



Ordinance

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

ORDINANCE NO. 138

AN ORDINANCE OF THE CITY OF SAN LUIS, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; MAINTAINING THE CITY SALES TAX RATE AT 2.5% ADOPTING "AMENDMENTS TO THE CITY TAX CODE OF THE CITY OF SAN LUIS, ARIZONA" BY REFERENCE; REPEALING ORDINANCE NO.94; PROVIDING PENALTIES FOR VIOLATION; PROVIDING SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA:

SECTION 1: The tax rate in each of the following sections of the City Tax Code of the City of San Luis is hereby maintained at the rate of two and one-half percent (2.5%).

- Section 7A-405 Advertising.
- Section 7A-410 Amusements, exhibitions, and similar activities.
- Section 7A-415 Construction contracting: construction contractors.
- Section 7A-416 Construction contracting: speculative builders.
- Section 7A-417 Construction contracting: owner-builders who are not speculative builders.
- Section 7A-425 Job Printing.
- Section 7A-427 Manufactured Buildings.
- Section 7A-430 Timbering and other extraction.
- Section 7A-435 Publishing and periodicals distribution.
- Section 7A-444 Hotels.
- Section 7A-445 Rental, leasing, and licensing for use of real property.
- Section 7A-450 Rental, leasing, and licensing for use of tangible personal property.
- Section 7A-455 Restaurant and Bars.
- Section 7A-460 Retail sales: measure of tax; burden of proof; exclusions.
- Section 7A-470 Telecommunication services.
- Section 7A-475 Transporting for hire.
- Section 7A-480 Utility services.

SECTION 2: That certain document known as "Amendments to the City Tax Code of the City of San Luis, Arizona", three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No.334 of the City of San Luis, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

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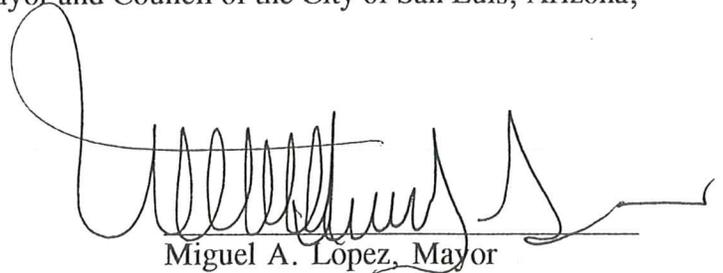
Section 3: Ordinance 94 of the City of San Luis is hereby repealed.

Section 4: Any person found guilty of violating any provision of this ordinance or these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 5: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 6: The provisions of this ordinance and the amendments to the tax code adopted herein shall become effective from and after October 31, 1996.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 28th day of August, 1996.



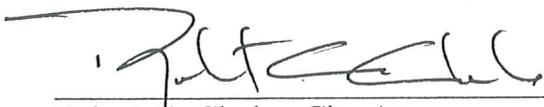
Miguel A. Lopez, Mayor

ATTEST:



Victor M. Stevens, City Manager

APPROVED AS TO FORM:



Robert C. Clarke, City Attorney

AMENDMENTS
TO THE
CITY TAX CODE
OF THE
CITY OF SAN LUIS, ARIZONA

Section 1. Section 7A-270 of the City Tax Code of the City of San Luis, Arizona is amended to read:

Sec. 7A-270. Exclusion of gross income of persons deemed not engaged in business.

- (a) For the purposes of this Section, the following definitions shall apply:
 - (1) "Federally Exempt Organization" means an organization which has received a determination of exemption, or qualifies for such exemption, under 26 U.S.C. Section 501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity", "non-licensed business", or "public educational entity".
 - (2) "Governmental Entity" means the Federal Government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.
 - (3) "Non-Licensed Business" means any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.
 - (4) "Proprietary Club" means any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. Section 501(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.
 - (5) "Public Educational Entity" means any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

- (b) Transactions which, if conducted by any other person, would produce gross income subject to tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a public educational entity; governmental entity, except "proprietary activities" of municipalities as provided by Regulation; or non-licensed business.

