

ORDINANCE NO. 588

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING THE "CITY TAX CODE OF THE CITY OF APACHE JUNCTION, ARIZONA" BY REFERENCE AND FIXING THE EFFECTIVE DATE THEREOF; REPEALING ARTICLE 8-3 OF THE APACHE JUNCTION CITY CODE; PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS THAT HAVE ALREADY BEGUN THEREUNDER; REPEALING ANY CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY, PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

SECTION I IN GENERAL

That certain document known as "The City Tax Code of the City of Apache Junction, Arizona," three copies of which are on file in the office of the City Clerk of the City of Apache Junction, Arizona, which document was made a public record by Resolution No. 87-46 of the City of Apache Junction, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance, the provisions thereof to become effective on the 1st day of September, 1987.

SECTION II REPEAL OF CONFLICTING SECTIONS OF CODE AND PRESERVATION
OF RIGHTS, DUTIES AND PROCEEDINGS

That Article 8-3 of the Apache Junction City Code and all ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the Code adopted herein by reference are hereby repealed, effective as of the 1st day of September, 1987.

That the repeal of Article 8-3 of the City Code, effective as of the 1st day of September, 1987, does not affect rights and duties matured or penalties that were incurred, and proceedings that were begun before the effective date of the repeal.

SECTION III REPEALING CONFLICTING PROVISIONS

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the Code adopted herein by reference are hereby repealed.

SECTION IV PROVIDING FOR SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the 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 V PROVIDING PENALTIES FOR THE VIOLATION THEREOF

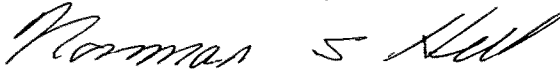
Any person found guilty of violating any provision of this code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

SECTION VI DECLARING AN EMERGENCY

WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Apache Junction, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS 1ST DAY OF SEPTEMBER, 1987.

SIGNED AND ATTESTED TO THIS 1ST DAY OF SEPTEMBER, 1987.



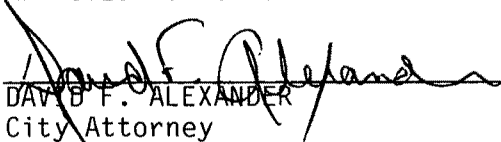
NORMAN S. HILL
Mayor

ATTEST:



KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:



DAVID B. F. ALEXANDER
City Attorney

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CHAPTER 8A - PRIVILEGE AND EXCISE TAXES

Article I - General Conditions and Definitions

Sec. 8A-1. Words of tense, number and gender; code references.

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

Sec. 8A-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 all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"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 Chapter 8.3, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"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. 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.

"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 42-1387. 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.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City 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.

"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.

"Manufacturing."

- (1) For the purposes of this Chapter, an activity shall be considered "manufacturing" only if such activity is not defined as something else in this Chapter and if it involves the physical combining (but not merely mixing), separating (but not merely sorting or sifting), or otherwise physically changing of tangible personal property ("raw materials") into another form of tangible personal property available for sale ("finished goods").
- (2) The activity of manufacturing shall be deemed to begin when the first act of physically combining (but not merely mixing), separating (but not merely sorting or sifting), or otherwise physically changing tangible personal property ("raw materials") occurs; the activity will be deemed to end when the last act of physically combining, separating, or otherwise physically changing the tangible personal property ends.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in subsection 8A-430(a)(1) for such use. This definition shall not include:

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

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

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

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

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

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

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

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

- (1) The order is placed from without the State of Arizona; and
- (2) the order is placed by other than a resident of the State to be determined in a manner similar to "resides within the City"; and
- (3) the property is delivered to the buyer at a location outside the State; and
- (4) 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.

"Primary Health Care Facility" means any hospital or any licensed nursing care institution or licensed residential care institution, licensed pursuant to Chapter 4, Title 36, Arizona Revised Statutes, or any licensed kidney dialysis center.

"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, 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 and insulin syringes, sold with or without a prescription.
- (3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
- (4) drugs or medicine, including oxygen.
- (5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

"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.

"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) such rental, lease, or license by the vendee to another is subject to the tax imposed by this Chapter or an equivalent excise tax; and
- (2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration, and is properly licensed therefor; 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 Supply" means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

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

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

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

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

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

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

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

"Speculative Builder" means an owner-builder who sells or contracts to sell improved real property on or before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete and the construction or reconstruction has passed final inspection and the permit holder has been issued a Certificate of Occupancy by the City; provided, however, that in cases where no permit for construction or Certificate of Occupancy was issued by the City, "substantially complete" shall mean "ready for immediate occupancy."

