrier permit for air
35 transportation to transport persons, property or United States mail in
36 intrastate, interstate or foreign commerce.
37 44. Alternative fuel vehicles, as defined in section 43-1086, if the
38 vehicle was manufactured as a diesel fuel vehicle and converted to operate
39 on alternative fuel and equipment that is installed in a conventional diesel
40 fuel motor vehicle to convert the vehicle to operate on an alternative fuel,
41 as defined in section 1-215.
42 45. Gas diverted from a pipeline, by a person engaged in the business
43 of operating a natural or artificial gas pipeline, and used or consumed for
44 the sole purpose of fueling compressor equipment that pressurizes the
45 pipeline.

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

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

48. SALES OF TANGIBLE PERSONAL PROPERTY BY A NONPROFIT ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(c)(6) OF THE INTERNAL REVENUE CODE IF THE ORGANIZATION PRODUCES, ORGANIZES OR PROMOTES CULTURAL OR CIVIC RELATED FESTIVALS OR EVENTS AND NO PART OF THE ORGANIZATION'S NET EARNINGS INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

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

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

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

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

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

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

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

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

1 (a) A person holding a federal certificate of public convenience and
2 necessity, a supplemental air carrier certificate under federal aviation
3 regulations (14 Code of Federal Regulations part 121) or a foreign air
4 carrier permit for air transportation for use as or in conjunction with or
5 becoming a part of aircraft to be used to transport persons, property or
6 United States mail in intrastate, interstate or foreign commerce.
7 (b) Any foreign government for use by such government outside of this
8 state, or sold to persons who are not residents of this state and who will
9 not use such property in this state other than in removing such property from
10 this state.
11 8. Machinery, tools, equipment and related supplies used or consumed
12 directly in repairing, remodeling or maintaining aircraft, aircraft engines
13 or aircraft component parts by or on behalf of a certificated or licensed
14 carrier of persons or property.
15 9. Rolling stock, rails, ties and signal control equipment used
16 directly to transport persons or property.
17 10. Machinery or equipment used directly to drill for oil or gas or
18 used directly in the process of extracting oil or gas from the earth for
19 commercial purposes.
20 11. Buses or other urban mass transit vehicles which are used directly
21 to transport persons or property for hire or pursuant to a governmentally
22 adopted and controlled urban mass transportation program and which are sold
23 to bus companies holding a federal certificate of convenience and necessity
24 or operated by any city, town or other governmental entity or by any person
25 contracting with such governmental entity as part of a governmentally adopted
26 and controlled program to provide urban mass transportation.
27 12. Groundwater measuring devices required under section 45-604.
28 13. New machinery and equipment consisting of tractors, tractor-drawn
29 implements, self-powered implements, machinery and equipment that are
30 necessary for extracting milk, and for cooling milk and livestock, and drip
31 irrigation lines not already exempt under paragraph 6 of this subsection and
32 used for commercial production of agricultural, horticultural, viticultural
33 and floricultural crops and products in this state. In this paragraph:
34 (a) "New machinery and equipment" means machinery or equipment which
35 has never been sold at retail except pursuant to leases or rentals which do
36 not total two years or more.
37 (b) "Self-powered implements" includes machinery and equipment that
38 are electric-powered.
39 14. Machinery or equipment used in research and development. In this
40 paragraph, "research and development" means basic and applied research in the
41 sciences and engineering, and designing, developing or testing prototypes,
42 processes or new products, including research and development of computer
43 software that is embedded in or an integral part of the prototype or new
44 product or that is required for machinery or equipment otherwise exempt under
45 this section to function effectively. Research and development do not

include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

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

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

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

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

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

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

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

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

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

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

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

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

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

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

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

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

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

1 (b) Machinery or equipment purchased to replace machinery or equipment
2 for which an exemption was previously claimed and taken under this paragraph.
3 (c) Any machinery or equipment purchased after the television station
4 has ceased analog broadcasting, or purchased after November 1, 2009,
5 whichever occurs first.
6 C. The exemptions provided by subsection B of this section do not
7 include:
8 1. Expendable materials. For purposes of this paragraph, expendable
9 materials do not include any of the categories of tangible personal property
10 specified in subsection B of this section regardless of the cost or useful
11 life of that property.
12 2. Janitorial equipment and hand tools.
13 3. Office equipment, furniture and supplies.
14 4. Tangible personal property used in selling or distributing
15 activities, other than the telecommunications transmissions described in
16 subsection B, paragraph 16 of this section.
17 5. Motor vehicles required to be licensed by this state, except buses
18 or other urban mass transit vehicles specifically exempted pursuant to
19 subsection B, paragraph 11 of this section, without regard to the use of such
20 motor vehicles.
21 6. Shops, buildings, docks, depots and all other materials of whatever
22 kind or character not specifically included as exempt.
23 7. Motors and pumps used in drip irrigation systems.
24 D. The following shall be deducted in computing the purchase price of
25 electricity by a retail electric customer from a utility business:
26 1. Revenues received from sales of ancillary services, electric
27 distribution services, electric generation services, electric transmission
28 services and other services related to providing electricity to a retail
29 electric customer who is located outside this state for use outside this
30 state if the electricity is delivered to a point of sale outside this state.
31 2. Revenues received from providing electricity, including ancillary
32 services, electric distribution services, electric generation services,
33 electric transmission services and other services related to providing
34 electricity with respect to which the transaction privilege tax imposed under
35 section 42-5063 has been paid.
36 E. The tax levied by this article does not apply to:
37 1. The storage, use or consumption in Arizona of machinery, equipment,
38 materials or other tangible personal property if used directly and
39 predominantly to construct a qualified environmental technology
40 manufacturing, producing or processing facility, as described in section
41 41-1514.02. This paragraph applies for ten full consecutive calendar or
42 fiscal years after the start of initial construction.
43 2. The purchase of electricity by a qualified environmental technology
44 manufacturer, producer or processor as defined in section 41-1514.02 that is
45 used directly in environmental technology manufacturing, producing or

