

2012-2013 AMENDMENTS TO THE
TAX CODE OF THE TOWN OF GILBERT

**PROPOSED GILBERT TAX CODE CHANGES FOR
CONSIDERATION BY GILBERT TOWN COUNCIL**

TO BE CONSIDERED AT THE REGULAR COUNCIL MEETING ON DECEMBER 19,
2013 AT 7:00 P.M., AT THE TOWN OF GILBERT MUNICIPAL COMPLEX, 50 E. CIVIC
CENTER DRIVE, GILBERT, ARIZONA 85296.

The Model City Tax Code is a state-wide, uniform set of local tax laws designed to ensure consistent privilege (sales) tax laws among all cities and towns. The original Model City Tax Code⁽¹⁹⁸⁷⁾ and the subsequent changes were reviewed and adopted by the Municipal Tax Code Commission.

The Municipal Tax Code Commission requires any city or town that wishes to impose a local privilege (sales) tax to adopt the Model City Tax Code, along with any changes the Commission adopts over time. The Town of Gilbert originally adopted the Model City Tax Code in 1987, and has adopted the subsequent changes over the years. Gilbert's version of the Model City Tax Code is referred to as the Gilbert Tax Code; Title 58 of the Gilbert Code of Ordinances.

The Municipal Tax Code Commission approved modifications to the Model City Tax Code during calendar years 2012 and 2013 as part of an ongoing effort to simplify the tax code and adopt legislative changes. The Town of Gilbert is required to consider the adoption of these changes into the Gilbert Tax Code.

The text of the proposed Gilbert Tax Code changes is posted below. Deleted text has been ~~struck through~~ and added text has been CAPITALIZED.

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Section I. Tax Code of the Town of Gilbert, Section 58-100 is amended as follows. The change to “Business” has an effective date of January 1, 2007. The change to “Prosthetic” has an effective date of October 1, 2007.

Sec. 58-100. General definitions.

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

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

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

"Business" ~~means~~ INCLUDES all activities or acts, personal or corporate, engaged in ~~and~~ OR caused to be engaged in with the object of gain, benefit, or advantage, either directLY or indirectLY, but DOES not INCLUDE EITHER: casual activities or sales; OR THE TRANSFER OF ELECTRICITY FROM A SOLAR PHOTOVOLTAIC GENERATION SYSTEM TO AN ELECTRIC UTILITY DISTRIBUTION SYSTEM.

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

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

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

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

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

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

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

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

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

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

"Equivalent Excise Tax" means either:

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

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an excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

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

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

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

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

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

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

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

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

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

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

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

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 58-432 for such use. This definition shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
- (2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.
- (3)

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hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

(4)

drugs or medicine, including oxygen.

(5)

equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

(6)

durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

(7)

ORTHODONTIC DEVICES DISPENSED BY A DENTAL PROFESSIONAL WHO IS LICENSED UNDER TITLE 32, CHAPTER 11 TO A PATIENT AS PART OF THE PRACTICE OF DENTISTRY.

~~(7)~~(8)

Under no circumstances shall "prosthetic" include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person.

"Qualifying Community Health Center"

(1)

means an entity that is recognized as nonprofit under Section 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(a)

the sole provider of primary care in the community.

(b)

a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(2)

includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed

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according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Speculative Builder" means either:

- (1)
 - an owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 58-416) consisting of:
 - (a) custom, model, or inventory homes, regardless of the stage of completion of such homes; or
 - (b) improved residential or commercial lots without a structure; or
- (2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:

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(a)
prior to completion; or

(b)
before the expiration of twenty-four (24) months after the
improvements of the real property sold are substantially complete.

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

(1)
has passed final inspection or its equivalent; or

(2)
certificate of occupancy or its equivalent has been issued; or

(3)
is ready for immediate occupancy or use.

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

"Tax Collector" means the Common Council or its designee or agent for all purposes
under this Chapter.

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

"Taxpayer Problem Resolution Officer" means the individual designated by the Town
to perform the duties identified in Sections 58-515 and 58-516. In towns with a population of
50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the town.
In towns with a population of less than 50,000, the Taxpayer Problem Resolution Officer
need not be an employee of the town. Regardless of whether the Taxpayer Problem
Resolution Officer is or is not an employee of the town, the Taxpayer Problem Resolution
Officer shall have substantive knowledge of taxation. The identity of and telephone number
for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

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

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

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

Section II. Tax Code of the Town of Gilbert, Section 58-120 is repealed, with an effective date of July 1, 2013.

~~Sec. 58-120. Reserved.~~

Section III. Tax Code of the Town of Gilbert, Section 58-200 is amended as follows, with an effective date of July 1, 2013.

Sec. 58-200. Determination of gross income: in general.

(a)

Gross income includes:

(1)

the value proceeding or accruing from the sale of property, the providing of service, or both.

(2)

the total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

(3)

all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

(4)

all other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

(b)

Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.