- (c) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:
 - (1) Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. Section 501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by Regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.
 - (2) Gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.
 - (3) (Reserved)

- (d) Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or non-licensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:
 - (1) a statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required, to pay City Privilege Tax or an equivalent excise tax on its gross income from such transactions and does in fact file returns on same; and
 - (2) the Privilege License number of the otherwise exempt vendee; and
 - (3) such other information as the Tax Collector may require.
- (e) Franchisees or concessionaires operating businesses for or on behalf of any exempt organization, governmental entity, public educational entity, proprietary club, or non-licensed business shall not be considered to be such an exempt organization, club, entity, or non-licensed business, but shall be deemed to be a taxpayer subject to the provisions of this Chapter, except as provided in the definition of governmental entity, regarding urban mass transit.
- (f) ~~(Reserved)~~ IN ANY CASE, IF A FEDERALLY EXEMPT ORGANIZATION, PROPRIETARY CLUB, OR NON-LICENSED BUSINESS RENTS, LEASES, LICENSES, OR PURCHASES ANY TANGIBLE PERSONAL PROPERTY FOR ITS OWN STORAGE OR USE, AND NO CITY PRIVILEGE OR USE TAX OR EQUIVALENT EXCISE TAX HAS BEEN PAID ON SUCH TRANSACTION, SAID ORGANIZATION, CLUB, OR BUSINESS SHALL BE LIABLE FOR THE USE TAX UPON SUCH ACQUISITIONS OR USE OF SUCH PROPERTY.

Section 2. Section 7A-300 of the City Tax Code of the City of San Luis, Arizona is amended to read:

Sec. 7A-300. Licensing requirements.

- (a) The following persons shall make application to the Tax Collector for a Privilege License, accompanied by a nonrefundable fee of two dollars (\$2.00), and no person shall engage or continue in business or engage in such activities until he shall have such a license:
 - (1) every person desiring to engage or continue in business activities within the City upon which a Privilege Tax is imposed by this Chapter.
 - (2) ~~(Reserved)~~ EVERY PERSON, ENGAGING OR CONTINUING IN BUSINESS WITHIN THE CITY, STORING OR USING TANGIBLE PERSONAL PROPERTY IN THIS CITY UPON WHICH A USE TAX IS IMPOSED BY THIS CHAPTER.
 - (3) (Reserved)
- (b) A person engaged in more than one activity subject to City Privilege and Use Taxes at any one business location is not required to obtain a separate license for each activity; provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.

- (c) Limitation. The issuance of a Privilege License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

Section 3. Article VI of the City Tax Code of the City of San Luis, Arizona is amended to read:

Article VI - (Reserved) USE TAX

Sec. 7A-600. (Reserved) USE TAX: DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE ONLY, THE FOLLOWING DEFINITIONS SHALL APPLY, IN ADDITION TO THE DEFINITIONS PROVIDED IN ARTICLE I:

"ACQUIRE (FOR STORAGE OR USE)" MEANS PURCHASE, RENT, LEASE, OR LICENSE FOR STORAGE OR USE.

"RETAILER" ALSO MEANS ANY PERSON SELLING, RENTING, LICENSING FOR USE, OR LEASING TANGIBLE PERSONAL PROPERTY UNDER CIRCUMSTANCES WHICH WOULD RENDER SUCH TRANSACTIONS SUBJECT TO THE TAXES IMPOSED IN ARTICLE IV, IF SUCH TRANSACTIONS HAD OCCURRED WITHIN THIS CITY.

"STORAGE (WITHIN THE CITY)" MEANS THE KEEPING OR RETAINING OF TANGIBLE PERSONAL PROPERTY AT A PLACE WITHIN THE CITY FOR ANY PURPOSE, EXCEPT FOR THOSE ITEMS ACQUIRED SPECIFICALLY AND SOLELY FOR THE PURPOSE OF SALE, RENTAL, LEASE, OR LICENSE FOR USE IN THE REGULAR COURSE OF BUSINESS OR FOR THE PURPOSE OF SUBSEQUENT USE SOLELY OUTSIDE THE CITY.

"USE (OF TANGIBLE PERSONAL PROPERTY)" MEANS CONSUMPTION OR EXERCISE OF ANY OTHER RIGHT OR POWER OVER TANGIBLE PERSONAL PROPERTY INCIDENT TO THE OWNERSHIP THEREOF EXCEPT THE HOLDING FOR THE SALE, RENTAL, LEASE, OR LICENSE FOR USE OF SUCH PROPERTY IN THE REGULAR COURSE OF BUSINESS.

Sec. 7A-601. (Reserved)

Sec. 7A-602. (Reserved)

Sec. 7A-610. (Reserved) USE TAX: IMPOSITION OF TAX; PRESUMPTION.

- (a) THERE IS HEREBY LEVIED AND IMPOSED, SUBJECT TO ALL OTHER PROVISIONS OF THIS CHAPTER, AN EXCISE TAX ON THE STORAGE OR USE IN THE CITY OF TANGIBLE PERSONAL PROPERTY, FOR THE PURPOSE OF RAISING REVENUE TO BE USED IN DEFRAYING THE NECESSARY EXPENSES OF THE CITY, SUCH TAXES TO BE COLLECTED BY THE TAX COLLECTOR.
- (b) THE TAX RATE SHALL BE AT AN AMOUNT EQUAL TO TWO AND ONE-HALF PERCENT (2.5%) OF THE:
 - (1) COST OF TANGIBLE PERSONAL PROPERTY ACQUIRED FROM A RETAILER, UPON EVERY PERSON STORING OR USING SUCH PROPERTY IN THIS CITY.

