

**TAX CODE**

**OF THE**

**TOWN OF CLIFTON**

**(2015 Edition)**

## Index to Clifton Tax Code

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540	<p>Interest and civil penalties.</p> <ul style="list-style-type: none"> <li>(a) (Reserved)</li> <li>(b) (Reserved)</li> <li>(c) (Reserved)</li> <li>(d) (Reserved)</li> <li>(e) (Reserved)</li> <li>(f) (Reserved)</li> <li>(g) (Reserved)</li> <li>(h) (Reserved)</li> <li>(i) (Reserved)</li> </ul>	
541	(Reserved)	
542	<p>Prospective application of new law or interpretation or application of law.</p> <ul style="list-style-type: none"> <li>(a) Prohibition of retroactive application of tax</li> <li>(b) New or additional category or type of business <ul style="list-style-type: none"> <li>(1) applies prospectively only</li> <li>(2) no retroactive assessment based new interpretation or application</li> </ul> </li> <li>(c) Includes policies and procedures which differ from established interpretations</li> <li>(d) (Reserved)</li> </ul>	

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## **CHAPTER 9 - PRIVILEGE AND EXCISE TAXES**

### **Article I - General Conditions and Definitions**

#### **Sec. 9-1. Words of tense, number and gender; Code references.**

- (a) For the purposes of this Chapter, all words of tense, number, and gender shall comply with A.R.S. Section 9-214 as amended.
- (b) For the purposes of this Chapter, all code references, unless specified otherwise, shall:
  - (1) refer to this Town Code.
  - (2) be deemed to include all amendments to such Code references.

#### **Sec. 9-100. General definitions.**

For the purposes of this Chapter, the following definitions apply:

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

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit, or advantage, either directly or indirectly, but does not include either: casual activities or sales; or the transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property, nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

"Equivalent Excise Tax" means either:

- (1) a Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or
- (2) an excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or
- (3) an excise tax levied by a Native American Government organized under the laws of the Federal Government upon the transaction in question and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. Under no circumstances shall "food" include an edible product, beverage, or ingredient infused, mixed, or in any way combined with medical marijuana or an active ingredient of medical marijuana.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the Town offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory-built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"Medical Marijuana" means "marijuana" used for a "medical use" as those terms are defined in A.R.S. Section 36-2801.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 9-432 for such use. This definition shall not include:

- (1) janitorial equipment and supplies.
- (2) office equipment, office furniture, and office supplies.
- (3) motor vehicles licensed for use upon the highways of the State.

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

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

- (1) transference of title and possession occur without the City; and
- (2) the stock from which such personal property was taken was not within the corporate limits of the City; and
- (3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the



City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

- (1) The order is placed from without the State of Arizona; and
- (2) the property is delivered to the buyer at a location outside the State; and
- (3) the property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

- (1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
- (2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.
- (3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
- (4) drugs or medicine, including oxygen.
- (5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.
- (6) durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.
- (7) orthodontic devices dispensed by a dental professional who is licensed under Title 32, Chapter 11 to a patient as part of the practice of dentistry.
- (8) under no circumstances shall "prosthetic" include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person.

"Qualifying Community Health Center"

- (1) means an entity that is recognized as nonprofit under Section 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:
  - (a) the sole provider of primary care in the community.
  - (b) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.
- (2) includes clinics that are being constructed as qualifying community health centers.

“Qualifying Health Care Organization” means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

“Qualifying Hospital” means any of the following:

- (1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (2) a licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.
- (3) a hospital, nursing care institution or residential care institution which is operated by the Federal Government, this State or a political subdivision of this State.
- (4) a facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

“Receipt (of Notice) by the Taxpayer” means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

“Remediation” means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

“Rental Equipment” means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

- (1) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (2) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

“Rental Supply” means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

- (1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be

- attached as a repair or replacement part; and
- (2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

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

"Resides within the Town" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the Town.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"Solar Daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

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

"Speculative Builder" means either:

- (1) an owner-builder who sells or contracts to sell, at any time, improved real property (as provided in Section 9-416) consisting of:
  - (a) custom, model, or inventory homes, regardless of the stage of completion of such homes;

- or
- (b) improved residential or commercial lots without a structure; or
- (2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:
  - (a) prior to completion; or
  - (b) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

**"Substantially Complete"** means the construction contracting or reconstruction contracting:

- (1) has passed final inspection or its equivalent; or
- (2) certificate of occupancy or its equivalent has been issued; or
- (3) is ready for immediate occupancy or use.

**"Supplier"** means any person who rents, leases, licenses, or makes sales of tangible personal property within the Town, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

**"Tax Collector"** means the Town Clerk or their designee or agent for all purposes under this Chapter.

**"Taxpayer"** means any person liable for any tax under this Chapter.

**"Telecommunication Service"** means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

**"Transient"** means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

**"Utility Service"** means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

## **Sec. 9-110. Definitions: income-producing capital equipment.**

- (a) The following tangible personal property, other than items excluded in subsection (d) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:
  - (1) machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining", and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.
  - (2) mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

- (3) tangible personal property, sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including optical fiber, coaxial cable, and other transmission media which are components of carrier systems.
- (4) machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.
- (5) pipes or valves four inches (4") in diameter or larger and related equipment, used to transport oil, natural gas, artificial gas, water, or coal slurry. For the purpose of this Section, related equipment includes: compressor units, regulators, machinery and equipment, fittings, seals and any other parts that are used in operating the pipes or valves.
- (6) aircraft, navigational and communication instruments, and other accessories and related equipment sold to:
  - (A) a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.
  - (B) any foreign government for use by such government outside of this State.
  - (C) persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.
- (7) machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.
- (8) railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.
- (9) machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.
- (10) buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.
- (11) metering, monitoring, receiving, and transmitting equipment acquired by persons engaged in the business of providing utility services or telecommunications services; but only to the extent that such equipment is to be used by the customers of such persons and such persons separately charge or bill their customers for use of such equipment.
- (12) groundwater measuring devices required under A.R.S. Section 45-604.
- (13) machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the

prototype or new product or that is required for machinery or equipment otherwise exempt under this Section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

- (14) (Reserved)
- (15) included in income producing capital equipment are liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This subsection does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this Code. Chemicals meeting the requirements of this subsection are deemed not to be expendable under subsection (d) of this Section.
- (16) cleanrooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph (13) of this subsection of semiconductor products. For purposes of this paragraph, “cleanroom” means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom:
  - (A) includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment.
  - (B) does not include the building or other permanent, nonremovable component of the building that houses the cleanroom environment.
- (17) machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five (5) years after the start of initial construction. For purposes of this paragraph:
  - (A) “motion picture, multimedia or interactive video production” includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, cd-rom, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.
  - (B) “soundstage complex” means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.
- (18) tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

- (A) any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations Parts 25 and 100.
- (B) any satellite television or data transmission facility if both of the following conditions are met:
  - (i) over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations Parts 25 and 100.
  - (ii) over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For purposes of subdivision (B) of this paragraph, “test period” means the three hundred sixty-five

(365) day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

- (19) machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.
- (20) machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality or a political subdivision of this State to prevent, monitor, control or reduce land, water or air pollution.
- (21) machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission Order issued April 21, 1997, 47 Code of Federal Regulations Part 73. This paragraph does not exempt any of the following:
  - (A) repair or replacement parts purchased for the machinery or equipment described in this paragraph.
  - (B) machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.
  - (C) any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

- (b) The term "income-producing capital equipment" shall further include ancillary machinery and equipment used for the treatment of waste products created by the business activities which are allowed to purchase "income-producing capital equipment" defined in subsection (a) above.

- (c) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in subsection (d) below, where the property is acquired to become an integral part of another item itemized in subsections (a) or (b) above.
- (d) The tangible personal property defined as income-producing capital equipment in this Section shall not include:
  - (1) expendable materials. For purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsections (a), (b) or (c) of this Section regardless of the cost or useful life of that property.
  - (2) janitorial equipment and hand tools.
  - (3) office equipment, furniture, and supplies.
  - (4) tangible personal property used in selling or distributing activities.
  - (5) motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection (a)(10) above without regard to the use of such motor vehicles.
  - (6) shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt.
  - (7) Motors and pumps used in drip irrigation systems.
- (e) For the purposes of this Section:
  - (1) "aircraft" includes:
    - (A) an airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121.
    - (B) tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.
  - (2) "other accessories and related equipment" include aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

**Sec. 9-115. Definitions: computer software; custom computer programming.**

- (a) "Computer Software" means any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not "custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter, regardless of the method by which title, possession, or right to use the software is transferred to the user.
- (b) "Custom Computer Programming" means any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.
  - (1) The term does not include a prewritten program which is held or existing for general or repeated sale, lease, or license, even if the program was initially developed on a custom basis for in-house, or for a single customer's, use.
  - (2) Modification to an existing prewritten program to meet the customer's needs is custom



computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the customer.

## **Article II - Determination of Gross Income**

### **Sec. 9-200. Determination of gross income: in general.**

- (a) Gross income includes:
  - (1) the value proceeding or accruing from the sale of property, the providing of service, or both.
  - (2) the total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.
  - (3) all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.
  - (4) all other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.
- (b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.
- (c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.
- (d) For the purposes of this Chapter, the total amount of gross income, gross receipts or gross proceeds of sales for nuclear fuel shall be deemed to be the value of the purchase price of uranium oxide used in producing the fuel. The tax imposed by this Chapter may be imposed only once for any one quantity or batch of nuclear fuel regardless of the number of transactions or financing arrangements which may occur with respect to that nuclear fuel.

### **Sec. 9-210. Determination of gross income: transactions between affiliated companies or persons.**

In transactions between affiliated companies or persons, or in other circumstances where the relationship between the parties is such that the gross income from the transaction is not indicative of the market value of the subject matter of the transaction, the Tax Collector shall determine the "market value" upon which the Town Privilege and Use Taxes shall be levied. "Market value" shall correspond as nearly as possible to the gross income from similar transactions of like quality or character by other taxpayers where no common interest exists between the parties, but otherwise under similar circumstances and conditions.

### **Sec. 9-220. Determination of gross income: artificially contrived transactions.**

The Tax Collector may examine any transaction, reported or unreported, if, in his opinion, there has been or may be an evasion of the taxes imposed by this Chapter and to estimate the amount subject to tax in cases where such evasion has occurred. The Tax Collector shall disregard any transaction which has been undertaken in an artificial manner in order to evade the taxes imposed by this Chapter.

### **Sec. 9-230. Determination of gross income based upon method of reporting.**

The method of reporting chosen by a taxpayer, as provided in Section 9-520, necessitates the following adjustments to gross income for all purposes under this Chapter:

- (a) Cash basis - When a person elects to report and pay taxes on a cash basis, gross income for the reporting period shall include:
  - (1) the total amounts received on "paid in full" transactions, against which are allowed all applicable deductions and exclusions; and
  - (2) all amounts received on accounts receivable, conditional sales contract, or other similar transactions, against which no deductions and no exclusions from gross income are allowed. Interest on finance contracts may be deducted if separately itemized on all books and records.
- (b) Accrual basis - When a person elects to report and pay taxes on an accrual basis, gross income shall include all gross income for the applicable period regardless of whether receipts are for cash, credit, conditional, or partially deferred transactions, and regardless of whether or not any security document or instrument is sold, assigned, or otherwise transferred to another. Persons reporting on the accrual basis may deduct bad debts, provided that:
  - (1) the amount deducted for the bad debt must be deducted from gross income of the month in which the actual charge-off was made, and only to the extent that such amount was actually charged-off, and also only to the extent that such amount is or was included as taxable gross income; and
  - (2) if any amount is subsequently collected on such charged-off account, it shall be included in gross income for the month in which it was collected, without deduction for expense of collection.