(c)

No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

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(d)

FOR THE PURPOSES OF THIS CHAPTER THE TOTAL AMOUNT OF GROSS INCOME, GROSS RECEIPTS OR GROSS PROCEEDS OF SALES FOR NUCLEAR FUEL SHALL BE DEEMED TO BE THE VALUE OF THE PURCHASE PRICE OF URANIUM OXIDE USED IN PRODUCING THE FUEL. THE TAX IMPOSED BY THIS CHAPTER MAY BE IMPOSED ONLY ONCE FOR ANY ONE QUANTITY OR BATCH OF NUCLEAR FUEL REGARDLESS OF THE NUMBER OF TRANSACTIONS OR FINANCING ARRANGEMENTS WHICH MAY OCCUR WITH RESPECT TO THAT NUCLEAR FUEL.

Section IV. Tax Code of the Town of Gilbert, Section 58-425 is amended as follows, with an effective date of September 21, 2006.

Sec. 58-425. Job printing.

(a)

The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

(b)

The tax imposed by this Section shall not apply to:

(1)

job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.

(2)

out-of-Town sales.

(3)

out-of-State sales.

(4)

job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by subsection 58-435(a) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.

(5)

sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold

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is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(6)

Reserved.

(7)

SALES OF POSTAGE AND FREIGHT EXCEPT THAT THE AMOUNT DEDUCTED SHALL NOT EXCEED THE ACTUAL POSTAGE AND FREIGHT EXPENSE THAT IS PAID TO THE UNITED STATES POSTAL SERVICE OR A COMMERCIAL DELIVERY SERVICE AND THAT IS SEPARATELY ITEMIZED BY THE TAXPAYER ON THE CUSTOMER'S INVOICE AND IN THE TAXPAYER'S RECORDS.

Section V. Tax Code of the Town of Gilbert, Section 58-445 is amended as follows, with an effective date of July 1, 2013.

Sec. 58-445. Rental, leasing, and licensing for use of real property.

(a)

The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:

(1)

Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

(2)

Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

(3)

However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 58-470

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- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) Reserved.
- (g) Reserved.
- (h) Reserved.
- (i) Reserved.
- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 58-444 of this code.
- (k) Reserved.
- (l) Reserved.
- (m) Reserved.

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- (n) Notwithstanding the provisions of Section 58-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.
- (r) Income received from the rental of any "low-income unit" as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the "gross rent" defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income unit" rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit.
- ~~(s) The gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation. For the purposes of this paragraph:~~
- ~~(t)~~

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~~"Affiliated Corporation" means a corporation that meets one of the following conditions:~~

~~(A)~~

~~The corporation owns or controls at least eighty per cent of the lessor.~~

~~(B)~~

~~The corporation is at least eighty per cent owned or controlled by the lessor.~~

~~(C)~~

~~The corporation is at least eighty per cent owned or controlled by a corporation that also owns or controls at least eighty per cent of the lessor.~~

~~(D)~~

~~The corporation is at least eighty per cent owned or controlled by a corporation that is at least eighty per cent owned or controlled by a reciprocal insurer.~~

~~(2)~~

~~For the purposes of subsection (1), ownership and control are determined by reference to the voting shares of a corporation.~~

~~(3)~~

~~"Reciprocal Insurer" has the same meaning as prescribed in A.R.S. Section 20-762.~~

(S)

THE GROSS PROCEEDS OF A COMMERCIAL LEASE OF REAL PROPERTY
BETWEEN AFFILIATED COMPANIES, BUSINESSES, PERSONS OR
RECIPROCAL INSURERS ARE EXEMPT. FOR THE PURPOSES OF THIS
PARAGRAPH:

(1)

"AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL
INSURERS" MEANS THE LESSOR HOLDS A CONTROLLING INTEREST
IN THE LESSEE, THE LESSEE HOLDS A CONTROLLING INTEREST IN
THE LESSOR, AN AFFILIATED ENTITY HOLDS A CONTROLLING
INTEREST IN BOTH THE LESSOR AND THE LESSEE OR AN

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UNRELATED PERSON HOLDS A CONTROLLING INTEREST IN BOTH
THE LESSOR AND LESSEE.

(2)

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

(3)

"RECIPROCAL INSURER" HAS THE SAME MEANING AS PRESCRIBED
IN A.R.S. SECTION 20-762.

**Section VI. Tax Code of the Town of Gilbert, Section 58-450 is amended as follows, with
an effective date of September 1, 2004.**

Sec. 58-450. Rental, leasing, and licensing for use of tangible personal property.

(a)

The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the Town as provided by Regulation.

(b)

Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.

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(c)

Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

(1)

rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

(2)

rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

(3)

rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 58-410, or to a radio station, television station, or subscription television system.

(4)

rental, leasing, or licensing for use of the following:

(A)

prosthetics.

(B)

income-producing capital equipment.

(C)

mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

(5)

rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

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- (6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
- (7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) the gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.
- (9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) rental, leasing and licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (11) rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the department of revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the department of revenue and Town, as applicable, for examination.

