

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2479

AN ACT

AMENDING SECTIONS 42-5001, 42-5002, 42-5040, 42-5061 AND 42-5151, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5155.01; AMENDING SECTION 42-5167, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6015; AMENDING SECTION 44-1263, ARIZONA REVISED STATUTES; RELATING TO STATE AND LOCAL TRANSACTION PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5001, Arizona Revised Statutes, is amended to
3 read:

4 42-5001. Definitions

5 In this article and article 2 of this chapter, unless the context
6 otherwise requires:

7 1. "Business" includes all activities or acts, personal or
8 corporate, engaged in or caused to be engaged in with the object of gain,
9 benefit or advantage, either directly or indirectly, but does not include
10 either:

11 (a) Casual activities or sales.

12 (b) The transfer of electricity from a solar photovoltaic
13 generation system to an electric utility distribution system.

14 2. "COMPUTER" MEANS AN ELECTRONIC DEVICE THAT ACCEPTS INFORMATION
15 IN A DIGITAL OR SIMILAR FORM AND MANIPULATES IT FOR A RESULT BASED ON A
16 SEQUENCE OF INSTRUCTIONS.

17 3. "COMPUTER SOFTWARE" MEANS A PERPETUAL OR SUBSCRIPTION LICENSE TO
18 A SET OF CODED INSTRUCTIONS DESIGNED TO CAUSE A COMPUTER OR AUTOMATIC DATA
19 PROCESSING EQUIPMENT TO PERFORM A TASK.

20 4. "COMPUTER SOFTWARE MAINTENANCE CONTRACT" MEANS A CONTRACT THAT
21 OBLIGATES A COMPUTER SOFTWARE VENDOR TO PROVIDE CUSTOMERS WITH FUTURE
22 UPDATES OR UPGRADES TO COMPUTER SOFTWARE.

23 ~~2.~~ 5. "Distribution base" means the portion of the revenues
24 derived from the tax levied by this article and articles 5 and 8 of this
25 chapter designated for distribution to counties, municipalities and other
26 purposes according to section 42-5029, subsection D.

27 ~~3.~~ 6. "Engaging", when used with reference to engaging or
28 continuing in business, includes the exercise of corporate or franchise
29 powers.

30 ~~4.~~ 7. "Gross income" means the gross receipts of a taxpayer
31 derived from trade, business, commerce or sales and the value proceeding
32 or accruing from the sale of tangible personal property or service, or
33 both, and without any deduction on account of losses.

34 ~~5.~~ 8. "Gross proceeds of sales" means the value proceeding or
35 accruing from the sale of tangible personal property without any deduction
36 on account of the cost of property sold, expense of any kind or losses,
37 but cash discounts allowed and taken on sales are not included as gross
38 income.

39 ~~6.~~ 9. ~~"Gross income"~~ and ~~"gross proceeds of sales"~~ do not
40 include goods, wares or merchandise, or value thereof, returned by
41 customers if the sale price is refunded either in cash or by credit, nor
42 the value of merchandise traded in on the purchase of new merchandise when
43 the trade-in allowance is deducted from the sales price of the new
44 merchandise before completion of the sale.

1 ~~7-~~ 10. "Gross receipts" means the total amount of the sale, lease
2 or rental price, as the case may be, of the retail sales of retailers,
3 including any services that are a part of the sales, valued in money,
4 whether received in money or otherwise, including all receipts, cash,
5 credits and property of every kind or nature, and any amount for which
6 credit is allowed by the seller to the purchaser without any deduction
7 from the amount on account of the cost of the property sold, materials
8 used, labor or service performed, interest paid, losses or any other
9 expense. Gross receipts do not include cash discounts allowed and taken
10 nor the sale price of property returned by customers if the full sale
11 price is refunded either in cash or by credit.

12 ~~8-~~ 11. "Person" or "company" includes an individual, firm,
13 partnership, joint venture, association, corporation, estate or trust,
14 this state, any county, city, town, district, other than a school
15 district, or other political subdivision and any other group or
16 combination acting as a unit, and the plural as well as the singular
17 number.

18 12. "PREWRITTEN COMPUTER SOFTWARE":

19 (a) MEANS COMPUTER SOFTWARE THAT IS NOT DESIGNED AND DEVELOPED BY
20 THE AUTHOR OR OTHER CREATOR TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER
21 TO A SALE.

22 (b) INCLUDES:

23 (i) RELATED COMPUTER SOFTWARE MAINTENANCE CONTRACTS, WHETHER SOLD
24 TOGETHER WITH OR SEPARATELY FROM THE COMPUTER SOFTWARE.

25 (ii) COMBINATIONS OF TWO OR MORE PREWRITTEN COMPUTER SOFTWARE
26 PROGRAMS OR PREWRITTEN PORTIONS OF COMPUTER SOFTWARE PROGRAMS.

27 (iii) SOFTWARE DESIGNED AND DEVELOPED BY THE AUTHOR OR OTHER
28 CREATOR TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER IF IT IS
29 SUBSEQUENTLY SOLD TO A PERSON OTHER THAN THE ORIGINAL PURCHASER.

30 (iv) PREWRITTEN COMPUTER SOFTWARE, OR A PORTION OF PREWRITTEN
31 COMPUTER SOFTWARE, THAT IS MODIFIED OR ENHANCED TO ANY DEGREE, IF THE
32 MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
33 SPECIFICATIONS OF A SPECIFIC PURCHASER, BUT FOR WHICH THE SELLER, LESSOR
34 OR LICENSOR'S BOOKS ARE NOT KEPT SO AS TO SHOW SEPARATELY THE GROSS
35 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE MODIFICATION OR
36 ENHANCEMENT.

37 (c) DOES NOT INCLUDE A PORTION OF COMPUTER SOFTWARE THAT IS
38 MODIFIED OR ENHANCED TO ANY DEGREE, IF THE MODIFICATION OR ENHANCEMENT IS
39 DESIGNED AND DEVELOPED TO THE SPECIFICATIONS OF A SPECIFIC PURCHASER, AND
40 FOR WHICH THE SELLER, LESSOR OR LICENSOR'S BOOKS ARE KEPT SO AS TO SHOW
41 SEPARATELY THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE
42 MODIFICATION OR ENHANCEMENT.

43 ~~9-~~ 13. "Qualifying community health center":

44 (a) Means an entity that is recognized as nonprofit under section
45 501(c)(3) of the United States internal revenue code, that is a

1 community-based, primary care clinic that has a community-based board of
2 directors and that is either:

3 (i) The sole provider of primary care in the community.

4 (ii) A nonhospital affiliated clinic that is located in a federally
5 designated medically underserved area in this state.

6 (b) Includes clinics that are being constructed as qualifying
7 community health centers.

8 ~~10.~~ 14. "Qualifying health care organization" means an entity that
9 is recognized as nonprofit under section 501(c) of the United States
10 internal revenue code and that uses, saves or invests at least eighty ~~per~~
11 ~~cent~~ PERCENT of all monies that it receives from all sources each year
12 only for health and medical related educational and charitable services,
13 as documented by annual financial audits prepared by an independent
14 certified public accountant, performed according to generally accepted
15 auditing standards and filed annually with the department. Monies that
16 are used, saved or invested to lease, purchase or construct a facility for
17 health and medical related education and charitable services are included
18 in the eighty ~~per cent~~ PERCENT requirement.

19 ~~11.~~ 15. "Qualifying health sciences educational institution" means
20 an entity that is recognized as nonprofit under section 501(c) of the
21 United States internal revenue code and that solely provides graduate and
22 postgraduate education in the health sciences. For the purposes of this
23 paragraph, "health sciences" includes medicine, nursing, physician's
24 assistant studies, pharmacy, physical therapy, occupational therapy,
25 biomedical sciences, podiatry, clinical psychology, cardiovascular
26 science, nurse anesthesia, dentistry, optometry and veterinary medicine.

27 ~~12.~~ 16. "Qualifying hospital" means any of the following:

28 (a) A licensed hospital ~~which~~ THAT is organized and operated
29 exclusively for charitable purposes, no part of the net earnings of which
30 inures to the benefit of any private shareholder or individual.

31 (b) A licensed nursing care institution or a licensed residential
32 care institution or a residential care facility operated in conjunction
33 with a licensed nursing care institution or a licensed kidney dialysis
34 center, ~~which~~ THAT provides medical services, nursing services or health
35 related services and is not used or held for profit.

36 (c) A hospital, nursing care institution or residential care
37 institution ~~which~~ THAT is operated by the federal government, this state
38 or a political subdivision of this state.

39 (d) A facility that is under construction and that on completion
40 will be a facility under subdivision (a), (b) or (c) of this paragraph.

41 17. "REMOTELY ACCESSED" MEANS SPECIFIED DIGITAL GOODS OR SPECIFIED
42 DIGITAL SERVICES THAT ARE STREAMED, ACCESSED OR VIEWED THROUGH THE
43 INTERNET OR AN EQUIVALENT OR SUCCESSOR PROTOCOL.