### **Sec. 9-240. Exclusion of cash discounts, returns, refunds, trade-in values, vendor-issued coupons, and rebates from gross income.**

- (a) The following items are not included in gross income:
  - (1) Cash discounts allowed by the vendor for timely payment, but only discounts allowed against taxable gross income.
  - (2) The value of property returned by customers to the extent of the amount actually refunded either in cash or by credit and the amount refunded was included in taxable gross income.
  - (3) The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold when the full sales price is included in taxable gross income. Trade-in allowances are not allowed for manufactured buildings taxable under Section 9-427.
  - (4) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.
  - (5) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.
  - (6) In computing the tax base, gross proceeds of sales or gross income does not include a

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

- (b) If the amount specified in subsection (a) above is credited by a vendor subsequent to the reporting period in which the original transaction occurs, such amount may be excluded from the taxable gross income of that subsequent reporting period, but only to the extent that the excludable amount was reported as taxable gross income in that prior reporting period.

**Sec. 9-250. Exclusion of combined taxes from gross income; itemization; notice; limitations.**

- (a) When tax is separately charged and/or collected. The total amount of gross income shall be exclusive of combined taxes only when the person upon whom the tax is imposed shall establish to the satisfaction of the Tax Collector that such tax has been added to the total price of the transaction. The taxpayer must provide to his customer and also keep a reliable record of the actual tax charged or collected, shown by cash register tapes, sales tickets, or other accurate record, separating net transaction price and combined tax. If at any time the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts billed or collected on account of combined taxes, the claimed taxes collected may not be excluded from gross income, unless such records are completed and/or clarified to the satisfaction of the Tax Collector.
  - (1) Remittance of all tax charged and/or collected. When an added charge is made to cover Town (or combined) Privilege and Use Taxes, the person upon whom the tax is imposed shall pay the full amount of the Town taxes due, whether collected by him or not, and in the event he collects more than the amount due he shall remit the excess to the Tax Collector. In the event the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts of taxes collected by him, and the Tax Collector is satisfied that the taxpayer has collected taxes in an amount in excess of the tax assessed under this Chapter, the Tax Collector may determine the amount collected and collect the tax so determined in the manner provided in this Chapter.
  - (2) Itemization. A taxpayer, in order to be entitled to exclude from his gross income any amounts paid to him by customers for combined taxes passed on to the customer, must prove that he has provided his customer with a written record of the transaction showing at a minimum the price before the tax, the combined taxes, and the total cost. This shall be addition to the record required to be kept under subsection (a) above.
- (b) When tax has been neither separately charged nor separately collected. When the person upon whom the tax is imposed shall establish by means of invoices, sales tickets, or other reliable evidence, that no added charge was made to cover combined taxes, the taxpayer may exclude tax collected from such income by dividing such taxable gross income by 1.00 plus a decimal figure representing the effective combined tax rate expressed as a fraction of 1.00.

**Sec. 9-260. Exclusion of fees and taxes from gross income; limitations.**

- (a) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met. For the purpose of the exclusion provided by this subsection only, the terms vendor and vendee shall also apply to a

lessor and lessee respectively, of a motor vehicle if, in addition to all other requirements of this subsection, the lease agreement specifically requires the lessee to pay such fees or taxes, and such amounts are separately itemized in the documentation provided to the lessee.

- (b) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers, the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III, relating to recordkeeping, have been met.
- (c) There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met:
  - (1) emergency telecommunication services excise tax imposed pursuant to A.R.S. Section 42-5252. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls;
  - (2) the telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. Section 42-5252;
  - (3) federal excise taxes on communications services as imposed by 26 U.S.C. Section 4251;
  - (4) car rental surcharge imposed pursuant to A.R.S. Section 48-4234;
  - (5) federal excise taxes on passenger vehicles as imposed by 26 U.S.C. Section 4001(.01);
  - (6) waste tire disposal fees imposed pursuant to A.R.S. Section 44-1302.
- (d) There shall be excluded from gross income of vendors of motor vehicles dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor.

#### **Sec. 9-265. (Reserved)**

#### **Sec. 9-266. Exclusion of motor carrier revenues from gross income.**

There shall be excluded from gross income the gross proceeds of sale or gross income derived from any of the following:

- (a) A motor carrier's use on the public highways in this State if the motor carrier is subject to a fee prescribed in A.R.S. Title 28, Chapter 15, Article 4 or A.R.S. Title 28, Chapter 16, Article 4.
- (b) Leasing, renting or licensing a motor vehicle subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16.
- (c) The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting or licensing such property.
- (d) For the purposes of these exclusions, "motor carrier" includes a motor vehicle weighing 26,000 pounds or more, a lightweight motor vehicle which weighs 12,001 pounds to 26,000 pounds and a light motor vehicle weighing 12,000 pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 15 or A.R.S. Title 28, Chapter 16.

**Sec. 9-270. Exclusion of gross income of persons deemed not engaged in business.**

- (a) For the purposes of this Section, the following definitions shall apply:
- (1) "Federally Exempt Organization" means an organization which has received a determination of exemption, or qualifies for such exemption, under 26 U.S.C. Section 501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity", "non-licensed business", or "public educational entity".
  - (2) "Governmental Entity" means the Federal Government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.
  - (3) "Non-Licensed Business" means any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.
  - (4) "Proprietary Club" means any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. Section 501(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.
  - (5) "Public Educational Entity" means any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.
- (b) Transactions which, if conducted by any other person, would produce gross income subject to tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a public educational entity; governmental entity, except "proprietary activities" of municipalities as provided by Regulation; or non-licensed business.
- (c) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:
- (1) Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. Section 501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by Regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.
  - (2) Gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.
  - (3) (Reserved)
- (d) Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or non-licensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or

leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:

- (1) a statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required, to pay Town Privilege Tax or an equivalent excise tax on its gross income from such transactions and does in fact file returns on same; and
  - (2) the Privilege License number of the otherwise exempt vendee; and
  - (3) such other information as the Tax Collector may require.
- (e) Franchisees or concessionaires operating businesses for or on behalf of any exempt organization, governmental entity, public educational entity, proprietary club, or non-licensed business shall not be considered to be such an exempt organization, club, entity, or non-licensed business, but shall be deemed to be a taxpayer subject to the provisions of this Chapter, except as provided in the definition of governmental entity, regarding urban mass transit.
- (f) City Privilege or Use Tax or equivalent excise tax has been paid on such transaction, said organization, club, or business shall be liable for the Use Tax upon such acquisitions or use of such property.

**Sec. 9-280. (Reserved)**

**Sec. 9-285. (Reserved)**

**Sec. 9-290. (Reserved)**

### Article III - Licensing and Recordkeeping

#### Sec. 9-300. Licensing requirements.

- (a) The following persons shall make application to the Tax Collector for a Transaction Privilege and Use Tax License and no person shall engage or continue in business or engage in such activities until he shall have such a license:
  - (1) Every person engaging or continuing in business activities within the city or town upon which a Transaction Privilege Tax is imposed by this Chapter.
  - (2) Every person engaging or continuing in business within the city or town and storing or using tangible personal property in this municipality upon which a Use Tax is imposed by this Chapter.
  - (3) (Reserved)
- (b) For the purpose of determining whether a Transaction Privilege and Use Tax License is required, a person shall be deemed to be "engaging or continuing in business" within the city or town if:
  - (1) engaging in any activity as a principal or broker, the gross receipts of which may be subject to Transaction Privilege Tax under Article IV of this Chapter, or
  - (2) maintaining within the city or town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business; maintaining within the city or town directly, or if a corporation by a subsidiary, any real or tangible personal property; or having any agent or other representative operating within the city or town under the authority of such person, or if a corporation by a subsidiary, irrespective of whether such place of business, property, or agent or other representative is located here permanently or temporarily, or
  - (3) soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the city or town from customers, consumers, or users located within the city or town, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this city or town.
  - (4) A person shall also be deemed to be "engaging or continuing in business" if engaging in any activity subject to Use Tax under Article VI of this Chapter for business purposes. Individuals who acquire items subject to Use Tax for their own personal use or their family's personal use are not required to obtain a license.
  - (5) (Reserved)
- (c) A person engaging in more than one activity subject to Transaction Privilege Tax at any one business location is not required to obtain a separate license for each activity, provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged.
- (d) The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.
- (e) Limitation. The issuance of a Transaction Privilege and Use Tax License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.



- (f) Casual activity. For the purposes of this Chapter, individuals engaging in a “casual activity or sale” are not subject to the license requirements imposed under this Article provided that they are only engaged in private sales activities, such as the sale of a personal automobile or garage sale, on no more than three separate occasions during any calendar year.

**Sec. 9-310. Licensing: special requirements.**

- (a) Partnerships. Application for a Transaction Privilege and Use Tax License for a partnership engaging or continuing in business shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaging in business as partners, limited or general, shall be in the name of the partnership.
- (b) Limited Liability Companies. Application for a Transaction Privilege and Use Tax License for a Limited Liability Company (LLC) engaging or continuing in business shall provide, as a minimum, the names and addresses of all members and the manager. Licenses issued to persons engaging in business as Limited Liability Companies, shall be in the name of the LLC.
- (c) Corporations. Application for a Transaction Privilege and Use Tax License for a corporation engaging or continuing in business shall provide, as a minimum, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation. Licenses issued to persons engaging in business as corporations shall be in the name of the corporation.
- (d) Multiple Locations or Multiple Business Names. A person engaging or continuing in one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment.
- (e) Real Property Rental, Leasing, and Licensing for Use. In all cases the Transaction Privilege and Use Tax License shall be issued only to the owner of the real property regardless of the owner engaging a property manager or other broker to oversee the owner's business activity including filing tax returns on behalf of the owner. Each rental property that can be independently sold or transferred is deemed to be a separate business establishment. Each platted parcel of real property subject to the tax imposed by this Chapter is deemed to be a separate business establishment and requires a separate license, regardless of the number of rental units located on that platted parcel. If one structure is located on multiple parcels in a manner such that ownership of an individual parcel cannot be sold or transferred without requiring alteration to divide the structure, one license shall be required for all affected parcels.

**Sec. 9-320. License fees; annual renewal; renewal fees.**

- (a) The Transaction Privilege and Use Tax License shall be valid upon receipt of a non-refundable license fee of two dollars (\$2.00), except for a license to engage in the business activity of residential or commercial real property rental, leasing, and licensing for use as separately identified in this Section. The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of zero dollars (\$0.00) for each license, subject to the limitations in A.R.S. Section 42-5005. Such annual renewal fee

shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.

- (b) The Transaction Privilege and Use Tax License to engage in the business activity of residential real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of two dollars (\$2.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of zero dollars (\$0.00) for each license, subject to the limitations in A.R.S. Section 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.
- (c) The Transaction Privilege and Use Tax License to engage in the business activity of commercial real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of two dollars (\$2.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of zero dollars (\$0.00) for each license, subject to the limitations in A.R.S. Section 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.

**Sec. 9-330. Licensing: duration; transferability; display; penalties; penalty waiver; relicensing; fees collectible as if taxes.**

- (a) The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying the applicable license renewal fee for each license, subject to the limitations in A.R.S. Section 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. Application and payment of the annual fee must be received in the Tax Collector's office to be deemed paid and received.
- (b) The Transaction Privilege and Use Tax License shall be nontransferable between owners or locations and shall be on display to the public in the licensee's place of business.
- (c) Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 9-540.
- (d) Any licensee who fails to renew his license on or before the due date shall be deemed to be operating without a license following such due date, and shall be subject to all penalties imposed under this Chapter against persons required to be licensed and operating without a license. The non-licensed status may be removed by payment of the annual license fee for each year or

portion of a year he operated without a license, plus a license fee penalty of fifty percent (50%) of the license fee due for each year. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 9-540.

- (e) Any licensee who permits his license to expire through cancellation as provided in Section 9-340, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for a license, shall be granted a new license as a new applicant and shall pay the current license fee imposed under Section 9-320.
- (f) Any licensee who needs a copy of his Transaction Privilege and Use Tax License which is still in effect shall be charged the current license fee for each reissuance of a license.
- (g) Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the Town for all applicable fees and penalties and shall be subject to the provisions of Sections 9-580 and 9-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections.

#### **Sec. 9-340. Licensing: cancellation; revocation.**

- (a) Cancellation. The Tax Collector may cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly, has neither filed any return nor remitted any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.
- (b) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector may revoke the Transaction Privilege and Use Tax License of said licensee.
- (c) Notice and Hearing. The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Transaction Privilege and Use Tax License. If the licensee requests a hearing within twenty (20) days of receipt of such notice, he shall be granted a hearing before the Tax Collector.
- (d) After cancellation or revocation of a taxpayer's license, the taxpayer shall not be issued a new license until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with all provisions of this Chapter.

