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42-5061. Retail classification; definitions BUS CODE 017

(L16, Ch. 181, sec. 1, Ch. 361, sec. 5, Ch. 368, sec. 1 & Ch. 369, sec. 2)
(L16, Ch. 367, sec. 2. Eff. 7/1/17)

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

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

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

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

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

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

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

7. The sale of stocks and bonds.

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

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

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

590 11. Prescription eyeglasses or contact lenses.

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

526 13. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29, 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.

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

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

513 16. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

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

568 18. Food and drink to a person that is engaged in a 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 the employees' hours of employment.

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

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

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

(a) "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:

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

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

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

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

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

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

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

25. Tangible personal property sold to:

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

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

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

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

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

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

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

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

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

27. Tangible personal property sold to:

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

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

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

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

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

28. The sale of a motor vehicle to:

580 (a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the

nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01.

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

575 29. 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 in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

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

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

763 32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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

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

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

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

511 37. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for 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.

510 38. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the

product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

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

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

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

514 40. 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.

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

42. Sales of:

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

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

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

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

534 (Tangible Personal Property) 566 (FOOD) 45. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, that are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

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

519 47. Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
(a) Printed or photographic materials, beginning August 7, 1985.
(b) Electronic or digital media materials, beginning July 17, 1994.

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

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

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

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

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

596 53. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:
(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.
(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

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

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

604 56. 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.

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

582 58. 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.

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

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

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

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

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

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

522 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.

523 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.

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

524 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.

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

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

EFFECTIVE *UNTIL* 7-1-2017:

508 **7.** Aircraft, navigational and communication instruments and other accessories and related equipment **[See subsection (V)(2) below]** sold to:
(a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.
(b) Any foreign government.
(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.

EFFECTIVE 7-1-2017:

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:
(a) A person:
(i) Holding, or exempted by federal law from obtaining, a federal certificate of public convenience and necessity for use as, in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.
(ii) That is certificated or licensed under federal aviation regulations (14 Code of Federal Regulations part 121 or 135) as a scheduled or unscheduled carrier of persons for hire for use as or in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.
(iii) Holding a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.
(iv) Operating an aircraft to transport persons in any manner for compensation or hire including as an air carrier, a foreign air carrier or a commercial operator or under a restricted category, within the meaning of 14 Code of Federal Regulations, regardless of whether the operation or aircraft is regulated or certified under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code of Federal Regulations.
(v) That will lease or otherwise transfer operational control, within the meaning of federal aviation administration operations specification A008, or its successor, of the aircraft, instruments or accessories to one or more persons described in item (i), (ii), (iii) or (iv) of this subdivision, subject to section 42-5009, subsection N.

(b) Any foreign government.
(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.

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

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

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

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

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

585 13. New machinery and equipment consisting of agricultural aircraft **[See subsection (V)(1) below]**, tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:
(a) "New machinery and equipment" means machinery and equipment that have never been sold at retail except pursuant to leases or rentals that do not total two years or more.
(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

553 14. Machinery or equipment used in research and development. For the purposes of 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.

591 15. 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 part 25.

(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 part 25.

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

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

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

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

577 17. Machinery and equipment 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.

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

599 19. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

578 20. 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.

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

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

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

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

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

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

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

7. Motors and pumps used in drip irrigation systems.

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

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

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

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

tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.
G. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.
H. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to:
1. Agricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products.
2. Businesses classified under the:
(a) Transporting classification.
(b) Utilities classification.
(c) Telecommunications classification.
(d) Pipeline classification.
(e) Private car line classification.
(f) Publication classification.
(g) Job printing classification.
(h) Prime contracting classification.
(i) Restaurant classification.

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

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

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

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

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

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

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

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

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

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

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

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

O. For the purposes of this section, a sale of wireless telecommunications 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 telecommunications services that are taxable under section 42-5064 is considered to be a sale for resale in the regular course of business.

P. 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.

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

1. 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.
2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.

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

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

S. If a seller is entitled to a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section, the department may require the purchaser to establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and

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

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

1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.
2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

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

V. For the purposes of this section:

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

508 2. "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.

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

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

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

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.
2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.
4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.
5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.
6. "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

42-5159. [USE TAX] Exemptions BUS CODES 029 [& 030]

(L16, ch. 156, sec. 13, Ch. 181, sec. 2, Ch. 357, sec. 2, Ch. 359, sec. 2, Ch. 361, sec. 6 & Ch 369, sec. 3. Eff. until 1/1/17)
(L16, Ch. 374, sec. 3. Eff. 1/1/17)
(L16, Ch. 367, sec. 3. Eff. 7/1/17)

A. The tax levied by this article does not apply to the storage, use or consumption in this state of the following described tangible personal property:

1. Tangible personal property, sold in this state, the gross receipts from the sale of which are included in the measure of the tax imposed by articles 1 and 2 of this chapter.

684 2. Tangible personal property, the sale or use of which has already been subjected to an excise tax at a rate equal to or exceeding the tax imposed by this article under the laws of another state of the United States. If the excise tax imposed by the other state is at a rate less than the tax imposed by this article, the tax imposed by this article is reduced by the amount of the tax already imposed by the other state.

3. Tangible personal property, the storage, use or consumption of which the constitution or laws of the United States prohibit this state from taxing or to the extent that the rate or imposition of tax is unconstitutional under the laws of the United States.

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

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

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

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

8. Purchases of:

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

520 (b) Livestock and poultry feed, supplies, salts, vitamins and other additives sold to persons for use or consumption in the businesses of farming, ranching and producing or feeding livestock or poultry or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.

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

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

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

519 12. Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
(a) Printed or photographic materials, beginning August 7, 1985.
(b) Electronic or digital media materials, beginning July 17, 1994.

13. Tangible personal property purchased by:

546 (a) A hospital 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.

546 (b) A hospital operated by this state or a political subdivision of this state.

546 (c) 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.

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

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

575 (f) 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 in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

(g) A person that is subject to tax under this chapter by reason of being engaged in business classified under section 42-5075, or a subcontractor working under the control of a person that is engaged in business classified under section 42-5075, if the tangible personal property is any of the following:

552 (i) Incorporated or fabricated by the person into a structure, project, development or improvement in fulfillment of a contract.

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

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

584 (h) A person that is not subject to tax under section 42-5075 and that has been provided a copy of a certificate described in section 42-5009, subsection L, if the property purchased is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

695 (i) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code if the property is purchased from the parent or an affiliate organization that is located outside this state.

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

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

534 (Tangible Personal Property) 566 (FOOD) (l) A person engaged in business under the transient lodging classification if the property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, which are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

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

699 (n) A qualifying health sciences educational institution as defined in section 42-5001.

(o) A person representing or working on behalf of any person described in subdivision (a), (b), (c), (d), (e), (f), (i), (j), (k), (m) or (n) of this paragraph, if the tangible personal property is incorporated or fabricated into a project described in section 42-5075, subsection O.

583 14. Commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a

contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

15. Tangible personal property sold by:

725 (a) Any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

762 (b) A nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

763 (c) A nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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

559 17. Prosthetic appliances, as defined in section 23-501, prescribed or recommended by a person who is licensed, registered or otherwise professionally credentialed as a physician, dentist, podiatrist, chiropractor, naturopath, homeopath, nurse or optometrist.

590 18. Prescription eyeglasses and contact lenses.

533 19. Insulin, insulin syringes and glucose test strips.

594 20. Hearing aids as defined in section 36-1901.

526 21. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 13, 17 or 29, 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.

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

513 23. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

568 24. Food and drink provided without monetary charge by a taxpayer that is subject to section 42-5074 to its employees for their own consumption on the premises during the employees' hours of employment.

507 25. Tangible personal property that is used or consumed in a business subject to section 42-5074 for human food, drink or condiment, whether simple, mixed or compounded.

569 26. Food, drink or condiment and accessory tangible personal property that are acquired for use by or provided to a school district or charter school if they are to be either served or prepared and served to persons for consumption on the premises of a public school in the school district or on the premises of the charter school during school hours.

521 27. Lottery tickets or shares purchased pursuant to title 5, chapter 5.1, article 1.

505 28. Textbooks, sold by a bookstore, that are required by any state university or community college.

602 29. Magazines, other periodicals or other publications produced by this state to encourage tourist travel.

586 30. Paper machine clothing, such as forming fabrics and dryer felts, purchased by a paper manufacturer and directly used or consumed in paper manufacturing.

511 31. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity purchased by a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for 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.

703 32. Motor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-4301 and that are provided to:

(a) Charitable or educational institutions that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(b) Public educational institutions.

(c) State universities or affiliated organizations of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

509 33. Natural gas or liquefied petroleum gas used to propel a motor vehicle.

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

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

514 36. Food, drink and condiment purchased 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.