1 ~~13.~~ 18. "Retailer" includes every person engaged in the business
2 classified under the retail classification pursuant to section 42-5061
3 and, when in the opinion of the department it is necessary for the
4 efficient administration of this article, includes dealers, distributors,
5 supervisors, employers and salesmen, representatives, peddlers or
6 canvassers as the agents of the dealers, distributors, supervisors or
7 employers under whom they operate or from whom they obtain the tangible
8 personal property sold by them, whether in making sales on their own
9 behalf or on behalf of the dealers, distributors, supervisors or
10 employers.

11 ~~14.~~ 19. "Sale" means any transfer of title or possession, or both,
12 exchange, barter, lease or rental, conditional or otherwise, in any manner
13 or by any means whatever, including consignment transactions and auctions,
14 of tangible personal property or other activities taxable under this
15 chapter, for a consideration, and includes:

16 (a) Any transaction by which the possession of property is
17 transferred but the seller retains the title as security for the payment
18 of the price.

19 (b) Fabricating tangible personal property for consumers who
20 furnish either directly or indirectly the materials used in the
21 fabrication work.

22 (c) Furnishing, preparing or serving for a consideration any
23 tangible personal property consumed on the premises of the person
24 furnishing, preparing or serving the tangible personal property.

25 ~~15.~~ 20. "Solar daylighting" means a device that is specifically
26 designed to capture and redirect the visible portion of the solar beam,
27 while controlling the infrared portion, for use in illuminating interior
28 building spaces in lieu of artificial lighting.

29 ~~16.~~ 21. "Solar energy device" means a system or series of
30 mechanisms designed primarily to provide heating, to provide cooling, to
31 produce electrical power, to produce mechanical power, to provide solar
32 daylighting or to provide any combination of the foregoing by means of
33 collecting and transferring solar generated energy into such uses either
34 by active or passive means, including wind generator systems that produce
35 electricity. Solar energy systems may also have the capability of storing
36 solar energy for future use. Passive systems shall clearly be designed as
37 a solar energy device, such as a trombe wall, and not merely as a part of
38 a normal structure, such as a window.

39 22. "SPECIFIED DIGITAL GOODS" MEANS:

40 (a) DIGITAL AUDIOVISUAL WORKS, WHICH MEAN A SERIES OF RELATED
41 DIGITAL IMAGES THAT, WHEN SHOWN IN SUCCESSION, IMPART AN IMPRESSION OF
42 MOTION, TOGETHER WITH ACCOMPANYING SOUNDS, IF ANY.

43 (b) DIGITAL AUDIO WORKS, WHICH MEAN WORKS THAT RESULT FROM THE
44 FIXATION OF A SERIES OF MUSICAL, SPOKEN OR OTHER DIGITAL SOUNDS, INCLUDING
45 RINGTONES. FOR THE PURPOSES OF THIS SUBDIVISION, "RINGTONES" MEANS

1 DIGITIZED SOUND FILES THAT ARE DOWNLOADED ONTO A DEVICE AND THAT MAY BE
2 USED TO ALERT THE CUSTOMER WITH RESPECT TO A COMMUNICATION.

3 (c) DIGITAL BOOKS, ARTICLES, PERIODICALS AND OTHER PREWRITTEN
4 WORKS, WHICH MEAN DIGITAL WORKS THAT ARE GENERALLY RECOGNIZED IN THE
5 ORDINARY AND USUAL SENSE AS BOOKS, ARTICLES OR PERIODICALS.

6 23. "SPECIFIED DIGITAL SERVICES" MEANS CLOUD-BASED OR REMOTELY
7 ACCESSED COMPUTING SERVICES, INCLUDING:

8 (a) SOFTWARE AS A SERVICE, WHICH MEANS THE CAPABILITY PROVIDED TO A
9 PURCHASER TO USE THE PROVIDER'S APPLICATIONS RUNNING ON A CLOUD
10 INFRASTRUCTURE ACCESSIBLE FROM VARIOUS CLIENT DEVICES OVER THE INTERNET.

11 (b) PLATFORM AS A SERVICE, WHICH MEANS THE CAPABILITY PROVIDED TO A
12 PURCHASER TO DEVELOP AND DEPLOY ONTO THE CLOUD INFRASTRUCTURE
13 PURCHASER-CREATED OR ACQUIRED APPLICATIONS CREATED USING PROGRAMMING
14 LANGUAGES, LIBRARIES, SERVICES AND TOOLS SUPPORTED BY THE PROVIDER AND THE
15 PURCHASER.

16 (c) INFRASTRUCTURE AS A SERVICE, WHICH MEANS THE CAPABILITY
17 PROVIDED TO THE PURCHASER TO ACQUIRE PROCESSING, STORAGE, NETWORKS AND
18 OTHER FUNDAMENTAL COMPUTING RESOURCES.

19 (d) APPLICATION SERVICE PROVIDERS, WHICH MEAN PERSONS THAT OFFER
20 PURCHASERS ACCESS TO THIRD-PARTY SOFTWARE APPLICATIONS OVER THE INTERNET
21 USING A STANDARD PROTOCOL SUCH AS HYPERTEXT TRANSFER PROTOCOL.

22 (e) HOSTING SERVICES, WHICH MEAN:

23 (i) PROVIDING A PERSON'S CUSTOMERS, AND THOSE AUTHORIZED BY THE
24 PERSON'S CUSTOMERS, WITH ACCESS TO WEBSITES, E-MAIL, FILES, IMAGES, GAMES
25 OR OTHER APPLICATIONS OR CONTENT USING DEDICATED OR SHARED SERVERS LOCATED
26 WITHIN A DATA CENTER ENVIRONMENT OPERATED BY THE PERSON. THE SALE, LEASE,
27 LICENSE FOR USE OR RENTAL OF SPECIFIED DIGITAL GOODS TRANSFERRED
28 ELECTRONICALLY OR PREWRITTEN COMPUTER SOFTWARE BY THE PERSON PROVIDING
29 HOSTING SERVICES IS NOT CONSIDERED TO BE HOSTING SERVICES.

30 (ii) PROVIDING COLOCATION SERVICES IN WHICH A PERSON PROVIDES TO
31 CUSTOMERS THE DATA CENTER ENVIRONMENT, INCLUDING SPACE TO OPERATE ONE OR
32 MORE SERVERS, AIR HANDLING, POWER, INTERNET ACCESS AND PHYSICAL SECURITY,
33 AND CUSTOMERS PROVIDE THEIR OWN SERVERS.

34 (iii) PROVIDING A PERSON'S CUSTOMERS, AND THOSE AUTHORIZED BY THE
35 PERSON'S CUSTOMERS, WITH ACCESS TO WEBSITES, E-MAIL, FILES, IMAGES, GAMES
36 OR OTHER APPLICATIONS OR CONTENT USING DEDICATED OR SHARED SERVERS LOCATED
37 WITHIN A DATA CENTER ENVIRONMENT THAT IS NOT OPERATED BY THE PERSON. THE
38 SALE, LEASE, LICENSE FOR USE OR RENTAL OF SPECIFIED DIGITAL GOODS OR
39 PREWRITTEN COMPUTER SOFTWARE BY THE PERSON PROVIDING HOSTING SERVICES IS
40 NOT CONSIDERED TO BE HOSTING SERVICES.

41 (f) DATA STORAGE MANAGEMENT, WHICH MEANS PROVIDING A PURCHASER WITH
42 SERVICES TO STORE AND RETRIEVE DATA, SOFTWARE AND OTHER DIGITAL CONTENT ON
43 THE PROVIDER'S SERVERS.

44 (g) DATA PROCESSING AND INFORMATION SERVICES, WHICH MEAN SERVICES
45 THAT ALLOW DATA TO BE GENERATED, ACQUIRED, STORED, PROCESSED OR RETRIEVED

1 AND DELIVERED BY AN ELECTRONIC TRANSMISSION TO A PURCHASER IF THE
2 PURCHASER'S PRIMARY PURPOSE FOR THE UNDERLYING TRANSACTION IS THE
3 PROCESSED DATA OR INFORMATION.

4 (h) STREAMING SERVICES, WHICH MEAN ACCESS TO MOTION PICTURES,
5 TELEVISION PROGRAMS, MUSIC, BOOKS OR OTHER DIGITAL CONTENT REMOTELY
6 ACCESSED AS A STEADY, CONTINUOUS FLOW, ALLOWING PLAYBACK TO PROCEED WHILE
7 SUBSEQUENT DATA IS BEING RECEIVED, IF THE SERVICE DOES NOT INCLUDE THE
8 RIGHT TO DIGITAL GOODS THAT ARE TRANSFERRED ELECTRONICALLY.

9 (i) DIGITAL AUTHENTICATION SERVICES, WHICH MEAN ELECTRONIC SERVICES
10 USED TO CONFIRM THE IDENTITY OF PERSONS OR WEBSITES IN ORDER TO PROVIDE
11 SECURE ELECTRONIC COMMERCE AND COMMUNICATIONS, INCLUDING THE SERVICES AND
12 DIGITAL SECURE SOCKET LAYER CERTIFICATES USED TO ATTEST TO THE
13 AUTHENTICITY OF WEBSITES.