#### **Sec. 9-350. Operating without a license.**

It shall be unlawful for any person who is required by this Chapter to obtain a Transaction Privilege and Use Tax License to engage in or continue in business without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter.

### **Sec. 9-360. Recordkeeping requirements.**

- (a) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by this Article; or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day.
- (b) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:
  - (1) only for future reporting periods, and
  - (2) only by express determination of the Tax Collector that such specific recordkeeping is necessary due to the inability of the taxing jurisdiction to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

### **Sec. 9-362. Recordkeeping: income.**

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

- (a) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the Town.
- (b) The gross income taxable under this Chapter, divided into categories as stated in the official Town tax return.
- (c) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.
- (d) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed:
  - (1) If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:
    - (A) The Town Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent Town, if applicable, and state tax numbers of the Town and state where the customer resides), and
    - (B) The name, business address, and business activity of the customer, and
    - (C) Evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.
  - (2) If the transaction is claimed to be exempt for any other reason:
    - (A) The name, business address, and business activity of the customer, and

- (B) Evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.
- (e) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.
- (f) With respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

#### **Sec. 9-364. Recordkeeping: expenditures.**

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

- (a) The total price of all goods acquired for use or storage in the Town.
- (b) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the Town.
- (c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
  - (1) All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner- builders and speculative builders.
  - (2) Disbursement of collected gratuities and related payroll information required of restaurants.
  - (3) (Reserved)
    - (A) (Reserved)
    - (B) (Reserved)
  - (4) The validity of any claims of proof of exemption.
  - (5) A claimed alternative prior value for reconstruction.
  - (6) All claimed exemptions to the Use Tax imposed by Article VI of this Chapter.
  - (7) (Reserved)

- (8) Payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.
- (9) (Reserved)
- (f) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

**Sec. 9-366. Recordkeeping: Out-of-City and Out-of-State sales.**

- (a) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.
- (b) Out-of-State sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:
  - (1) documentation of location of the buyer at the time of order placement; and
  - (2) shipping, delivery, or freight documents showing where the buyer took delivery; and
  - (3) documentation of intended location of use or storage of the tangible personal property sold to such buyer.

**Sec. 9-370. Recordkeeping: claim of exclusion, exemption, deduction, or credit; documentation; liability.**

- (a) All deductions, exclusions, exemptions and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required under A.R.S. Section 42-5022 or by this Chapter or Regulation.
- (b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

**Sec. 9-372. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.**

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number and makes a verbal claim of "sale for resale

or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

**Sec. 9-380. Inadequate or unsuitable records.**

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either:

- (a) To provide such other records required by this Chapter or Regulation; or
- (b) To correct or to reconstruct his records, to the satisfaction of the Tax Collector.

## Article IV - Privilege Taxes

### Sec. 9-400. Imposition of Privilege Taxes; presumption.

- (a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the Town, such taxes to be collected by the Tax Collector:
  - (1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the Town or not, or whether derived from within the Town or from without.
  - (2) (Reserved)
- (b) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.
- (c) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income is subject to the tax until the contrary is established by the taxpayer.
- (d) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

### Sec. 9-405. Advertising.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "Local Advertising", except the following:
  - (1) the advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within the State, and in which the advertisement names either no "commonly designated business entity" within the State or more than one "commonly designated business entity". "Commonly Designated Business Entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.
  - (2) the advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.
  - (3) the advertising of a product which may only be purchased from an out-of-State supplier.
  - (4) political advertising for United States Presidential and Vice-Presidential candidates only.
  - (5) advertising by means of product purchase coupons redeemable at any retail establishment



carrying such product but not product coupons redeemable only at a single commonly designated business entity.

- (6) advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(b) (Reserved)

#### **Sec. 9-407. (Reserved)**

#### **Sec. 9-410. Amusements, exhibitions, and similar activities.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the Town or takes place entirely within the Town, which includes the following type or nature of businesses:
  - (1) operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.
  - (2) (Reserved)
- (b) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:
  - (1) (Reserved)
  - (2) Amounts retained by the Arizona Exposition and State Fair Board from ride ticket sales at the annual Arizona State Fair.
  - (3) Income received from a hotel business subject to tax under Section 9-444, if all of the following apply:
    - (A) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax.
    - (B) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection.
    - (C) The hotel business has provided an exemption certificate to the person engaging in business under this Section.
  - (4) Income that is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
  - (5) Income from arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business.
- (c) The tax imposed by this Section shall not include arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to

businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement.

**Sec. 9-415. Construction contracting: construction contractors.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the Town.
  - (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.
  - (2) (Reserved)
  - (3) gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 9-427.
  - (4) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.
- (b) Deductions and exemptions.
  - (1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.
  - (2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).
  - (3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from Privilege or Use Tax under:
    - (A) Section 9-465, subsections (g) and (p)
    - (B) Section 9-660, subsections (g) and (p)shall be exempt or deductible, respectively, from the tax imposed by this Section.
  - (4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 9-110, that is deducted from the retail classification pursuant to Section 9-465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
    - (A) to be incorporated into real property.
    - (B) to become so affixed to real property that it becomes part of the real property.

- (C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
- (5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
- (6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 9-465, subsection (g) shall be exempt from the tax imposed under this Section.
- (7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.
- (8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this Section.
- (9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. Section 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the Town:
  - (A) The certificate of qualification of the lake facility development issued by the Town pursuant to A.R.S. Section 9-499.08, subsection D.
  - (B) All State and local Transaction Privilege Tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from State and local taxation.
  - (C) Any other information considered to be necessary.
- (10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:
  - (A) the attributable amount shall not exceed the value of the development fees actually imposed.
  - (B) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
  - (C) "development fees" means fees imposed to offset capital costs of providing public

infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Sections 9-463.05 and 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

- (11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the Town, as applicable, for examination.

(c) "Subcontractor" means a construction contractor performing work for either:

- (1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his Town Privilege License number.
- (2) an owner-builder who has provided the subcontractor with a written declaration that:
  - (A) the owner-builder is improving the property for sale; and
  - (B) the owner-builder is liable for the tax for such construction contracting activity; and
  - (C) the owner-builder has provided the contractor his Town Privilege License number.
- (3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his Town Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

#### **Sec. 9-416. Construction contracting: speculative builders.**

- (a) The tax shall be equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the Town.
  - (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.
  - (2) "Improved Real Property" means any real property:
    - (A) upon which a structure has been constructed; or
    - (B) where improvements have been made to land containing no structure (such as paving or landscaping); or
    - (C) which has been reconstructed as provided by Regulation; or
    - (D) where water, power, and streets have been constructed to the property line.
  - (3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
  - (4) "Partially Improved Residential Real Property", as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) Exclusions.

- (1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.
- (2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.
- (3) (Reserved)
- (4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in (a)(4) above to another speculative builder only if all of the following conditions are satisfied:
  - (A) The speculative builder purchasing the partially improved residential real property has a valid Town privilege license for construction contracting as a speculative builder; and
  - (B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the Town at the time of sale of the partially improved residential real property; and
  - (C) The seller also:
    - (i) maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and
    - (ii) retains a copy of the written declaration provided by the buyer for the transaction; and
    - (iii) is properly licensed with the Town as a speculative builder and provides the Town with the written declaration attached to the Town privilege tax return where he claims the exclusion.
- (5) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, “direct costs” means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

- (A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from Privilege or Use Tax under:
  - (i) Section 9-465, subsections (g) and (p)
  - (ii) Section 9-660, subsections (g) and (p)shall be exempt or deductible, respectively, from the tax imposed by this Section.
- (B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
- (C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 9-465, subsection (g) shall be exempt

from the tax imposed under this Section.

- (D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.
- (E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph:
  - (i) the attributable amount shall not exceed the value of the development fees actually imposed.
  - (ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
  - (iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Sections 9-463.05 and 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

- (A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
- (B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 9-110, that is deducted from the retail classification pursuant to Section 9- 465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
  - (i) to be incorporated into real property.
  - (ii) to become so affixed to real property that it becomes part of the real property.
  - (iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
- (C) For taxable periods beginning from and after July 1, 2008 and ending before January

1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the Town, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

- (A) A tax credit equal to the amount of Town Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.
- (B) A tax credit equal to the amount of Privilege Taxes paid to this Town, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
- (C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

**Sec. 9-417. Construction contracting: owner-builders who are not speculative builders.**

- (a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to three percent (3%) of:
  - (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in subsection 9-415(c)(2); and
  - (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.
- (b) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, “direct costs” means the portion of the actual costs that are directly expended in providing architectural or engineering services.
- (c) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits:
  - (1) Exemptions.
    - (A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from Privilege or Use Tax under:
      - (i) Section 9-465, subsections (g) and (p)
      - (ii) Section 9-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

- (B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
- (C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 9-465, subsection (g) shall be exempt from the tax imposed under this Section.
- (D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.
- (E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph:
  - (i) the attributable amount shall not exceed the value of the development fees actually imposed.
  - (ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
  - (iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Sections 9-463.05 and 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

- (A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
- (B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 9-110, that is deducted from the retail classification pursuant to Section 9-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or



removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

- (i) to be incorporated into real property.
- (ii) to become so affixed to real property that it becomes part of the real property.
- (iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

- (C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the Town, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

- (A) A tax credit equal to the amount of Town Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.
- (B) A tax credit equal to the amount of privilege taxes paid to this Town, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
- (C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

- (d) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 9-540, will be based on reportable date.

- (e) (Reserved)

**Sec. 9-418. (Reserved)**

**Sec. 9-420. (Reserved)**

**Sec. 9-422. (Reserved)**

**Sec. 9-425. Job Printing.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing,

which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

- (b) The tax imposed by this Section shall not apply to:
  - (1) job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.
  - (2) out-of-City sales.
  - (3) out-of-State sales.
  - (4) (Reserved)
  - (5) sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
  - (6) (Reserved)
  - (7) sales of postage and freight except that the amount deducted shall not exceed the actual postage and freight expense that is paid to the United States Postal Service or a commercial delivery service and that is separately itemized by the taxpayer on the customer's invoice and in the taxpayer's records.

#### **Sec. 9-427. Manufactured buildings.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the town. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.
- (b) Sales of used manufactured buildings are not taxable.
- (c) The sale prices of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. Sales of such items are subject to the tax under Section 9-460.
- (d) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability.

#### **Sec. 9-430. Timbering and other extraction.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:
  - (1) felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.
  - (2) extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.
- (b) The rate specified in subsection (a) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the Town, regardless of the place of sale of the product or the fact that delivery may be made to a point without the Town or without the State.

- (c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.
- (d) (Reserved)

**Sec. 9-432. Mining.**

- (a) The tax rate shall be at an amount equal to one-tenth of one percent (.1%), not to exceed one-tenth of one percent (.1%), of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.
- (b) The rate specified in subsection (a) above shall be applied to the value of the entire product mined, smelted or produced for sale, profit, or commercial use, when such activity occurs within the Town, regardless of the place of sale of the product or the fact that delivery may be made to a point without the Town or without the State.
- (c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

**Sec. 9-435. Publishing and periodicals distribution.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:
  - (1) publication of newspapers, magazines, or other periodicals when published within the Town, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 9-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.
  - (2) distribution or delivery within the Town of newspapers, magazines, or other periodicals not published within the Town, measured by the gross income derived from subscriptions.
- (b) "Location of Publication" is determined by:
  - (1) location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or
  - (2) location of either the editorial offices or the printing facilities if the publisher performs his own physical printing.
- (c) "Subscription income" shall include all circulation revenue of the publisher except amounts

retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.

- (d) "Circulation", for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.
- (e) Allocation of taxes between cities and towns. In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the Town shall include:
  - (1) that portion of the gross income from publication which reflects the ratio of circulation within this Town to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus
  - (2) only when publication occurs within the Town, that portion of the remaining gross income from publication which reflects the ratio of circulation within this Town to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.
- (f) The tax imposed by this Section shall not apply to sales of newspapers, magazines or other periodicals to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

#### **Sec. 9-440. (Reserved)**

#### **Sec. 9-444. Hotels.**

The tax rate shall be at an amount equal to five percent (5%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

- (a) Person.
- (b) Exclusions. The tax imposed by this Section shall not include:
  - (1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility.
  - (2) Gross proceeds of sales or gross income that is properly included in another business activity under this Article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.
  - (3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this Article.
  - (4) Gross proceeds of sales or gross income from transactions or activities that are not limited

to transients and that would not be taxable if engaged in by a person subject to taxation under Sections 9-410 or 9-475 due to an exclusion, exemption or deduction.