- (2) GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON MEETING THE REQUIREMENTS OF SUBSECTION 7A-620(b) OR (c) WHO IS ENGAGED OR CONTINUING IN THE BUSINESS ACTIVITY OF SALES, RENTALS, LEASES, OR LICENSES OF TANGIBLE PERSONAL PROPERTY TO PERSONS WITHIN THE CITY FOR STORAGE OR USE WITHIN THE CITY, TO THE EXTENT THAT TAX HAS BEEN COLLECTED UPON SUCH TRANSACTION.
 - (3) (RESERVED)
 - (4) COST OF COMPLIMENTARY ITEMS PROVIDED TO PATRONS WITHOUT ITEMIZED CHARGE BY A RESTAURANT, HOTEL, OR OTHER BUSINESS.
 - (5) COST OF FOOD CONSUMED BY THE OWNER OR BY EMPLOYEES OR AGENTS OF THE OWNER OF A RESTAURANT OR BAR SUBJECT TO THE PROVISIONS OF SECTION 7A-455 OF THIS CHAPTER.
- (c) IT SHALL BE PRESUMED THAT ALL TANGIBLE PERSONAL PROPERTY ACQUIRED BY ANY PERSON WHO AT THE TIME OF SUCH ACQUISITION RESIDES IN THE CITY IS ACQUIRED FOR STORAGE OR USE IN THIS CITY, UNTIL THE CONTRARY IS ESTABLISHED BY THE TAXPAYER.
- (d) EXCLUSIONS. FOR THE PURPOSES OF THIS ARTICLE, THE ACQUISITION OF THE FOLLOWING SHALL NOT BE DEEMED TO BE THE PURCHASE, RENTAL, LEASE, OR LICENSE OF TANGIBLE PERSONAL PROPERTY FOR STORAGE OR USE WITHIN THE CITY:
- (1) STOCKS, BONDS, OPTIONS, OR OTHER SIMILAR MATERIALS.
 - (2) LOTTERY TICKETS OR SHARES SOLD PURSUANT TO ARTICLE I, CHAPTER 5, TITLE 5, ARIZONA REVISED STATUTES.
 - (3) PLATINUM, BULLION, OR MONETIZED BULLION, EXCEPT MINTED OR MANUFACTURED COINS TRANSFERRED OR ACQUIRED PRIMARILY FOR THEIR NUMISMATIC VALUE AS PRESCRIBED BY REGULATION.
- (e) (RESERVED)
- (f) (RESERVED)

Sec. 7A-620. (Reserved) USE TAX: LIABILITY FOR TAX.

THE FOLLOWING PERSONS SHALL BE DEEMED LIABLE FOR THE TAX IMPOSED BY THIS ARTICLE; AND SUCH LIABILITY SHALL NOT BE EXTINGUISHED UNTIL THE TAX HAS BEEN PAID TO THIS CITY, EXCEPT THAT A RECEIPT FROM A RETAILER SEPARATELY CHARGING THE TAX IMPOSED BY THIS CHAPTER IS SUFFICIENT TO RELIEVE THE PERSON ACQUIRING SUCH PROPERTY FROM FURTHER LIABILITY FOR THE TAX TO WHICH THE RECEIPT REFERS:

- (a) ANY PERSON WHO ACQUIRES TANGIBLE PERSONAL PROPERTY FROM A RETAILER, WHETHER OR NOT SUCH RETAILER IS LOCATED IN THIS CITY, WHEN SUCH PERSON STORES OR USES SAID PROPERTY WITHIN THE CITY.
- (b) ANY RETAILER NOT LOCATED WITHIN THE CITY, SELLING, RENTING, LEASING, OR LICENSING TANGIBLE PERSONAL PROPERTY FOR STORAGE OR USE OF SUCH PROPERTY WITHIN THE CITY, MAY OBTAIN A LICENSE FROM THE TAX COLLECTOR AND COLLECT THE USE TAX ON SUCH TRANSACTIONS. SUCH RETAILER SHALL BE LIABLE FOR THE USE TAX TO THE EXTENT SUCH USE TAX IS COLLECTED FROM HIS CUSTOMERS.