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, 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 Revenue Officer/City Clerk or their designee or agent for all purposes under this Chapter.

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

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

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

Sec. 8A-110. Definitions: Income-producing capital equipment

- (a) The following tangible personal property, other than items excluded in subsection (d) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:
- (1) machinery or equipment which is purchased or leased for use primarily during the activity of manufacturing or job printing. Machinery or equipment having multiple uses shall be included only if such machinery and equipment is not used by the vendee for any purpose other than during the activity of manufacturing or job printing to an extent greater than fifteen percent (15%) of its actual use.
 - (2) central office switching equipment; switchboards; private branch exchange equipment; microwave, radio, and other electromagnetic carrier wave transmission equipment; coaxial cable; when so used by persons engaged in the business of providing telecommunication services.
 - (3) machinery, equipment, or transmission lines used directly in the production or transmission of electrical power, but not including items used for distribution or transformers and control equipment used at transmission substation sites. For the purposes of this Chapter, all machinery, equipment, or transmission lines rated for power of less than sixty thousand (60,000) volts or actually used for power of less than 60,000 volts shall be considered to be used for distribution.
 - (4) pipes, or valves for such pipes, four inches (4") in interior diameter or larger, used for transporting oil, natural gas, artificial gas, water, or coal slurry.
 - (5) airplanes, navigational and communication instruments, and other accessories and related equipment used by airlines holding a federal or state certificate of public convenience and necessity or foreign air carrier permit for air transportation; provided that such tangible personal property is used in conjunction with or become part of aircraft to be used in transportation of persons, property, or U.S. Mail in intrastate, interstate, or foreign air transportation for hire.
 - (6) rolling stock, rails, ties, or signal control equipment used by railroads directly in the transportation of persons or property in intrastate or interstate transportation for hire.
 - (7) machinery or equipment used directly by oil or gas drilling or extracting companies in the drilling for or in the process of extracting oil or gas from the earth for commercial purposes.
 - (8) tangible personal property actually and directly used or consumed by the business of operating any bus company or other urban mass transit system, when such system is operated by a governmental entity or by any person contracting with such a governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

- (9) metering, monitoring, receiving, and transmitting equipment acquired by persons engaged in the business of providing utility services or telecommunications services; but only to the extent that such equipment is to be used by the customers of such persons and such persons separately charge or bill their customers for use of such equipment.
 - (10) machinery and equipment used directly in mining and metallurgical activity, as prescribed by Subsection 8A-430(a)(1), by persons engaging or continuing in the business of such activity.
 - (11) (Reserved)
- (b) The term "income-producing capital equipment" shall further include ancillary machinery and equipment used for the treatment of waste products created by the business activities which are allowed to purchase "income-producing capital equipment" defined in subsection (a) above.
- (c) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in subsection (d) below, where the property is acquired to become an integral part of another item itemized in subsections (a) or (b) above.
- (d) The tangible personal property defined as income-producing capital equipment in this Section shall not include:
- (1) expendable items. Any item having a net unit cost to the vendee of less than two hundred fifty dollars (\$250.00) shall be deemed "expendable"; unless such item is treated in the vendee's books and records as a capital asset and the vendee supplies the vendor with a certificate of proof of exemption at the time of the transaction, as provided by Regulation.
 - (2) janitorial equipment and supplies.
 - (3) hand tools.
 - (4) office equipment, furniture, and supplies.
 - (5) tangible personal property used in selling or distributing activities.
 - (6) tangible personal property used in research.
 - (7) motor vehicles required to be licensed by the State of Arizona, without regard to the use of such motor vehicles, but not including buses and similar vehicles used to transport passengers as part of an urban mass transportation system described in subsection (a)(8) above.
 - (8) shops, buildings, docks, depots, or other alterations of real property.

Sec. 8A-115. Definitions: computer software; custom computer programming.

- (a) "Computer Software" means any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not "custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter, regardless of the method by which title, possession, or right to use the software is transferred to the user.

- (b) "Custom Computer Programming" means any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.
- (1) The term does not include a prewritten program which is held or existing for general or repeated sale, lease, or license, even if the program was initially developed on a custom basis for in-house, or for a single customer's, use.
 - (2) Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the customer.

Sec. 8A-120. (Reserved)

Article II - Determination of Gross Income

Sec. 8A-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.

Sec. 8A-210. Determination of gross income: transactions between affiliated companies or persons.

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

Sec. 8A-220. Determination of gross income: artificially contrived transactions.

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

Sec. 8A-230. Determination of gross income based upon method of reporting.