- (5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Sections 9-445 or 9-450 as rental, leasing or licensing for use of real or tangible personal property.
- (6) Income from providing telephone, fax or internet services to customers at an additional charge that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 9-470 as telecommunication services.

#### **Sec. 9-445. Rental, leasing, and licensing for use of real property.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:
  - (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
  - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
  - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 9-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) (Reserved)
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)

- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 9-444 of this Code.
- (k) (Reserved)
- (l) (Reserved)
- (m) (Reserved)
- (n) Notwithstanding the provisions of Section 9-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.
- (r) Income received from the rental of any "low-income unit" as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the "gross rent" defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income unit" rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit.
- (s) The gross proceeds of a commercial lease of real property between affiliated companies, businesses, persons or reciprocal insurers are exempt. For the purposes of this paragraph:
  - (1) "affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, an affiliated entity holds a controlling interest in both the lessor and the lessee or an unrelated person holds a controlling interest in both the lessor and lessee.
  - (2) "controlling interest" means direct or indirect ownership of at least eighty percent (80%) of the voting shares of a corporation or of the interests in a company, business

- or person other than a corporation.
- (3) "reciprocal insurer" has the same meaning as prescribed in A.R.S. Section 20-762.

**Sec. 9-446. (Reserved)**

**Sec. 9-447. Rental, leasing, and licensing for use of real property: additional tax upon transient lodging.**

In addition to the taxes levied as provided in Section 9-444, there is hereby levied and shall be collected an additional tax in an amount equal to five percent (5%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging space furnished to any transient.

**Sec. 9-450. Rental, leasing, and licensing for use of tangible personal property.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the Town as provided by Regulation.
- (b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
- (c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:
- (1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
  - (2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
  - (3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 9-410, or to a radio station, television station, or subscription television system.
  - (4) rental, leasing, or licensing for use of the following:
    - (A) prosthetics.
    - (B) income-producing capital equipment.
    - (C) mining and metallurgical supplies.These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

- (5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
- (7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) (Reserved)
- (9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) rental, leasing or licensing for use an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (11) rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and Town, as applicable, for examination.
- (12) leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by A.R.S. Section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in A.R.S. Section 28-1301.

**Sec. 9-452. (Reserved)**

**Sec. 9-455. Restaurants and Bars.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.
- (b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business



location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.

- (c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (d) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. Section 42-5061(A)49, that serves the food and beverages to its passengers, without additional charge, for consumption in flight.
- (e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.
- (f) For the purposes of this Section, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

**Sec. 9-460. Retail sales: measure of tax; burden of proof; exclusions.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.
- (b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.
- (c) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:
  - (1) sales of stocks, bonds, options, or other similar materials.
  - (2) sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
  - (3) sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
  - (4) gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.
  - (5) sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.
  - (6) sales of cash equivalents. The gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. “Cash equivalents” means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's

checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:

- (A) items or intangibles that are sold to one or more persons, through which a value is not denominated in money.
  - (B) prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection (g) of this Section.
- (d) Notwithstanding the provisions of subsection (a) above, when the gross income from the sale of a single item of tangible personal property exceeds ten thousand dollars (\$10,000), the three percent (3%) tax rate shall apply to the first ten thousand dollars (\$10,000). Above ten thousand dollars (\$10,000), the measure of tax shall be at a rate of two percent (2%).
  - (e) When this Town and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.
  - (f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this Town or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.
  - (g) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.

#### **Sec. 9-462. Retail sales: food for home consumption.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of selling food for home consumption at retail.
- (b) For the purposes of this Section only, the following definitions shall be applicable:
  - (1) "eligible grocery business" means an establishment whose sales of food are such that it is eligible to participate in the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 stat. 958.7 U.S.C. Section 2011 et seq.), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the food stamp program if it is authorized to participate in the program by the United States Department of Agriculture Food and Nutrition Service field office on the effective date of this Section, or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the Tax Collector that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the Food Stamp Program established by the Food Stamp Act of 1977 according to regulations in effect on January 1, 1979.
  - (2) "facilities for the consumption of food" means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking

areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.

- (3) "food for consumption on the premises" means any of the following:
- (A) "hot prepared food" as defined below.
  - (B) hot or cold sandwiches.
  - (C) food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.
  - (D) food served with trays, glasses, dishes, or other tableware.
  - (E) beverages sold in cups, glasses, or open containers.
  - (F) food sold by caterers.
  - (G) food sold within the premises of theatres, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.
  - (H) any items contained in subsections (b)(3)(A) through (G) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.
- (4) "hot prepared food" means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "Hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.
- (5) "premises" means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.
- (6) "food for home consumption" means all food, except food for consumption on the premises, if sold by any of the following:
- (A) an eligible grocery business.
  - (B) a person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.
  - (C) a person who sells food and does not provide or make available any facilities for the consumption of food on the premises.
  - (D) a person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.
  - (E) vending machines and other types of automatic retailers.
  - (F) a person's sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the State Department of Corrections, the Department of Public Safety, the Department of Juvenile Corrections or a county sheriff.

- (c) Income derived from the following sources is exempt from the tax imposed by this Section:

- (1) sales of food for home consumption to a person regularly engaged in the business of selling such property.
  - (2) out-of-Town sales or out-of-State sales.
  - (3) charges for delivery or other "direct customer services" as prescribed by Regulation.
  - (4) food purchased with food stamps provided through the Food Stamp Program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) Or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food.
  - (5) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
  - (6) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve (12) or under which may be attended in substitution for a public school pursuant to A.R.S. Section 15-802 ; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
  - (7) sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (d) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 9-520, report to the Tax Collector in a manner prescribed by the Tax Collector all sales of food for home consumption exempted from taxes imposed by this Chapter.
- (e) Recordkeeping.
- (1) retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this Chapter. A retailer may use any method of reporting that properly reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this Chapter, provided that such records are maintained in accordance with Article III, and Regulations of the Tax Collector.
  - (2) any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the Tax Collector, a person cannot demonstrate to the Tax Collector that such records and reports do properly reflect all sales of food for home consumption, the Tax Collector may recompute the amount of tax to be paid as provided in Sections 9-370 and 9-545(b).

#### **Sec. 9-465. Retail sales: exemptions.**

Income derived from the following sources is exempt from the tax imposed by Section 9-460:

- (a) Sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) Out-of-Town sales or out-of-State sales.
- (c) Charges for delivery, installation, or other direct customer services as prescribed by Regulation.
- (d) Charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.
- (e) Sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.
- (f) Sales of prosthetics.
- (g) Sales of income-producing capital equipment.
- (h) Sales of rental equipment and rental supplies.
- (i) Sales of mining and metallurgical supplies.
- (j) Sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (k) Sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.
- (l) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) Sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) (Reserved)
  - (1) (Reserved)
  - (2) (Reserved)
- (o) Sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 9-455 or the equivalent excise tax upon such income.

- (p) Sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (q) (Reserved)
- (r) (Reserved)
  - (1) (Reserved)
  - (2) (Reserved)
  - (3) (Reserved)
  - (4) (Reserved)
- (s) Sales of groundwater measuring devices required by A.R.S. Section 45-604.
- (t) (Reserved)
- (u) Sales of aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
- (w) (Reserved)
- (x) Sales of food and drink to a person who is engaged in business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during such employees' hours of employment.
- (y) (Reserved)
- (z) (Reserved)
- (aa) The sale of tangible personal property used in remediation contracting as defined in Section 9-100 and Regulation 9-100.5.
- (bb) Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
  - (1) printed or photographic materials.
  - (2) electronic or digital media materials.
- (cc) Sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

- (dd) In computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 9-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.
- (ee) For the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 9-470 is considered to be a sale for resale in the regular course of business.
- (ff) Sales of alternative fuel as defined in A.R.S. Section 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.
- (gg) Sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve (12) or under which may be attended in substitution for a public school pursuant to A.R.S. Section 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (hh) Sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 9- 444 of this Code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (kk) Sales of motor vehicles that use alternative fuel was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (ll) Sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the Department of Revenue as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy

devices available to the Department of Revenue and the Town, as applicable, for examination.

- (mm) Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.
- (nn) Sales of magazines or other periodicals or other publications by this State to encourage tourist travel.
- (oo) Sales of paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.
- (pp) Sales of overhead materials or other tangible personal property that is used in performing a contract between the United States Government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a Government contractor who is a manufacturer, modifier, assembler or repairer, to which Title passes to the Government under the terms of the contract or subcontract.
- (qq) Sales of coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty (20), full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.
- (rr) sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This subsection applies for ten (10), full consecutive calendar or fiscal years after the start of initial construction.

#### **Sec. 9-470. Telecommunication services.**

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this Town.
  - (1) Telecommunication services shall include:
    - (A) two-way voice, sound, and/or video communication over a communications channel.
    - (B) one-way voice, sound, and/or video transmission or relay over a communications channel.
    - (C) facsimile transmissions.
    - (D) providing relay or repeater service.
    - (E) providing computer interface services over a communications channel.
    - (F) time-sharing activities with a computer accomplished through the use of a



communications channel.

- (2) Gross income from the business activity of providing telecommunication services to consumers within this Town shall include:
  - (A) all fees for connection to a telecommunication system.
  - (B) toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the Town and terminating in this State.
  - (C) fees charged for access to or subscription to or membership in a telecommunication system or network.
  - (D) charges for monitoring services relating to a security or burglar alarm system located within the Town where such system transmits or receives signals or data over a communications channel.
  - (E) charges for telephone, fax or internet access services provided at an additional charge by a hotel business subject to taxation under Section 9-444.
- (b) Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the Town to engage in such business.
- (c) Interstate transmissions. Charges by a provider of telecommunication services for transmissions originating in the Town and terminating outside the State are exempt from the tax imposed by this Section.
- (d) (Reserved)
- (e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in A.R.S. Section 9-505, shall be exempt from the tax imposed by this Section.
- (f) Prepaid calling cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 9-460 are exempt from the tax imposed under this Section.
- (g) Internet Access Services - the gross income subject to tax under this section shall not include sales of internet access services to the person's subscribers and customers. For the purposes of this subsection:
  - (1) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.
  - (2) "Internet Access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

#### **Sec. 9-475. Transporting for hire.**

The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business

activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this Town to another point within the State:

- (a) Transporting of persons or property by railroad; provided, however, that the tax imposed by this subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, “a single shipment” means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.
- (b) transporting of oil or natural or artificial gas through pipe or conduit.
- (c) transporting of property by aircraft.
- (d) transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in Article VII, Chapter 14, Title 42 , Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:
  - (1) gross income subject to the tax imposed by Article IV, Chapter 16, Title 28, Arizona Revised Statutes.
  - (2) gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.
  - (3) (Reserved)
  - (4) (Reserved)
- (e) (Reserved)
- (f) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:
  - (1) income that is specifically included as the gross income of a business activity upon which another Section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
  - (2) income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.
- (g) The tax imposed by this Section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:
  - (1) consumers or ratepayers who reside within the Town.
  - (2) (Reserved)
- (b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 9-460 and 9-465 and not considered gross income taxable under this Section.
- (c) Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.
- (d) (Reserved)
- (e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (g) The tax imposed by this Section shall not apply to:
  - (1) revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.
  - (2) revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.
- (h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. Section 1- 215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.

- (i) The tax imposed by this section shall not apply to sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.
- (j) The tax imposed by this Section shall not apply to the portion of gross proceeds of sales or gross income attributable to transfers of electricity by any retail electric customer owning a solar photovoltaic energy generating system to an electric distribution system, if the electricity transferred is generated by the customer's system.
- (k) (Reserved)

**Sec. 9-485. Wastewater removal services.**

- (a) The tax rate shall be an amount equal to zero percent (0%) of the gross income from the business activity upon every person engaging or continuing in the business of providing wastewater removal services by means of sewer lines or similar pipelines to:
  - (1) consumers or ratepayers who reside within the Town.
  - (2) consumers or ratepayers of this Town, whether within the Town or without, to the extent that this Town provides such persons wastewater removal services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this Town for providing such wastewater removal services to such persons.
- (b) The tax imposed by this Section shall not apply to gross income relating to the providing of wastewater removal services from a qualifying hospital, qualifying community health center or a qualifying health care organization.