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

705 38. Tangible personal property that is or directly enters into and becomes an ingredient or component part of cards used as prescription plan identification cards.

611 39. 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. For the purposes of this paragraph:

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

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

40. Through December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061. From and after December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061, if the gross proceeds of the sales were included in the measure of the tax imposed by article 1 of this chapter or if the personal property liquidation was a casual activity or transaction.

41. Wireless telecommunications equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064.

587 42. Alternative fuel, as defined in section 1-215, purchased by a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

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

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

563 45. Gas diverted from a pipeline, by a person engaged in the business of:

(a) Operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

(b) Converting natural gas into liquefied natural gas, and used or consumed for the sole purpose of fueling compressor equipment used in the conversion process.

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

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

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

662 49. Prepared food, drink or condiment donated by a restaurant as classified in section 42-5074, subsection A to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

596 50. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:
(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.
(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

598 51. Motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

603 52. Repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

604 53. 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 entity 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.

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

55. Coal acquired from an owner or operator of a power plant by a person who is responsible for refining coal if both of the following apply:
(a) The transfer of title or possession of the coal is for the purpose of refining the coal.
(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

712 56. Tangible personal property incorporated or fabricated into a project described in section 42-5075, subsection O, that is located within the exterior boundaries of an Indian

reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

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

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

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

567 57. Cash equivalents, precious metal bullion and monetized bullion purchased by the ultimate consumer, but coins or other forms of money for manufacture into jewelry or works of art are subject to tax, and tangible personal property that is purchased through the redemption of any cash equivalent by the holder as a means of payment for goods that are subject to tax under this article is subject to tax. For the purposes of this paragraph:

(a) "Cash equivalents" means items, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and that 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 tangible instruments or orders. Cash equivalents do not include either of the following:

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

(ii) Prepaid calling cards for telecommunications services.

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

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

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

522 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.

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

539 3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification under section 42-5064, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, and consisting of central office switching equipment, switchboards, private branch exchange

equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.

524 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.

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

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

EFFECTIVE *UNTIL* 7-1-2017:

508 **7.** Aircraft, navigational and communication instruments and other accessories and related equipment **[See subsection (H)(2) below]** sold to:

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

(b) Any foreign government, or sold to 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.

EFFECTIVE 7-1-2017:

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

(a) A person:

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

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

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

(iv) Operating an aircraft to transport persons in any manner for compensation or hire including as an air carrier, a foreign air carrier or a commercial operator or under a restricted category, within the meaning of 14 Code of Federal Regulations, regardless of whether the operation or aircraft is regulated or certified under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code of Federal Regulations.

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

(b) Any foreign government.
(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.

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

576 9. Rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

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

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

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

585 13. New machinery and equipment consisting of agricultural aircraft **[See subsection (H)(1) below]** , tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:
(a) "New machinery and equipment" means machinery or equipment that has never been sold at retail except pursuant to leases or rentals that do not total two years or more.
(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

553 14. Machinery or equipment used in research and development. For the purposes of 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.

591 15. 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 part 25.

(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 part 25.

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

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

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

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

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

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

599 19. Machinery and equipment that are used in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including production by a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

578 20. 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.

554 21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this exemption, the qualified business must obtain and present its certification from the Arizona commerce authority at the time of purchase.

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

1. **Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.**
2. **Janitorial equipment and hand tools.**
3. **Office equipment, furniture and supplies.**
4. **Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 15 of this section.**
5. **Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.**
6. **Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.**
7. **Motors and pumps used in drip irrigation systems.**
8. **Machinery and equipment or tangible personal property used by a contractor in the performance of a contract.**

D. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

617 1. Revenues received from sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

709 2. Revenues received from providing electricity, including ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity with respect to which the transaction privilege tax imposed under section 42-5063 has been paid.

538 E. The tax levied by this article does not apply to the purchase of solar energy devices from a retailer that is registered with the department as a solar energy retailer or a solar energy contractor.

F. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

621 1. Fees charged by a municipally owned utility 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.

626 2. Reimbursement or contribution compensation to any person or persons owning a utility system 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 deduction shall not exceed the value of such property and equipment.

EFFECTIVE *UNTIL* 1-1-2017:

G. The tax levied by this article does not apply to the purchase price of electricity, natural gas or liquefied petroleum gas by:

710 1. A business that is principally engaged in manufacturing or smelting operations and that uses at least fifty-one percent of the electricity, natural gas or liquefied petroleum gas in the manufacturing or smelting operations. This paragraph applies to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include processing, fabricating, job printing, mining, generating electricity or operating a restaurant.

(c) "Principally engaged" means at least fifty-one percent of the business is a manufacturing or smelting operation.

(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

783 2. A business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.

EFFECTIVE 1-1-2017:

G. The tax levied by this article does not apply to the purchase price of electricity, natural gas or liquefied petroleum gas by:

1. A qualified manufacturing or smelting business. A utility that claims this deduction shall report each month, on a form prescribed by the department, the name and address of each qualified manufacturing or smelting business for which this deduction is taken. This paragraph applies to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character

different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include job printing, publishing, packaging, mining, generating electricity or operating a restaurant.
(c) "Qualified manufacturing or smelting business" means one of the following:
(i) A business that manufactures or smelts tangible products in this state, of which at least fifty-one percent of the manufactured or smelted products will be exported out of state for incorporation into another product or sold out of state for a final sale.
(ii) A business that derives at least fifty-one percent of its gross income from the sale of manufactured or smelted products manufactured or smelted by the business.
(iii) A business that uses at least fifty-one percent of its square footage in this state for manufacturing or smelting and business activities directly related to manufacturing or smelting.
(iv) A business that employs at least fifty-one percent of its workforce in this state in manufacturing or smelting and business activities directly related to manufacturing or smelting.
(v) A business that uses at least fifty-one percent of the value of its capitalized assets in this state, as reflected on the business's books and records, for manufacturing or smelting and business activities directly related to manufacturing or smelting.
(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.
2. A business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.

H. For the purposes of subsection B of this section:
1. "Agricultural aircraft" means an aircraft that is built for agricultural use for the aerial application of pesticides or fertilizer or for aerial seeding.
508+ 2. "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.
3. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.
I. For the purposes of subsection D of this section, "ancillary services", "electric distribution service", "electric generation service", "electric transmission service" and "other services" have the same meanings prescribed in section 42-5063.

42-5062. Transporting classification BUSINESS CODE 006

A. The transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state. The transporting classification does not include:
1. Transporting for hire persons, freight or property by:

715 (a) Motor carriers subject to a fee prescribed in title 28, chapter 16, article 4.
715 (b) Light motor vehicles subject to a fee under title 28, chapter 15, article 4.
772 (c) Transportation network companies subject to a fee prescribed pursuant to section 28-9552.
772 (d) Transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.
778 (e) Vehicle for hire companies that are issued permits pursuant to section 28-9503.
778 (f) Vehicle for hire drivers operating under a company permit issued pursuant to section 28-9503 on transactions involving vehicle for hire services.

615 2. The business of transporting for hire persons traveling in air commerce by aircraft if taxation of the business is preempted by federal law.
3. Ambulances or ambulance services provided under title 48 or certified pursuant to title 36, chapter 21.1 or provided by a city or town in a county with a population of less than one hundred fifty thousand persons as determined in the most recent United States decennial census.
4. Public transportation program services for the dial-a-ride programs and special needs transportation services.

616 5. 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 the 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.
6. Arranging transportation as a convenience or service 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.

B. The tax base for the transporting classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

620 1. The gross proceeds of sales or gross income derived from transporting for hire persons, freight or property by a railroad pursuant to a contract with another railroad that is also considered to be engaged in the businesses of transporting persons, freight or property for hire if the other railroad is liable for the tax on gross proceeds of sales or gross income attributable to the transportation.

640 2. The gross proceeds of sales or gross income derived from business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

612 3. The gross proceeds of sales or gross income derived from a business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5073, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

702 4. The gross proceeds of sales or gross income derived from business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the 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.

625 5. The gross proceeds of sales or gross income derived from transporting fertilizer by a railroad from a point in this state to another point in this state.

42-5063. Utilities classification; definitions BUS CODE 004

(L16, Ch. 357, sec. 1 & Ch. 359, sec. 1. Eff. until 1/1/17)
(L16, Ch. 374, sec. 2. Eff. 1/1/17)

A. The utilities classification is comprised of the business of:

1. Producing and furnishing or furnishing to consumers natural or artificial gas and water.

2. Providing to retail electric customers ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity.

B. The utilities classification does not include:

503 1. Sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity, gas or water to a person who resells the services.

509 2. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

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

617 4. Sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services that are related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

604 5. 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.

759 6. The leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in business under this section.

(b) To a person that is engaged in business under this section or section 42-5064 or that is a cable operator.