The method of reporting chosen by a taxpayer, as provided in Section 8A-520, necessitates the following adjustments to gross income for all purposes under this Chapter:

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

Sec. 8A-240. Exclusion of cash discounts, returns, refunds, trade-in values, vendor-issued coupons, and rebates from gross income.

- (a) The following items are not included in gross income:
 - (1) Cash discounts allowed by the vendor for timely payment, but only discounts allowed against taxable gross income.
 - (2) The value of property returned by customers to the extent of the amount actually refunded either in cash or by credit and the amount refunded was included in taxable gross income.
 - (3) The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold, when the full sales price is included in taxable gross income.
 - (4) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.

- (5) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.
- (b) If the amount specified in subsection (a) above is credited by a vendor subsequent to the reporting period in which the original transaction occurs, such amount may be excluded from the taxable gross income of that subsequent reporting period, but only to the extent that the excludable amount was reported as taxable gross income in that prior reporting period.

Sec. 8A-250. Exclusion of combined taxes from gross income; itemization; notice; limitations.

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

Sec. 8A-260. Exclusion of motor vehicle fees and taxes from gross income; limitations.

- (a) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met. For the purpose of the exclusion provided by this subsection only, the terms vendor and vendee shall also apply to a lessor and lessee respectively, of a motor vehicle if, in addition to all other requirements of this subsection, the lease agreement specifically requires the lessee to pay such fees or taxes, and such amounts are separately itemized in the documentation provided to the lessee.
- (b) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers, the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III, relating to recordkeeping, have been met.

Sec. 8A-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)

Sec. 8A-280. (Reserved)

Sec. 8A-285. (Reserved)

Sec. 8A-290. (Reserved)

Article III - Licensing and Recordkeeping

Sec. 8A-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)
 - (3) every person required to report and pay a tax upon Rental Occupancy, as imposed by Section 8A-440.
- (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 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.

Sec. 8A-305. Special licensing requirements.

- (a) Partnerships. Application for a Privilege License for a partnership engaging or continuing in business in the City shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaged in business as partners, limited or general, shall be in the name of the partnership.
- (b) Corporations. Application for a Privilege License for a corporation engaging or continuing in business in the City shall provide, as a minimum, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation. Licenses issued to persons engaged in business as corporations shall be in the name of the corporation.
- (c) Multiple Locations. A person engaged in or conducting one or more businesses at two (2) or more locations shall procure a license for each such location. A "location" is a place of a separate business establishment.
- (d) (Reserved)

Sec. 8A-310. Licensing: duration of license; transferability; display.

- (a) Except as provided in Section 8A-320, the Privilege License shall be valid until request for cancellation and/or surrender of the license by the licensee or expiration through cessation by the licensee of the business activity for which it was issued.
- (b) The Privilege License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee's place of business.
- (c) Any licensee who permits his license to expire through cancellation as provided in Section 8A-320, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for license, shall be granted a new license as an original applicant and shall pay the current license fee. Any licensee who loses or misplaces his Privilege License which is still in effect shall be charged the current license fee for each reissuance of a license.
- (d) (Reserved)

Sec. 8A-320. Licensing: cancellation; revocation.

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

Sec. 8A-330. Operating without a license.

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

Sec. 8A-350. Recordkeeping requirements.

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

Sec. 8A-360. Recordkeeping: claim of exclusion, exemption, deduction, or credit; documentation; liability.

- (a) All deductions, exclusions, exemptions and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required under A.R.S. Section 42-1328 or by this Chapter or Regulation.
- (b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

Sec. 8A-370. Inadequate or unsuitable records.

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

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

Article IV - Privilege Taxes

Sec. 8A-400. Imposition of Privilege Taxes; presumption.

- (a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:
 - (1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not, or whether derived from within the City or from without.
 - (2) a Privilege Tax upon certain persons for the privilege of occupancy of real property, in accordance with the provisions of Section 8A-440.
- (b) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.
- (c) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income is subject to the tax until the contrary is established by the taxpayer.
- (d) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

Sec. 8A-405. Advertising.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "Local Advertising", except the following:
 - (1) the advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within the State, and in which the advertisement names either no "commonly designated business entity" within the State or more than one "commonly designated business entity". "Commonly Designated Business Entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

- (2) the advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.
- (3) the advertising of a product which may only be purchased from an out-of-State supplier.
- (4) political advertising for United States Presidential and Vice Presidential candidates only.
- (5) advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.
- (6) advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(b) (Reserved)

Sec. 8A-410. Amusements, exhibitions, and similar activities.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:
 - (1) operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dancehalls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, entertainment, or instruction.
 - (2) health spas, fitness centers, or other persons who charge for the use of premises for sports, athletic, or other health-related activities, whether on a per-event use, or for long-term usage, such as membership fees.