## **Article V - Administration**

### **Sec. 9-500. Administration of this Chapter; rule making.**

- (a) The administration of this Chapter is vested in and exercised by the Town of Clifton, and except as otherwise provided, and all payments shall be made to the Town of Clifton. The Town may, pursuant to an intergovernmental agreement, contract with the State of Arizona Department of Revenue for the administration of the tax. In such cases, "Tax Collector" shall also mean the Arizona Department of Revenue, when acting as agent in administering this tax.
- (b) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.
- (c) Except where such Regulations would conflict with administrative regulations adopted by the Town Council or with provisions of this Chapter, all regulations on the Transaction Privilege Tax adopted by the Arizona Department of Revenue under the authority of A.R.S. Section 42-1005 shall be considered Regulations of this Chapter and enforceable as such.
- (d) Taxpayers shall be subject to the State Taxpayer Bill of Rights (A.R.S. Section 42-2051 et. seq.).
- (e) The Unified Audit Committee shall publish uniform guidelines that interpret the Model City Tax Code and that apply to all cities and towns that have adopted the Model City Tax Code as provided by A.R.S. Section 42-6005.
  - (1) Prior to finalization of uniform guidelines that interpret the Model City Tax Code, the Unified Audit Committee shall disseminate draft guidelines for public comment.
  - (2) Pursuant to A.R.S. Section 42-6005(D), when the State statutes and the Model City Tax Code are the same and where the Arizona Department of Revenue has issued written guidance, the Department's interpretation is binding on cities and towns.

### **Sec. 9-510. Divulging of information prohibited; exceptions allowing disclosure.**

- (a) Except as specifically provided, it shall be unlawful for any official or employee of the Town to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.
- (b) The Town Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the Federal Government, the State of Arizona, or any political subdivisions.
- (c) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.
- (d) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.
- (e) Upon a written direction by the Town Attorney or other legal advisor to the Town designated by the Town Council, officials or employees of the Town may divulge the amount and source of

income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the Town.

- (f) The Tax Collector shall provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Sections 42-6003, 42-6005, and 42-6056.
- (g) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 9-435 upon publishing and distribution of periodicals.
- (h) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the Town has an agreement.

**Sec. 9-515. (Reserved)**

**Sec. 9-516. (Reserved)**

**Sec. 9-517. (Reserved)**

**Sec. 9-520. Reporting and payment of tax.**

- (a) The taxpayer shall be required to use the report form authorized by the Tax Collector and shall mail or deliver the same, together with remittance for the amount of tax due, payable to the Town of Clifton, to the Tax Collector or any Town representative or agent authorized to receive such payment. The tax return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return.
- (b) Payment. If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.
- (c) Requirement of Security. If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future payments.
- (d) Method of Reporting. Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the Privilege License application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.
  - (1) Taxpayers must report all gross income subject to the tax using the same basis of reporting.
  - (2) Taxes imposed upon construction contracting shall be reported as follows:
    - (A) Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.
    - (B) Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession,

whichever occurs earlier.

- (C) Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 9-417.

**Sec. 9-530. When tax due; when delinquent; verification of return; extensions.**

- (a) Except as otherwise specified in this Section, the taxes levied under this Chapter shall be due, payable, and delinquent on the dates specified for the State Transaction Privilege Taxes in A.R.S. Section 42-5014. The taxpayer shall report on the taxes imposed by this Chapter at such frequency to be identical to the taxpayer's reporting frequency for the reporting of State Transaction Privilege Taxes.
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) The Tax Collector may for good cause extend the date for making any return required under the provisions of this Section as prescribed by A.R.S. Section 42-1107.

**Sec. 9-540. Interest and civil penalties.**

Any taxpayer who shall have failed to timely pay any taxes imposed by this Chapter, or file a report for the same in a timely manner, or fail or refuse to allow examination of records by the Tax Collector, shall be subject to any interest or civil penalties on such tax in like manner as such interest and penalties are provided in A.R.S. Sections 42-1123 and 42-1125 for the State Transaction Privilege Tax.

- (a) (Reserved)
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)

**Sec. 9-541. (Reserved)**

**Sec. 9-542. Prospective application of new law or interpretation or application of law.**

- (a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.
- (b) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:
  - (1) the change in interpretation or application applies prospectively only unless it is favorable to taxpayers.
  - (2) the Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
- (c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter.
- (d) (Reserved)

**Sec. 9-545. Deficiencies; when inaccurate return is filed; when no return is filed; estimates.**

- (a) If a taxpayer has failed to file a return or if the Tax Collector is not satisfied with the return or payment of tax required, the Tax Collector may redetermine the tax due, plus penalties and interest, and notify the taxpayer, as provided and prescribed by A.R.S. Sections 42-1108 and 42-1109.
  - (1) (Reserved)
  - (2) (Reserved)
- (b) Estimates by the Tax Collector. Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Tax Collector's estimate. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector.

**Sec. 9-546. (Reserved)**

**Sec. 9-550. Limitation periods.**

- (a) Except as provided elsewhere in this Chapter, deficiency assessments for the taxes imposed by this Chapter must be issued within the limitation periods prescribed in A.R.S. Section 42-1104 and must meet the provisions of A.R.S. Section 42-1108.
- (b) (Reserved)
- (c) In cases of failure to file a return or a false or fraudulent return, the limitation period shall be as



prescribed in A.R.S. Section 42-1109.

- (d) Special provisions relating to owner-builders. The limitation for an owner-builder subject to the tax as prescribed in Section 9-417 shall be based upon the date such tax liability is reportable or was reported, as provided in Section 9-417.

**Sec. 9-553. (Reserved)**

**Sec. 9-555. Tax Collector may examine books and other records; failure to provide records.**

- (a) The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter, for any periods available to him under Section 9-550.
- (b) (Reserved)
- (c) (Reserved)
- (d) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards.
- (e) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. The provisions of Section 9-545(b), concerning estimates, shall apply.
- (f) (Reserved)

**Sec. 9-556. (Reserved)**

**Sec. 9-560. Erroneous payment of tax; credits and refunds; limitations.**

- (a) Except as provided in Section 9-565, the period within which a claim, meeting the requirements of subsection (c) of this Section, for credit may be filed, or refund allowed or made if no claim is filed, shall be as provided in A.R.S. Sections 42-1106 and 42-1118. For purposes of this Section, “claimant” means a taxpayer that has paid a tax imposed under this Article and has submitted a credit or refund claim under this Section. Except where the taxpayer has granted a customer a power of attorney to pursue a credit or refund claim on the taxpayer’s behalf, claimant does not include any customer of such taxpayer, whether or not the claimant collected the tax from customers by separately stated itemization.
- (b) (Reserved)

- (c) A credit or refund claim submitted by a claimant for credit or refund of any taxes, penalties, or interest paid must be in writing and:
  - (1) Identify the name, address and city tax identification number of the taxpayer; and
  - (2) Identify the dollar amount of the credit or refund requested; and
  - (3) Identify the specific tax period involved; and
  - (4) Identify the specific grounds upon which the claim is based.
- (d) (Reserved)
- (e) (Reserved)
- (f) Interest shall be allowed on the overpayment of tax for any credit or refund authorized pursuant to this Section at the rate and in the manner set forth in Section 9-540(a). Interest shall be calculated from the date the Tax Collector receives the claimant's written claim meeting the requirements of subsection (c) of this Section.
- (g) The denial of a refund by the Tax Collector is subject to the provisions of A.R.S. Section 42-1119.
- (h) Claimants shall be subject to the State Taxpayer Bill of Rights (A.R.S. Section 42-2051 et. seq.), except that reasonable fees and other costs may be awarded and are not subject to the monetary limitations of A.R.S. Section 42-2064 if the Tax Collector's position was not substantially justified or was brought for the purpose of harassing the claimant, frustrating the credit or refund process or delaying the credit or refund. For the purposes of this Section, "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, not to exceed the amounts actually paid for expert witnesses, the cost of any study, analysis, report, test, project or computer program that is found to be necessary to prepare the claimant's case and necessary fees for attorneys or other representatives.
- (i) (Reserved)
- (j) Any refund paid under the provisions of this Section shall be paid from the Privilege Tax revenue accounts.

**Sec. 9-565. Payment of tax by the incorrect taxpayer or to the incorrect Arizona city or town.**

- (a) When it is determined that taxes have been reported and paid to the Town by the wrong taxpayer, any taxes erroneously paid shall be transferred by the Town to the Privilege Tax account of the person who actually owes and should have paid such taxes, provided that the Town receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax.
- (b) An assignment and waiver provided under this Section must:
  - (1) identify the name and Town privilege license number of the person who erroneously paid the tax and the person who should have paid the tax.
  - (2) provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid.
  - (3) authorize the Town Treasurer to transfer the erroneously paid tax to the privilege tax

account of the person who should have paid the tax.

- (c) When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town, provided that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. Where the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The Town shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax.
- (d) This Section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. Section 42-6003. The limitations and procedures set forth in A.R.S. Section 42- 6003 shall apply to all payments under this Section.
- (e) When reference is made in this Section to this Town or an Arizona city or town, and payments made to or requested from this Town or an Arizona city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of this Town or an Arizona city or town.

**Sec. 9-567. (Reserved)**

**Sec. 9-570. Administrative review; petition for hearing or for redetermination; finality of order.**

- (a) Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-1113.
- (b) Administrative review.
  - (1) Petitions of appeal shall be made to, and hearings shall be conducted by, the Arizona Department of Revenue, in accordance with the provisions of A.R.S. Section 42-1251, as modified by Section 9- 571.
  - (2) (Reserved)
  - (3) (Reserved)
  - (4) (Reserved)
  - (5) Hearings shall be held by the Arizona Department of Revenue in accordance with the provisions of A.R.S. Section 42-1251. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-1253.
  - (6) (Reserved)
  - (7) (Reserved)
  - (8) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) Taxpayers shall be subject to the State Taxpayer Bill of Rights (A.R.S. Section 42-2051 et. seq.).

**Sec. 9-571. Jeopardy assessments.**

- (a) If the Tax Collector believes that collection of any amounts imposed by this Chapter will be jeopardized by delay, he shall issue notice to the taxpayer in accordance with the provisions of A.R.S. Section 42-1111.
- (b) In cases where such jeopardy notice has been issued, the taxpayer must meet the provisions of A.R.S. Section 42-1111, concerning appeals of jeopardy assessments, before any request for administrative review shall be honored. Any bond or collateral that may be required shall meet the provisions of A.R.S. Section 42-1102.
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)

**Sec. 9-572. (Reserved)**

**Sec. 9-575. Judicial review.**

- (a) Appeal of a State Board of Tax Appeals decision to the courts is valid only if all the provisions of A.R.S. Section 42-1254 are met.
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) The Town has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:
  - (1) the taxpayer asserts a reasonable dispute regarding the issue.
  - (2) the taxpayer has fully cooperated with the Tax Collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the Tax Collector.
  - (3) the taxpayer has kept and maintained records as required by the Town.
- (f) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the Town or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the Town to recover any amounts

claimed to be due to it by virtue of the original assessment.

- (g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

**Sec. 9-577. (Reserved)**

**Sec. 9-578. (Reserved)**

**Sec. 9-580. Criminal penalties.**

- (a) It is unlawful for any person to knowingly or willfully:
  - (1) fail or refuse to make any return required by this Chapter.
  - (2) fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.
  - (3) make or cause to be made a false or fraudulent return.
  - (4) make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.
  - (5) fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.
  - (6) fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.
  - (7) advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.
  - (8) fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.
  - (9) reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure, an exemption from taxes imposed by this Chapter.
- (b) The violation of any provision of subsection (a) above shall constitute a Class One Misdemeanor.
- (c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

**Sec. 9-590. Civil actions.**

- (a) Liens
  - (1) Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the Town perfects a notice and claim of lien setting forth the

name of the taxpayer, the amount of the tax, penalty, and interest, the period or periods for which the same is due, and the date of accrual thereof, the amount of the recording costs by the County Recorder in any county in which the taxpayer owns real property and the documentation and lien processing fees imposed by the Town Council and further, stating that the Town claims a lien therefor.