(12)

LEASING OR RENTING CERTIFIED IGNITION INTERLOCK DEVICES
INSTALLED PURSUANT TO THE REQUIREMENTS PRESCRIBED BY
A.R.S. SECTION 28-1461. FOR THE PURPOSES OF THIS PARAGRAPH,

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["CERTIFIED IGNITION INTERLOCK DEVICE" HAS THE SAME MEANING
PRESCRIBED IN A.R.S. SECTION 28-1301.](#)

**Section VII. Tax Code of the Town of Gilbert, Section 58-460 is amended as follows, with
an effective date of October 1, 2007.**

Sec. 58-460. Retail sales: measure of tax; burden of proof; exclusions.

- (a)
The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.
- (b)
The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.
- (c)
Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:
- (1)
sales of stocks, bonds, options, or other similar materials.
 - (2)
sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
 - (3)
sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
 - (4)
gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.
 - (5)
sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

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(6)

SALES OF CASH EQUIVALENTS. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE REDEMPTION OF ANY CASH EQUIVALENT BY THE HOLDER AS A MEANS OF PAYMENT FOR GOODS OR SERVICES THAT ARE TAXABLE UNDER THIS ARTICLE IS SUBJECT TO THE TAX. "CASH EQUIVALENTS" MEANS ITEMS OR INTANGIBLES, WHETHER OR NOT NEGOTIABLE, THAT ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE DENOMINATED IN MONEY IS PURCHASED IN ADVANCE AND MAY BE REDEEMED IN FULL OR IN PART FOR TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES. CASH EQUIVALENTS INCLUDE GIFT CARDS, STORED VALUE CARDS, GIFT CERTIFICATES, VOUCHERS, TRAVELER'S CHECKS, MONEY ORDERS OR OTHER INSTRUMENTS, ORDERS OR ELECTRONIC MECHANISMS, SUCH AS AN ELECTRONIC CODE, PERSONAL IDENTIFICATION NUMBER OR DIGITAL PAYMENT MECHANISM, OR ANY OTHER PREPAID INTANGIBLE RIGHT TO ACQUIRE TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES IN THE FUTURE, WHETHER FROM THE SELLER OF THE CASH EQUIVALENT OR FROM ANOTHER PERSON. CASH EQUIVALENTS DO NOT INCLUDE EITHER OF THE FOLLOWING:

(A) _____

ITEMS OR INTANGIBLES THAT ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE IS NOT DENOMINATED IN MONEY.

(B) _____

PREPAID CALLING CARDS OR PREPAID AUTHORIZATION NUMBERS FOR

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TELECOMMUNICATIONS SERVICES MADE

TAXABLE BY SUBSECTION (g) OF THIS SECTION.

- (d) Reserved.
- (e) When this Town and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.
- (f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this Town or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.
- (g) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.

Section VIII. Tax Code of the Town of Gilbert, Section 58-462 is added as follows, with an effective date of July 1, 2013.

SEC. 58-462. RETAIL SALES: FOOD FOR HOME CONSUMPTION.

(a)

THE TAX RATE SHALL BE AT AN AMOUNT EQUAL TO ONE AND ONE-HALF PERCENT (1.5%) OF THE GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON ENGAGING OR CONTINUING IN THE BUSINESS OF SELLING FOOD FOR HOME CONSUMPTION AT RETAIL.

(b)

FOR THE PURPOSES OF THIS SECTION ONLY, THE FOLLOWING DEFINITIONS SHALL BE APPLICABLE:

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(1)

"ELIGIBLE GROCERY BUSINESS" MEANS AN ESTABLISHMENT WHOSE SALES OF FOOD ARE SUCH THAT IT IS ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 (P.L. 95-113; 91 STAT. 958.7 U.S.C. SECTION 2011 ET SEQ.), ACCORDING TO REGULATIONS IN EFFECT ON JANUARY 1, 1979. AN ESTABLISHMENT IS DEEMED ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM IF IT IS AUTHORIZED TO PARTICIPATE IN THE PROGRAM BY THE UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE FIELD OFFICE ON THE EFFECTIVE DATE OF THIS SECTION, OR IF, PRIOR TO A REPORTING PERIOD FOR WHICH THE RETURN IS FILED, SUCH RETAILER PROVES TO THE SATISFACTION OF THE TAX COLLECTOR THAT THE ESTABLISHMENT, BASED ON THE NATURE OF THE RETAILER'S FOOD SALES, COULD BE ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 ACCORDING TO REGULATIONS IN EFFECT ON JANUARY 1, 1979.

(2)

"FACILITIES FOR THE CONSUMPTION OF FOOD" MEANS TABLES, CHAIRS, BENCHES, BOOTHS, STOOLS, COUNTERS, AND SIMILAR CONVENIENCES, TRAYS, GLASSES, DISHES, OR OTHER TABLEWARE AND PARKING AREAS FOR THE CONVENIENCE OF IN-CAR CONSUMPTION OF FOOD IN OR ON THE PREMISES ON WHICH THE RETAILER CONDUCTS BUSINESS.

(3)

"FOOD FOR CONSUMPTION ON THE PREMISES" MEANS ANY OF THE FOLLOWING:

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(A)

"HOT PREPARED FOOD" AS DEFINED BELOW.

(B)

HOT OR COLD SANDWICHES.