(b) (Reserved)

Sec. 8A-415. Construction contracting: prime contractors.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.
 - (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.
 - (2) (Reserved)
- (b) Deductions.
 - (1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.
 - (2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

- (c) "Subcontractor" means a construction contractor performing work for either:
- (1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor both his Arizona Transaction Privilege License number and his City Privilege License number.
 - (2) an owner-builder who has provided the subcontractor with a written declaration that:
 - (A) the owner-builder is improving the property for sale; and
 - (B) the owner-builder is liable for the tax for such construction contracting activity; and
 - (C) the owner-builder has provided the contractor both his Arizona Transaction Privilege License number and his City Privilege License number.

Sec. 8A-416. Construction contracting: speculative builders.

- (a) The tax shall be equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.
 - (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.
 - (2) "Improved Real Property" means any real property:
 - (A) upon which a structure has been constructed; or
 - (B) where improvements have been made to land containing no structure (such as paving or landscaping); or
 - (C) which has been reconstructed as provided by Regulation; or
 - (D) where water, power, and streets have been constructed to the property line.
 - (3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
- (b) Exclusions.
 - (1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.
 - (2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.
 - (3) (Reserved)
- (c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the provisions of Section 8A-418, relating to deductions and tax credits.

Sec. 8A-417. Construction contracting: owner-builders who are not speculative builders.

- (a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to two percent (2%) of:
 - (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 8A-415(c)(2); and
 - (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.
- (b) The tax liability of this Section is subject to the provisions of Section 8A-418, relating to deductions and tax credits.
- (c) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 8A-540, will be based on reportable date.
- (d) (Reserved)

Sec. 8A-418. Construction contracting: deductions and tax credits available to speculative builders and owner-builders.

The following deductions and tax credits are available to amounts subject to the taxes imposed by Sections 8A-416 and 8A-417:

- (a) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
- (b) The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:
 - (1) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor in respect of the tangible personal property incorporated into the said structure or improvement to real property undertaken by the speculative builder or owner-builder.
 - (2) A tax credit equal to the amount of Privilege Taxes paid to this City, or charged separately to the customer, by the construction contractor, speculative builder, or owner-builder on the gross income derived by said person from the construction of any improvement to the real property.
 - (3) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

Sec. 8A-420. Feed at wholesale.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of the sale of feed, salt, vitamins, and other additives to feed, to persons engaged in the raising or feeding of livestock or poultry purchased or raised for slaughter, with no deduction for the income derived from the "resale" of such feed.
- (b) The tax imposed by this Section shall not apply to:
 - (1) out-of-City sales.
 - (2) out-of-State sales.

Sec. 8A-425. Job printing.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.
- (b) The tax imposed by this Section shall not apply to:
 - (1) job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.
 - (2) out-of-City sales.
 - (3) out-of-State sales.
 - (4) (Reserved)

Sec. 8A-430. Mining, timbering, and other extraction.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:
 - (1) mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.
 - (2) felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.
 - (3) extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.
- (b) The rate specified in subsection (a) above shall be applied to the value of the entire product mined, smelted, extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.
- (c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

Sec. 8A-435. Publishing and periodicals distribution.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:
 - (1) publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 8A-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.
 - (2) distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.
- (b) "Location of Publication" is determined by:
 - (1) location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or
 - (2) location of either the editorial offices or the printing facilities, if the publisher performs his own physical printing.
- (c) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.
- (d) "Circulation," for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.
- (e) Allocation of taxes between cities and towns. In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the City shall include:
 - (1) that portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus
 - (2) only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

Sec. 8A-440. Rental occupancy.