- (2) The notice of claim of lien shall be signed by the Tax Collector under his official seal or the official seal of the Town, and, with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.
- (3) Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the Town, but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.
- (4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above and lien release fees imposed by the County Recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the Town.

- (b) Actions to recover tax. The Arizona Department of Revenue, or any agent or representative authorized by that Department, may bring action, in the name of the Town, to recover taxes as provided in A.R.S. Section 42-1114.

**Sec. 9-595. Collection of taxes when there is succession in and/or cessation of business.**

- (a) In addition to any remedy provided elsewhere in this Town Code that may apply, the Tax Collector may apply the provisions of subsections (b) through (d) below concerning the collection of taxes when there is succession in and/or cessation of business.

- (b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.
- (c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Sections 9-416 and 9-417.
  - (1) Any person who is a creditor or an affiliate of creditor, who acquires improved real property directly or indirectly from the creditor's debtor by any means set forth in this subsection, shall pay the tax based on the amount received by the creditor or its affiliate in a subsequent sale of such improved real property to a party unrelated to the creditor, regardless of when such subsequent sale takes place. Such tax shall be due in the month following the month in which the sale of the improved real property by the creditor or its affiliate occurs. Notwithstanding the foregoing, if the real property meets the definition of partially improved residential real property in Section 9-416(a)(4) and all of the requirements of Section 9-416(b)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale.
  - (2) In the event a creditor or its affiliate uses the acquired improved real property for any business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated, before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 9-416 and 9-417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the month in which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition.
  - (3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this subsection, neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate.
  - (4) If the tax liability imposed by either Sections 9-416 or 9-417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the tax collector by the debtor subsequent to payment of the tax by the creditor or its affiliate, the amount so paid may constitute a credit, as equitably determined by the Tax Collector in good faith, against the tax imposed on the creditor or its affiliate by either paragraph 1 or paragraph 2 of this subsection.
  - (5) Notwithstanding anything in this Chapter to the contrary, if a creditor or its affiliate is subject to tax as described in paragraph 1 or paragraph 2 of this subsection and such creditor or affiliate has not previously been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which the tax is due.
- (d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all Town tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.
  - (1) If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer

who has received a certificate from the Tax Collector.

- (2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

**Sec. 9-596. (Reserved)**

**Sec. 9-597. (Reserved)**



## **Article VI – Use Tax**

### **Sec. 9-600. Use Tax: definitions.**

For the purposes of this Article only, the following definitions shall apply, in addition to the definitions provided in Article I:

"Acquire (for storage or use)" means purchase, rent, lease, or license for storage or use.

"Retailer" also means any person selling, renting, licensing for use, or leasing tangible personal property under circumstances which would render such transactions subject to the taxes imposed in Article IV, if such transactions had occurred within this city.

"Storage (within the city)" means the keeping or retaining of tangible personal property at a place within the city for any purpose, except for those items acquired specifically and solely for the purpose of sale, rental, lease, or license for use in the regular course of business or for the purpose of subsequent use solely outside the city.

"Use (of tangible personal property)" means consumption or exercise of any other right or power over tangible personal property incident to the ownership thereof except the holding for the sale, rental, lease, or license for use of such property in the regular course of business.

### **Sec. 9-601. (Reserved)**

### **Sec. 9-602. (Reserved)**

### **Sec. 9-610. Use Tax: imposition of tax; presumption.**

- (a) There is hereby levied and imposed, subject to all other provisions of this Chapter, an excise tax on the storage or use in the city of tangible personal property, for the purpose of raising revenue to be used in defraying the necessary expenses of the city, such taxes to be collected by the Tax Collector.
- (b) The tax rate shall be at an amount equal to three percent (3%) of the:
  - (1) Cost of tangible personal property acquired from a retailer, upon every person storing or using such property in this city.
  - (2) Gross income from the business activity upon every person meeting the requirements of subsection 9-620(b) or (c) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the city for storage or use within the city, to the extent that tax has been collected upon such transaction.
  - (3) Cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.
  - (4) Cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.
  - (5) (Reserved)

- (c) It shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the city is acquired for storage or use in this city, until the contrary is established by the taxpayer.
- (d) Exclusions. For the purposes of this Article, the acquisition of the following shall not be deemed to be the purchase, rental, lease, or license of tangible personal property for storage or use within the city:
  - (1) stocks, bonds, options, or other similar materials.
  - (2) lottery tickets or shares sold pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
  - (3) platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
- (e) Notwithstanding the provisions of subsection (a) above, when the amount subject to the tax for any single item of tangible personal property exceeds ten thousand dollars (\$10,000), the three percent (3%) tax rate shall apply to the first ten thousand dollars (\$10,000). Above ten thousand dollars (\$10,000), the measure of tax shall be at a rate of two percent (2%).
- (f) (Reserved)

**Sec. 9-620. Use Tax: liability for tax.**

The following persons shall be deemed liable for the tax imposed by this Article; and such liability shall not be extinguished until the tax has been paid to this city, except that a receipt from a retailer separately charging the tax imposed by this Chapter is sufficient to relieve the person acquiring such property from further liability for the tax to which the receipt refers:

- (a) Any person who acquires tangible personal property from a retailer, whether or not such retailer is located in this city, when such person stores or uses said property within the city.
- (b) Any retailer not located within the city, selling, renting, leasing, or licensing tangible personal property for storage or use of such property within the city, may obtain a license from the tax collector and collect the use tax on such transactions. Such retailer shall be liable for the use tax to the extent such use tax is collected from his customers.
- (c) Every agent within the city of any retailer not maintaining an office or place of business in this city, when such person sells, rents, leases, or licenses tangible personal property for storage or use in this city shall, at the time of such transaction, collect and be liable for the tax imposed by this article upon the storage or use of the property so transferred, unless such retailer or agent is liable for an equivalent excise tax upon the transaction.
- (d) Any person who acquires tangible personal property from a retailer located in the city and such person claims to be exempt from the city privilege or use tax at the time of the transaction, and upon which no city privilege tax was charged or paid, when such claim is not sustainable.
- (e) Every person storing or using tangible personal property under the conditions of a warranty, maintenance, or service contract.

**Sec. 9-630. Use Tax: recordkeeping requirements.**

All deductions, exclusions, exemptions, and credits provided in this Article are conditional upon adequate proof of documentation as required by Article III or elsewhere in this Chapter.

**Sec. 9-640. Use Tax: credit for equivalent excise taxes paid another jurisdiction.**

In the event that an equivalent excise tax has been levied and paid upon tangible personal property which is acquired to be stored or used within this city, full credit for any and all such taxes so paid shall be allowed by the Tax Collector but only to the extent use tax is imposed upon that transaction by this Article.

**Sec. 9-650. Use Tax: exclusion when acquisition subject to use tax is taxed or taxable elsewhere in this chapter; limitation.**

The tax levied by this Article does not apply to the storage or use in this city of tangible personal property acquired in this city, the gross income from the sale, rental, lease, or license of which were included in the measure of the tax imposed by Article IV of this Chapter; provided, however, that any person who has acquired tangible personal property from a vendor in this city without paying the city privilege tax because of a representation to the vendor that the property was not subject to such tax, when such claim is not sustainable, may not claim the exclusion from such use tax provided by this Section.

**Sec. 9-660. Use Tax: exemptions.**

The storage or use in this city of the following tangible personal property is exempt from the Use Tax imposed by this Article:

- (a) Tangible personal property brought into the city by an individual who was not a resident of the city at the time the property was acquired for his own use, if the first actual use of such property was outside the city, unless such property is used in conducting a business in this city.
- (b) Tangible personal property, the value of which does not exceed the amount of one thousand dollars (\$1,000) per item, acquired by an individual outside the limits of the city for his personal use and enjoyment.
- (c) Charges for delivery, installation, or other customer services, as prescribed by Regulation.
- (d) Charges for repair services, as prescribed by Regulation.
- (e) Separately itemized charges for warranty, maintenance, and service contracts.
- (f) Prosthetics.
- (g) Income-producing capital equipment.
- (h) Rental equipment and rental supplies.
- (i) Mining and metallurgical supplies.

- (j) Motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes.
- (k) Tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid privilege license for engaging or continuing in the business of construction contracting, and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.
- (l) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) Tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) Rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 9-410, or by a radio station, television station, or subscription television system.
- (o) Food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 9-455, but not food consumed by owners, agents, or employees of such business.
- (p) Tangible personal property acquired by a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property is in fact used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (q) (Reserved)
- (r) (Reserved)
  - (1) (Reserved)
  - (2) (Reserved)
  - (3) (Reserved)
  - (4) (Reserved)
- (s) Groundwater measuring devices required by A.R.S. Section 45-604.
- (t) (Reserved)
- (u) Aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
- (w) (Reserved)
- (x) Food and drink provided by a person who is engaged in business that is classified under the restaurant classification without monetary charge to its employees for their own consumption on the premises

during such employees' hours of employment.

- (y) (Reserved)
- (z) Tangible personal property used or stored by this city.
- (aa) Tangible personal property used in remediation contracting as defined in Section 9-100 and Regulation 9-100.5.
- (bb) Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
  - (1) printed or photographic materials.
  - (2) electronic or digital media materials.
- (cc) Food, beverages, condiments and accessories used for serving food and beverages by a commercial airline, as defined in A.R.S. Section 42-5061(a)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (dd) Wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under section 9-470.
- (ee) (Reserved)
- (ff) Alternative fuel as defined in A.R.S. Section 1-215, by a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Sections 49-426 or 49-480.
- (gg) Food, beverages, condiments and accessories purchased by or for a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve (12) or under which may be attended in substitution for a public school pursuant to A.R.S. Section 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (hh) Personal hygiene items purchased by a person engaged in the business of and subject to tax under Section 9-444 of this Code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) The diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) Food, beverages, condiments and accessories purchased by or for a nonprofit charitable organization

that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, “accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

- (kk) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in a.r.s. section 1-215.
- (ll) The storage, use or consumption of tangible personal property in the city by a school district or charter school.
- (mm) Renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.
- (nn) Magazines or other periodicals or other publications by this State to encourage tourist travel.
- (oo) Paper machine clothing, such as forming fabrics and dryer felts, purchased by a paper manufacturer and directly used or consumed in paper manufacturing.
- (pp) Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.
- (qq) coal, petroleum, coke, natural gas, virgin fuel oil and electricity purchased by a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty (20), full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.
- (rr) machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This subsection applies for ten (10), full consecutive calendar or fiscal years after the start of initial construction.
- (ss) (Reserved)

## REGULATIONS - PRIVILEGE AND EXCISE TAXES

### Reg. 9-100.1. Brokers

- (a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 9-405, relating to advertising commissions.
- (b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:
  - (1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.
  - (2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.
- (c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.
- (d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.
- (e) (Reserved)
- (f) Location of Business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine "out-of-Town sales"; provided, however, that an auctioneer is deemed to be engaged in business at the site of each auction.

### Reg. 9-100.2. Delivery, installation, or other direct customer services.

- (a) "Delivery Charges" exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the Town, and when the taxpayer's books and records show the separate delivery charges.
  - (1) Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge.

- Only the separately stated charge for the delivery shall be deemed a "delivery charge".
- (2) Freight in. Charges for delivery from place of production or the manufacturer to the vendor either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery.
- (b) "Installation", as used in this definition, relates only to tangible personal property. Installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sunscreens on the windows of a boat; installing cabinets, carpeting, or "built-in appliances" to a camper or motorized recreational vehicle.
- (c) Repair of tangible personal property is not included in this definition. See Regulation 9-465.1.
- (d) "Direct Customer Services" means services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of subsection (e) below are referred to by the words "identify" or "identification."
- (1) A retailer sells a customer a \$100 "plug-in" appliance, with a \$25 delivery and installation charge. If the retailer identifies the \$25 delivery and installation charge, it is a charge for direct customer services.
- (2) A caterer charges his customer \$1,000 for the food and drink served, \$300 for setup and site cleanup, and \$500 for bartender and waiters. If all charges are properly identified, only the \$300 for set up and cleanup is a charge for direct customer services, and the \$1,500 for food and service is restaurant gross income.
- (3) Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges for labor as direct customer services.
- (4) All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.
- (5) An equipment rental company charging \$25 for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.
- (6) Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.
- (e) Recordkeeping requirements.
- (1) Any person who engages in transactions involving these services must:
- (A) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge; and
- (B) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified, to the satisfaction of the Tax Collector.
- (2) Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or similar expression does not satisfy the requirements of this subsection.