C. The tax base for the utilities classification is the gross proceeds of sales or gross income derived from the business, but the following shall be deducted from the tax base:

621 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.

626 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 deduction shall not exceed the value of such property and equipment.

3. Gross proceeds of sales or gross income derived from sales to:

546 (a) Qualifying hospitals as defined in section 42-5001.

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

511 4. The portion of gross proceeds of sales or gross income that is derived from sales to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 of a utility product and that is used directly in environmental technology manufacturing, producing or processing. 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 a qualified 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.

618 5. 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.

EFFECTIVE *UNTIL* JANUARY 1, 2017:

710 **6**. Gross proceeds of sales or gross income derived from sales of electricity, natural gas or liquefied petroleum gas to a business that is principally engaged in manufacturing or smelting operations and that uses at least fifty-one percent of the electricity, natural gas or liquefied petroleum gas in the manufacturing or smelting operations. This paragraph applies to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include processing, fabricating, job printing, mining, generating electricity or operating a restaurant.

(c) "Principally engaged" means at least fifty-one percent of the business is a manufacturing or smelting operation.
(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

EFFECTIVE JANUARY 1, 2017:
6. Gross proceeds of sales or gross income derived from sales of electricity, natural gas or liquefied petroleum gas to a qualified manufacturing or smelting business. A utility that claims this deduction shall report each month, on a form prescribed by the department, the name and address of each qualified manufacturing or smelting business for which this deduction is taken. This paragraph applies to gas transportation services. For the purposes of this paragraph:
(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.
(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include job printing, publishing, packaging, mining, generating electricity or operating a restaurant.
(c) "Qualified manufacturing or smelting business" means one of the following:
(i) A business that manufactures or smelts tangible products in this state, of which at least fifty-one percent of the manufactured or smelted products will be exported out of state for incorporation into another product or sold out of state for a final sale.
(ii) A business that derives at least fifty-one percent of its gross income from the sale of manufactured or smelted products manufactured or smelted by the business.
(iii) A business that uses at least fifty-one percent of its square footage in this state for manufacturing or smelting and business activities directly related to manufacturing or smelting.
(iv) A business that employs at least fifty-one percent of its workforce in this state in manufacturing or smelting and business activities directly related to manufacturing or smelting.
(v) A business that uses at least fifty-one percent of the value of its capitalized assets in this state, as reflected on the business's books and records, for manufacturing or smelting and business activities directly related to manufacturing or smelting.
(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

783 7. Gross proceeds of sales or gross income derived from sales of electricity or natural gas to a business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.
D. For the purposes of this section:
1. "Ancillary services" means those services so designated in federal energy regulatory commission order 888 adopted in 1996 that include the services necessary to support the transmission of electricity from resources to loads while maintaining reliable operation of the transmission system according to good utility practice.
2. "Cable operator" has the same meaning prescribed in section 9-505.

3. "Electric distribution service" means distributing electricity to retail electric customers through the use of electric distribution facilities.
4. "Electric generation service" means providing electricity for sale to retail electric customers but excluding electric distribution or transmission services.
5. "Electric transmission service" means transmitting electricity to retail electric customers or to electric distribution facilities so classified by the federal energy regulatory commission or, to the extent permitted by law, so classified by the Arizona corporation commission.
6. "Other services" includes metering, meter reading services, billing and collecting services.
7. "Retail electric customer" means a person who purchases electricity for that person's own use, including use in that person's trade or business and not for resale, redistribution or retransmission.
8. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5064. Telecommunications classification; definitions

BUSINESS CODE 005

A. The telecommunications classification is comprised of the business of providing intrastate telecommunications services. The telecommunications classification does not include:
1. Sales of intrastate telecommunications services by a cable operator or by a microwave television transmission system that transmits television programming to multiple subscribers and that is operated pursuant to 47 Code of Federal Regulations parts 21 and 74.
2. Sales of **517** internet access or **596** application services to the person's subscribers and customers. For the purposes of this paragraph:
(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol and purchased by or for any school district, charter school, community college or state university to assess or test student learning or to promote curriculum design or enhancement.
(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.
759 3. The leasing or renting of space to make attachments to utility poles as follows:
(a) By a person that is engaged in business under this section.
(b) To a person that is engaged in business under section 42-5063 or this section or that is a cable operator.

B. The tax base for the telecommunications classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers. However, the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales of intrastate telecommunications services to:

503 (a) Other persons engaged in businesses classified under the telecommunications classification for use in such business.

619 (b) A direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25 for use in its direct broadcast satellite television or data transmission operation by a facility described in section 42-5061, subsection B, paragraph 15, subdivision (b).

641 2. End user common line charges established by federal communications commission regulations (47 Code of Federal Regulations section 69.104(a)).

627 3. Carrier access charges established by federal communications commission regulations (47 Code of Federal Regulations sections 69.105(a) through 69.118).

633 4. Sales of direct broadcast satellite television services pursuant to 47 Code of Federal Regulations part 25 by a direct broadcast satellite television service that operates pursuant to 47 Code of Federal Regulations part 25.

649 5. Telecommunications services purchased with a prepaid calling card, or a prepaid authorization number for telecommunications services, that is taxable under section 42-5061.

C. A person that is engaged in a transient lodging business subject to taxation under section 42-5070 and that provides telephone, fax or internet access services to its customers at an additional charge, which is separately stated on the customer invoice, is considered to be engaged in business subject to taxation under this section for the purposes of taxing the gross proceeds of sales or gross income derived from providing those services.

D. The gross proceeds of sales or gross income derived from a bundled transaction of services that are taxable pursuant to section 42-5023 are subject to the following:

1. A telecommunications service provider who can reasonably identify the portion of the sales price of the bundled transaction derived from charges for nontaxable services is subject to tax only on the gross proceeds of sales or gross income derived from the taxable services. For the purposes of this section, the telecommunications service provider may elect to reasonably identify the portion of the sales price of the bundled transaction derived from charges for nontaxable services by using allocation percentages derived from the telecommunications service provider's entire service area, including territories outside of this state. On request, the department may require the telecommunications service provider to provide this allocation information. The reasonableness of the allocation is subject to audit by the department.
2. Notwithstanding sections 42-1118, 42-1120 and 42-1121, the telecommunications service provider shall waive the right to file a claim for a refund of taxes paid on the bundled transaction if the taxes paid are based on the allocation percentage the telecommunications service provider had determined to be reasonable at the beginning of the tax period at issue.
3. The burden of proof is on the telecommunications service provider to establish that the gross proceeds of sales or gross income is derived from charges for nontaxable services.

E. For the purposes of this section:

1. "Bundled transaction" means a sale of multiple services in which both of the following apply:
   (a) The sale consists of both taxable and nontaxable services.
   (b) The telecommunications service provider charges a customer one sales price for all services that are sold instead of separately charging for each individual service.
2. "Cable operator" has the same meaning prescribed in section 9-505.
3. "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.

517+ 4. "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 telecommunications services provided by a common carrier.

643 5. "Intrastate telecommunications services" means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state.

6. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5065. Publication classification; definition

BUSINESS CODE 009

A. The publication classification is comprised of the business of publishing newspapers, magazines or other periodicals and publications if published in this state. **The publication classification does not include:**

1. Manufacturing or publishing books.

602 2. Sales of magazines or other periodicals or other publications by this state to encourage tourist travel.

B. The tax base for the publication classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from notices and subscription income, but the following shall be deducted from the tax base:

628 1. Gross income derived from advertising.

2. Gross proceeds of sales or gross income derived from sales of personal property to:

546 (a) Qualifying hospitals as defined in section 42-5001.

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

699 (c) A qualifying health sciences educational institution as defined in section 42-5001.

C. For purposes of this section "subscription income" includes all circulation revenue, except amounts actually retained by or credited to carriers and other vendors as compensation for sale or delivery of publications and revenue from publications sold, directly or through wholesalers or jobbers, to retailers for resale.

42-5066. Job printing classification **BUSINESS CODE 010**

A. The job printing classification is comprised of the business of job printing, engraving, embossing and copying.
B. The tax base for the job printing classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person in this state who has a transaction privilege tax license issued in this state, and who does either of the following:

503 (a) Resells the job printing, engraving, embossing or copying.

630 (b) Distributes such printing, engraving, embossing or copying without consideration in connection with the publication of a newspaper or magazine.

637 2. Sales of job printing, engraving, embossing and copying for use outside this state if the materials are shipped or delivered out of this state regardless of where title to the materials passes or their free on board point.

3. Sales of personal property to:

546 (a) Qualifying hospitals as defined in section 42-5001.

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

699 (c) A qualifying health sciences educational institution as defined in section 42-5001.

561 4. 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.