(C)

FOOD SERVED BY AN ATTENDANT TO BE EATEN AT TABLES,
CHAIRS, BENCHES, BOOTHS, STOOLS, COUNTERS, AND
SIMILAR CONVENIENCES AND WITHIN PARKING AREAS FOR
THE CONVENIENCE OF IN-CAR CONSUMPTION OF FOOD.

(D)

FOOD SERVED WITH TRAYS, GLASSES, DISHES, OR OTHER
TABLEWARE.

(E)

BEVERAGES SOLD IN CUPS, GLASSES, OR OPEN
CONTAINERS.

(F)

FOOD SOLD BY CATERERS.

(G)

FOOD SOLD WITHIN THE PREMISES OF THEATRES, MOVIES,
OPERAS, SHOWS OF ANY TYPE OR NATURE, EXHIBITIONS,
CONCERTS, CARNIVALS, CIRCUSES, AMUSEMENT PARKS,
FAIRS, RACES, CONTESTS, GAMES, ATHLETIC EVENTS,
RODEOS, BILLIARD AND POOL PARLORS, BOWLING ALLEYS,
PUBLIC DANCES, DANCE HALLS, BOXING, WRESTLING AND
OTHER MATCHES, AND ANY BUSINESS WHICH CHARGES
ADMISSION, ENTRANCE, OR COVER FEES FOR EXHIBITION,
AMUSEMENT, ENTERTAINMENT, OR INSTRUCTION.

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(H)

ANY ITEMS CONTAINED IN SUBSECTIONS (A)(3)(A) THROUGH (G) ABOVE EVEN THOUGH THEY ARE SOLD ON A "TAKE-OUT" OR "TO GO" BASIS, AND WHETHER OR NOT THE ITEM IS PACKAGED, WRAPPED, OR IS ACTUALLY TAKEN FROM THE PREMISES.

(4)

"HOT PREPARED FOOD" MEANS THOSE PRODUCTS, ITEMS, OR INGREDIENTS OF FOOD WHICH ARE PREPARED AND INTENDED FOR CONSUMPTION IN A HEATED CONDITION. "HOT PREPARED FOOD" INCLUDES A COMBINATION OF HOT AND COLD FOOD ITEMS OR INGREDIENTS IF A SINGLE PRICE HAS BEEN ESTABLISHED.

(5)

"PREMISES" MEANS THE TOTAL SPACE AND FACILITIES IN OR ON WHICH A VENDOR CONDUCTS BUSINESS AND WHICH ARE OWNED OR CONTROLLED, IN WHOLE OR IN PART, BY A VENDOR OR WHICH ARE MADE AVAILABLE FOR THE USE OF CUSTOMERS OF THE VENDOR OR GROUP OF VENDORS, INCLUDING ANY BUILDING OR PART OF A BUILDING, PARKING LOT, OR GROUNDS.

(6)

"FOOD FOR HOME CONSUMPTION" MEANS ALL FOOD, EXCEPT FOOD FOR CONSUMPTION ON THE PREMISES, IF SOLD BY ANY OF THE FOLLOWING:

(A)

AN ELIGIBLE GROCERY BUSINESS.

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(B)

A PERSON WHO CONDUCTS A BUSINESS WHOSE PRIMARY BUSINESS IS NOT THE SALE OF FOOD BUT WHO SELLS FOOD WHICH IS DISPLAYED, PACKAGED, AND SOLD IN A SIMILAR MANNER AS AN ELIGIBLE GROCERY BUSINESS.

(C)

A PERSON WHO SELLS FOOD AND DOES NOT PROVIDE OR MAKE AVAILABLE ANY FACILITIES FOR THE CONSUMPTION OF FOOD ON THE PREMISES.

(D)

A PERSON WHO CONDUCTS A DELICATESSEN BUSINESS EITHER FROM A COUNTER WHICH IS SEPARATE FROM THE PLACE AND CASH REGISTER WHERE TAXABLE SALES ARE MADE OR FROM A COUNTER WHICH HAS TWO CASH REGISTERS AND WHICH ARE USED TO RECORD TAXABLE AND TAX EXEMPT SALES, OR A RETAILER WHO CONDUCTS A DELICATESSEN BUSINESS WHO USES A CASH REGISTER WHICH HAS AT LEAST TWO TAX COMPUTING KEYS WHICH ARE USED TO RECORD TAXABLE AND TAX EXEMPT SALES.

(E)

VENDING MACHINES AND OTHER TYPES OF AUTOMATIC RETAILERS.

(F)

A PERSON'S SALES OF FOOD, DRINK AND CONDIMENT FOR CONSUMPTION WITHIN THE PREMISES OF ANY PRISON, JAIL OR OTHER INSTITUTION UNDER THE JURISDICTION OF THE

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STATE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT
OF PUBLIC SAFETY, THE DEPARTMENT OF JUVENILE
CORRECTIONS OR A COUNTY SHERIFF.

(c)

INCOME DERIVED FROM THE FOLLOWING SOURCES IS EXEMPT FROM THE
TAX IMPOSED BY THIS SECTION:

(1)

SALES OF FOOD FOR HOME CONSUMPTION TO A PERSON
REGULARLY ENGAGED IN THE BUSINESS OF SELLING SUCH
PROPERTY.