14 (j) ANY NONCOMPUTING SERVICE OF WHICH THE PRINCIPAL VALUE WOULD
15 HAVE BEEN CONSIDERED TO BE INTANGIBLE IN NATURE BUT FOR THE REMOTE ACCESS
16 OR ELECTRONIC TRANSFER OF THE SERVICE, INCLUDING LEGAL SERVICES, FINANCIAL
17 SERVICES, AUDIT SERVICES, TAX PREPARATION SERVICES AND ACCOUNTING SERVICES
18 THAT ARE COMPLETED TO THE SPECIFICATIONS OF A PARTICULAR USER AND NOT THE
19 RESULT OF THE EXECUTION OF A PREPACKAGED OR PREWRITTEN SET OF GENERAL
20 INSTRUCTIONS.

21 (k) ANY OTHER CLOUD-BASED OR OTHER REMOTELY ACCESSED COMPUTING
22 SERVICE.

23 ~~17:~~ 24. "Tangible personal property" means personal property ~~which~~
24 THAT may be seen, weighed, measured, felt or touched or THAT is in any
25 other manner perceptible to the senses.

26 ~~19:~~ 25. "Taxpayer" means any person who is liable for any tax
27 ~~which~~ THAT is imposed by this article.

28 ~~18:~~ 26. "Tax year" or "taxable year" means either the calendar
29 year or the taxpayer's fiscal year, if permission is obtained from the
30 department to use a fiscal year as the tax period instead of the calendar
31 year.

32 27. "TRANSFERRED ELECTRONICALLY" MEANS THE RIGHT TO ELECTRONIC
33 DELIVERY OR TRANSFER IN WHOLE OF SPECIFIED DIGITAL GOODS TO A PURCHASER OR
34 TO A PURCHASER'S COMPUTER OR DEVICE, AND NOT BY REMOTE ACCESS.

35 ~~20:~~ 28. "Wholesaler" or "jobber" means any person who sells
36 tangible personal property for resale and not for consumption by the
37 purchaser.

38 Sec. 2. Section 42-5002, Arizona Revised Statutes, is amended to
39 read:

40 42-5002. Exclusions from gross income, receipts or proceeds

41 A. For the purpose of this article, the total amount of gross
42 income, gross receipts or gross proceeds of sales ~~shall be~~ IS deemed to be
43 the amount received, exclusive of:

44 1. The taxes imposed by this chapter and chapter 6, article 3 of
45 this title, sales or transaction privilege taxes imposed by municipalities

1 in this state and sales or transaction privilege taxes imposed in this
2 state by Indian tribes, if the Indian tribal tax is imposed with respect
3 to sales by non-Indian or nonaffiliated Indian vendors to nonmembers of
4 the tribe. A person who imposes an added charge to cover the tax levied
5 by this article or ~~which~~ THAT is identified as being imposed to cover
6 transaction privilege tax shall not remit less than the amount so
7 collected to the department.

8 2. Freight costs billed to and collected from a purchaser by a
9 retailer for tangible personal property ~~which~~ THAT, ~~upon~~ ON the order of
10 the retailer, is shipped directly from a manufacturer or wholesaler to the
11 purchaser.

12 B. For the purposes of this article, the total amount of gross
13 income, gross receipts or gross proceeds of sales for nuclear fuel ~~shall~~
14 ~~be~~ IS deemed to be the value of the purchase price of uranium oxide used
15 in producing the fuel. The tax imposed by this article may be imposed
16 only once for any one quantity or batch of nuclear fuel regardless of the
17 number of transactions or financing arrangements ~~which~~ THAT may occur with
18 respect to that nuclear fuel.

19 C. FOR THE PURPOSES OF ARTICLES 2 AND 4 OF THIS CHAPTER AND CHAPTER
20 6 OF THIS TITLE:

21 1. THE GROSS INCOME, GROSS RECEIPTS, GROSS PROCEEDS, PURCHASE PRICE
22 OR SALES PRICE FROM SELLING, LEASING, LICENSING, PURCHASING OR USING
23 SPECIFIED DIGITAL SERVICES AND FROM SELLING, LEASING, LICENSING,
24 PURCHASING OR USING SPECIFIED DIGITAL GOODS THAT ARE REMOTELY ACCESSED BY
25 A CUSTOMER, AND NOT TRANSFERRED ELECTRONICALLY TO THE CUSTOMER, ARE
26 EXCLUDED FROM TAX. THE FOLLOWING DO NOT CHANGE THE CHARACTERIZATION OF
27 ANY SPECIFIED DIGITAL GOOD OR SPECIFIED DIGITAL SERVICE AS BEING EXCLUDED
28 FROM TAX:

29 (a) THE ABILITY TO RECEIVE, VIEW, SAVE, LISTEN TO OR PRINT A
30 SPECIFIED DIGITAL GOOD OR THE OUTPUT OF A SPECIFIED DIGITAL SERVICE.

31 (b) THE TRANSFER OF ANY TRANSITORY OR TEMPORARY DOWNLOADED FILES
32 SUCH AS CACHE FILES OR USER GUIDES.

33 (c) THE TRANSFER OF ANY TRANSITORY OR AUXILIARY APPLICATION,
34 INCLUDING APPLETS, COOKIES OR PLUG-INS.

35 2. SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY AND
36 PREWRITTEN COMPUTER SOFTWARE MAY BE TAXED ONLY AS PROVIDED BY SECTIONS
37 42-5061 AND 42-6015.

38 3. PARAGRAPH 1 OF THIS SUBSECTION DOES NOT APPLY TO SERVICES
39 PROVIDED BY A PERSON THAT IS SUBJECT TO TAX UNDER THE ONLINE LODGING
40 MARKETPLACE CLASSIFICATION PURSUANT TO SECTIONS 42-5076 AND 42-6009.

1 classification is the gross proceeds of sales or gross income derived from
2 the business. The tax imposed on the retail classification does not apply
3 to the gross proceeds of sales or gross income from:

4 1. Professional or personal service occupations or businesses that
5 involve sales or transfers of tangible personal property only as
6 inconsequential elements.

7 2. Services rendered in addition to selling tangible personal
8 property at retail.

9 3. Sales of warranty or service contracts. The storage, use or
10 consumption of tangible personal property provided under the conditions of
11 such contracts is subject to tax under section 42-5156.

12 4. Sales of tangible personal property by any nonprofit
13 organization organized and operated exclusively for charitable purposes
14 and recognized by the United States internal revenue service under section
15 501(c)(3) of the internal revenue code.

16 5. Sales to persons engaged in business classified under the
17 restaurant classification of articles used by human beings for food, drink
18 or condiment, whether simple, mixed or compounded.

19 6. Business activity that is properly included in any other
20 business classification that is taxable under this article.

21 7. The sale of stocks and bonds.

22 8. Drugs and medical oxygen, including delivery hose, mask or tent,
23 regulator and tank, on the prescription of a member of the medical, dental
24 or veterinarian profession who is licensed by law to administer such
25 substances.

26 9. Prosthetic appliances as defined in section 23-501 and as
27 prescribed or recommended by a health professional who is licensed
28 pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.

29 10. Insulin, insulin syringes and glucose test strips.

30 11. Prescription eyeglasses or contact lenses.

31 12. Hearing aids as defined in section 36-1901.

32 13. Durable medical equipment that has a centers for medicare and
33 medicaid services common procedure code, is designated reimbursable by
34 medicare, is prescribed by a person who is licensed under title 32,
35 chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is
36 primarily and customarily used to serve a medical purpose, is generally
37 not useful to a person in the absence of illness or injury and is
38 appropriate for use in the home.

39 14. Sales of motor vehicles to nonresidents of this state for use
40 outside this state if the motor vehicle dealer ships or delivers the motor
41 vehicle to a destination out of this state.

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

44 16. Items purchased with United States department of agriculture
45 food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113;

1 91 Stat. 958) or food instruments issued under section 17 of the child
2 nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42
3 United States Code section 1786).

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

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

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

15 20. Lottery tickets or shares pursuant to title 5, chapter 5.1,
16 article 1.

17 21. The sale of cash equivalents and the sale of precious metal
18 bullion and monetized bullion to the ultimate consumer, but the sale of
19 coins or other forms of money for manufacture into jewelry or works of art
20 is subject to the tax and the gross proceeds of sales or gross income
21 derived from the redemption of any cash equivalent by the holder as a
22 means of payment for goods or services that are taxable under this article
23 is subject to the tax. For the purposes of this paragraph:

24 (a) "Cash equivalents" means items or intangibles, whether or not
25 negotiable, that are sold to one or more persons, through which a value
26 denominated in money is purchased in advance and may be redeemed in full
27 or in part for tangible personal property, intangibles or services. Cash
28 equivalents include gift cards, stored value cards, gift certificates,
29 vouchers, traveler's checks, money orders or other instruments, orders or
30 electronic mechanisms, such as an electronic code, personal identification
31 number or digital payment mechanism, or any other prepaid intangible right
32 to acquire tangible personal property, intangibles or services in the
33 future, whether from the seller of the cash equivalent or from another
34 person. Cash equivalents do not include either of the following:

35 (i) Items or intangibles that are sold to one or more persons,
36 through which a value is not denominated in money.

37 (ii) Prepaid calling cards or prepaid authorization numbers for
38 telecommunications services made taxable by subsection P of this section.