42-5067. Pipeline classification BUSINESS CODE 008

A. The pipeline classification is comprised of the business of operating pipelines for transporting oil or natural or artificial gas through pipes or conduits from one point to another point in this state. The pipeline classification does not include sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
B. The tax base for the pipeline classification is the gross proceeds of sales or gross income derived from the business, but the taxpayer shall deduct from the tax base the gross proceeds of sales or gross income derived from pipeline services to:

546 1. Qualifying hospitals as defined in section 42-5001.

545 2. A qualifying health care organization as defined in section 42-5001 if the oil or gas is used by the organization solely to provide health and medical related educational and charitable services.

42-5068. Private car line classification BUSINESS CODE 007

A. The private car line classification is comprised of the business of operating a private car company, as defined in section 42-14301, from one point to another point in this state.
B. The tax base for the private car line classification is the gross proceeds of sales or gross income derived from the business.

42-5069. Commercial lease classification; definitions

BUSINESS CODE 013

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

C. The commercial lease classification does not include:

1. Any business activities that are classified under the transient lodging classification.
2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by those entities.

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

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

634 **5. Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph:**

(a) "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, affiliated persons hold a controlling interest in both the lessor and the lessee, or an unrelated person holds a controlling interest in both the lessor and lessee.
(b) "Affiliated persons" means members of an individual's family or persons who have ownership or control of a business entity.
(c) "Controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.
(d) "Members of an individual's family" means the individual's spouse and brothers and sisters, whether by whole or half blood, including adopted persons, ancestors and lineal descendants.
(e) "Reciprocal insurers" has the same meaning prescribed in section 20-762.

766 6. Leasing real property for boarding horses.

638 7. Leasing or renting real property or the right to use real property at exhibition events in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams or a national touring professional

golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

669 16. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à prendre, but the tax base for the grant of such a leasehold right, if the gross income derived from the grant is not separately stated from

the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. For the purposes of this paragraph, "profit à prendre" means a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit.

759 17. The leasing or renting of space to make attachments to utility poles as follows:
(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.
(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

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

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

F. For the purposes of this section:
1. "Cable operator" has the same meaning prescribed by section 9-505.
2. "Leasing" includes renting.
3. "Real property" includes any improvements, rights or interest in such property.
4. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5070. Transient lodging classification; definition

BUSINESS CODE 025

A. The transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab that is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

B. The transient lodging classification does not include:
1. Operating a convalescent home or facility, home for the aged, hospital, jail, military installation or fraternity or sorority house or operating any structure exclusively by an association, institution, governmental agency or corporation for religious, charitable or educational purposes, if no part of the net earnings of the association, corporation or other entity inures to the benefit of any private shareholder or individual.

629 2. A lease or rental of a mobile home or house trailer at a fixed location or any other similar structure, and also including a space, lot or slab that is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy for thirty or more consecutive days.

636 3. Leasing or renting four or fewer rooms of an owner-occupied residential home, together with furnishing no more than a breakfast meal, to transient lodgers at no more than a fifty percent average annual occupancy rate.

EFFECTIVE JANUARY 1, 2017
4. The activities of any online lodging marketplace, as defined in section 42-5076.

C. The tax base for the transient lodging classification is the gross proceeds of sales or gross income derived from the business, except that the tax base does not include:

640 1. The gross proceeds of sales or gross income derived from business activity that is properly included in another business classification under this article and that is taxable to the person engaged in that business classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

EFFECTIVE JANUARY 1, 2017
2. The gross proceeds or gross income received by an online lodging operator, as defined in section 42-5076, from any online lodging transactions, as defined in section 42-5076, for which the online lodging operator has received documentation from a registered online lodging marketplace, as defined in section 42-5076, pursuant to section 42-5009, subsection P that the online lodging marketplace has remitted or will remit the applicable tax to the department pursuant to section 42-5014, subsection E.

D. For the purposes of this section, the tax base for the transient lodging classification does not include gross proceeds of sales or gross income derived from:

704 1. 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.

701 2. 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 section 42-5062 or 42-5073 due to an exclusion, exemption or deduction.

648 3. Commissions paid to a person that is engaged in transient lodging business subject to taxation under this section by a person providing services or property to the customers of the person engaging in the transient lodging business.

E. The department shall separately account for revenues collected under the transient lodging classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

718 F. For the purposes of this section, **"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 consecutive days. [718 applies to income from lodgers that obtain lodging (*at the start of the stay*) for more than 30 days.]**

42-5071. Personal property rental classification

BUSINESS CODE 014

A. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. **The tax does not apply to:**

784 1. Leasing or renting films, tapes or slides used by theaters or movies, which are engaged in business under the amusement classification, or used by television stations or radio stations.

785 2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by such entities.

631 3. Leasing or renting tangible personal property by a parent corporation to a subsidiary corporation or by a subsidiary corporation to another subsidiary of the same parent corporation if taxes were paid under this chapter on the gross proceeds or gross income accruing from the initial sale of the tangible personal property. For the purposes of this paragraph, "subsidiary" means a corporation of which at least eighty percent of the voting shares are owned by the parent corporation.

786 4. Operating coin-operated washing, drying and dry cleaning machines or coin-operated car washing machines at establishments for the use of such machines.

607 5. Leasing or renting tangible personal property for incorporation into or comprising any part of a qualified environmental technology facility as described in section 41-1514.02. This paragraph shall apply for ten full consecutive calendar or fiscal years following the initial lease or rental by each qualified environmental technology manufacturer, producer or processor.

787 6. Leasing or renting aircraft, flight simulators or similar training equipment to students or staff by nonprofit, accredited educational institutions that offer associate or baccalaureate degrees in aviation or aerospace related fields.

651 7. Leasing or renting photographs, transparencies or other creative works used by this state on internet websites, in magazines or in other publications that encourage tourism.

8. Leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

759 9. The leasing or renting of space to make attachments to utility poles, as follows:

(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

769 10. Leasing or renting billboards that are designed, intended or used to advertise or inform and that are visible from any street, road or other highway.

B. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

656 1. Reimbursements by the lessee to the lessor of a motor vehicle for payments by the lessor of the applicable fees and taxes imposed by sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15, article 2 and article IX, section 11, Constitution of Arizona, to the extent such amounts are separately identified as such fees and taxes and are billed to the lessee.

2. Leases or rentals of tangible personal property that, if it had been purchased instead of leased or rented by the lessee, would have been exempt under:

(a) Section 42-5061, subsection A, paragraph 8 **536**, 9 **559**, 12 **594**, 13 **526**, 25 **546-544-574-545-572-573-699**, 29 **575**, 49 **592** or 53 **596** .

(b) Section 42-5061, subsection B **508-522-523-524-532-535-539-553-576-577-578-579-581-591-597-599-605-606-595**, except that a lease or rental of new machinery or equipment is not exempt pursuant to:

585 (i) Section 42-5061, subsection B, paragraph 13 if the lease is for less than two years.

(ii) Section 42-5061, subsection B, paragraph 21.

547 (c) Section 42-5061, subsection I, paragraph 1.

538 (d) Section 42-5061, subsection M.

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

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

556 5. Amounts received by a motor vehicle dealer for the first month of a lease payment if the lease and the lease payment for the first month of the lease are transferred to a third-party leasing company.

503 C. Sales of tangible personal property to be leased or rented to a person engaged in a business classified under the personal property rental classification are deemed to be resale sales.

680 D. In computing the tax base, the gross proceeds of sales or gross income from the lease or rental of a motor vehicle does not include any amount attributable to the car rental surcharge under section 5-839, 28-5810 or 48-4234.

E. Until December 31, 1988, leasing or renting animals for recreational purposes is exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from leasing or renting animals for recreational purposes is subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the monies paid as taxes will be returned to the customer.

F. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed by section 9-505.
2. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

42-5072. Mining classification; definition

BUSINESS CODE 002

A. The mining classification is comprised of the business of mining, quarrying or producing for sale, profit or commercial use any nonmetalliferous mineral product that has been mined, quarried or otherwise extracted within the boundaries of this state described in article I, section 1, Constitution of Arizona.

552 + 589 + 584 + 543: B. The tax base for the mining classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from sales described under section 42-5061, subsection A, paragraph 27 **552 589 584** and subsection I, paragraph 2 **543** shall be deducted from the tax base.

652 C. The tax base includes the value of the entire product mined, quarried or produced for sale, profit or commercial use in this state, regardless of the place of sale of the product or of the fact that deliveries may be made to points without this state. If, however, the sale price of the product includes freight, the sale price shall be reduced by the actual freight paid by any person from the place of production to the place of delivery.

D. In the case of a person engaged in business classified under the mining classification all or part of whose income is derived from service or manufacturing charges instead of from sales of the products manufactured or handled, the tax base includes the gross income of the person derived from the service or manufacturing charge.