(2)

OUT-OF-CITY SALES OR OUT-OF-STATE SALES.

(3)

CHARGES FOR DELIVERY OR OTHER "DIRECT CUSTOMER SERVICES"
AS PRESCRIBED BY REGULATION.

(4)

FOOD PURCHASED WITH FOOD STAMPS PROVIDED THROUGH THE
FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF
1977 (P.L. 95-113; 91 STAT. 958.7 U.S.C. SECTION 2011 ET SEQ.) OR
PURCHASED WITH FOOD INSTRUMENTS ISSUED UNDER SECTION 17
OF THE CHILD NUTRITION ACT (P.L. 95-627; 92 STAT. 3603; AND P.L.
99-669; SECTION 4302; 42 UNITED STATES CODE SECTION 1786) BUT
ONLY TO THE EXTENT THAT FOOD STAMPS OR FOOD INSTRUMENTS
WERE ACTUALLY USED TO PURCHASE SUCH FOOD.

(5)

SALES OF FOOD PRODUCTS BY PRODUCERS AS PROVIDED FOR BY
A.R.S. SECTIONS 3-561, 3-562 AND 3-563.

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(6)

SALES OF FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES TO A PUBLIC EDUCATIONAL ENTITY, PURSUANT TO ANY OF THE PROVISIONS OF TITLE 15, ARIZONA REVISED STATUTES, INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 15-802 ; TO THE EXTENT SUCH ITEMS ARE TO BE PREPARED OR SERVED TO INDIVIDUALS FOR CONSUMPTION ON THE PREMISES OF A PUBLIC EDUCATIONAL ENTITY DURING SCHOOL HOURS. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

(7)

SALES OF FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES TO A NONPROFIT CHARITABLE ORGANIZATION THAT HAS QUALIFIED AS AN EXEMPT ORGANIZATION UNDER 26 U.S.C. SECTION 501(C)(3) AND REGULARLY SERVES MEALS TO THE NEEDY AND INDIGENT ON A CONTINUING BASIS AT NO COST. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

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(d)

REPORTING. SUCH PERSONS WHO SELL FOOD FOR HOME CONSUMPTION SHALL, IN CONJUNCTION WITH THE RETURN REQUIRED PURSUANT TO SECTION 58-520, REPORT TO THE TAX COLLECTOR IN A MANNER PRESCRIBED BY THE TAX COLLECTOR ALL SALES OF FOOD FOR HOME CONSUMPTION EXEMPTED FROM TAXES IMPOSED BY THIS CHAPTER.

(e)

RECORDKEEPING.

(1)

RETAILERS SHALL MAINTAIN ACCURATE, VERIFIABLE, AND COMPLETE RECORDS OF ALL PURCHASES AND SALES OF TANGIBLE PERSONAL PROPERTY IN ORDER TO VERIFY EXEMPTIONS FROM TAXES IMPOSED BY THIS CHAPTER. A RETAILER MAY USE ANY METHOD OF REPORTING THAT PROPERLY REFLECTS ALL PURCHASES AND SALES OF FOOD FOR HOME CONSUMPTION, AS WELL AS ALL PURCHASES AND SALES OF ITEMS SUBJECT TO TAXES IMPOSED BY THIS CHAPTER, PROVIDED THAT SUCH RECORDS ARE MAINTAINED IN ACCORDANCE WITH ARTICLE III, AND REGULATIONS OF THE TAX COLLECTOR.

(2)

ANY PERSON WHO FAILS TO MAINTAIN RECORDS AS PROVIDED HEREIN SHALL BE DEEMED TO HAVE HAD NO SALES OF FOOD FOR HOME CONSUMPTION, AND IF UPON REQUEST BY THE TAX COLLECTOR, A PERSON CANNOT DEMONSTRATE TO THE TAX COLLECTOR THAT SUCH RECORDS AND REPORTS DO PROPERLY REFLECT ALL SALES OF FOOD FOR HOME CONSUMPTION, THE TAX

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[COLLECTOR MAY RECOMPUTE THE AMOUNT OF TAX TO BE PAID AS
PROVIDED IN SECTIONS 58-370 AND 58-545\(B\).](#)

Section IX. Tax Code of the Town of Gilbert, Section 58-465 is amended as follows. All changes are effective July 1, 2013, except new subsection (mm), which is effective January 1, 2007.

Sec. 58-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 58-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-Town sales or out-of-State sales.
- (c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.
- (d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.
- (e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.
- (f) sales of prosthetics.
- (g) sales of income-producing capital equipment.
- (h) sales of rental equipment and rental supplies.
- (i) sales of mining and metallurgical supplies.
- (j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

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- (k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) sales made directly to the Federal government to the extent of:
 - (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
 - (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.
- (o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 58-455 or the equivalent excise tax upon such income.
- (p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

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(q) ~~food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 *et seq.*) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food. RESERVED.~~

(r) sales of the following to persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry or ratites:

- (1) seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.
- (2) feed for livestock, poultry or ratites, including salt, vitamins, and other additives to such feed.
- (3) livestock, poultry or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milch cows, breeding bulls, laying hens, riding or work horses.
- (4) Reserved.