- (c) EVERY AGENT WITHIN THE CITY OF ANY RETAILER NOT MAINTAINING AN OFFICE OR PLACE OF BUSINESS IN THIS CITY, WHEN SUCH PERSON SELLS, RENTS, LEASES, OR LICENSES TANGIBLE PERSONAL PROPERTY FOR STORAGE OR USE IN THIS CITY SHALL, AT THE TIME OF SUCH TRANSACTION, COLLECT AND BE LIABLE FOR THE TAX IMPOSED BY THIS ARTICLE UPON THE STORAGE OR USE OF THE PROPERTY SO TRANSFERRED, UNLESS SUCH RETAILER OR AGENT IS LIABLE FOR AN EQUIVALENT EXCISE TAX UPON THE TRANSACTION.
- (d) ANY PERSON WHO ACQUIRES TANGIBLE PERSONAL PROPERTY FROM A RETAILER LOCATED IN THE CITY AND SUCH PERSON CLAIMS TO BE EXEMPT FROM THE CITY PRIVILEGE OR USE TAX AT THE TIME OF THE TRANSACTION, AND UPON WHICH NO CITY PRIVILEGE TAX WAS CHARGED OR PAID, WHEN SUCH CLAIM IS NOT SUSTAINABLE.
- (e) (RESERVED)

Sec. 7A-630. (Reserved) USE TAX: RECORDKEEPING REQUIREMENTS.

ALL DEDUCTIONS, EXCLUSIONS, EXEMPTIONS, AND CREDITS PROVIDED IN THIS ARTICLE ARE CONDITIONAL UPON ADEQUATE PROOF OF DOCUMENTATION AS REQUIRED BY ARTICLE III OR ELSEWHERE IN THIS CHAPTER.

Sec. 7A-640. (Reserved) USE TAX: CREDIT FOR EQUIVALENT EXCISE TAXES PAID ANOTHER JURISDICTION.

IN THE EVENT THAT AN EQUIVALENT EXCISE TAX HAS BEEN LEVIED AND PAID UPON TANGIBLE PERSONAL PROPERTY WHICH IS ACQUIRED TO BE STORED OR USED WITHIN THIS CITY, FULL CREDIT FOR ANY AND ALL SUCH TAXES SO PAID SHALL BE ALLOWED BY THE TAX COLLECTOR BUT ONLY TO THE EXTENT USE TAX IS IMPOSED UPON THAT TRANSACTION BY THIS ARTICLE.

Sec. 7A-650. (Reserved) USE TAX: EXCLUSION WHEN ACQUISITION SUBJECT TO USE TAX IS TAXED OR TAXABLE ELSEWHERE IN THIS CHAPTER; LIMITATION.

THE TAX LEVIED BY THIS ARTICLE DOES NOT APPLY TO THE STORAGE OR USE IN THIS CITY OF TANGIBLE PERSONAL PROPERTY ACQUIRED IN THIS CITY, THE GROSS INCOME FROM THE SALE, RENTAL, LEASE, OR LICENSE OF WHICH WERE INCLUDED IN THE MEASURE OF THE TAX IMPOSED BY ARTICLE IV OF THIS CHAPTER; PROVIDED, HOWEVER, THAT ANY PERSON WHO HAS ACQUIRED TANGIBLE PERSONAL PROPERTY FROM A VENDOR IN THIS CITY WITHOUT PAYING THE CITY PRIVILEGE TAX BECAUSE OF A REPRESENTATION TO THE VENDOR THAT THE PROPERTY WAS NOT SUBJECT TO SUCH TAX, WHEN SUCH CLAIM IS NOT SUSTAINABLE, MAY NOT CLAIM THE EXCLUSION FROM SUCH USE TAX PROVIDED BY THIS SECTION.

- (n) RENTAL, LEASING, OR LICENSING FOR USE OF FILM, TAPE, OR SLIDES BY A THEATER OR OTHER PERSON TAXED UNDER SECTION 7A-410, OR BY A RADIO STATION, TELEVISION STATION, OR SUBSCRIPTION TELEVISION SYSTEM.
- (o) FOOD SERVED TO PATRONS FOR A CONSIDERATION BY ANY PERSON ENGAGED IN A BUSINESS PROPERLY LICENSED AND TAXED UNDER SECTION 7A-455, BUT NOT FOOD CONSUMED BY OWNERS, AGENTS, OR EMPLOYEES OF SUCH BUSINESS.
- (p) TANGIBLE PERSONAL PROPERTY ACQUIRED BY ANY NONPROFIT HEALTH CARE FACILITY, EXCEPT WHEN THE PROPERTY IS IN FACT USED IN ACTIVITIES RESULTING IN GROSS INCOME FROM UNRELATED BUSINESS INCOME AS THAT TERM IS DEFINED IN 26 U.S.C. SECTION 512.
- (q) 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).
- (r) (RESERVED)
 - (1) (RESERVED)
 - (2) (RESERVED)
 - (3) (RESERVED)
- (s) GROUNDWATER MEASURING DEVICES REQUIRED BY A.R.S. SECTION 45-604.
- (t) (RESERVED)
- (u) (RESERVED)
- (v) (RESERVED)
- (w) (RESERVED)
- (x) (RESERVED)
- (y) (RESERVED)
- (z) (RESERVED)