- (a) For the purposes of this Section only, the following definitions shall apply:
- (1) "Landlord" means any lessor of real property under a pre-existing lease.
 - (2) "Pre-existing Lease" means any written lease, license for use, or rental agreement entered into prior to December 1, 1967; except for the following:
 - (A) any bilateral amendment to such written agreement which was entered into subsequent to December 1, 1967, wherein the length of the term or the size of the premises affected is changed or both.
 - (B) any such agreement for lodging or lodging space.
 - (3) "Rent" means all consideration paid by the tenant to his landlord or to another in payment of or diminution of his own or his landlord's obligation in connection with the real property occupied by the tenant, whether or not such occupancy is designated as a rent, lease or license for use of real property.
 - (4) "Tenant" means any lessee of real property under a pre-existing lease.
- (b) The tax rate shall be at an amount of ____ percent (__%) of the gross rent paid by a tenant, to the extent of his occupancy of real property in this City under a pre-existing lease, upon such tenant, for the privilege of such occupancy, subject to the provisions of this Section.
- (c) Exclusions. The tax imposed by this Section shall not apply to:
- (1) occupancy by a tenant which the Constitution or laws of the United States or of the State of Arizona prohibit the City from taxing.
 - (2) occupancy by a tenant of a landlord which the Constitution or laws of the United States or of the State of Arizona prohibit the City from taxing.
 - (3) occupancy of lodging or lodging space.
 - (4) occupancy of real property under other than a pre-existing lease.
- (d) Duty of landlords. Every landlord of a tenant subject to the tax:
- (1) shall collect the tax imposed by this Section from the tenant liable for the tax at the same time as and together with the tenant's periodic or other payment of rent. The tax required to be collected shall constitute a debt owed by the landlord to the City.
 - (2) shall be considered a taxpayer subject to all licensing, recordkeeping, and reporting requirements of this Chapter.
- (e) Duty of tenants. Every tenant liable for the tax:
- (1) shall, in any instance in which the tax has not been collected by his landlord, remit such tax to the Tax Collector, and in such case, be subject to all licensing and reporting requirements of this Chapter.
 - (2) shall maintain, and provide upon request, books and records sufficient for the Tax Collector to determine the tax liability of such tenant.

- (f) Interest and civil penalties shall be the liability of the landlord collecting and remitting the tax; provided, however, that if the landlord can present clear and convincing evidence that the delinquency was caused by the tenant, then said interest and penalties shall be the liability of the tenant.
- (g) Extension of rights of appeal to include tenants and landlords.
- (1) Any landlord or tenant may avail himself of the provisions of Sections 8A-570 through 8A-575, relating to appeals, and, except as modified hereunder, all provisions of said Sections shall apply.
 - (2) For the purposes of preserving appeal rights, an assessment against a landlord may be protested and appealed by any tenant paying or liable to pay the tax for the occupancy included in such assessment.
 - (3) Payment of the tax herein imposed to a landlord by a tenant shall be deemed payment of the tax for the tenant for the purposes of allowing a protest to be initiated under Sections 8A-570 through 8A-575.
 - (4) The filing of a protest petition by a tenant shall not relieve the landlord of his obligation to report and remit the protested tax; or any subsequent periodic payments of tax governed by the initial protest.
- (h) Refunds. Any refunds of taxes authorized by this Chapter shall be made to the tenant. Any refunds of interest and civil penalties authorized by this Chapter shall be made to the person liable for such, as provided in subsection (f) above.

Sec. 8A-445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting real property located within the City for a consideration, to the tenant in actual possession, 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 8A-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by primary health care facilities to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) (Reserved)
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)

Sec. 8A-447. (Reserved)

Sec. 8A-450. Rental, leasing, and licensing for use of tangible personal property.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

- (b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
- (c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:
- (1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
 - (2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
 - (3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 8A-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.
 - (5) rental, leasing, or licensing for use of tangible personal property to any nonprofit primary health care facility, 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.
 - (6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
 - (7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
 - (8) (Reserved)
 - (9) (Reserved)

Sec. 8A-455. Restaurants and Bars.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.
- (b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises, shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records.

Sec. 8A-460. Retail sales: measure of tax; burden of proof; exclusions.

- (a) The tax rate shall be at an amount equal to two percent (2%) 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.
- (d) (Reserved)
- (e) Except as provided in Section 8A-567, when this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.
- (f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.

Sec. 8A-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 8A-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-City sales and 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) (Reserved)
- (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 9, 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 28-1559.
- (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) (Reserved)
- (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 8A-445 or the equivalent excise tax upon such income.
- (p) sales of tangible personal property to any nonprofit primary health care facility, 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.
- (q) (Reserved)

- (r) (Reserved)
 - (1) (Reserved)
 - (2) (Reserved)
 - (3) (Reserved)
 - (4) (Reserved)
- (s) sales of groundwater measuring devices required by A.R.S. Section 45-604.
- (t) (Reserved)
- (u) (Reserved)
- (v) (Reserved)
- (w) (Reserved)
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

Sec. 8A-470. Telecommunication services.

- (a) The tax rate shall be at an amount equal to zero percent (0%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.
 - (1) Telecommunication services shall include:
 - (A) two-way voice, sound, and/or video communication over a communications channel.
 - (B) one-way voice, sound, and/or video transmission or relay over a communications channel.
 - (C) facsimile transmissions.
 - (D) providing relay or repeater service.
 - (E) providing computer interface services over a communications channel.
 - (F) time-sharing activities with a computer accomplished through the use of a communications channel.
 - (2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:
 - (A) all fees for connection to a telecommunication system.
 - (B) toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.
 - (C) fees charged for access to or subscription to or membership in a telecommunication system or network.
 - (D) charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.

