

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

# HOUSE BILL 2324

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 42-5069. Commercial lease classification; definitions

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

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

13 C. The commercial lease classification does not include:

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

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

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

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

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

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

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

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

1 (c) "RECIPROCAL INSURERS" HAS THE SAME MEANING PRESCRIBED IN SECTION  
2 20-762.

3 6. Leasing real property for boarding horses.

4 7. Leasing or renting real property or the right to use real property  
5 at exhibition events in this state sponsored, operated or conducted by a  
6 nonprofit organization that is exempt from taxation under section 501(c)(3),  
7 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is  
8 associated with major league baseball teams or a national touring  
9 professional golfing association and no part of the organization's net  
10 earnings inures to the benefit of any private shareholder or individual.

11 8. Leasing or renting real property or the right to use real property  
12 for use as a rodeo featuring primarily farm and ranch animals in this state  
13 sponsored, operated or conducted by a nonprofit organization that is exempt  
14 from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or  
15 501(c)(8) of the internal revenue code and no part of the organization's net  
16 earnings inures to the benefit of any private shareholder or individual.

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

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

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

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

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

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

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

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

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

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

11 14. Leasing or subleasing real property used by a nursing care  
12 institution as defined in section 36-401 that is licensed pursuant to title  
13 36, chapter 4.

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

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

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

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

42 F. For the purposes of this section:

43 1. "Leasing" includes renting.

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

1           Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to read:  
2           42-6004. Exemption from municipal tax

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

5           1. Exhibition events in this state sponsored, conducted or operated by  
6 a nonprofit organization that is exempt from taxation under section  
7 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the  
8 organization is associated with a major league baseball team or a national  
9 touring professional golfing association and no part of the organization's  
10 net earnings inures to the benefit of any private shareholder or individual.

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

14           3. Sales of warranty or service contracts.

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

18           5. Interest on finance contracts.

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

20           7. Sales of food or other items purchased with United States  
21 department of agriculture food stamp coupons issued under the food stamp act  
22 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section  
23 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,  
24 section 4302; 42 United States Code section 1786) but may impose such a tax  
25 on other sales of food. If a city, town or special taxing district exempts  
26 sales of food from its tax or imposes a different transaction privilege rate  
27 on the gross proceeds of sales or gross income from sales of food and nonfood  
28 items, it shall use the definition of food prescribed by rule adopted by the  
29 department pursuant to section 42-5106.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27       (a) "AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS"  
28 MEANS THE LESSOR HOLDS A CONTROLLING INTEREST IN THE LESSEE, THE LESSEE HOLDS  
29 A CONTROLLING INTEREST IN THE LESSOR, AN AFFILIATED ENTITY HOLDS A  
30 CONTROLLING INTEREST IN BOTH THE LESSOR AND THE LESSEE OR AN UNRELATED PERSON  
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32       (b) "CONTROLLING INTEREST" MEANS DIRECT OR INDIRECT OWNERSHIP OF AT  
33 LEAST EIGHTY PER CENT OF THE VOTING SHARES OF A CORPORATION OR OF THE  
34 INTERESTS IN A COMPANY, BUSINESS OR PERSON OTHER THAN A CORPORATION.

35       (c) "RECIPROCAL INSURER" HAS THE SAME MEANING PRESCRIBED IN SECTION  
36 20-762.

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

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

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

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

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

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

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

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

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

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

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

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

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

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