658 E. If a person engaging in business classified under the mining classification ships or transports all or part of a product out of this state without making sale of the product or ships his product outside of this state in an unfinished condition, the value of the product or article in the condition or form in which it existed when transported out of this state and before it enters interstate commerce is included in the tax base, and the department shall prescribe equitable and uniform rules for ascertaining that value. In determining the tax base, if the product or any part of the product has been processed in this state and the proceeds of such processing have been included in the tax base of the processor under this chapter, the person may deduct from the value of the product when transported out of this state the cost of such processing.

F. A person who conducts a business classified under the mining classification may be deemed also to be engaged in business classified under the retail classification to the extent the person's activities comprise business under the retail classification if the tax is paid at the rate imposed on the retail classification by section 42-5010. If the transaction is not subject to taxation under the retail classification, the transaction shall be included in the tax base under this section, except for the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

1. The transfer of title or possession of the coal is for the purpose of refining the coal.
2. The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this paragraph, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

G. For the purposes of this section, "nonmetalliferous mineral product" means oil, natural gas, limestone, sand, gravel or any other nonmetalliferous mineral product, compound or combination of nonmetalliferous mineral products

42-5073. Amusement classification **BUSINESS CODE 012**

A. The amusement classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, except as provided in subsection B of this section, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement or entertainment, including the operation or sponsorship of events by a tourism and sports authority under title 5, chapter 8. For the purposes of this section, admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements. **The amusement classification does not include:**

1. Activities or projects of bona fide religious or educational institutions.

657 2. Private or group instructional activities. For the purposes of this paragraph, "private or group instructional activities" includes, but is not limited to, performing arts, martial arts, gymnastics and aerobic instruction.

785 3. The operation or sponsorship of events by the Arizona exposition and state fair board or county fair commissions.

4. A musical, dramatic or dance group or a botanical garden, museum or zoo that is qualified as a nonprofit charitable organization under section 501(c)(3) of the United States internal revenue code and if no part of its net income inures to the benefit of any private shareholder or individual.

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

763 6. Operating or sponsoring rodeos that feature primarily farm and ranch animals in this state and that are sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

7. Sales of admissions to intercollegiate football contests if the contests are both:
   (a) Operated by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
   (b) Not held in a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8.

8. Activities and events of, or fees and assessments received by, a homeowners organization from persons who are members of the organization or accompanied guests of members. For the purposes of this paragraph, "homeowners organization" means a mandatory membership organization comprised of owners of residential property within a specified residential real estate subdivision development or similar area and established to own property for the benefit of its members where both of the following apply:
   (a) No part of the organization's net earnings inures to the benefit of any private shareholder or individual.

(b) The primary purpose of the organization is to provide for the acquisition, construction, management, maintenance or care of organization property.

764 9. Activities and events of, or fees received by, a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
10. 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 personally 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.

B. The tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

527 1. The gross proceeds of sales or gross income derived from memberships, including initiation fees, that provide for the right to use a health or fitness establishment or a private recreational establishment, or any portion of an establishment, including tennis and other racquet courts at that establishment, for participatory purposes for twenty-eight days or more and fees charged for use of the health or fitness establishment or private recreational establishment by bona fide accompanied guests of members, except that this paragraph does not include additional fees, other than initiation fees, charged by a health or fitness establishment or a private recreational establishment for purposes other than memberships which provide for the right to use a health or fitness establishment or private recreational establishment, or any portion of an establishment, for participatory purposes for twenty-eight days or more and accompanied guest use fees.

661 2. Amounts that are exempt under section 5-111, subsection H.

> **[5-111. <u>Wagering percentage to permittee and state; exemptions</u>**
> . . .
> H. All of the amounts received by a permittee from the gross amount of monies handled in a pari-mutuel pool and all amounts held by a permittee for payment of purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 are exempt from the provisions of title 42, chapter 5.]

666 3. The gross proceeds of sales or gross income derived from membership fees, including initiation fees, that provide for the right to use a transient lodging recreational establishment, including golf courses and tennis and other racquet courts at that establishment, for participatory purposes for twenty-eight days or more, except that this paragraph does not include additional fees, other than initiation fees, that are charged by a transient lodging recreational establishment for purposes other than memberships and that provide for the right to use a transient lodging recreational establishment or any portion of the establishment for participatory purposes for twenty-eight days or more.

670 4. The gross proceeds of sales or gross income derived from sales to persons engaged in the business of transient lodging classified under section 42-5070, if all of the following apply:
(a) The persons who are engaged in the transient lodging business sell the amusement to another person for consideration.
(b) The consideration received by the transient lodging business is equal to or greater than the amount to be deducted under this subsection.
(c) The transient lodging business has provided an exemption certificate to the person engaging in business under this section.

5. The gross proceeds of sales or gross income derived from:

640 (a) Business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

612 (b) Business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5062, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

702 (c) Business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the 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.

735 6. The gross proceeds of sales or gross income derived from entry fees paid by participants for events that either:
(a) Until March 1, 2017, consist of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.
(b) Are operated or conducted by nonprofit organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code and of which no part of the organization's net earnings inures to the benefit of any private shareholder or individual, if the event consists of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

C. For the purposes of subsection B of this section:
1. "Health or fitness establishment" means a facility whose primary purpose is to provide facilities, equipment, instruction or education to promote the health and fitness of its members and at least eighty percent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees which provide for the right to use the facility, or any portion of the facility, under the terms of the membership agreement for participatory purposes for twenty-eight days or more.
2. "Private recreational establishment" means a facility whose primary purpose is to provide recreational facilities, such as tennis, golf and swimming, for its members and where at least eighty percent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees which provide for the right to use the facility, or any portion of the facility, for participatory purposes for twenty-eight days or more.
3. "Transient lodging recreational establishment" means a facility whose primary purpose is to provide facilities for transient lodging, that is subject to taxation under this chapter and that also provides recreational facilities, such as tennis, golf and swimming, for members for a period of twenty-eight days or more.

D. Until December 31, 1988, the revenues from hayrides and other animal-drawn amusement rides, from horseback riding and riding instruction and from recreational tours using motor vehicles designed to operate on and off public highways are exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from hayrides and other animal-drawn amusement rides, from horseback riding and from recreational tours using motor vehicles designed to operate on and off public highways are subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the taxes will be returned to the customer.
E. If a person is engaged in the business of offering both exhibition, amusement or entertainment and private or group instructional activities, the person's books shall be kept to show separately the gross income from exhibition, amusement or entertainment and the gross income from instructional activities. If the books do not provide this separate accounting, the tax is imposed on the person's total gross income from the business.
F. The department shall separately account for revenues collected under the amusement classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).
G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the amusement classification from sales of admissions to:
1. Events that are held in a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8, including intercollegiate football contests that are operated by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.
2. Professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

42-5074. Restaurant classification BUSINESS CODE 011

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. **The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:**

503 1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.

744 2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.

3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), that do not regularly engage or continue in the restaurant business for the purpose of fund-raising.

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

763 5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

725 6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

546 7. Sales to qualifying hospitals as defined in section 42-5001.

545 8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

514 9. 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.

569 10. Sales of articles of prepared or unprepared food, drink or condiment and accessory tangible personal property to a school district or charter school if the articles and accessory tangible personal property are served to persons for consumption on the premises of a public school in the school district or charter school during school hours.

662 11. Prepared food, drink or condiment donated by a restaurant to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

513 12. Sales of articles of food and drink at low or reduced prices to eligible elderly, disabled or homeless persons by a restaurant that contracts with the department of economic security and that is approved by the food and nutrition services of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases of the articles of food and drink are made with the benefits issued pursuant to the supplemental nutrition assistance program.

512 C. The tax imposed on the restaurant classification pursuant to this section does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this subsection, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

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

E. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the restaurant classification from businesses operating restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments:

1. On the premises of a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8 for consumption on or off the premises.
2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

42-5075. Prime contracting classification; exemptions; definitions BUSINESS CODE 015

A. The prime contracting classification is comprised of the business of prime contracting and the business of manufactured building dealer. **668** Sales for resale to another manufactured building dealer are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. **562** The sale of a used manufactured building is not taxable under this chapter.

502 B. The tax base for the prime contracting classification is sixty-five percent of the gross proceeds of sales or gross income derived from the business. **The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:**

518 1. The sales price of land, which shall not exceed the fair market value.

581 2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

663 3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

667 4. The gross proceeds of sales or gross income received from a contract entered into for the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement located in a military reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before beginning work under the contract, the prime contractor must have applied for a letter of qualification from the department of revenue.

607 5. The gross proceeds of sales or gross income derived from a contract to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02, and from subsequent construction and installation contracts that begin within ten years after the start of initial construction. To qualify for this deduction, before beginning work under the contract, the prime contractor must obtain a letter of qualification from the department of revenue. This paragraph shall apply for ten full consecutive calendar or fiscal years after the start of initial construction.