- (b) Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.
- (c) Interstate transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.
- (d) Tax credit offset for franchise fees. There shall be allowed as an offset, up to the amount of tax due, any amounts paid to the City for license fees or franchise fees, but such offset shall not be allowed against taxes imposed by any other Section of this Chapter. Such offset shall not be deemed in conflict with or violation of subsection 8A-400(b).
- (e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in A.R.S. Section 9-505, shall be exempt from the tax imposed by this Section.

Sec. 8A-475. Transporting for hire.

The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State:

- (a) transporting of persons or property by railroad.
- (b) transporting of oil or natural or artificial gas through pipe or conduit.
- (c) transporting of property by aircraft.
- (d) transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in Article III, Chapter 4, Title 42, Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:
 - (1) gross income subject to the tax imposed by Article VI, Chapter 9, Title 28, Arizona Revised Statutes.
 - (2) gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.
 - (3) (Reserved)
 - (4) (Reserved)

Sec. 8A-480. Utility services.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:
 - (1) consumers or ratepayers who reside within the City.
 - (2) (Reserved)

- (b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 8A-460 and 8A-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) Tax credit offset for franchise fees. There shall be allowed as an offset any franchise fees paid to the City pursuant to the terms of a franchise agreement, when such franchise fees are based on gross income realized from utility services provided to a specified class of customers within the City. However, such offset shall not be allowed against taxes imposed by any other Section of this Chapter. Such offsets shall not be deemed in conflict with or violation of subsection 8A-400(b).

Article V - Administration

Sec. 8A-500. Administration of this Chapter; rule making.

- (a) The administration of this Chapter is vested in and exercised by the City of Apache Junction, and except as otherwise provided, and all payments shall be made to the City of Apache Junction. The City may, pursuant to an intergovernmental agreement, contract with the State of Arizona Department of Revenue for the administration of the tax. In such cases, "Tax Collector" shall also mean the Arizona Department of Revenue, when acting as agent in administering this tax.
- (b) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.
- (c) Except where such Regulations would conflict with administrative regulations adopted by the City Council or with provisions of this Chapter, all regulations on the Transaction Privilege Tax adopted by the Arizona Department of Revenue under the authority of A.R.S. Section 42-105 shall be considered Regulations of this Chapter and enforceable as such.

Sec. 8A-510. Divulging of information prohibited; exceptions allowing disclosure.

- (a) Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.
- (b) The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the Federal Government, the State of Arizona, or any political subdivisions.
- (c) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.
- (d) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.
- (e) Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the City.
- (f) The Tax Collector may provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Section 42-1452 relating to the assessment and collection of intermunicipal taxes.

- (g) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 8A-435 upon publishing and distribution of periodicals.
- (h) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.

Sec. 8A-520. Reporting and payment of tax.

- (a) The taxpayer shall be required to use the report form authorized by the Tax Collector and shall mail or deliver the same, together with remittance for the amount of tax due, payable to the City of Apache Junction, to the Tax Collector or any City representative or agent authorized to receive such payment. The tax return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return.
- (b) Payment. If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.
- (c) Requirement of Security. If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future payments.
- (d) Method of Reporting. Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the Privilege License application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.
 - (1) Taxpayers must report all gross income subject to the tax using the same basis of reporting.
 - (2) Taxes imposed upon construction contracting shall be reported as follows:
 - (A) Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.
 - (B) Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession, whichever occurs earlier.
 - (C) Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 8A-417.

Sec. 8A-530. When tax due; when delinquent; verification of return; extensions.

- (a) Except as otherwise specified in this Section, the taxes levied under this Chapter shall be due, payable, and delinquent on the dates specified for the State Transaction Privilege Taxes in A.R.S. Section 42-1322. The taxpayer shall report on the taxes imposed by this Chapter at such frequency to be identical to the taxpayer's reporting frequency for the reporting of State Transaction Privilege Taxes.

- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) The Tax Collector may for good cause extend the date for making any return required under the provisions of this Section as prescribed by A.R.S. Section 42-116.

Sec. 8A-540. Interest and civil penalties.

Any taxpayer who shall have failed to timely pay any taxes imposed by this Chapter, or file a report for the same in a timely manner, or fail or refuse to allow examination of records by the Tax Collector, shall be subject to any interest or civil penalties on such tax in like manner as such interest and penalties are provided in A.R.S. Sections 42-134 and 42-136 for the State Transaction Privilege Tax.

- (a) (Reserved)
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)
- (f) (Reserved)

Sec. 8A-545. Deficiencies; when inaccurate return is filed; when no return is filed; estimates.