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

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

1 22. Motor vehicle fuel and use fuel that are subject to a tax
2 imposed under title 28, chapter 16, article 1, sales of use fuel to a
3 holder of a valid single trip use fuel tax permit issued under section
4 28-5739, sales of aviation fuel that are subject to the tax imposed under
5 section 28-8344 and sales of jet fuel that are subject to the tax imposed
6 under article 8 of this chapter.

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

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

14 25. Tangible personal property sold to:

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

16 (b) A qualifying health care organization as defined in section
17 42-5001 if the tangible personal property is used by the organization
18 solely to provide health and medical related educational and charitable
19 services.

20 (c) A qualifying health care organization as defined in section
21 42-5001 if the organization is dedicated to providing educational,
22 therapeutic, rehabilitative and family medical education training for
23 blind and visually impaired children and children with multiple
24 disabilities from the time of birth to age twenty-one.

25 (d) A qualifying community health center as defined in section
26 42-5001.

27 (e) A nonprofit charitable organization that has qualified under
28 section 501(c)(3) of the internal revenue code and that regularly serves
29 meals to the needy and indigent on a continuing basis at no cost.

30 (f) For taxable periods beginning from and after June 30, 2001, a
31 nonprofit charitable organization that has qualified under section
32 501(c)(3) of the internal revenue code and that provides residential
33 apartment housing for low income persons over sixty-two years of age in a
34 facility that qualifies for a federal housing subsidy, if the tangible
35 personal property is used by the organization solely to provide
36 residential apartment housing for low income persons over sixty-two years
37 of age in a facility that qualifies for a federal housing subsidy.

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

40 (h) Any person representing or working on behalf of another person
41 described in subdivisions (a) through (g) of this paragraph if the
42 tangible personal property is incorporated or fabricated into a project
43 described in section 42-5075, subsection 0.

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

1 27. Tangible personal property sold to:

2 (a) A person that is subject to tax under this article by reason of
3 being engaged in business classified under section 42-5075 or to a
4 subcontractor working under the control of a person engaged in business
5 classified under section 42-5075, if the property so sold is any of the
6 following:

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

10 (ii) Incorporated or fabricated by the person into any project
11 described in section 42-5075, subsection 0.

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

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

19 28. The sale of a motor vehicle to:

20 (a) A nonresident of this state if the purchaser's state of
21 residence does not allow a corresponding use tax exemption to the tax
22 imposed by article 1 of this chapter and if the nonresident has secured a
23 special ninety day nonresident registration permit for the vehicle as
24 prescribed by sections 28-2154 and 28-2154.01.

25 (b) An enrolled member of an Indian tribe who resides on the Indian
26 reservation established for that tribe.

27 29. Tangible personal property purchased in this state by a
28 nonprofit charitable organization that has qualified under section
29 501(c)(3) of the United States internal revenue code and that engages in
30 and uses such property exclusively in programs for persons with mental or
31 physical disabilities if the programs are exclusively for training, job
32 placement, rehabilitation or testing.

33 30. Sales of tangible personal property by a nonprofit organization
34 that is exempt from taxation under section 501(c)(3), 501(c)(4) or
35 501(c)(6) of the internal revenue code if the organization is associated
36 with a major league baseball team or a national touring professional
37 golfing association and no part of the organization's net earnings inures
38 to the benefit of any private shareholder or individual.

39 31. Sales of commodities, as defined by title 7 United States Code
40 section 2, that are consigned for resale in a warehouse in this state in
41 or from which the commodity is deliverable on a contract for future
42 delivery subject to the rules of a commodity market regulated by the
43 United States commodity futures trading commission.

44 32. Sales of tangible personal property by a nonprofit organization
45 that is exempt from taxation under section 501(c)(3), 501(c)(4),

1 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the
2 organization sponsors or operates a rodeo featuring primarily farm and
3 ranch animals and no part of the organization's net earnings inures to the
4 benefit of any private shareholder or individual.

5 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
6 propagative material to persons who use those items to commercially
7 produce agricultural, horticultural, viticultural or floricultural crops
8 in this state.

9 34. Machinery, equipment, technology or related supplies that are
10 only useful to assist a person with a physical disability as defined in
11 section 46-191 or a person who has a developmental disability as defined
12 in section 36-551 or has a head injury as defined in section 41-3201 to be
13 more independent and functional.

14 35. Sales of natural gas or liquefied petroleum gas used to propel
15 a motor vehicle.

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

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

30 38. Sales of liquid, solid or gaseous chemicals used in
31 manufacturing, processing, fabricating, mining, refining, metallurgical
32 operations, research and development and, beginning on January 1, 1999,
33 printing, if using or consuming the chemicals, alone or as part of an
34 integrated system of chemicals, involves direct contact with the materials
35 from which the product is produced for the purpose of causing or
36 permitting a chemical or physical change to occur in the materials as part
37 of the production process. This paragraph does not include chemicals that
38 are used or consumed in activities such as packaging, storage or
39 transportation but does not affect any deduction for such chemicals that
40 is otherwise provided by this section. For the purposes of this
41 paragraph, "printing" means a commercial printing operation and includes
42 job printing, engraving, embossing, copying and bookbinding.

43 39. Through December 31, 1994, personal property liquidation
44 transactions, conducted by a personal property liquidator. From and after
45 December 31, 1994, personal property liquidation transactions shall be

1 taxable under this section provided that nothing in this subsection shall
2 be construed to authorize the taxation of casual activities or
3 transactions under this chapter. For the purposes of this paragraph:

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

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

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

16 41. A motor vehicle and any repair and replacement parts and
17 tangible personal property becoming a part of such motor vehicle sold to a
18 motor carrier who is subject to a fee prescribed in title 28, chapter 16,
19 article 4 and who is engaged in the business of leasing or renting such
20 property.

21 42. Sales of:

22 (a) Livestock and poultry to persons engaging in the businesses of
23 farming, ranching or producing livestock or poultry.

24 (b) Livestock and poultry feed, salts, vitamins and other additives
25 for livestock or poultry consumption that are sold to persons for use or
26 consumption by their own livestock or poultry, for use or consumption in
27 the businesses of farming, ranching and producing or feeding livestock,
28 poultry, or livestock or poultry products or for use or consumption in
29 noncommercial boarding of livestock. For the purposes of this paragraph,
30 "poultry" includes ratites.

31 43. Sales of implants used as growth promotants and injectable
32 medicines, not already exempt under paragraph 8 of this subsection, for
33 livestock or poultry owned by or in possession of persons who are engaged
34 in producing livestock, poultry, or livestock or poultry products or who
35 are engaged in feeding livestock or poultry commercially. For the
36 purposes of this paragraph, "poultry" includes ratites.

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

41 45. Tangible personal property sold to a person engaged in business
42 and subject to tax under the transient lodging classification if the
43 tangible personal property is a personal hygiene item or articles used by
44 human beings for food, drink or condiment, except alcoholic beverages,

1 that are furnished without additional charge to and intended to be
2 consumed by the transient during the transient's occupancy.

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

6 47. Sales of materials that are purchased by or for publicly funded
7 libraries including school district libraries, charter school libraries,
8 community college libraries, state university libraries or federal, state,
9 county or municipal libraries for use by the public as follows:

10 (a) Printed or photographic materials, beginning August 7, 1985.

11 (b) Electronic or digital media materials, beginning July 17, 1994.

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

20 49. Sales of alternative fuel vehicles if the vehicle was
21 manufactured as a diesel fuel vehicle and converted to operate on
22 alternative fuel and equipment that is installed in a conventional diesel
23 fuel motor vehicle to convert the vehicle to operate on an alternative
24 fuel, as defined in section 1-215.

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

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

31 52. Sales of tangible personal property by a nonprofit organization
32 that is exempt from taxation under section 501(c)(6) of the internal
33 revenue code if the organization produces, organizes or promotes cultural
34 or civic related festivals or events and no part of the organization's net
35 earnings inures to the benefit of any private shareholder or individual.

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

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

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

1 54. Sales of motor vehicle fuel and use fuel to a qualified
2 business under section 41-1516 for off-road use in harvesting, processing
3 or transporting qualifying forest products removed from qualifying
4 projects as defined in section 41-1516.

5 55. Sales of repair parts installed in equipment used directly by a
6 qualified business under section 41-1516 in harvesting, processing or
7 transporting qualifying forest products removed from qualifying projects
8 as defined in section 41-1516.

9 56. Sales or other transfers of renewable energy credits or any
10 other unit created to track energy derived from renewable energy
11 resources. For the purposes of this paragraph, "renewable energy credit"
12 means a unit created administratively by the corporation commission or
13 governing body of a public power utility to track kilowatt hours of
14 electricity derived from a renewable energy resource or the kilowatt hour
15 equivalent of conventional energy resources displaced by distributed
16 renewable energy resources.

17 57. Computer data center equipment sold to the owner, operator or
18 qualified colocation tenant of a computer data center that is certified by
19 the Arizona commerce authority under section 41-1519 or an authorized
20 agent of the owner, operator or qualified colocation tenant during the
21 qualification period for use in the qualified computer data center. For
22 the purposes of this paragraph, "computer data center", "computer data
23 center equipment", "qualification period" and "qualified colocation
24 tenant" have the same meanings prescribed in section 41-1519.