### **Reg. 9-100.3. Retailers.**

When in the opinion of the Tax Collector it is necessary for efficient administration of this Chapter, he may regard any salesman, representative, peddler, canvasser, or agent of any dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property for sale, rental, lease, or license as a retailer for the purposes of this Chapter, irrespective of whether he is making sales, rentals, leases, or licenses on his own behalf or on behalf of others. The Tax Collector may also regard such dealer, distributor, supervisor, or employer as a retailer for the purposes of this Chapter.

### **Reg. 9-100.4. Out-of-Town/Out-of-State Sales: Sales to Native Americans.**

Sales to Native Americans or tribal councils by vendors located within the Town shall be deemed sales within the Town, unless all of the following conditions exist:

- (1) the vendor has properly accounted for such sales, in a manner similar to the recordkeeping requirements for out-of-Town sales; and,
- (2) all of the following elements of the sale exist:
  - (A) solicitation and placement of the order occurs on the reservation; and
  - (B) delivery is made to the reservation; and
  - (C) payment originates from the reservation.

### **Reg. 9-100.5. Remediation Contracting.**

The following activities are considered remediation contracting and are exempt:

- (1) excavation, transportation, treatment, and/or disposal of contaminated soil for purposes of site remediation (rather than characterization);
- (2) installation of groundwater extraction and/or injection wells for purposes of groundwater remediation;
- (3) installation of pumps and piping into groundwater extraction wells for remediation purposes;
- (4) installation of vapor extraction wells for the purpose of soil or groundwater remediation;
- (5) construction of remediation systems, such as groundwater treatment plants, vapor extraction systems, or air injection systems;
- (6) connection of remediation systems to utilities;
- (7) abandonment of groundwater or vapor extraction wells;
- (8) removal/demolition of remediation systems;
- (9) capping/closure construction activities; and
- (10) service or handling charges for subcontracted remediation contracting activities.

### **Reg. 9-115.1. Computer hardware, software, and data services.**

#### **(a) Definitions.**

- (1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical

reader and/or digitizer, network.

- (2) "Computer Software" (also called "computer program") is tangible personal property, and includes:
    - (A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
    - (B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.
  - (3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, disk pack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.
  - (4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.
  - (5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.
- (b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:
- (1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.
  - (2) Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:
    - (A) the entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.
    - (B) the entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.
    - (C) license fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.
    - (D) the entire amount charged for transfer of a prewritten ("canned") program by

remote telecommunications from the transferor's place of business to or through the customer's computer.

- (E) any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:
  - (i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
  - (ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
  - (iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.
- (c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:
  - (1) statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.
  - (2) additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.
- (d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.
- (e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 9-100.2(e):
  - (1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.
    - (A) Custom computer programming is deemed a professional service regardless of the form in which the programming is transferred.
    - (B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.
    - (C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental,

- lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.
- (2) Training services related to computer hardware or software provided further that:
    - (A) the provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.
    - (B) training deemed a direct customer service does not include:
      - (i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.
      - (ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.
  - (3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).
  - (4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.
- (f) The purchase, rental, lease, or license for use of computer hardware, storage media, or computer software which is not deemed custom programming is deemed the use or storage of tangible personal property for the purpose of this Chapter, and the amount which may be subject to use tax shall be determined in the same manner as the determination of the gross income from the sale, rental, lease, or license for use of such.

**Reg. 9-200.1. When deposits are includable in gross income.**

- (a) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee.
- (b) Nonrefundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt.

**Reg. 9-250.1. Excess tax collected.**

If a taxpayer collects taxes in excess of the combined tax rate from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. Tax paid on an activity that is not subject to tax or that qualifies for an exemption, deduction, exclusion or credit is not excess tax collected.

**Reg. 9-270.1. Proprietary activities of municipalities are not considered activities of a governmental entity.**

The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 9-270:

- (a) Rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.
- (b) Producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.
- (c) Sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.
- (d) Providing wastewater removal services to consumers or ratepayers by means of sewer lines or similar pipelines.

**Reg. 9-270.2. Proprietary clubs.**

- (a) Equity requirements. In order to qualify for exclusion under Section 9-270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member- owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one or more of its employees and it is not engaged in any business activity connected with the operation of the club.
- (b) Gross revenue requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of subsection 9-270(c)(1),
  - (1) the following shall be excluded:
    - (A) membership dues.
    - (B) membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.
    - (C) assessments.
    - (D) special fund-raising events, raffles, etc.
    - (E) donations, gifts, or bequests.
    - (F) gate receipts, admissions, and program advertising for not more than one tournament in any calendar year.
  - (2) the following must be included:
    - (A) green fees, court use fees, and similar charges for the actual use of a facility or part thereof.
    - (B) pro shop sales if the shop is owned by the club.
    - (C) golf cart rental if the carts are owned by the club.
    - (D) rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.
    - (E) all receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and similar receipts.
    - (F) locker and locker room fees and attendant charges if paid to the club.

- (G) tournament entry fees other than entry fees for the one annual tournament exempt under subsection (b)(1)(F) above.

#### **Reg. 9-405.1. Local advertising examples.**

For the purposes of illustration only, and not by way of limitation, the following are provided as examples of local advertising subject to the tax:

- (1) retail sales and rental establishments doing business within the State when only one commonly designated business entity is identified by name in the advertisement.
- (2) financial institutions doing business within the State whether part of a national chain or local business only.
- (3) sales of real estate located within the State.
- (4) health care facilities located within the State.
- (5) hotels, motels, and apartments, whether a national chain or local so long as the advertisement identifies any location within the State.
- (6) brokers doing business within the State whether stockbrokers, real estate brokers, insurance brokers, etc.
- (7) nonprofit organizations, which even though tax exempt, have an office, whether national, local, or branch, within the State.
- (8) political activity, except United States Presidential and Vice-Presidential candidates.
- (9) restaurants or food service establishments which have one or more branches, outlets, or franchises within the State even though the local franchisee or licensee may not be responsible for the placement of the advertisement.
- (10) services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shops, counseling services, utilities, contractors, auction houses, etc.
- (11) coupons redeemable only at a single commonly designated business entity within the State.
- (12) theater, sports, and other entertainment events held at locations within the State.

#### **Reg. 9-405.2. Advertising activity within the Town.**

- (a) In General. Except as provided elsewhere in this regulation, a person engaged in advertising activity shall be considered to be doing business entirely within the Town if all or a major portion of the dissemination facilities such as broadcasting studios, printing plants, or distribution centers are located within the Town limits. Remote studios patched to an in-Town studio and subject to engineering modulation or control at the in-Town studio are considered studios doing business in the Town.
- (b) Billboards and other outdoor advertising companies shall be considered to be doing business within the Town to the extent they have billboards or similar displays within the Town.
- (c) Publishers and distributors of newspaper and other periodicals shall be subject to the tax upon advertising imposed by Section 9-405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 9-435.

**Reg. 9-407.1. (Reserved)**

**Reg. 9-415.1. Distinction between the categories of construction contracting.**

For the purposes of this Chapter, transactions involving improvements to, or sales of, real property are designated into one of the following categories, and these categorizations shall apply, whether or not a person designates himself as a contractor, construction manager, developer, or otherwise:

- (a) A person performing improvements to real property is one of the following:
  - (1) an "Owner-Builder" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-builder" may also be a "speculative builder".
  - (2) a "Construction Contractor" when performing work for the owner or lessor or lessee-in-possession of the real property, unless that person has provided a written declaration stating that:
    - (A) the owner-builder is improving the property for sale; and
    - (B) the owner-builder is liable for the tax for such construction contracting activity; and
    - (C) the owner-builder has provided the contractor his Town Privilege License number.
  - (3) a "Subcontractor" as provided in Section 9-415 (c).
- (b) An owner or lessor ("owner-builder") of improved real property is one of the following:
  - (1) a "Speculative Builder" as provided in Section 9-100; or
  - (2) an "owner builder who is not a speculative builder" in all other cases.
- (c) The terms "owner", "lessor", and "lessee-in-possession" shall be deemed to include any authorized agent for such person.

**Reg. 9-415.2. Distinction between construction contracting and certain related activities.**

- (a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:
  - (1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
  - (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
  - (3) Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with the equipment rented.
- (b) Distinction between construction contracting, retail, and certain direct customer service activities.
  - (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.

- (2) Items attached or installed on tangible personal property are retail sales.
  - (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).
  - (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (d) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
- (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
  - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
  - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
  - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

**Reg. 9-415.3. Construction contracting; tax rate effective date.**

- (a) In the event of a tax rate change, the rate imposed on gross income from construction contracting shall be computed based upon the rate in effect when the contract was executed, subject to the "enactment date" as defined in this Section. Gross income from a contract executed prior to the enactment date shall not be subject to the tax rate change, provided the contract contains no provision that entitles the construction contractor to recover the amount of the tax.
- (b) In the event of a rate increase, in order to qualify for the lower rate, the construction contractor shall, upon request, provide sufficient documentation, in a manner and form prescribed by the Tax Collector, to verify that a contract was entered into before the enactment date.
- (c) For purposes of this Section, "enactment date" shall be:
  - (1) in the event an election is held, the date of election.
  - (2) in the event no election is held, the date of final adoption by the Mayor and Council.
  - (3) notwithstanding the above, nothing in this Section shall be construed to prevent the Town from establishing a later enactment date.

**Reg. 9-416.1. Speculative builders: homeowner's bona fide non-business sale of a family residence.**

- (a) A sale of a custom home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:



- (1) the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and
  - (2) the seller has not sold more than two (2) such residences (or, if the residence is a vacation residence, two (2) such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and
  - (3) the seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale.
- (b) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner's bona fide non-business purpose and all construction contractors shall be required to report and pay the tax imposed on all such improvements.
- (c) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.
- (d) "Owner" and "Homeowner" as used in this Regulation shall only mean an individual, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings, for the estate of a deceased or incompetent person or a minor, may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.

**Reg. 9-416.2. Reconstruction contracting.**

- (a) "Reconstruction (of Real Property)" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:
- (1) a structure existed on said real property prior to the reconstruction activity; and
  - (2) the "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and
  - (3) the total cost of all construction contracting activities performed on said real property in the twenty- four (24) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and
  - (4) the structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.
- (b) Except as provided in subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial

level shall apply. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s).

- (c) "Alternative Prior Value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, at a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. Only long-term lending, not interim or construction financing, will be considered. This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below.
- (d) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty) whichever is earlier, to a purchaser or grantee of any single residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens or security interests) of a share, or a sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases a person shall include a husband and wife as a community, or any co-occupants of a single unit as joint tenants.

**Reg. 9-425.1. Distinction between job printing and certain related activities.**

- (a) Computerized Printing. Computerized versions of all items which would be taxable under Section 9-425 if performed without computerized assistance are considered taxable under that Section, and therefore, are not exempt services.
- (b) Book publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.
- (c) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

**Reg. 9-435.1. Distinction between publishing of periodicals and certain related activities.**

- (a) Book publishing shall not be considered publication of newspapers, magazines, or other periodicals for purposes of this Chapter. Sales of books shall be deemed retail sales. The printing of books shall be deemed job printing.

- (b) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

**Reg. 9-435.2. Advertising income of publishers and distributors of newspapers and other periodicals.**

Publishers and distributors of newspapers and other periodicals shall be subject to the tax upon advertising imposed by Section 9-405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 9- 435.

**Reg. 9-445.1. (Reserved)**

**Reg. 9-445.3. Rental, leasing, and licensing of real property as lodging: room and board; furnished lodging.**

- (a) Room and board.
- (1) Rooming houses, lodges, or other establishments providing both lodging and meals, shall maintain a record of the separate charges made for the lodging and the meals.
  - (2) The charge for lodging shall be subject to the tax imposed by Sections 9-444 or 9-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 9-455.
- (b) Furnished lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging, and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property, unless:
- (1) Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished; and
  - (2) The lessor separately charges tenants for lodging and for furnishings; and
  - (3) The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.
- If all of the above conditions are met, such person shall report both sources of income separately to the Town.