This exemption shall not be construed to include machinery, equipment, fuels, lubricants, pharmaceuticals, repair and replacement parts, or other items used or consumed in the running, maintenance, or repair of machinery, equipment, buildings, or structures used or consumed in the business of farming, ranching, or feeding of livestock, poultry or ratites.

(s) sales of groundwater measuring devices required by A.R.S. Section 45-604.

(t) Reserved.

(u) sales of aircraft acquired for use outside the State, as prescribed by Regulation.

(v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(w) Reserved.

(x) ~~Reserved.~~ SALES OF FOOD AND DRINK TO A PERSON WHO IS ENGAGED IN BUSINESS THAT IS CLASSIFIED UNDER THE RESTAURANT

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CLASSIFICATION AND THAT PROVIDES SUCH FOOD AND DRINK
WITHOUT MONETARY CHARGE TO ITS EMPLOYEES FOR THEIR OWN
CONSUMPTION ON THE PREMISES DURING SUCH EMPLOYEES' HOURS
OF EMPLOYMENT.

- (y) Reserved.
- (z) Reserved.
- (aa) the sale of tangible personal property used in remediation contracting as defined in Section 58-100 and Regulation 58-100.5
- (bb) sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
 - (1) printed or photographic materials.
 - (2) electronic or digital media materials.
- (cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (dd) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 58-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.
- (ee) for the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 58-470 is considered to be a sale for resale in the regular course of business.

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- (ff) sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.
- (gg) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, [INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 15-802](#); to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (hh) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 58-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) for the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (kk) sales of motor vehicles that use alternative fuel was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215.
- (ll) sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the department of Revenue as a solar energy

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retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and city, as applicable, for examination.

(MM)

SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.

(NN)

SALES OF MAGAZINES OR OTHER PERIODICALS OR OTHER PUBLICATIONS BY THIS STATE TO ENCOURAGE TOURIST TRAVEL.

(OO)

SALES OF PAPER MACHINE CLOTHING, SUCH AS FORMING FABRICS AND DRYER FELTS, SOLD TO A PAPER MANUFACTURER AND DIRECTLY USED OR CONSUMED IN PAPER MANUFACTURING.

(PP)

SALES OF OVERHEAD MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS USED IN PERFORMING A CONTRACT BETWEEN THE UNITED STATES GOVERNMENT AND A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, INCLUDING PROPERTY USED IN PERFORMING A SUBCONTRACT WITH A GOVERNMENT CONTRACTOR WHO IS A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, TO WHICH TITLE

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PASSES TO THE GOVERNMENT UNDER THE TERMS OF THE CONTRACT OR
SUBCONTRACT.

(QQ)

SALES OF COAL, PETROLEUM, COKE, NATURAL GAS, VIRGIN FUEL OIL AND
ELECTRICITY SOLD TO A QUALIFIED ENVIRONMENTAL TECHNOLOGY
MANUFACTURER, PRODUCER OR PROCESSOR AS DEFINED IN A.R.S.
SECTION 41-1514.02 AND DIRECTLY USED OR CONSUMED IN THE
GENERATION OR PROVISION OF ON-SITE POWER OR ENERGY SOLELY FOR
ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR
PROCESSING OR ENVIRONMENTAL PROTECTION. THIS PARAGRAPH SHALL
APPLY FOR TWENTY FULL CONSECUTIVE CALENDAR OR FISCAL YEARS
FROM THE DATE THE FIRST PAPER MANUFACTURING MACHINE IS PLACED
IN SERVICE. IN THE CASE OF AN ENVIRONMENTAL TECHNOLOGY
MANUFACTURER, PRODUCER OR PROCESSOR WHO DOES NOT
MANUFACTURE PAPER, THE TIME PERIOD SHALL BEGIN WITH THE DATE
THE FIRST MANUFACTURING, PROCESSING OR PRODUCTION EQUIPMENT
IS PLACED IN SERVICE.

(RR)

SALES OR GROSS INCOME DERIVED FROM SALES OF MACHINERY,
EQUIPMENT, MATERIALS AND OTHER TANGIBLE PERSONAL PROPERTY
USED DIRECTLY AND PREDOMINANTLY TO CONSTRUCT A QUALIFIED
ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR
PROCESSING FACILITY AS DESCRIBED IN A.R.S. SECTION 41-1514.02. THIS
SUBSECTION APPLIES FOR TEN FULL CONSECUTIVE CALENDAR OR FISCAL
YEARS AFTER THE START OF INITIAL CONSTRUCTION.

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Section X. Tax Code of the Town of Gilbert, Section 58-480 is amended as follows, with an effective date of January 1, 2007.

Sec. 58-480. Utility services.

(a)

The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:

(1)

consumers or ratepayers who reside within the Town.

(2)

consumers or ratepayers of this Town, whether within the Town or without, to the extent that this Town provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this Town for providing such utility services to such persons.

(b)

Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 58-460 and 58-465, and not considered gross income taxable under this Section.

(c)

Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

(d)

Reserved.