- (a) If a taxpayer has failed to file a return or if the Tax Collector is not satisfied with the return or payment of tax required, the Tax Collector may redetermine the tax due, plus penalties and interest, and notify the taxpayer, as provided and prescribed by A.R.S. Sections 42-117 and 42-118.
 - (1) (Reserved)
 - (2) (Reserved)
- (b) Estimates by the Tax Collector. Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Tax Collector's estimate. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector.

Sec. 8A-550. Limitation periods.

- (a) Except as provided elsewhere in this Chapter, deficiency assessments for the taxes imposed by this Chapter must be issued within the limitation periods prescribed in A.R.S. Section 42-113, and must meet the provisions of A.R.S. Section 42-117.

- (b) (Reserved)
- (c) In cases of failure to file a return or a false or fraudulent return, the limitation period shall be as prescribed in A.R.S. Section 42-118.
- (d) Special provisions relating to owner-builders. The limitation for an owner-builder subject to the tax as prescribed in Section 8A-417 shall be based upon the date such tax liability is reportable or was reported, as provided in Section 8A-417.

Sec. 8A-555. Tax Collector may examine books and other records; failure to provide records.

- (a) The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter, for any periods available to him under Section 8A-550.
- (b) (Reserved)
- (c) (Reserved)
- (d) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The only responsibility of the Tax Collector is that the procedures used are in accordance with generally accepted auditing standards. The taxpayer must prove by clear and convincing evidence that the methods chosen do not comply with generally accepted auditing standards.
- (e) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. The provisions of Section 8A-545(b), concerning estimates, shall apply.
- (f) (Reserved)

Sec. 8A-560. Erroneous payment of tax; credits and refunds; limitations.

- (a) Except as provided in Section 8A-565, the period within which a claim for credit may be filed, or refund allowed or made if no claim is filed, shall be as provided in A.R.S. Sections 42-115 and 42-129.
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)
- (f) The denial of a refund by the Tax Collector is subject to the provisions of A.R.S. Section 42-130.

- (g) Any refund paid under the provisions of this Section shall be paid from the Privilege Tax revenue accounts.

Sec. 8A-565. Payment of tax to the incorrect Arizona city or town.

- (a) When it is determined that taxes have been reported and paid to the wrong Arizona city or town, a refund or assessment shall be made to the correct city or town. The refund or assessment period shall be limited to the forty-eight (48) month period prior to the date the City receives or gives written request of the taxes due. The City shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax.
- (b) The limitations and procedures set forth in A.R.S. Section 42-1452 shall apply to all payments under this Section.
- (c) When reference is made in this Section to an Arizona city or town, and payments made to or requested from such city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of an Arizona city or town.

Sec. 8A-567. Allocation of tax on retail sales when more than one Arizona city or town has nexus.

- (a) In cases of retail sales where the tangible personal property sold was delivered from stock located at a point without the state of Arizona, the tax imposed upon the retail sale in question shall be shared equally between this City and the other city or town involved; provided that the tangible personal property is not "mobile equipment" and either:
- (1) transfer of title and possession occurred within the City, but the order was received at a permanent business location of the seller located in another Arizona city or town that imposes and equivalent excise tax upon the transaction; or
 - (2) transfer of title and possession occurred in another Arizona city or town that imposes an equivalent excise tax upon the transaction, but the order was received at a permanent business location of the seller located within the City.
- (b) "Mobile Equipment," for the purposes of subsection (a) above, includes any automobile, bicycle, motorcycle, truck, aircraft, boat, tractor, forklift, or any other equipment that can move under its own power or is designed as a method of transportation.
- (c) "Shared Equally," for the purposes of subsection (a) above, shall mean:
- (1) in cases where tax was collected as a separate charge from the customer, that each city or town shall have the right to half of the actual tax collected, even if the rate at which such tax was collected differs from the appropriate tax rate of either city.
 - (2) in cases where the tax was not separately charged to the customer but was reported and paid to one of the cities or towns in question, that each city or town shall have the right to half of the actual tax so paid, even if the rate at which such tax was reported and paid differs from the appropriate tax rate of either city.

- (3) in all other cases, each city or town shall have the right to half of the tax liability on such a sale, to be determined by the tax rate of the city or town of the seller's permanent business location.
- (d) Claim, payment, and collection of taxes allocated between Arizona cities and towns by the provisions of this Section shall be made in the same manner as provided in Section 8A-565 relating to tax paid to the incorrect city or town.

Sec. 8A-570. Administrative review; petition for hearing or for redetermination; hearing or redetermination; finality of order.