25 58. Orthodontic devices dispensed by a dental professional who is
26 licensed under title 32, chapter 11 to a patient as part of the practice
27 of dentistry.

28 59. Sales of tangible personal property incorporated or fabricated
29 into a project described in section 42-5075, subsection 0, that is located
30 within the exterior boundaries of an Indian reservation for which the
31 owner, as defined in section 42-5075, of the project is an Indian tribe or
32 an affiliated Indian. For the purposes of this paragraph:

33 (a) "Affiliated Indian" means an individual native American Indian
34 who is duly registered on the tribal rolls of the Indian tribe for whose
35 benefit the Indian reservation was established.

36 (b) "Indian reservation" means all lands that are within the limits
37 of areas set aside by the United States for the exclusive use and
38 occupancy of an Indian tribe by treaty, law or executive order and that
39 are recognized as Indian reservations by the United States department of
40 the interior.

41 (c) "Indian tribe" means any organized nation, tribe, band or
42 community that is recognized as an Indian tribe by the United States
43 department of the interior and includes any entity formed under the laws
44 of the Indian tribe.

1 60. Sales of works of fine art, as defined in section 44-1771, at
2 an art auction or gallery in this state to nonresidents of this state for
3 use outside this state if the vendor ships or delivers the work of fine
4 art to a destination outside this state.

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

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

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

22 3. Tangible personal property sold to persons engaged in business
23 classified under the telecommunications classification, including a person
24 representing or working on behalf of such a person in a manner described
25 in section 42-5075, subsection 0, and consisting of central office
26 switching equipment, switchboards, private branch exchange equipment,
27 microwave radio equipment and carrier equipment including optical fiber,
28 coaxial cable and other transmission media that are components of carrier
29 systems.

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

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

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

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

45 (a) A person:

1 (i) Holding, or exempted by federal law from obtaining, a federal
2 certificate of public convenience and necessity for use as, in conjunction
3 with or becoming part of an aircraft to be used to transport persons for
4 hire in intrastate, interstate or foreign commerce.

5 (ii) That is certificated or licensed under federal aviation
6 administration regulations (14 Code of Federal Regulations part 121 or
7 135) as a scheduled or unscheduled carrier of persons for hire for use as
8 or in conjunction with or becoming part of an aircraft to be used to
9 transport persons for hire in intrastate, interstate or foreign commerce.

10 (iii) Holding a foreign air carrier permit for air transportation
11 for use as or in conjunction with or becoming a part of aircraft to be
12 used to transport persons, property or United States mail in intrastate,
13 interstate or foreign commerce.

14 (iv) Operating an aircraft to transport persons in any manner for
15 compensation or hire, or for use in a fractional ownership program that
16 meets the requirements of federal aviation administration regulations (14
17 Code of Federal Regulations part 91, subpart K), including as an air
18 carrier, a foreign air carrier or a commercial operator or under a
19 restricted category, within the meaning of 14 Code of Federal Regulations,
20 regardless of whether the operation or aircraft is regulated or certified
21 under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code
22 of Federal Regulations.

23 (v) That will lease or otherwise transfer operational control,
24 within the meaning of federal aviation administration operations
25 specification A008, or its successor, of the aircraft, instruments or
26 accessories to one or more persons described in item (i), (ii), (iii) or
27 (iv) of this subdivision, subject to section 42-5009, subsection Q.

28 (b) Any foreign government.

29 (c) Persons who are not residents of this state and who will not
30 use such property in this state other than in removing such property from
31 this state. This subdivision also applies to corporations that are not
32 incorporated in this state, regardless of maintaining a place of business
33 in this state, if the principal corporate office is located outside this
34 state and the property will not be used in this state other than in
35 removing the property from this state.

36 8. Machinery, tools, equipment and related supplies used or
37 consumed directly in repairing, remodeling or maintaining aircraft,
38 aircraft engines or aircraft component parts by or on behalf of a
39 certificated or licensed carrier of persons or property.

40 9. Railroad rolling stock, rails, ties and signal control equipment
41 used directly to transport persons or property.

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

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

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

10 13. New machinery and equipment consisting of agricultural
11 aircraft, tractors, tractor-drawn implements, self-powered implements,
12 machinery and equipment necessary for extracting milk, and machinery and
13 equipment necessary for cooling milk and livestock, and drip irrigation
14 lines not already exempt under paragraph 6 of this subsection and that are
15 used for commercial production of agricultural, horticultural,
16 viticultural and floricultural crops and products in this state. For the
17 purposes of this paragraph:

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

21 (b) "Self-powered implements" includes machinery and equipment that
22 are electric-powered.

23 14. Machinery or equipment used in research and development. For
24 the purposes of this paragraph, "research and development" means basic and
25 applied research in the sciences and engineering, and designing,
26 developing or testing prototypes, processes or new products, including
27 research and development of computer software that is embedded in or an
28 integral part of the prototype or new product or that is required for
29 machinery or equipment otherwise exempt under this section to function
30 effectively. Research and development do not include manufacturing
31 quality control, routine consumer product testing, market research, sales
32 promotion, sales service, research in social sciences or psychology,
33 computer software research that is not included in the definition of
34 research and development, or other nontechnological activities or
35 technical services.

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

39 (a) Any direct broadcast satellite television or data transmission
40 service that operates pursuant to 47 Code of Federal Regulations part 25.

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

43 (i) Over two-thirds of the transmissions, measured in megabytes,
44 transmitted by the facility during the test period were transmitted to or
45 on behalf of one or more direct broadcast satellite television or data

1 transmission services that operate pursuant to 47 Code of Federal
2 Regulations part 25.

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

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

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

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

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

29 17. Machinery and equipment used directly in the feeding of
30 poultry, the environmental control of housing for poultry, the movement of
31 eggs within a production and packaging facility or the sorting or cooling
32 of eggs. This exemption does not apply to vehicles used for transporting
33 eggs.

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

44 19. Machinery and equipment that are sold to a person engaged in
45 the commercial production of livestock, livestock products or

1 agricultural, horticultural, viticultural or floricultural crops or
2 products in this state, including a person representing or working on
3 behalf of such a person in a manner described in section 42-5075,
4 subsection 0, if the machinery and equipment are used directly and
5 primarily to prevent, monitor, control or reduce air, water or land
6 pollution.

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

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

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

19 (c) Any machinery or equipment purchased after the television
20 station has ceased analog broadcasting, or purchased after November 1,
21 2009, whichever occurs first.

22 21. Qualifying equipment that is purchased from and after June 30,
23 2004 through June 30, 2024 by a qualified business under section 41-1516
24 for harvesting or processing qualifying forest products removed from
25 qualifying projects as defined in section 41-1516. To qualify for this
26 deduction, the qualified business at the time of purchase must present its
27 certification approved by the department.

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

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

34 2. Janitorial equipment and hand tools.

35 3. Office equipment, furniture and supplies.

36 4. Tangible personal property used in selling or distributing
37 activities, other than the telecommunications transmissions described in
38 subsection B, paragraph 15 of this section.

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

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

45 7. Motors and pumps used in drip irrigation systems.

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

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

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

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

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

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

35 1. Agricultural producers who are owners, proprietors or tenants of
36 agricultural lands, orchards, farms or gardens where agricultural products
37 are grown, raised or prepared for market and who are marketing their own
38 agricultural products.

39 2. Businesses classified under the:

40 (a) Transporting classification.

41 (b) Utilities classification.

42 (c) Telecommunications classification.

43 (d) Pipeline classification.

44 (e) Private car line classification.

45 (f) Publication classification.

1 (g) Job printing classification.

2 (h) Prime contracting classification.

3 (i) Restaurant classification.

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

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

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

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

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

25 J. There shall be deducted from the tax base fifty percent of the
26 gross proceeds or gross income from any sale of tangible personal property
27 made directly to the United States government or its departments or
28 agencies that is not deducted under subsection I of this section.

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

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

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

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

40 M. There shall be deducted from the tax base the amount received
41 from sales of solar energy devices. The retailer shall register with the
42 department as a solar energy retailer. By registering, the retailer
43 acknowledges that it will make its books and records relating to sales of
44 solar energy devices available to the department for examination.

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

8 O. For the purposes of this section, a sale of wireless
9 telecommunications equipment to a person who holds the equipment for sale
10 or transfer to a customer as an inducement to enter into or continue a
11 contract for telecommunications services that are taxable under section
12 42-5064 is considered to be a sale for resale in the regular course of
13 business.

14 P. Retail sales of prepaid calling cards or prepaid authorization
15 numbers for telecommunications services, including sales of
16 reauthorization of a prepaid card or authorization number, are subject to
17 tax under this section.

18 Q. For the purposes of this section, the diversion of gas from a
19 pipeline by a person engaged in the business of:

20 1. Operating a natural or artificial gas pipeline, for the sole
21 purpose of fueling compressor equipment to pressurize the pipeline, is not
22 a sale of the gas to the operator of the pipeline.

23 2. Converting natural gas into liquefied natural gas, for the sole
24 purpose of fueling compressor equipment used in the conversion process, is
25 not a sale of gas to the operator of the compressor equipment.