589 6. The gross proceeds of sales or gross income from a contract to provide for one or more of the following actions, or a contract for site preparation, constructing, furnishing or installing machinery, equipment or other tangible personal property, including structures necessary to protect exempt incorporated materials or installed machinery or equipment, and tangible personal property incorporated into the project, to perform one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

(a) Actions to monitor, assess and evaluate such a release or a suspected release.
(b) Excavation, removal and transportation of contaminated soil and its treatment or disposal.

(c) Treatment of contaminated soil by vapor extraction, chemical or physical stabilization, soil washing or biological treatment to reduce the concentration, toxicity or mobility of a contaminant.
(d) Pumping and treatment or in situ treatment of contaminated groundwater or surface water to reduce the concentration or toxicity of a contaminant.
(e) The installation of structures, such as cutoff walls or caps, to contain contaminants present in groundwater or soil and prevent them from reaching a location where they could threaten human health or welfare or the environment.
This paragraph does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities or other control items required or to be used by a person to prevent or control contamination before it reaches the environment.

600 7. The gross proceeds of sales or gross income that is derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or that is exempt from use tax under section 42-5159, subsection B and that has independent functional utility, pursuant to the following provisions:
(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:
(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.
(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.
(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.
(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or exempt from use tax under section 42-5159, subsection B.
(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.
(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:
(i) Assembling the machinery, equipment or other tangible personal property.
(ii) Connecting items of machinery, equipment or other tangible personal property to each other.
(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.
(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other similar nonpermanent connections to either real property or real property improvements.

8. 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 transaction privilege and use tax under:

(a) Section 42-5061, subsection A, paragraph 25 **645**-**646**-**573**-**672**-**674**-**644**-**799**, 29 **675**, 57 **665**, or 59 **712.**

(b) Section 42-5061, subsection B. **608**-**622**-**623**-**639**-**624**-**635**-**632**-**676**-**679**-**685**-**653**-**691**-**677**-**697**-**678**-**654**-**706**

(c) Section 42-5159, subsection A, paragraph 13, subdivision (a)**646**, (b)**646**, (c) **646**, (d)**645**, (e)**674**, (f)**675**, (j)**672**, (k)**644**, (m) **573** or (n) **799**, or paragraph 54 **665** or 56 **712.**

(d) Section 42-5159, subsection B **608**-**622**-**623**-**639**-**624**-**635**-**632**-**676**-**685**-**653**-**691**-**677**-**679**-**697**-**678**-**654**-**706**.

683 9. 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, cooling and packaging of eggs.

599 10. 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 modification of 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.

595 11. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, paragraph 16.

573 12. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

538 13. For taxable periods beginning from and after December 31, 1996 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 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 for examination.

698 14. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a launch site, as defined in 14 Code of Federal Regulations section 401.5.

673 15. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a domestic violence shelter that is owned and operated by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

686 16. The gross proceeds of sales or gross income derived from contracts to perform postconstruction treatment of real property for termite and general pest control, including wood destroying organisms.

696 17. The gross proceeds of sales or gross income received from contracts entered into before July 1, 2006 for constructing a state university research infrastructure project if the project has been reviewed by the joint committee on capital review before the university enters into the construction contract for the project. For the purposes of this paragraph, "research infrastructure" has the same meaning prescribed in section 15-1670.

555 18. The gross proceeds of sales or gross income received from a contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516 if actual construction begins before January 1, 2024. To qualify for this deduction, the prime contractor must obtain a letter of qualification from the Arizona commerce authority before beginning work under the contract.

560 19. Any amount of the gross proceeds of sales or gross income attributable to development fees that are incurred in relation to a contract for construction, development or improvement of real property and that are paid by a prime contractor or subcontractor. 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 prime contractor or subcontractor, 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 section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

719 20. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a mixed waste processing facility that is located on a municipal solid waste landfill and that is constructed for the purpose of recycling solid waste or producing renewable energy from landfill waste. For the purposes of this paragraph:

(a) "Mixed waste processing facility" means a solid waste facility that is owned, operated or used for the treatment, processing or disposal of solid waste, recyclable solid waste, conditionally exempt small quantity generator waste or household hazardous waste. For the purposes of this subdivision, "conditionally exempt small quantity generator waste", "household hazardous waste" and "solid waste facility" have the same meanings prescribed in section 49-701, except that solid waste facility does include a site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material.

(b) "Municipal solid waste landfill" has the same meaning prescribed in section 49-701.

(c) "Recycling" means collecting, separating, cleansing, treating and reconstituting recyclable solid waste that would otherwise become solid waste, but does not include incineration or other similar processes.

(d) "Renewable energy" has the same meaning prescribed in section 41-1511.

C. Entitlement to the deduction pursuant to subsection B, paragraph 7 of this section is subject to the following provisions:

1. A prime contractor may establish entitlement to the deduction by both:
   (a) Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the base.
   (b) Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the deductibility of the property under section 42-5061, subsection B, and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the prime contractor has reason to believe that the information contained in the certificate is not accurate or complete.
2. A person who does not comply with paragraph 1 of this subsection may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.
3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The department may also adopt rules that describe the transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided in paragraph 1, subdivision (b) of this subsection but must instead obtain such additional information as required in order to be entitled to the deduction.
4. If a prime contractor is entitled to a deduction by complying with paragraph 1 of this subsection, the department may require the purchaser who caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate that would entitle the prime contractor to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the prime contractor would have been required to pay under article 1 of this chapter if the prime contractor had not complied with paragraph 1 of this subsection. Payment of the amount under this paragraph exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as a transaction privilege tax to the purchaser and as tax revenues collected from the prime contractor in order to designate the distribution base for purposes of section 42-5029.

550 D. Subcontractors or others who perform modification activities are not subject to tax if they can demonstrate that the job was within the control of a prime contractor or contractors or a dealership of manufactured buildings and that the prime contractor or dealership is liable for the tax on the gross income, gross proceeds of sales or gross receipts attributable to the job and from which the subcontractors or others were paid.

E. Amounts received by a contractor for a project are excluded from the contractor's gross proceeds of sales or gross income derived from the business if the person who hired the contractor executes and provides a certificate to the contractor stating that the person providing the certificate is a prime contractor and is liable for the tax under article 1 of this chapter. The department shall prescribe the form of the certificate. If the contractor has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. If the person who provides the certificate is not liable for the tax as a prime contractor, that person is nevertheless deemed to be the prime contractor in lieu of the contractor and is subject to the tax under this section on the gross receipts or gross proceeds received by the contractor.

F. Every person engaging or continuing in this state in the business of prime contracting or dealership of manufactured buildings shall present to the purchaser of such prime contracting or

manufactured building a written receipt of the gross income or gross proceeds of sales from such activity and shall separately state the taxes to be paid pursuant to this section.
G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the prime contracting classification from any prime contractor engaged in the preparation or construction of a multipurpose facility, and related infrastructure, that is owned, operated or leased by the tourism and sports authority pursuant to title 5, chapter 8.
H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues reported and collected under the prime contracting classification from any prime contractor engaged in the construction of any buildings and associated improvements that are for the benefit of a manufacturing facility. For the purposes of this subsection, "associated improvements" and "manufacturing facility" have the same meanings prescribed in section 42-5032.02.
689 I. The gross proceeds of sales or gross income derived from a contract for lawn maintenance services are not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.
J. Except as provided in subsection O of this section, the gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building irrigation berms, installing railroad ties and installing underground sprinkler or watering systems.
557 K. 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.
L. Operating a landfill or a solid waste disposal facility is not subject to taxation under this section, including filling, compacting and creating vehicle access to and from cell sites within the landfill. Constructing roads to a landfill or solid waste disposal facility and constructing cells within a landfill or solid waste disposal facility may be deemed prime contracting under this section.
M. The following apply in determining the taxable situs of sales of manufactured buildings:
1. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site or to perform the setup in this state, the taxable situs is the setup site.
2. For sales in this state where the manufactured building dealer does not contract to deliver the building to a setup site or does not perform the setup, the taxable situs is the location of the dealership where the building is delivered to the buyer.
694 3. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site that is outside this state, the situs is outside this state and the transaction is excluded from tax.

690 N. The gross proceeds of sales or gross income attributable to a written contract for design phase services or professional services, executed before modification begins and with terms, conditions and pricing of all of these services separately stated in the contract from those for construction phase services, is not subject to tax under this section, regardless of whether the services are provided sequential to or concurrent with prime contracting activities that are subject to tax under this section. This subsection does not include the gross proceeds of sales or gross income attributable to construction phase services. For the purposes of this subsection:

1. "Construction phase services" means services for the execution and completion of any modification, including the following:

(a) Administration or supervision of any modification performed on the project, including team management and coordination, scheduling, cost controls, submittal process management, field management, safety program, close-out process and warranty period services.