(e)

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The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f)

The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(g)

The tax imposed by this Section shall not apply to:

(1)

revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

(2)

revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

(h)

The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

(i)

THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A

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RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF
CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED
RENEWABLE ENERGY RESOURCES.

(J)

THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO THE PORTION
OF GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO
TRANSFERS OF ELECTRICITY BY ANY RETAIL ELECTRIC CUSTOMER
OWNING A SOLAR PHOTOVOLTAIC ENERGY GENERATING SYSTEM TO AN
ELECTRIC DISTRIBUTION SYSTEM, IF THE ELECTRICITY TRANSFERRED IS
GENERATED BY THE CUSTOMER'S SYSTEM.

**Section XI. Tax Code of the Town of Gilbert, Section 58-485 is amended as follows, with
an effective date of July 1, 2013.**

Sec. 58-485. ~~(Reserved)~~ WASTEWATER REMOVAL SERVICES

(a)

THE TAX RATE SHALL BE AN AMOUNT EQUAL TO ZERO PERCENT (0%) OF
THE GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON
ENGAGING OR CONTINUING IN THE BUSINESS OF PROVIDING WASTEWATER
REMOVAL SERVICES BY MEANS OF SEWER LINES OR SIMILAR PIPELINES
TO:

(1)

CONSUMERS OR RATEPAYERS WHO RESIDE WITHIN THE CITY.

(2)

CONSUMERS OR RATEPAYERS OF THIS CITY, WHETHER WITHIN THE
CITY OR WITHOUT, TO THE EXTENT THAT THIS CITY PROVIDES SUCH

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PERSONS WASTEWATER REMOVAL SERVICES, EXCLUDING
CONSUMERS OR RATEPAYERS WHO ARE RESIDENTS OF ANOTHER
CITY OR TOWN WHICH LEVIES AN EQUIVALENT EXCISE TAX UPON
THIS COTY FOR PROVIDING SUCH WASTEWATER REMOVAL
SERVICES TO SUCH PERSONS.

(b)

THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO GROSS INCOME
RELATING TO THE PROVIDING OF WASTEWATER REMOVAL SERVICES FROM
A QUALIFYING HOSPITAL, QUALIFYING COMMUNITY HEALTH CENTER OR A
QUALIFYING HEALTH CARE ORGANIZATION.

Section XII. Tax Code of the Town of Gilbert, Regulation 58-120.1 is repealed, with an effective date of July 1, 2013.

~~Reg. 58-120.1. Reserved.~~**

Section XIII. Tax Code of the Town of Gilbert, Regulation 58-270.1 is amended as follows, with an effective date of July 1, 2013.

Reg. 58-270.1. Proprietary activities of municipalities are not considered activities of a governmental entity.

The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 58-270:

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(a)

rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.

(b)

producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

(c)

sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

(d)

[PROVIDING WASTEWATER REMOVAL SERVICES TO CONSUMERS OR RATEPAYERS BY MEANS OF SEWER LINES OR SIMILAR PIPELINES.](#)

Section XIV. Tax Code of the Town of Gilbert, Regulation 58-460.1 is amended as follows, with an effective date of July 1, 2013.

Reg. 58-460.1. Distinction between retail sales and certain other transfers of tangible personal property.

(a)

Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 58-460:

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(1)

tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 58-415 through 58-418.

(2)

sales of feed at wholesale, per Section 58-420.

(3)

job printing, per Section 58-425.

(4)

mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 58-430.

(5)

publication of newspapers, magazines, and other periodicals, per Section 58-435.

(6)

rental, leasing, and licensing of real or tangible personal property, per Sections 58-445 or 58-450.

~~(7)~~

restaurants and bars, per Section 58-455.

~~(7)(8)~~

[FOOD FOR HOME CONSUMPTION, PER SECTION 58-462.](#)

~~(8)(9)~~

telecommunications services, per Section 58-470.

~~(9)(10)~~

utility services, per Section 58-480.

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~~(10)~~(11)

WASTEWATER REMOVAL SERVICES, PER SECTION 58-485.

(b)

Distinction between construction contracting, retail, and certain direct customer service activities.

(1)

When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.

(2)

Items attached or installed on tangible personal property are retail sales.

(3)

Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).

(4)

Demolition, earth moving, and wrecking activities are considered construction contracting.

(c)

The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.

(d)

Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of

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consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(e)

Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.

(1)

"Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.

(2)

Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.

(3)

Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.

(4)

The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

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Section XV. Tax Code of the Town of Gilbert, Section 58-570 is amended as follows with an effective date of July 1, 2008.

Sec. 58-570. Administrative review; petition for hearing or for redetermination; finality of order. (State Administration and Audits)

(a)

Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-1113.

(b)

Administrative review.

(1)

Petitions of appeal shall be made to, and hearings shall be conducted by, the Arizona Department of Revenue, in accordance with the provisions of A.R.S. Section 42-1251, as modified by Section 58-571.

(2)

(Reserved)

(3)

(Reserved)

(4)

(Reserved)

(5)

Hearings shall be held by the Arizona Department of Revenue in accordance with the provisions of A.R.S. Section 42-1251. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-1253.