26 R. For the purposes of this section, the transfer of title or
27 possession of coal from an owner or operator of a power plant to a person
28 in the business of refining coal is not a sale of coal if both of the
29 following apply:

30 1. The transfer of title or possession of the coal is for the
31 purpose of refining the coal.

32 2. The title or possession of the coal is transferred back to the
33 owner or operator of the power plant after completion of the coal refining
34 process. For the purposes of this paragraph, "coal refining process"
35 means the application of a coal additive system that aids in the reduction
36 of power plant emissions during the combustion of coal and the treatment
37 of flue gas.

38 S. If a seller is entitled to a deduction pursuant to subsection B,
39 paragraph 15, subdivision (b) of this section, the department may require
40 the purchaser to establish that the requirements of subsection B,
41 paragraph 15, subdivision (b) of this section have been satisfied. If the
42 purchaser cannot establish that the requirements of subsection B,
43 paragraph 15, subdivision (b) of this section have been satisfied, the
44 purchaser is liable in an amount equal to any tax, penalty and interest
45 that the seller would have been required to pay under article 1 of this

1 chapter if the seller had not made a deduction pursuant to subsection B,
2 paragraph 15, subdivision (b) of this section. Payment of the amount
3 under this subsection exempts the purchaser from liability for any tax
4 imposed under article 4 of this chapter and related to the tangible
5 personal property purchased. The amount shall be treated as transaction
6 privilege tax to the purchaser and as tax revenues collected from the
7 seller to designate the distribution base pursuant to section 42-5029.

8 T. For the purposes of section 42-5032.01, the department shall
9 separately account for revenues collected under the retail classification
10 from businesses selling tangible personal property at retail:

11 1. On the premises of a multipurpose facility that is owned, leased
12 or operated by the tourism and sports authority pursuant to title 5,
13 chapter 8.

14 2. At professional football contests that are held in a stadium
15 located on the campus of an institution under the jurisdiction of the
16 Arizona board of regents.

17 U. In computing the tax base for the sale of a motor vehicle to a
18 nonresident of this state, if the purchaser's state of residence allows a
19 corresponding use tax exemption to the tax imposed by article 1 of this
20 chapter and the rate of the tax in the purchaser's state of residence is
21 lower than the rate prescribed in article 1 of this chapter or if the
22 purchaser's state of residence does not impose an excise tax, and the
23 nonresident has secured a special ninety day nonresident registration
24 permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01,
25 there shall be deducted from the tax base a portion of the gross proceeds
26 or gross income from the sale so that the amount of transaction privilege
27 tax that is paid in this state is equal to the excise tax that is imposed
28 by the purchaser's state of residence on the nonexempt sale or use of the
29 motor vehicle.

30 V. For the purposes of this section:

31 1. "Agricultural aircraft" means an aircraft that is built for
32 agricultural use for the aerial application of pesticides or fertilizer or
33 for aerial seeding.

34 2. "Aircraft" includes:

35 (a) An airplane flight simulator that is approved by the federal
36 aviation administration for use as a phase II or higher flight simulator
37 under appendix H, 14 Code of Federal Regulations part 121.

38 (b) Tangible personal property that is permanently affixed or
39 attached as a component part of an aircraft that is owned or operated by a
40 certificated or licensed carrier of persons or property.

41 3. "Other accessories and related equipment" includes aircraft
42 accessories and equipment such as ground service equipment that physically
43 contact aircraft at some point during the overall carrier operation.

44 4. "Selling at retail" means a sale for any purpose other than for
45 resale in the regular course of business in the form of tangible personal

1 property, but transfer of possession, lease and rental as used in the
2 definition of sale mean only such transactions as are found on
3 investigation to be in lieu of sales as defined without the words lease or
4 rental.

5 W. For the purposes of subsection I of this section:

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

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

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

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

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

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

34 Sec. 5. Section 42-5151, Arizona Revised Statutes, is amended to
35 read:

36 42-5151. Definitions

37 In this article, unless the context otherwise requires:

38 1. "Ancillary services" means those services so designated in
39 federal energy regulatory commission order 888 adopted in 1996 that
40 include the services necessary to support the transmission of electricity
41 from resources to loads while maintaining reliable operation of the
42 transmission system according to good utility practice.

43 2. "Electric distribution service" means distributing electricity
44 to retail electric customers through the use of electric distribution
45 facilities.

1 3. "Electric generation service" means providing electricity for
2 sale to retail electric customers but excluding electric distribution or
3 transmission services.

4 ~~6.~~ 4. "Electricity" means electric energy, electric capacity or
5 electric capacity and energy.

6 ~~7.~~ 5. "Electricity supplier" means a person, whether acting in a
7 principal, agent or other capacity, that offers to sell electricity to a
8 retail electric customer in this state.

9 ~~4.~~ 6. "Electric transmission service" means transmitting
10 electricity to retail electric customers or to electric distribution
11 facilities so classified by the federal energy regulatory commission or,
12 to the extent permitted by law, so classified by the Arizona corporation
13 commission.

14 ~~5.~~ 7. "Electric utility services" means the business of providing
15 electric ancillary services, electric distribution services, electric
16 generation services, electric transmission services and other services
17 related to providing electricity.

18 8. "Natural gas" means natural or artificial gas, and includes
19 methane and propane gas, the natural gas commodity, natural gas pipeline
20 capacity or natural gas commodity and pipeline capacity.

21 9. "Natural gas utility services" means the business of selling
22 natural gas or providing natural gas transportation services or other
23 services related to providing natural gas.

24 10. "Notice" means written notice served personally or by certified
25 mail and addressed to the last known address of the person to whom such
26 notice is given.

27 11. "Other services" includes metering, meter reading services,
28 billing and collecting services.

29 12. "Person" means an individual, firm, partnership, joint venture,
30 association, corporation, estate, trust, receiver or syndicate, this state
31 or a county, city, municipality, district or other political subdivision
32 or agency thereof.

33 13. "PREWRITTEN COMPUTER SOFTWARE" HAS THE SAME MEANING PRESCRIBED
34 IN SECTION 42-5001.

35 ~~13.~~ 14. "Purchase" means any transfer, exchange or barter,
36 conditional or otherwise, in any manner or by any means, of tangible
37 personal property for a consideration, including transactions by which the
38 possession of property is transferred but the seller retains the title as
39 security for payment.

40 ~~14.~~ 15. "Purchase price" or "sales price" means the total amount
41 for which tangible personal property is sold, including any services that
42 are a part of the sale, valued in money, whether paid in money or
43 otherwise, and any amount for which credit is given to the purchaser by
44 the seller without any deduction on account of the cost of the property

1 sold, materials used, labor or services performed, interest charged,
2 losses or other expenses, but does not include:

3 (a) Discounts allowed and taken.

4 (b) Charges for labor or services in installing, remodeling or
5 repairing.

6 (c) Freight costs billed to and collected from a purchaser by a
7 retailer for tangible personal property ~~which~~ THAT, on the order of the
8 retailer, is shipped directly from a manufacturer or wholesaler to the
9 purchaser.

10 (d) Amounts attributable to federal excise taxes imposed by 26
11 United States Code section 4001, 4051 or 4081 on sales of heavy trucks and
12 trailers and automobiles or on sales of use fuel, as defined in section
13 28-5601.

14 (e) The value of merchandise that is traded in on the purchase of
15 new or pre-owned merchandise when the trade-in allowance is deducted from
16 the sales price of the new or pre-owned merchandise before the completion
17 of the sale.

18 ~~15.~~ 16. "Retail electric customer" means a person who purchases
19 electricity for that person's own use, including use in that person's
20 trade or business, and not for resale, redistribution or retransmission.

21 17. "Retailer" includes:

22 (a) Every person engaged in the business of making sales of
23 tangible personal property for storage, use or other consumption or in the
24 business of making sales at auction of tangible personal property owned by
25 that person or others for storage, use or other consumption. If in the
26 opinion of the department it is necessary for the efficient administration
27 of this article to regard any salesmen, representatives, peddlers or
28 canvassers as the agents of the dealers, distributors, supervisors or
29 employers under whom they operate or from whom they obtain the tangible
30 personal property sold by them, regardless of whether they are making
31 sales on their own behalf or on behalf of such dealers, distributors,
32 supervisors or employers, the department may so regard them and may regard
33 the dealers, distributors, supervisors or employers as retailers for
34 purposes of this article.

35 (b) A person who solicits orders for tangible personal property by
36 mail if the solicitations are substantial and recurring or if the retailer
37 benefits from any banking, financing, debt collection, telecommunication,
38 television shopping system, cable, optic, microwave or other communication
39 system or marketing activities occurring in this state or benefits from
40 the location in this state of authorized installation, servicing or repair
41 facilities.

42 ~~16.~~ 18. "Retail natural gas customer" means a person who purchases
43 natural gas for that person's own use, including use in that person's
44 trade or business, and not for resale, redistribution or retransmission.

1 ~~18.~~ 19. "Solar daylighting" means a device that is specifically
2 designed to capture and redirect the visible portion of the solar beam,
3 while controlling the infrared portion, for use in illuminating interior
4 building spaces in lieu of artificial lighting.

