

RESOLUTION NO. 2013-33

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF,
ARIZONA, DECLARING THAT CERTAIN DOCUMENT KNOWN AS "THE 2013
CITY TAX CODE AMENDMENTS" AS A PUBLIC RECORD, AND PROVIDING
FOR AN EFFECTIVE DATE**

RECITALS:

WHEREAS, pursuant to A.R.S. § 9-802, a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1.

That certain document known as "The 2013 City Tax Code Amendments" attached hereto as Exhibit A is hereby declared to be a public record, and three (3) copies shall remain on file with the City Clerk.

SECTION 2.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT 'A'
2013 CITY TAX CODE AMENDMENTS

The Flagstaff City Code, Title 3, Business Regulations, Chapter 3-05, *Privilege and Excise Taxes*, is hereby amended by amending those divisions and sections as of the effective dates as set forth below (deletions shown as stricken, additions shown as capitalized text, existing omitted text shown as "****"):

Section 1: The following changes shall be effective from and after September 1, 2004:

DIVISION 3-05-004
PRIVILEGE TAXES

* * *

SECTION 3-05-004-0450 RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY:

- (a) The tax rate shall be at an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) 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 City 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 3-05-004-0410, 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) the gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.
- (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 and licensing for use of 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 city, 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.

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Section 2: The following changes shall be effective from and after September 21, 2006:

**DIVISION 3-05-004
PRIVILEGE TAXES**

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SECTION 3-05-004-0425 JOB PRINTING:

- (a) The tax rate shall be at an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) 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) job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by subsection 3-05-004-0435(a) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.
 - (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.

* * *

Section 3: The following changes shall be effective from and after January 1, 2007:**DIVISION 3-05-001
GENERAL CONDITIONS AND DEFINITIONS****SECTION 3-05-001-0100 WORDS OF TENSE, NUMBER AND GENDER; CODE REFERENCES; AND GENERAL DEFINITIONS:**

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

* * *

"Business" ~~means~~ INCLUDES all activities or acts, personal or corporate, engaged in ~~and~~ 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.

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**DIVISION 3-05-004
PRIVILEGE TAXES**

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SECTION 3-05-004-0480 UTILITY SERVICES:

- (a) The tax rate shall be at an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) 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 City.
 - (2) consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.
- (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 3-05-004-0460 and 3-05-0400-0465, 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. § 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. § 49-426 or § 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.

Section 4: The following changes shall be effective from and after October 1, 2007:**DIVISION 3-05-001
GENERAL CONDITIONS AND DEFINITIONS****SECTION 3-05-001-0100 WORDS OF TENSE, NUMBER AND GENDER; CODE REFERENCES; AND GENERAL DEFINITIONS:**

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

* * *

"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.
- ~~(7)~~(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. (Ord. No. 2011-21, Amended, 10/04/2011).

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**DIVISION 3-05-004
PRIVILEGE TAXES**

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SECTION 3-05-004-0460 RETAIL SALES; MEASURE OF TAX, BURDEN OF PROOF, EXCLUSIONS:

- (a) The tax rate shall be at an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) 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) Reserved.
- (e) When this City 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 City 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.

* * *

Section 5: The following changes to Section 3-05-004-0465 as shown in (mm) shall be effective from and after January 1, 2007; the changes as shown in (q), (x), (gg), (nn), (oo), (pp), (qq) and (rr) shall be effective from and after July 1, 2013:

**DIVISION 3-05-004
PRIVILEGE TAXES**

* * *

SECTION 3-05-004-0465 RETAIL SALES; EXEMPTIONS:

Income derived from the following sources is exempt from the tax imposed by Section 3-05-004-0460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-City 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) sales made directly to the Federal government to the extent of:
 - (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
 - (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.
- (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 3-05-004-0455 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) ~~sales of food for home consumption.~~ (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) ~~(Reserved)~~ 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 3-05-100-0100 and Regulation 3-05-100.5.
- (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. § 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 3-05-004-0470, 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 3-05-004-0470 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. § 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. § 49-426 or § 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 OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 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 3-05-004-0444 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 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. § 1-215.

- (II) 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 city, as applicable, for examination. (Ord. 2009-16, Amended, June 16, 2009)
- (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 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 FULL CONSECUTIVE CALENDAR OR FISCAL YEARS AFTER THE START OF INITIAL CONSTRUCTION.

* * *

Section 6: The following changes shall be effective from and after July 1, 2013:

**DIVISION 3-05-001
GENERAL CONDITIONS AND DEFINITIONS**

* * *

~~SECTION 3-05-001-0120 — DEFINITIONS; FOOD FOR HOME CONSUMPTION:~~

~~A. 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 theaters, 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 (a)(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.~~
- ~~B. "Food for home consumption" means all food, except food for consumption on the premises, if sold by any of the following:~~
- ~~1. An eligible grocery business.~~
 - ~~2. 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.~~
 - ~~3. A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.~~
 - ~~4. 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.~~
 - ~~5. (Reserved)~~
 - ~~6. Vending machines and other types of automatic retailers.~~
 - ~~7. 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.~~

* * *

**DIVISION 3-05-002
DETERMINATION OF GROSS INCOME**

SECTION 3-05-002-0200 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.