**Reg. 9-450.1. Distinction between rental, leasing, and licensing for use of tangible personal property and certain related activities.**

- (a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:
- (1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
  - (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
  - (3) Rental of pumps or cranes is rental of tangible personal property, regardless of whether

or not an operator is included with the equipment rented.

- (b) Distinction between equipment rental, leasing, or licensing for use and transporting for hire. The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is considered rental, leasing, or licensing of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

**Reg. 9-450.2. Rental, leasing, and licensing for use of tangible personal property: membership fees; other charges.**

- (a) Membership, admission, or other fees charged by any rental club or limited access lessor are considered part of taxable gross income.
- (b) Gross income from rental, leasing, or licensing for use of tangible personal property must include all charges by the lessor to the lessee for repair, maintenance, or other service upon the tangible personal property rented, leased, or licensed.
- (c) Sale of a warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is exempt.

**Reg. 9-450.3. Rental, leasing, and licensing for use of equipment with operator.**

In cases where the tangible personal property is rented, leased, or licensed with an operator provided by the lessor, the charge for the operator shall not be includable in the gross income from the rental, lease, or license of such tangible personal property if the charge for the operator and the charge for the use of the equipment are separately itemized to the lessee and separately maintained on the books and records of the lessor.

**Reg. 9-450.4. Rental, leasing, and licensing for use of tangible personal property: semi-permanently or permanently installed tangible personal property.**

- (a) The term "semi-permanently or permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.
- (b) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.
- (c) Examples of "semi-permanently or permanently installed tangible personal property" include, but are not limited to: computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.
- (d) The term does not include mobile transportation equipment or tangible personal property

designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.

- (1) For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.
  - (2) Other similar examples include, but are not limited to: camping equipment, contracting equipment, chain saw, forklift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, tow bars, sump pumps, arc welders.
- (e) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi- permanently installed" in said city or town, except when the item is mobile transportation equipment or one of the other types of portable equipment or property described in subsection (d) above.

**Reg. 9-450.5. Rental, leasing, and licensing for use of tangible personal property: delivery, installation, repair, and maintenance charges.**

- (a) Delivery and installation charges in connection with the rental, leasing, and licensing of tangible personal property are exempt from the tax imposed by Section 9-450; provided that the provisions of Regulation 9-100.2 have been met.
- (b) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be exempt.
- (c) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property are exempt from the tax imposed by Section 9-450; however, such income is subject to the provisions of Sections 9-460 and 9-465, and the provisions of Regulation 9-465.1.

**Reg. 9-455.1. Gratuities related to restaurant activity.**

Gratuities charged by or collected by persons subject to the tax imposed by Section 9-455 may be excluded from gross income if:

- (1) such charge is separately stated upon the bill, invoice, etc. provided the customer, and such amounts are maintained separately in the books and records of the taxpayer; and
- (2) such gratuities are distributed in total to employees of the taxpayer in addition to customary and regular wages.

**Reg. 9-460.1. Distinction between retail sales and certain other transfers of tangible personal property.**

- (a) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 9-460:
  - (1) tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 9-415 through 9-418.
  - (2) (Reserved)
  - (3) job printing, per Section 9-425.
  - (4) mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 9-430.
  - (5) publication of newspapers, magazines, and other periodicals, per Section 9-435.
  - (6) rental, leasing, and licensing of real or tangible personal property, per Sections 9-445 or 9-450.
  - (7) restaurants and bars, per Section 9-455.
  - (8) food for home consumption, per Section 9-462.
  - (9) telecommunications services, per Section 9-470.
  - (10) utility services, per Section 9-480.
  - (11) wastewater removal services, per Section 9-485.
- (b) Distinction between construction contracting, retail, and certain direct customer service activities.
  - (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
  - (2) Items attached or installed on tangible personal property are retail sales.
  - (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).
  - (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.
- (d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
  - (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
  - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
  - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
  - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

**Reg. 9-460.2. Retail sales: trading stamp company transactions.**

A trading stamp transaction is defined as follows: the trading stamp company issues stamps to a vendor; the vendor then provides them to its customers; and the customer then exchanges the stamps for merchandise from the trading stamp company.

The exchange transaction for the merchandise shall be deemed a retail sale and the trading stamp company a retailer. All taxes imposed by this Chapter applicable to retail transactions are therefore applicable to such exchange transactions.

The rate of tax shall be the retail rate based upon the retail dollar value of the redeemed merchandise as expressed in the redemption dollar value per book of stamps or portion thereof. The tax imposition described herein is in lieu of any Privilege or Use Tax upon the business of issuing stamps, redeeming the same, or using or storing property redeemed.

#### **Reg. 9-460.3. Retail sales: membership fees of retailers.**

Membership, admission, or other fees charged by limited access retailers are considered part of taxable gross income of the business activity of selling tangible personal property.

#### **Reg. 9-460.4. Retail sales: professional services.**

- (a) "Professional Services" refer to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, workpapers, reports, etc. are not in a form which would be subject to retail sales to customers. However, transfer of items in a form which would be subject to retail sales (e.g., artwork, forms, manuals, etc.) would not be considered professional services. The issue is one of fact which must be resolved in each situation.
- (b) Creative ("idea") labor and design labor that do not result in tangible personal property that will be or can be sold are deemed professional services and, if charged separately and maintained separately in the taxpayer's books and records, are not includable in gross income.
- (c) "Professional services" shall be deemed to include those items of tangible personal property which are incidental to the services rendered, provided such tangible personal property is "inconsequential".
  - (1) Incidental transfers of tangible personal property shall be regarded as "inconsequential" if,
    - (A) the purchase price of the tangible personal property to the person rendering the professional services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the purchaser in connection with the transaction, and
    - (B) the tangible personal property transferred is not itself in a form which is subject to retail sale.
  - (2) In cases where the tangible personal property transferred is deemed inconsequential, the provider of the tangible personal property so transferred is deemed the ultimate consumer of such tangible personal property, and subject to all applicable taxes imposed by this Chapter upon such transfer.

(d) Examples:

- (1) The transfer of paper embodying the result or work product of the services rendered by an attorney or certified public accountant is regarded as inconsequential to the charges for professional services.
- (2) An appraisal report issued by an appraiser, reflecting such appraiser's efforts to appraise real estate, is regarded inconsequential.
- (3) Use of a hair care product on a client's hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client's use thereafter and without the professional's assistance, the transfer of the bottle of hair care product is deemed not inconsequential.
- (4) If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

**Reg. 9-460.5. Retail sales: monetized bullion; numismatic value of coins.**

- (a) "Monetized Bullion" means coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.
- (b) Any coin shall be considered to have been transferred or acquired primarily for its "Numismatic value" if the sale or acquisition price:
  - (1) is equal to or greater than twice (2 times) the value of the metallic content of the coin as of the date of transfer or acquisition; and
  - (2) is equal to or greater than twice (2 times) its face value, in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

**Reg. 9-460.6. Retail sales: consignment sales.**

Sales of merchandise acquired on consignment are taxable as retail sales. In cases where the merchant is acting as an agent on behalf of another dealer, sales of the consigned merchandise are taxable to the principal, provided the merchant makes full disclosure to customers that he is acting only as an agent for the named principal. However, when the principal is not deemed to be a dealer, such sales are considered to be those of the merchant and are taxable to him.

**Reg. 9-465.1. Retail sales: repair services.**

- (a) Fair market value of parts and labor charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part, which ordinarily sells to the customer at \$10, at \$5 and including the difference as "service" or "labor". In the absence of satisfactory evidence supplied by the taxpayer as to industry or business practice, the



Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit, to estimate the gross income subject to tax.

- (b) (Reserved)
- (1) (Reserved)
- (2) (Reserved)

**Reg. 9-465.2. Retail sales: warranty, maintenance, and similar service contracts.**

- (a) Gross income from sales of warranty, maintenance, and service contracts is exempt from the tax imposed by Section 9-460.
- (b) Transfers of tangible personal property in connection with a service, warranty, guaranty, or maintenance agreement between a vendor and a vendee shall be subject to tax under Section 9-460 only to the extent of gross income received from separately itemized charges made for the items of property transferred.
- (c) The gross income derived from a maintenance insurance agreement, which agreement is entered into between the purchaser and any person other than the seller is not subject to tax imposed by Section 9-460. If the provider of the maintenance insurance agreement pays for tangible personal property on behalf of the insured in the performance of the agreement, such sales are subject to all applicable taxes imposed by this Chapter.
- (d) Charges for tangible personal property provided under the terms of a warranty, maintenance, or service contract exempted under Section 9-465 are subject to tax as retail sales.
- (e) However, gross income received by a dealer from a manufacturer for work performed under a manufacturer's warranty is not taxable under Section 9-460.

**Reg. 9-465.3. Retail sales: sale of containers, paper products, and labels.**

- (a) The sale of a container or similar packaging material which contains personal property, and which is transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such nontaxable containers include but are not limited to:
  - (1) packaging materials sold to a manufacturer of video equipment for containment of the product during shipment.
  - (2) cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or contained meat.
  - (3) bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where such bags or containers are used to contain and measure the amount purchased by the customer.
  - (4) shopping bags and similar merchandising bags sold to grocery stores, department stores or other retailers.
  - (5) gift wrappings and gift boxes sold to department stores or other retailers.

- (b) Sales of non-returnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks and other similar food accessories to a restaurant or others taxable under Section 9-455 for transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink or condiment are sales for resale and not taxable.
- (c) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a sale.
- (d) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made.
- (e) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it, and is not exempt as a sale for resale.

**Reg. 9-465.4. Retail sales: aircraft acquired for use outside the State.**

"Aircraft acquired for use outside the State" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

- (a) Any foreign government for use by such government outside of this State.
- (b) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subsection also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.

**Reg. 9-470.1. Telecommunication services.**

- (a) Gross income from the business activity of providing telecommunication services to consumers within this Town shall not include:
  - (1) charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 9-415, 9-416, or 9-417 (construction contracting); 9-445 (real property rental); 9-450 (tangible personal property rental); or 9-460 (retail sales); depending upon the nature of the work performed.
  - (2) separately billed advertising charges which are subject to the provisions of Section 9-405 or 9-435.
- (b) Mobile equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones, portable hand-held two-way radios, paging devices, etc.), the provider shall, for the

purposes of the tax imposed by this Section, determine whether such provider's customers are "within this Town" as follows:

- (1) by the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.
- (2) in all other cases, the business location of the telecommunications provider.

**Reg. 9-475.1. Distinction between transporting for hire and certain related activities.**

The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is deemed rental, leasing, or licensing for use of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

**Reg. 9-520.1. (Reserved)**

**Reg. 9-520.2. Change of method of reporting.**

- (a) Any taxpayer electing to change his reporting method shall be permitted to do so only upon filing a written request to the Tax Collector and after receiving written approval of the Tax Collector. The approval shall state the effective date of the change.
- (b) The Tax Collector may postpone such approval to allow for examination of the records of the taxpayer and may further require that all tax liability be satisfied up to the effective date of the change.
- (c) Failure of the taxpayer to notify the Tax Collector and await approval before changing the method of reporting will subject the taxpayer to interest and penalties if his original method of reporting would produce higher taxes due the Town. When a person makes such change without the consent of the Tax Collector, the Tax Collector may audit his books and records to verify the tax liability as of the date of the change.
- (d) Any taxpayer who has failed to indicate a choice of reporting method upon the application for a Privilege License shall be deemed to have chosen the accrual method of reporting.

**Reg. 9-555.1. (Reserved)**

**Reg. 9-571.1. Collection of tax in jeopardy.**

Evidence that collection of tax due is in jeopardy shall include documentation that:

- (a) The taxpayer is going out of business.
- (b) The taxpayer has no Town Privilege License or has no permanent business location in the State.

- (c) The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the Town on three (3) or more occasions within the previous thirty-six (36) calendar months.
- (d) The taxpayer has remitted payment by check, which has been dishonored.
- (e) The taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 9-555.1.