(b) Administration or supervision of any modification performed pursuant to a punch list. For the purposes of this subdivision, "punch list" means minor items of modification work performed after substantial completion and before final completion of the project.

(c) Administration or supervision of any modification performed pursuant to change orders. For the purposes of this subdivision, "change order" means a written instrument issued after execution of a contract for modification work, providing for all of the following:

(i) The scope of a change in the modification work, contract for modification work or other contract documents.

(ii) The amount of an adjustment, if any, to the guaranteed maximum price as set in the contract for modification work. For the purposes of this item, "guaranteed maximum price" means the amount guaranteed to be the maximum amount due to a prime contractor for the performance of all modification work for the project.

(iii) The extent of an adjustment, if any, to the contract time of performance set forth in the contract.

(d) Administration or supervision of any modification performed pursuant to change directives. For the purposes of this subdivision, "change directive" means a written order directing a change in modification work before agreement on an adjustment of the guaranteed maximum price or contract time.

(e) Inspection to determine the dates of substantial completion or final completion.

(f) Preparation of any manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work. For the purposes of this subdivision, "as-built drawing" means a drawing that indicates field changes made to adapt to field conditions, field changes resulting from change orders or buried and concealed installation of piping, conduit and utility services.

(g) Preparation of status reports after modification work has begun detailing the progress of work performed, including preparation of any of the following:

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

(iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.

(v) Identification of any health and safety issues that have arisen in connection with the modification work.

(h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.

(i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.
(j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

2. "Design phase services" means services for developing and completing a design for a project that are not construction phase services, including the following:
(a) Evaluating surveys, reports, test results or any other information on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.
(b) Evaluating any criteria or programming objectives for the project to ascertain requirements for the project, such as physical requirements affecting cost or projected utilization of the project.
(c) Preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.
(d) Preparing an initial schedule for the project, excluding the preparation of updates to the master schedule after modification work has begun.
(e) Preparing preliminary estimates of costs of modification work before completion of the final design of the project, including an estimate or schedule of values for any of the following:
(i) Labor, materials, machinery and equipment, tools, water, heat, utilities, transportation and other facilities and services used in the execution and completion of modification work, regardless of whether they are temporary or permanent or whether they are incorporated in the modifications.
(ii) The cost of labor and materials to be furnished by the owner of the real property.
(iii) The cost of any equipment of the owner of the real property to be assigned by the owner to the prime contractor.
(iv) The cost of any labor for installation of equipment separately provided by the owner of the real property that has been designed, specified, selected or specifically provided for in any design document for the project.
(v) Any fee paid by the owner of the real property to the prime contractor pursuant to the contract for modification work.
(vi) Any bond and insurance premiums.
(vii) Any applicable taxes.
(viii) Any contingency fees for the prime contractor that may be used before final completion of the project.
(f) Reviewing and evaluating cost estimates and project documents to prepare recommendations on site use, site improvements, selection of materials, building systems and equipment, modification feasibility, availability of materials and labor, local modification activity as related to schedules and time requirements for modification work.
(g) Preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.

3. "Professional services" means architect services, engineer services, geologist services, land surveying services or landscape architect services that are within the scope of those services as provided in title 32, chapter 1 and for which gross proceeds of sales or gross income has not otherwise been deducted under subsection K of this section.

500 O. [MRRA Projects] The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this subsection. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section. For the purposes of this subsection:

1. Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in section 42-5008.01.
2. Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

P. Notwithstanding subsection O of this section, a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is taxable under this section, even if the contract also includes vertical improvements. Agencies that are subject to procurement processes under those provisions shall include in the request for proposals a notice to bidders when those projects are subject to this section. This subsection does not apply to contracts with:

1. Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.
2. Any special taxing district not specified in paragraph 1 of this subsection if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

Q. Notwithstanding subsection R, paragraph 10 of this section, a person owning real property who enters into a contract for sale of the real property, who is responsible to the new owner of the property for modifications made to the property in the period subsequent to the transfer of title and who receives a consideration for the modifications is considered a prime contractor solely for purposes of taxing the gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title. The original owner's gross proceeds of sale or gross income received for the modifications shall be determined according to the following methodology:

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale

or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

2. If the original owner enters into an agreement separate from the contract for sale of the real property providing for amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title to the property, the amounts are included in the original owner's gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title.

3. If the original owner is responsible to the new owner for modifications made to the property in the period subsequent to the transfer of title and derives any gross proceeds of sale or gross income from the project subsequent to the transfer of title other than a delayed disbursement from escrow unrelated to the modifications, it is presumed that the amounts are received for the modifications made subsequent to the transfer of title unless the contrary is established by the owner through its books, records and papers kept in the regular course of business.

4. The tax base of the original owner is computed in the same manner as a prime contractor under this section.

R. For the purposes of this section:

1. "Alteration" means an activity or action that causes a direct physical change to existing property. For the purposes of this paragraph:

(a) For existing property that is properly classified as class two property under section 42-12002, paragraph 1, subdivision (c) or paragraph 2, subdivision (c) and that is used for residential purposes, class three property under section 42-12003 or class four property under 42-12004, this paragraph does not apply if the contract amount is more than twenty-five percent of the most recent full cash value established under chapter 13, article 2 of this title as of the date of any bid for the work or the date of the contract, whichever value is higher.

(b) For all existing property other than existing property described in subdivision (a) of this paragraph, this paragraph does not apply if any of the following is true:

(i) The contract amount is more than seven hundred fifty thousand dollars.

(ii) The scope of work directly relates to more than forty percent of the existing square footage of the existing property.

(iii) The scope of work involves expanding the square footage of more than ten percent of the existing property.

(c) Project elements may not be artificially separated from a contract to cause a project to qualify as an alteration. The department has the burden of proof that project elements have been artificially separated from a contract.

(d) If a project for which the owner and the person performing the work reasonably believed, at the inception of the contract, would be treated as an alteration under this paragraph and, on completion of the project, the project exceeded the applicable threshold described in either subdivision (a) or (b) of this paragraph by no more than twenty-five percent of the applicable threshold for any reason, the work performed under the contract qualifies as an alteration.

(e) A change order that directly relates to the scope of work of the original contract shall be treated as part of the original contract, and the contract amount shall include any amount attributable to a change order that directly relates to the scope of work of the original contract.
(f) Alteration does not include maintenance, repair or replacement.
2. "Contracting" means engaging in business as a contractor.
3. "Contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part of such a project, including the erection of scaffolding or other structure or works in connection with such a project, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not such contractor is acting in fulfillment of a contract.
4. "Manufactured building" means a manufactured home, mobile home or factory-built building, as defined in section 41-4001.
5. "Manufactured building dealer" means a dealer who either:
(a) Is licensed pursuant to title 41, chapter 37, article 4 and who sells manufactured buildings to the final consumer.
(b) Supervises, performs or coordinates the excavation and completion of site improvements or the setup of a manufactured building, including the contracting, if any, with any subcontractor or specialty contractor for the completion of the contract.
6. "Modification" means construction, grading and leveling ground, wreckage or demolition. Modification does not include:
(a) Any project described in subsection O of this section.
(b) Any wreckage or demolition of existing property, or any other activity that is a necessary component of a project described in subsection O of this section.
(c) Any mobilization or demobilization related to a project described in subsection O of this section, such as the erection or removal of temporary facilities to be used by those persons working on the project.
7. "Modify" means to make a modification or cause a modification to be made.
8. "Owner" means the person that holds title to the real property or improvements to real property that is the subject of the work, as well as an agent of the title holder and any person with the authority to perform or authorize work on the real property or improvements, including a tenant and a property manager. For the purposes of subsection O of this section, a person who is hired by a general contractor that is hired by an owner, or a subcontractor of a general contractor that is hired by an owner, is considered to be hired by the owner.
9. "Prime contracting" means engaging in business as a prime contractor.
10. "Prime contractor" means a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, including the contracting, if any, with any subcontractors or specialty contractors and who is

responsible for the completion of the contract. Except as provided in subsections E and Q of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.
11. "Replacement" means the removal from service of one component or system of existing property or tangible personal property installed in existing property, including machinery or equipment, and the installation of a new component or system or new tangible personal property, including machinery or equipment, that provides the same similar or upgraded design or functionality, regardless of the contract amount and regardless of whether the existing component or system or existing tangible personal property is physically removed from the existing property.
12. "Sale of a used manufactured building" does not include a lease of a used manufactured building.

EFFECTIVE JANUARY 1, 2017:

42-5076. Online lodging marketplace classification; definitions

(Eff. 1/1/17)

A. The online lodging marketplace classification is comprised of the business of operating an online lodging marketplace.