1 processing. This paragraph shall apply for fifteen full consecutive calendar
2 or fiscal years from the date the first paper manufacturing machine is placed
3 in service. In the case of an environmental technology manufacturer,
4 producer or processor who does not manufacture paper, the time period shall
5 begin with the date the first manufacturing, processing or production
6 equipment is placed in service.
7 F. The following shall be deducted in computing the purchase price of
8 electricity by a retail electric customer from a utility business:
9 1. Fees charged by a municipally owned utility to persons constructing
10 residential, commercial or industrial developments or connecting residential,
11 commercial or industrial developments to a municipal utility system or
12 systems if the fees are segregated and used only for capital expansion,
13 system enlargement or debt service of the utility system or systems.
14 2. Reimbursement or contribution compensation to any person or persons
15 owning a utility system for property and equipment installed to provide
16 utility access to, on or across the land of an actual utility consumer if the
17 property and equipment become the property of the utility. This deduction
18 shall not exceed the value of such property and equipment.
19 G. For the purposes of subsection B of this section:
20 1. "Aircraft" includes:
21 (a) An airplane flight simulator that is approved by the federal
22 aviation administration for use as a phase II or higher flight simulator
23 under appendix H, 14 Code of Federal Regulations part 121.
24 (b) Tangible personal property that is permanently affixed or attached
25 as a component part of an aircraft that is owned or operated by a
26 certificated or licensed carrier of persons or property.
27 2. "Other accessories and related equipment" includes aircraft
28 accessories and equipment such as ground service equipment that physically
29 contact aircraft at some point during the overall carrier operation.
30 H. For purposes of subsection D of this section, "ancillary services",
31 "electric distribution service", "electric generation service", "electric
32 transmission service" and "other services" have the same meanings prescribed
33 by section 42-5063.
34 Sec. 4. Retroactivity; limitation on refunds; nonseverability
35 A. Section 42-5061, subsection A, paragraph 54, section 42-5073,
36 subsection A, paragraph 9 and section 42-5159, subsection A, paragraph 48,
37 Arizona Revised Statutes, as amended by this act, apply retroactively to
38 taxable periods beginning from and after December 31, 1982.
39 B. Any claim for refund of transaction privilege or use tax based on
40 the retroactive application of section 42-5061, subsection A, paragraph 54,
41 section 42-5073, subsection A, paragraph 9 and section 42-5159, subsection
42 A, paragraph 48, Arizona Revised Statutes, as amended by this act, shall be
43 submitted to the department of revenue on or before December 31, 2001,
44 pursuant to section 42-1118, Arizona Revised Statutes. A failure to file a

claim on or before December 31, 2001, constitutes a waiver of the claim for refund under this section.

C. The burden is on the taxpayer to establish by competent evidence the amount of tax paid for all taxable periods, if any, attributable to the sale or purchase of tangible personal property that qualifies for the deduction under section 42-5061, subsection A, paragraph 54, section 42-5073, subsection A, paragraph 9 and section 42-5159, subsection A, paragraph 48, Arizona Revised Statutes, as amended by this act. The department of revenue shall:

1. Review all timely filed claims.

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

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

D. Notwithstanding section 42-1119, Arizona Revised Statutes, the department of revenue shall not make a refund until after a final determination has been made as to the amount of all refund claims filed pursuant to this section. If a taxpayer appeals the department's determination, the department, in compliance with the rules protecting confidentiality under sections 42-2001 through 42-2004, Arizona Revised Statutes, may notify other taxpayers who have filed claims as to the nature of any delay, and if possible, to estimate the probable extent of the delay.

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

F. Interest shall not be computed or allowed on any refundable amount if paid before July 1, 2002, but if the amount cannot be determined or paid until after June 30, 2002, interest accrues thereafter under section 42-1123, Arizona Revised Statutes.

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

THIS BILL HAVING NOT BEEN RETURNED TO THE LEGISLATURE WITHIN 5 DAYS AFTER IT WAS PRESENTED TO THE GOVERNOR, HAS BECOME A LAW THIS 30th DAY OF APRIL, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2001.

Passed the House March 13, 2001,

by the following vote: 35 Ayes,

23 Nays, 2 Not Voting

[signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 25, 2001,

by the following vote: 26 Ayes,

0 Nays, 3 Not Voting

1 Vacancy

[signature]
President of the Senate

Charmin Billington
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

H.B. 2391

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 30, 2001,

by the following vote: 50 Ayes,

8 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Pro Tempore
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30 day of April, 2001,

at 3:30 o'clock P M.

Sandra Ramirez
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 4 day of May, 2001,

at 4:34 o'clock P M.

Betsey Bayless
Secretary of State

H.B. 2391