(6)

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(Reserved)

(7)

(Reserved)

(8)

(Reserved)

(c)

(Reserved)

(d)

(Reserved)

(e)

Taxpayers shall be subject to the state taxpayer bill of rights (A.R.S. § 42-2051 et. seq.).

Sec. 58-570. Administrative review; petition for hearing or for redetermination; finality of order. (Local Audits)

For the purposes of this section, "Municipal Tax Hearing Office" means the administrative offices of the ~~Municipal~~ MUNICIPAL Tax Hearing Officer.

(a)

Informal Conference. A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.

(b)

Administrative Review.

(1)

Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of tax, penalty, or interest imposed

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upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:

(A)

within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit has been denied;
or

(B)

by voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment; or

(C)

by petition accompanying a timely filed return contesting an amount reported but not paid; or

(D)

by petition requesting review of denial of waiver of penalty as provided in subsection 58-540(g).

(2)

Extension to file a petition. In all cases, the taxpayer may request ~~only one~~ ~~(1)AN~~ extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay ~~and time of delay requested~~, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow ~~such~~ A FORTY-FIVE (45) DAY extension to file a petition, when such written request has been properly and timely made by the taxpayer, ~~but such extension shall not exceed forty five (45) days beyond the time provided for originally filing a~~

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petition. THE TAX COLLECTOR MAY GRANT AN ADDITIONAL
EXTENSION AND MAY DETERMINE THE CORRESPONDING TIME OF
ANY SUCH EXTENSION AT THIS SOLE DISCRETION.

(3)

Requirements for petition.

(A)

The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted, and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.

(B)

The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.

(C)

The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under the Section.

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(4)

Transmittal to Hearing Officer. The city/town shall designate a Hearing Officer, who may be other than an employee of the (city/town). The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Officer within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition.

(5)

Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same.

(6)

Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.

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(7)

Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.

(8)

Notice of Refund or Adjusted Assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision.

(c)

Stipulations that future tax is also protested. A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income.

(d)

When an assessment is final.

(1)

If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by subsection (b) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due and any tax, interest, or penalty

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determined to be due shall be final as provided in subsections 58-545(a) and 58-555(f).

(2)

The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by subsection (b)(8) above, unless the taxpayer appeals the order or decision in the manner provided in Section 58-575.

(e)

The provisions of the state taxpayer bill of rights (A.R.S. Section 42-2051 et. seq.) shall not apply.

Section XVI. Tax Code of the Town of Gilbert, Section 444 is amended as follows for a technical correction, with an effective date of July 1, 1995:

Sec. 58-444. Hotels.

The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

(a)

~~Transient~~ PERSON.

(b)

Exclusions. The tax imposed by this Section shall not include:

(1)

Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility.

(2)

Gross proceeds of sales or gross income that is properly included in another business activity under this Article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to

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be deducted shall not exceed the consideration paid to the person conducting the activity.

(3)

Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this Article.

(4)

Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 58-410 or Section 58-475 due to an exclusion, exemption or deduction.

(5)

Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 58-445 or Section 58-450 as rental, leasing or licensing for use of real or tangible personal property.

(6)

Income from providing telephone, fax or Internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 58-470 as telecommunication services.

Section XVII. Tax Code of the Town of Gilbert, Regulation 58-300.1(b) is amended as follows for a technical correction, with an effective date of October 1, 2010:

Reg. 58-300.1. Who must apply for a license.

(a)

For the purposes of determining whether a license is required under Section 58-300, a person shall be deemed to be "*engaged in or continuing in business*" within the Town, if he meets any of the following conditions:

(1)

He is engaged in any activity subject to the Town's Privilege Taxes as principal or broker.

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(2)

He has or maintains within the Town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this Town under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this Town.

(3)

He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the Town from customers, consumers, or users located within the Town, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this Town.

(4)

Reserved.

(5)

He is required to report and pay the tax upon Rental Occupancy imposed by Section 58-440

~~(b)~~

~~For the purposes of obtaining a Privilege License, a person who has less than three (3) apartments, houses, trailer spaces, or other lodging spaces available for rent, lease, or license within the State is not considered to be regularly engaged in business and need not obtain a Privilege License; provided, however, if that person is also receiving income from the activity of renting, leasing, or licensing one (1) or more commercial properties or units within a commercial property, he is considered to be regularly engaged in business and must obtain licenses for all his rental, lease, or license property. RESERVED.~~

Section XVIII. Tax Code of the Town of Gilbert, Regulation 58-445.1 is amended as follows for a technical correction, with an effective date of October 1, 2010:

Reg. 58-445.1. When the rental, leasing, and licensing of real property is exempt as “casual”.

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(a)

~~The person who has less than three (3) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is deemed not to be in the business of renting, leasing or licensing real property, and is therefore exempt from the tax imposed by Section 58-445 on such income. However, a person who has one (1) or more units of any other real property is deemed to be in the business of renting, leasing or licensing real property, and subject to the tax imposed by Section 58-445 on rental, lease, and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than three (3) lodging spaces within the state. RESERVED.~~

(b) Reserved.