Section 4. Regulation 7A-115.1 of the City Tax Code of the City of San Luis, Arizona is amended to read:

Reg. 7A-115.1. Computer hardware, software, and data services.

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

Sec. 7A-660. (Reserved) USE TAX: EXEMPTIONS.

THE STORAGE OR USE IN THIS CITY OF THE FOLLOWING TANGIBLE PERSONAL PROPERTY IS EXEMPT FROM THE USE TAX IMPOSED BY THIS ARTICLE:

- (a) TANGIBLE PERSONAL PROPERTY BROUGHT INTO THE CITY BY AN INDIVIDUAL WHO WAS NOT A RESIDENT OF THE CITY AT THE TIME THE PROPERTY WAS ACQUIRED FOR HIS OWN USE, IF THE FIRST ACTUAL USE OF SUCH PROPERTY WAS OUTSIDE THE CITY, UNLESS SUCH PROPERTY IS USED IN CONDUCTING A BUSINESS IN THIS CITY.
- (b) TANGIBLE PERSONAL PROPERTY, THE VALUE OF WHICH DOES NOT EXCEED THE AMOUNT OF ONE THOUSAND DOLLARS (\$1,000) PER ITEM, ACQUIRED BY AN INDIVIDUAL OUTSIDE THE LIMITS OF THE CITY FOR HIS PERSONAL USE AND ENJOYMENT.
- (c) CHARGES FOR DELIVERY, INSTALLATION, OR OTHER CUSTOMER SERVICES, AS PRESCRIBED BY REGULATION.
- (d) CHARGES FOR REPAIR SERVICES, AS PRESCRIBED BY REGULATION.
- (e) (RESERVED)
- (f) PROSTHETICS.
- (g) INCOME-PRODUCING CAPITAL EQUIPMENT.
- (h) RENTAL EQUIPMENT AND RENTAL SUPPLIES.
- (i) MINING AND METALLURGICAL SUPPLIES.
- (j) MOTOR VEHICLE FUEL AND USE FUEL WHICH ARE USED UPON THE HIGHWAYS OF THIS STATE AND UPON WHICH A TAX HAS BEEN IMPOSED UNDER THE PROVISIONS OF ARTICLE I OR II, CHAPTER 9, TITLE 28, ARIZONA REVISED STATUTES.
- (k) TANGIBLE PERSONAL PROPERTY PURCHASED BY A CONSTRUCTION CONTRACTOR, BUT NOT AN OWNER-BUILDER, WHEN SUCH PERSON HOLDS A VALID PRIVILEGE LICENSE FOR ENGAGING OR CONTINUING IN THE BUSINESS OF CONSTRUCTION CONTRACTING, AND WHERE THE PROPERTY ACQUIRED IS INCORPORATED INTO ANY STRUCTURE OR IMPROVEMENT TO REAL PROPERTY IN FULFILLMENT OF A CONSTRUCTION CONTRACT.
- (l) (RESERVED)
- (m) TANGIBLE PERSONAL PROPERTY WHICH DIRECTLY ENTERS INTO AND BECOMES AN INGREDIENT OR COMPONENT PART OF A PRODUCT SOLD IN THE REGULAR COURSE OF THE BUSINESS OF JOB PRINTING, MANUFACTURING, OR PUBLICATION OF NEWSPAPERS, MAGAZINES OR OTHER PERIODICALS. TANGIBLE PERSONAL PROPERTY WHICH IS CONSUMED OR USED UP IN A MANUFACTURING, JOB PRINTING, PUBLISHING, OR PRODUCTION PROCESS IS NOT AN INGREDIENT NOR COMPONENT PART OF A PRODUCT.

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

- (D) the entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.
- (E) any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:
 - (i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
 - (ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
 - (iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.
- (c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:
 - (1) statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.
 - (2) additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.
- (d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.
- (e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 7A-100.2(e):
 - (1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.
 - (A) Customer computer programming is deemed a professional service regardless of the form in which the programming is transferred.
 - (B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

- (9) (Reserved)
- (f) any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.