5 ~~19.~~ 20. "Solar energy device" means a system or series of
6 mechanisms designed primarily to provide heating, to provide cooling, to
7 produce electrical power, to produce mechanical power, to provide solar
8 daylighting or to provide any combination of the foregoing by means of
9 collecting and transferring solar generated energy into such uses by
10 either active or passive means, including wind generator systems that
11 produce electricity. Solar energy systems may also have the capability of
12 storing solar energy for future use. Passive systems shall clearly be
13 designed as a solar energy device, such as a trombe wall, and not merely
14 as a part of a normal structure, such as a window.

15 21. "SPECIFIED DIGITAL GOODS" HAS THE SAME MEANING PRESCRIBED IN
16 SECTION 42-5001.

17 ~~20.~~ 22. "Storage" means keeping or retaining tangible personal
18 property purchased from a retailer for any purpose except sale in the
19 regular course of business or subsequent use solely outside this state.
20 For the purposes of this paragraph, sale in the regular course of business
21 does not include the transfer of title or possession of coal back and
22 forth between an owner or operator of a power plant and a person who is
23 responsible for refining coal if both of the following apply:

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

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

32 ~~21.~~ 23. "Taxpayer" means:

33 (a) Any retailer or person storing, using or consuming tangible
34 personal property **OF WHICH** the storage, use or consumption ~~of which~~ is
35 subject to the tax imposed by this article when ~~such~~ **THE** tax was not paid
36 to a retailer.

37 (b) **ANY VENDOR OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL**
38 **GOODS TRANSFERRED ELECTRONICALLY OR PERSON USING SUCH ITEMS OF WHICH THE**
39 **USE IS SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE IF THE TAX WAS NOT PAID**
40 **TO A VENDOR.**

41 24. "TRANSFERRED ELECTRONICALLY" HAS THE SAME MEANING PRESCRIBED IN
42 SECTION 42-5001.

43 ~~22.~~ 25. "Use or consumption" means the exercise of any right or
44 power over tangible personal property, **PREWRITTEN COMPUTER SOFTWARE OR**
45 **SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY**, incidental to owning

1 the property except holding for sale or selling the property in the
2 regular course of business. For the purposes of this paragraph, selling
3 the property in the regular course of business does not include the
4 transfer of title or possession of coal back and forth between an owner or
5 operator of a power plant and a person who is responsible for refining
6 coal if both of the following apply:

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

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

15 ~~23.~~ 26. "Utility business" means a person that is engaged in the
16 business of providing electric utility services to retail electric
17 customers or natural gas utility services to retail natural gas customers.

18 Sec. 6. Title 42, chapter 5, article 4, Arizona Revised Statutes,
19 is amended by adding section 42-5155.01, to read:

20 42-5155.01. Levy of tax; prewritten computer software and
21 specified digital goods transferred
22 electronically; rate; purchaser's liability

23 A. AN EXCISE TAX IS LEVIED AND IMPOSED ON THE USE OR CONSUMPTION IN
24 THIS STATE OF PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS
25 TRANSFERRED ELECTRONICALLY AS A PERCENTAGE OF THE ACQUISITION PRICE.

26 B. THE TAX IMPOSED BY THIS SECTION APPLIES TO ANY PURCHASER THAT
27 PURCHASES PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS
28 TRANSFERRED ELECTRONICALLY FOR RESALE BUT SUBSEQUENTLY USES OR CONSUMES
29 THE ITEMS.

30 C. THE TAX RATE IS THE RATE OF TAX PRESCRIBED BY SECTION 42-5010,
31 SUBSECTION A AS APPLIED TO RETAILERS.

32 D. IN ADDITION TO THE RATE PRESCRIBED BY SUBSECTION C OF THIS
33 SECTION, AN ADDITIONAL RATE INCREMENT OF SIX-TENTHS OF ONE PERCENT IS
34 IMPOSED AND SHALL BE COLLECTED THROUGH JUNE 30, 2021. THE TAXPAYER SHALL
35 PAY TAXES PURSUANT TO THIS SUBSECTION AT THE SAME TIME AND IN THE SAME
36 MANNER AS UNDER SUBSECTION C OF THIS SECTION. THE DEPARTMENT SHALL
37 SEPARATELY ACCOUNT FOR THE REVENUES COLLECTED WITH RESPECT TO THE RATE
38 IMPOSED PURSUANT TO THIS SUBSECTION, AND THE STATE TREASURER SHALL PAY ALL
39 OF THOSE REVENUES IN THE MANNER PRESCRIBED BY SECTION 42-5029,
40 SUBSECTION E.

41 E. EACH PERSON USING OR CONSUMING PREWRITTEN COMPUTER SOFTWARE OR
42 SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY IN THIS STATE IS LIABLE
43 FOR THE TAX. THE PERSON'S LIABILITY IS NOT EXTINGUISHED UNTIL THE TAX HAS
44 BEEN PAID TO THIS STATE.

1 F. A RECEIPT FROM A VENDOR THAT MAINTAINS A PLACE OF BUSINESS IN
2 THIS STATE OR FROM A VENDOR THAT IS AUTHORIZED BY THE DEPARTMENT TO
3 COLLECT THE TAX, UNDER RULES ADOPTED BY THE DEPARTMENT, AND THAT IS FOR
4 THE PURPOSES OF THIS ARTICLE REGARDED AS A RETAILER MAINTAINING A PLACE OF
5 BUSINESS IN THIS STATE, GIVEN TO THE PURCHASER AS PROVIDED IN SECTION
6 42-5161 IS SUFFICIENT TO RELIEVE THE PURCHASER FROM FURTHER LIABILITY FOR
7 THE TAX TO WHICH THE RECEIPT REFERS.

8 G. ALL EXEMPTIONS UNDER SECTION 42-5159 APPLY TO THE TAX UNDER THIS
9 SECTION AS IF THE PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS
10 TRANSFERRED ELECTRONICALLY WERE TANGIBLE PERSONAL PROPERTY.

11 H. A PERSON WHO USES OR CONSUMES PREWRITTEN COMPUTER SOFTWARE OR
12 SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY ON WHICH A TAX IS
13 IMPOSED BY THIS ARTICLE AND ON WHICH THE TAX HAS NOT BEEN COLLECTED BY A
14 REGISTERED VENDOR SHALL PAY THE TAX AS PROVIDED BY THIS ARTICLE, BUT EACH
15 VENDOR MAINTAINING A PLACE OF BUSINESS IN THIS STATE AND MAKING SALES OF
16 PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS TRANSFERRED
17 ELECTRONICALLY FOR USE OR CONSUMPTION IN THIS STATE SHALL COLLECT THE TAX
18 FROM THE PURCHASER OR USER UNLESS THE PROPERTY IS EXEMPT UNDER THIS
19 ARTICLE OR THE PURCHASER OR USER PAYS THE TAX DIRECTLY TO THE DEPARTMENT
20 AS PROVIDED BY SECTION 42-5167.

21 I. EACH VENDOR ENGAGED IN THE BUSINESS OF SELLING, LEASING, OR
22 LICENSING THE USE OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL
23 GOODS TRANSFERRED ELECTRONICALLY OF WHICH THE USE OR CONSUMPTION IS
24 SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE, AND EACH PERSON WHO ACQUIRES
25 ANY SUCH PROPERTY FOR USE OR CONSUMPTION IN THIS STATE, AND FOR WHICH THE
26 TAX IS NOT PAID TO THE VENDOR, SHALL FILE A RETURN WITH THE DEPARTMENT ON
27 OR BEFORE THE TWENTIETH DAY OF THE MONTH NEXT SUCCEEDING THE MONTH IN
28 WHICH THE PROPERTY IS BROUGHT INTO THIS STATE FOR USE OR CONSUMPTION. THE
29 RETURN SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT AND SHALL SHOW THE
30 AMOUNT OF PROPERTY SOLD, LEASED OR LICENSED FOR USE OR CONSUMPTION OR
31 ACQUIRED FOR USE OR CONSUMPTION IN THIS STATE DURING THE PRECEDING MONTH.
32 THE RETURN SHALL BE VERIFIED BY OATH OR AFFIRMATION OF THE VENDOR OR
33 PERSON MAKING THE REPORT, OR THE PERSON'S AGENT, AND SHALL BE ACCOMPANIED
34 BY PAYMENT OF THE TAX SHOWN TO BE DUE. THE RETURN AND TAX ARE DELINQUENT
35 IF NOT RECEIVED BY THE DEPARTMENT ON OR BEFORE THE BUSINESS DAY PRECEDING
36 THE LAST BUSINESS DAY OF THE MONTH WHEN DUE.

37 J. NOTWITHSTANDING SUBSECTION I OF THIS SECTION, A PERSON WHO IS
38 REQUIRED TO FILE A RETURN UNDER ARTICLE 1 OF THIS CHAPTER MAY REPORT AND
39 PAY THE TAX LIABILITY UNDER THIS ARTICLE ON THE SAME RETURN AND FILING
40 BASIS AS THE TAXES REPORTED UNDER ARTICLE 1 OF THIS CHAPTER.

41 K. FOR GOOD CAUSE THE DEPARTMENT MAY EXTEND THE TIME FOR MAKING A
42 RETURN AND PAYING THE TAX, BUT THE TIME FOR FILING THE RETURN MAY NOT BE
43 EXTENDED BEYOND THE FIRST DAY OF THE THIRD MONTH NEXT SUCCEEDING THE
44 REGULAR DUE DATE OF THE RETURN.