B. The tax base for the online lodging marketplace classification is the gross proceeds of sales or gross income derived from the business measured by the total amount charged for an online transient lodging transaction by the online lodging operator.

C. The online lodging marketplace classification does not include any online lodging marketplace that has not entered into an agreement with the department to register for, or has not otherwise obtained from the department, a license to collect tax pursuant to section 42-5005, subsection L.

D. For the purposes of this section:

1. "Online lodging marketplace" means a person that provides a digital platform for compensation through which an unaffiliated third party offers to rent lodging accommodations to an occupant, including a transient, as defined in section 42-5070, and the accommodations are not classified for property tax purposes under section 42-12001. For the purposes of this paragraph:

(a) "Lodging accommodations" means any space offered to the public for lodging, including any hotel, motel, inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, residential home, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or space.

(b) "Unaffiliated third party" means a person that is not owned or controlled, directly or indirectly, by the same interests.

2. "Online lodging operator" means a person that is engaged in the business of renting to an occupant, including a transient as defined in section 42-5070, any lodging accommodation offered through an online lodging marketplace.

3. "Online lodging transaction" means a charge to an occupant, including a transient as defined in section 42-5070, by an online lodging operator for the occupancy of any lodging accommodation and includes an online transient lodging transaction.

4. "Online transient lodging transaction" means a charge to an occupant who is a transient as defined in section 42-5070 by an online lodging operator for the occupancy of any lodging accommodation.

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

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

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

549 2. Freight costs billed to and collected from a purchaser by a retailer for tangible personal property which, upon the order of the retailer, is shipped directly from a manufacturer or wholesaler to the purchaser.

B. For the purposes of this article 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 article 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.

42-5001. Definitions

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

1. "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:

(a) Casual activities or sales.

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

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

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

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

5. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but 708 cash discounts allowed and taken on sales are not included as gross income.

708 6. "Gross income" and "gross proceeds of sales" do not include goods, wares or merchandise, or value thereof, returned by customers if the sale price is refunded either in cash or by credit, nor 711 the value of merchandise traded in on the purchase of new merchandise when the trade-in allowance is deducted from the sales price of the new merchandise before completion of the sale.

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

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

9. "Qualifying community health center":

(a) 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:

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

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

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

10. "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 per cent 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 auditing standards and filed annually with the department. 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 per cent requirement.

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

12. "Qualifying hospital" means any of the following:

(a) 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.

(b) 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.

(c) 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.

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

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

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

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

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

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

15. "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.

16. "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.

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

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

19. "Taxpayer" means any person who is liable for any tax which is imposed by this article.

20. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale and not for consumption by the purchaser.

42-5402. Levy of tax
[Prepaid wireless telecommunications E911 excise tax] BUSINESS CODE 912

A. A prepaid wireless telecommunications E911 excise tax is levied on every seller in an amount of eight-tenths of one per cent of the gross proceeds of sales or gross income derived from the retail sale of prepaid wireless telecommunications service.

564 B. The seller is liable for the tax imposed under this section. The amount of tax may be separately stated on the invoice, receipt or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer. **The seller may retain three per cent of the amount of tax collected before remitting the tax to the department.**

C. For the purpose of determining the location of a retail sale of prepaid wireless telecommunications service under this article, a retail sale of prepaid wireless telecommunications service occurs in this state if:

1. The retail sale of prepaid wireless telecommunications service is completed in person at a business location in this state.
2. If paragraph 1 of this subsection does not apply, the product is delivered to the consumer at an address in this state.
3. If paragraphs 1 and 2 of this subsection do not apply, the seller's records that are maintained in the ordinary course of business indicate that the consumer's address is located in this state and the seller's records are not made or kept in bad faith.
4. If paragraphs 1, 2 and 3 of this subsection do not apply, the consumer gives the seller an address in this state during the completion of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith.
5. If paragraphs 1 through 4 of this subsection do not apply, the wireless telephone number is associated with a location in this state.

D. The amount of tax that is paid by a seller shall not be included in the tax base for computing any transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

E. The tax levied under this section shall be the only E911 funding obligation for prepaid wireless telecommunications service in this state. This state, any political subdivision of this state or any intergovernmental agency shall not levy any other similar tax or fee, however denominated, on any seller or consumer for the sale, purchase, use or provision of prepaid wireless telecommunications service for the purpose of funding E911 service.

Deduction Code 692: USE TX: Out-of-State Vendor's *Sale to* a USE TAX DIRECT PAY PERMIT HOLDER

42-5167. Use tax direct payment

A. A person may elect to pay use taxes directly to the department under this article if the person:
1. Applies to the department for a use tax direct payment permit. The application must be on a form prescribed by the department setting forth the name under which the applicant transacts or intends to transact business, the location of the place or places of business where the applicant intends to make direct payment of use taxes and any other information that the department may require. The application must be signed, in the case of:
(a) A natural person, by the owner.
(b) An association or partnership, by a member or partner.
(c) A corporation, by an executive officer or another person specifically authorized by the corporation to sign the application.
2. Agrees to self-assess and pay directly to the department any use tax liability incurred under this article.
3. Certifies to the department that the person purchased for the person's own use tangible personal property at a cost of five hundred thousand dollars or more, in the aggregate, during the immediately preceding calendar year.
B. The department shall issue a use tax direct payment permit to any applicant that meets the requirements of subsection A of this section.
C. If the department deems it necessary to protect the revenues to be collected under this section, it may require a person to file a bond to secure the payment of such amounts pursuant to section 42-1102.
D. A person who holds a valid use tax direct payment permit shall:
1. Self-assess and pay directly to the department use taxes due under this article for all tangible personal property subject to use tax.
2. Report the tax on a tax return prescribed by the department.
E. A holder of a use tax direct payment certificate may issue a use tax direct payment certificate to any retailer or seller, subject to all of the following:
1. The certificate shall be in a form prescribed by the department and must be signed by and bear the name, address and permit number of the holder of the use tax direct payment permit.
2. The certificate is effective until the permit holder revises or withdraws the certificate or until the retailer or seller receives actual notice that the department has revoked the permit.
3. The certificate relieves the retailer or seller of the duty to collect use tax only if taken in good faith from a person who holds a use tax direct payment permit. The department may periodically publish on its web site a list of taxpayers by name with tax identification numbers who have been issued direct payment permits. A purchaser holding a direct payment permit who issues a use tax direct payment certificate that is accepted in good faith by a retailer or seller of tangible personal property shall be liable for use tax and related interest and penalties with respect to any transaction that the department subsequently determines properly subjects the vendor to the transaction privilege tax and not use tax. The vendor shall be relieved of the duty to pay transaction privilege tax on such transactions.
4. In addition to any use tax liabilities, a holder of a use tax direct payment permit that gives a use tax direct payment certificate to a retailer or seller is subject to the same penalty provisions that apply to a retailer or seller.

Deduction Code 788: Telecommunications – Credit for Senior Assistance Program Discount

46-701. Telecommunications service assistance program; administration; rules
(L86, ch 361, sec 2.)
A. A telecommunications service assistance program is established to provide eligible recipients with a reduction in costs of telecommunications services.
B. The program shall be administered by the department in accordance with the provisions of this chapter and rules promulgated by the department for the program.

46-702. Assistance eligibility; list
(L86, ch 361, sec 2.)
A. To be considered eligible for the telecommunications service assistance program, applicants must be a head of household, be sixty-five years of age or older and have a household income at or below the poverty level as determined by the United States office of management and budget and reported annually in the federal register. The department shall develop procedures for taking applications for assistance and for determining program eligibility.
B. Each year the department shall provide a list or lists of the names, addresses and if applicable, telephone numbers of all eligible recipients to each local exchange telephone company. The local exchange telephone company shall determine from the list those recipients to which the company provides service.

46-703. Assistance rate credit; form; applicable services; amount; application
A. The local exchange telephone company shall provide assistance to all recipients determined to be eligible pursuant to section 46-702 in the form of a credit on their telephone bill. Such a credit on the telephone bill shall apply to the following:
1. Flat rate local exchange services.
2. Local exchange access services in measured service circumstances.
3. Local area calling usage limited to an amount that in conjunction with the exchange access service does not exceed the comparable flat rate total.
4. The charge for maintenance of inside wiring.
5. The installation charge for basic service one time during any calendar year.
B. The credit allowed by the telecommunications service assistance program is seventeen per cent of the rate set by the corporation commission for the services in subsection A, either paragraphs 1, 4 and 5 or paragraphs 2 through 5, whichever is applicable, to the services being received by the eligible recipient.
C. The department shall apply for a waiver for the mandated customer access line charges pursuant to the federal communications commission CC docket 78-72, 80-286. Upon receipt of the waiver, the assistance provided by the local exchange telephone company pursuant to subsection A shall include a waiver of the mandated customer access line charge.