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**DIVISION 3-05-004
PRIVILEGE TAXES**

* * *

SECTION 3-05-004-0445 RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY

- (a) The tax rate shall be at an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) 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 City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City 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 3-05-0040-470.
- (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) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real 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.
 - (f) (Reserved)
 - (g) (Reserved)
 - (h) The tax prescribed by this Section shall not include gross income from the rental, leasing, or licensing of lodging or lodging space to an individual who resides therein.
 - (i) (Reserved)
 - (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 3-05-004-0444 of this code.
 - (k) (Reserved)
 - (l) (Reserved)
 - (m) (Reserved)

- (n) Notwithstanding the provisions of Section 3-05-002-0200(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 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 any 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) Reserved
- (s) ~~the gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation for the purpose of this paragraph:~~
 - (1) ~~"affiliated corporation" means a corporation that meets one of the following conditions:~~
 - (a) ~~the corporation owns or controls at least eighty per cent of the lessor.~~
 - (b) ~~the corporation is at least eighty per cent owned or controlled by the lessor.~~
 - (c) ~~the corporation is at least eighty per cent owned or controlled by a corporation that also owns or controls at least eighty per cent of the lessor.~~
 - (d) ~~the corporation is at least eighty per cent owned or controlled by a corporation that is at least eighty per cent owned or controlled by a reciprocal insurer.~~
 - (2) ~~for the purposes of subsection (1), ownership and control are determined by reference to the voting shares of a corporation.~~
 - (3) ~~"reciprocal insurer" has the same meaning as prescribed in A.R.S. Section 20-762.~~

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 PER CENT 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.

* * *

SECTION 3-05-004-0462 RETAIL SALES: FOOD FOR HOME CONSUMPTION.

- (a) THE TAX RATE SHALL BE AT 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 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 (A)(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-CITY 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 OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 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 3-05-005-0520, 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 3-05-003-0370 AND 3-05-005-0545(B).

* * *

SECTION 3-05-004-0485 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 CITY.
 - (2) CONSUMERS OR RATEPAYERS OF THIS CITY, WHETHER WITHIN THE CITY OR WITHOUT, TO THE EXTENT THAT THIS CITY 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 CITY 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.

* * *

**DIVISION 3-05-007
REGULATIONS-PRIVILEGE AND EXCISE TAXES**

SECTION 3-05-007-001 REGULATIONS-PRIVILEGE AND EXCISE TAXES

* * *

~~Reg. 3-5-120.1. FOOD FOR HOME CONSUMPTION: RECORDKEEPING AND REPORTING REQUIREMENTS:~~

- ~~(a) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 3-05-005-0520, 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.~~
- ~~(b) 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 3-05-003-0370 and 3-05-005-0545 (b)~~

* * *

Reg. 3-5-270.1. 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 3-05-002-0270:

- (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. 3-5-360.2. PROOF OF EXEMPTION: EXEMPTION CERTIFICATE:

For the purpose of proof of exemption, in transactions other than those in which the proof is set by standard documentation as detailed in Regulations 3-5-350.1 and 3-5-360.1, the minimum acceptable proof and documentation for each transaction shall be the completion, at the time of the transaction, in all material respects, of a certificate containing all the information set forth below (see Sales Tax Section for form). For the purpose of validating the vendor's claim of exemption, such certificate is sufficient if executed by any person with apparent authority to act for the customer, and the information provided validates the claim.

INVALID UNLESS COMPLETED IN FULL

VENDOR'S NAME _____ Sales Invoice No. _____

Customer's Exemption Claim

City of Flagstaff Privilege License (Sales) Tax

Customer's Business Name: _____

Customer's Business Address: _____

Specific Business Activity: _____
(e.g., if retailer, lessor, or
manufacturer, specify items
leased, sold or made, i.e.,
cars, computers, clothes, etc.) _____

Customer's License Nos. _____ City: _____ State: _____

ITEMS CLAIMED AS EXEMPT FROM TAX

_____ : All Items on This Invoice or Purchase Order.
or
_____ : Only Those Items marked with An "E".

REASON FOR CLAIMED EXEMPTION:

_____ : The items claimed as exempt are sold, rented, leased, or licensed by the
above named customer in the normal course of its business activity.
or
_____ : The items claimed as exempt are exempt from the City of Flagstaff
Privilege Tax for the following specific reason(s):

CUSTOMER'S CERTIFICATE

I certify that the above information is accurate to the best of my information and belief, and that I
am authorized by the Customer above to acquire the items claimed as exempt on a tax-free basis
on its behalf. I further understand that the making of a false or fraudulent claim to obtain a tax
exemption is a ~~Petty Offense~~ CLASS ONE MISDEMEANOR under City Code Section 3-05-005-0580.

Name

Date

Title

* * *

Reg. 3-5-460.1. 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 3-05-004-0460:
- (1) Tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 3-05-004-0415 through 3-05-004-0418.
 - (2) Sales of feed at wholesale, per Section 3-05-004-0420.
 - (3) Job printing, per Section 3-05-004-0425.
 - (4) Mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 3-05-004-0430.
 - (5) Publication of newspapers, magazines, and other periodicals, per Section 3-05-004-0435.
 - (6) Rental, leasing, and licensing of real or tangible personal property, per Sections 3-05-004-0445 or 3-05-004-0450.
 - (7) Restaurants and bars, per Section 3-05-004-0455.
 - (8) FOOD FOR HOME CONSUMPTION, PER SECTION 3-05-004-0462.
 - (9) Telecommunications services, per Section 3-05-004-0470.
 - (10) Utility services, per Section 3-05-004-0480.
 - (11) WASTEWATER REMOVAL SERVICES, PER SECTION 3-05-004-0485.
- (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.

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Section 7: The following changes shall be effective from and after thirty (30) days after adoption of Ordinance No. 2013-26:

**DIVISION 3-05-005
ADMINISTRATION**

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SECTION 3-05-005-0580 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. ~~Reserved.~~ 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.

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