1 Sec. 7. Section 42-5167, Arizona Revised Statutes, is amended to
2 read:

3 42-5167. Use tax direct payment

4 A. A person may elect to pay use taxes directly to the department
5 under this article if the person:

6 1. Applies to the department for a use tax direct payment permit.
7 The application must be on a form prescribed by the department setting
8 forth the name under which the applicant transacts or intends to transact
9 business, the location of the place or places of business where the
10 applicant intends to make direct payment of use taxes and any other
11 information that the department may require. The application must be
12 signed, in the case of:

13 (a) A natural person, by the owner.

14 (b) An association or partnership, by a member or partner.

15 (c) A corporation, by an executive officer or another person
16 specifically authorized by the corporation to sign the application.

17 2. Agrees to self-assess and pay directly to the department any use
18 tax liability incurred under this article.

19 3. Certifies to the department that the person purchased for the
20 person's own use **ANY COMBINATION OF** tangible personal property, **PREWRITTEN**
21 **COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY** at
22 a cost of five hundred thousand dollars or more, in the aggregate, during
23 the immediately preceding calendar year.

24 B. The department shall issue a use tax direct payment permit to
25 any applicant that meets the requirements of subsection A of this section.

26 C. If the department deems it necessary to protect the revenues to
27 be collected under this section, it may require a person to file a bond to
28 secure the payment of such amounts pursuant to section 42-1102.

29 D. A person who holds a valid use tax direct payment permit shall:

30 1. Self-assess and pay directly to the department use taxes due
31 under this article for all tangible personal property, **PREWRITTEN COMPUTER**
32 **SOFTWARE AND SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY THAT ARE**
33 subject to use tax.

34 2. Report the tax on a tax return prescribed by the department.

35 E. A holder of a use tax direct payment ~~certificate~~ **PERMIT** may
36 issue a use tax direct payment certificate to any retailer or seller,
37 subject to all of the following:

38 1. The certificate shall be in a form prescribed by the department
39 and must be signed by and bear the name, address and permit number of the
40 holder of the use tax direct payment permit.

41 2. The certificate is effective until the permit holder revises or
42 withdraws the certificate or until the retailer or seller receives actual
43 notice that the department has revoked the permit.

44 3. The certificate relieves the retailer or seller of the duty to
45 collect use tax only if taken in good faith from a person who holds a use

1 tax direct payment permit. The department may periodically publish on its
2 ~~web site~~ WEBSITE a list of taxpayers by name with tax identification
3 numbers who have been issued direct payment permits. A purchaser holding
4 a direct payment permit who issues a use tax direct payment certificate
5 that is accepted in good faith by a retailer or seller of tangible
6 personal property OR A VENDOR OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED
7 DIGITAL GOODS TRANSFERRED ELECTRONICALLY shall be liable for use tax and
8 related interest and penalties with respect to any transaction that the
9 department subsequently determines properly subjects the vendor to the
10 transaction privilege tax and not use tax. The vendor shall be relieved
11 of the duty to pay transaction privilege tax on such transactions.

12 4. In addition to any use tax liabilities, a holder of a use tax
13 direct payment permit that gives a use tax direct payment certificate to a
14 retailer or seller is subject to the same penalty provisions that apply to
15 a retailer or seller.

16 Sec. 8. Title 42, chapter 6, article 1, Arizona Revised Statutes,
17 is amended by adding section 42-6015, to read:

18 42-6015. Municipal tax on digital goods and services:
19 definitions

20 A. A CITY OR TOWN THAT IMPOSES A RETAIL TRANSACTION PRIVILEGE TAX
21 SHALL IMPOSE A TAX ON SALES, RENTALS OR LICENSES FOR THE USE OF PREWRITTEN
22 COMPUTER SOFTWARE, REGARDLESS OF DELIVERY METHOD, AND SPECIFIED DIGITAL
23 GOODS TRANSFERRED ELECTRONICALLY, BUT ONLY AS RETAIL TRANSACTION PRIVILEGE
24 OR USE TAX UNDER THE MODEL CITY TAX CODE. ALL TAXES ON PREWRITTEN
25 COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY
26 SHALL BE SOURCED AS PROVIDED IN SECTION 42-5040, IF APPLICABLE.

27 B. A CITY, TOWN OR OTHER TAXING JURISDICTION MAY NOT LEVY A
28 TRANSACTION PRIVILEGE, SALES, USE OR OTHER SIMILAR TAX, HOWEVER
29 DENOMINATED, ON SPECIFIED DIGITAL SERVICES, OR ON SPECIFIED DIGITAL GOODS
30 THAT ARE REMOTELY ACCESSED AND NOT TRANSFERRED ELECTRONICALLY. THE
31 ABILITY TO RECEIVE, SAVE OR PRINT AN OUTPUT FILE OR ANY TEMPORARY
32 DOWNLOADED FILE FROM ANY SPECIFIED DIGITAL SERVICE DOES NOT CHANGE ITS
33 CHARACTERIZATION AS AN EXCLUDED SERVICE.

34 C. THIS SECTION DOES NOT APPLY WITH RESPECT TO SERVICES PROVIDED BY
35 A PERSON THAT IS SUBJECT TO TAX UNDER THE ONLINE LODGING MARKETPLACE
36 CLASSIFICATION PURSUANT TO SECTIONS 42-5076 AND 42-6009.

37 D. FOR THE PURPOSES OF THIS SECTION, "PREWRITTEN COMPUTER
38 SOFTWARE", "REMOTELY ACCESSED", "SPECIFIED DIGITAL GOODS", "SPECIFIED
39 DIGITAL SERVICES" AND "TRANSFERRED ELECTRONICALLY" HAVE THE SAME MEANINGS
40 PRESCRIBED IN SECTION 42-5001.

1 Sec. 9. Section 44-1263, Arizona Revised Statutes, is amended to
2 read:

3 44-1263. Inability to conform motor vehicle to express
4 warranty; replacement of vehicle or refund of
5 monies; affirmative defenses; tax refund

6 A. If the manufacturer, its agents or its authorized dealers are
7 unable to conform the motor vehicle to any applicable express warranty by
8 repairing or correcting any defect or condition which substantially
9 impairs the use and value of the motor vehicle to the consumer after a
10 reasonable number of attempts, the manufacturer shall replace the motor
11 vehicle with a new motor vehicle or accept return of the motor vehicle
12 from the consumer and refund to the consumer the full purchase price,
13 including all collateral charges, less a reasonable allowance for the
14 consumer's use of the vehicle. The manufacturer shall make refunds to the
15 consumer and lienholder, if any, as their interests appear. A reasonable
16 allowance for use is that amount directly attributable to use by the
17 consumer before his first written report of the nonconformity to the
18 manufacturer, agent or dealer and during any subsequent period when the
19 vehicle is not out of service by reason of repair.

20 B. It is an affirmative defense to any claim under this article
21 that either:

22 1. An alleged nonconformity does not substantially impair the use
23 and market value of the motor vehicle.

24 2. A nonconformity is the result of abuse, neglect or unauthorized
25 modifications or alterations of the motor vehicle.

26 C. In the case of taxes paid pursuant to title 42, chapter 5, if
27 the manufacturer:

28 1. Accepts return of a motor vehicle from a consumer without
29 replacing the motor vehicle, the manufacturer shall refund the amount of
30 tax attributed to the sale of the vehicle to that consumer.

31 2. Replaces a motor vehicle with a new motor vehicle of lesser
32 value, the manufacturer shall refund the difference between the original
33 amount of tax attributed to the sale of that vehicle and the amount of tax
34 attributed to the sale of the replacement vehicle, excluding the value of
35 the motor vehicle being replaced.

36 3. Replaces a motor vehicle with a new motor vehicle of greater
37 value, the manufacturer shall calculate the gross proceeds of sales
38 pursuant to section 42-5001, paragraph ~~6~~ 9.

39 D. Pursuant to section 42-1118, subsection F, the manufacturer may
40 apply to the department of revenue for a refund for the amount of tax that
41 the manufacturer properly refunds to the consumer.

42 Sec. 10. Legislative intent

43 A. It is the intent of the legislature in enacting this act that
44 from and after the effective date of this act:

1 1. Proceeds from sales, rentals and licenses for the use of
2 prewritten computer software, regardless of delivery method, and specified
3 digital goods that are transferred electronically to the purchaser be
4 subject to transaction privilege tax and use tax as provided by statute.

5 2. Proceeds from sales, leasing or licensing specified digital
6 services, regardless of delivery method, and specified digital goods that
7 are remotely accessed by the purchaser and not transferred electronically
8 be excluded from state and local transaction privilege taxes and use taxes
9 as provided by statute.

10 B. This act and statutory provisions added by this act are not
11 intended to affect, and may not be cited or applied in, any administrative
12 or judicial action pending on the effective date of this act that
13 considers the construction, interpretation or application of any statutory
14 or administrative provision regarding the taxation of digital goods and
15 services.

16 Sec. 11. Effective date

17 This act is effective from and after the last day of the month of
18 the general effective date of the fifty-third legislature, second regular
19 session.