- (a) Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-126.
- (b) Payment of tax under protest. Payment under protest of tax, penalty or interest due or assessed under this Chapter shall be deemed as normal, unprotested payment of such unless the provisions of A.R.S. Section 42-126 have been met.
- (c) 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 42-122, as modified by Section 8A-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 42-122. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-124.
 - (6) (Reserved)
 - (7) (Reserved)
- (d) (Reserved)
- (e) (Reserved)

Sec. 8A-571. Jeopardy assessments.

- (a) If the Tax Collector believes that collection of any amounts imposed by this Chapter will be jeopardized by delay, he shall issue notice to the taxpayer in accordance with the provisions of A.R.S. Section 42-120.
- (b) In cases where such jeopardy notice has been issued, the taxpayer must meet the provisions of A.R.S. Section 42-120, concerning appeals of jeopardy assessments, before any request for administrative review shall be honored. Any bond or collateral that may be required shall meet the provisions of A.R.S. Section 42-112.
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)

Sec. 8A-575. Judicial review.

- (a) Appeal of a State Board of Tax Appeals decision to the courts is valid only if all the provisions of A.R.S. Section 42-124 are met.
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the City or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the City to recover any amounts claimed to be due to it by virtue of the original assessment.
- (f) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

Sec. 8A-577. (Reserved)

Sec. 8A-580. Criminal penalties.

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

- (c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

Sec. 8A-590. Civil actions.

(a) Liens.

- (1) Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the City perfects a notice and claim of lien setting forth the name of the taxpayer, the amount of the tax, penalty, and interest, the period or periods for which due, the date of accrual thereof and stating that the City claims a lien therefor.
- (2) The notice of claim of lien shall be signed by the Revenue Officer/City Clerk under his official seal or the official seal of the City, and, with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, and interest in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.
- (3) Every tax imposed by this Chapter, and all increases, interest, and penalties thereon, shall become from the time the same is due and payable a personal debt from the person liable to the City, but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.
- (4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, and interest affected thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the City.

- (b) Actions to recover tax. The Arizona Department of Revenue, or any agent or representative authorized by that Department, may bring action, in the name of the City, to recover taxes as provided in A.R.S. Section 42-125.

Sec. 8A-595. Collection of taxes when there is succession in and/or cessation of business.

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

- (b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.
- (c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Sections 8A-416 and 8A-417.
- (d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector.
 - (1) If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.
 - (2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

Article VI - (Reserved)

Sec. 8A-600. (Reserved)

Sec. 8A-610. (Reserved)

Sec. 8A-620. (Reserved)

Sec. 8A-630. (Reserved)

Sec. 8A-640. (Reserved)

Sec. 8A-650. (Reserved)

Sec. 8A-660. (Reserved)

REGULATIONS - PRIVILEGE AND EXCISE TAXES

Reg. 8A-100.1. Brokers

- (a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 8A-405, relating to advertising commissions.
- (b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:
 - (1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.
 - (2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.
- (c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.
- (d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

Reg. 8A-100.2. Delivery, installation, or other direct customer services.

- (a) "Delivery Charges" exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges.
 - (1) Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge. Only the separately stated charge for the delivery shall be deemed a "delivery charge".
 - (2) Freight in. Charges for delivery from place of production or the manufacturer to the vendor either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery.

- (b) "Installation", as used in this definition, relates only to tangible personal property. Installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sun screens on the windows of a boat; installing cabinets, carpeting, or "built-in appliances" to a camper or motorized recreational vehicle.
- (c) Repair of tangible personal property is not included in this definition. See Regulation 8A-465.1.
- (d) "Direct Customer Services" means services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of subsection (e) below are referred to by the words "identify" or "identification."
- (1) A retailer sells a customer a \$100 "plug-in" appliance, with a \$25 delivery and installation charge. If the retailer identifies the \$25 delivery and installation charge, it is a charge for direct customer services.
 - (2) A caterer charges his customer \$1,000 for the food and drink served, \$300 for setup and site cleanup, and \$500 for bartender and waiters. If all charges are properly identified, only the \$300 for set up and cleanup is a charge for direct customer services, and the \$1,500 for food and service is restauranting gross income.
 - (3) Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges for labor as direct customer services.
 - (4) All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.
 - (5) An equipment rental company charging \$25 for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.
 - (6) Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.
- (e) Recordkeeping requirements.
- (1) Any person who engages in transactions involving these services must:
 - (A) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge; and
 - (B) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified, to the satisfaction of the Tax Collector.
 - (2) Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or similar a expression does not satisfy the requirements of this subsection.

Reg. 8A-100.3. Retailers.

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

Reg. 8A-110.1. Income-producing capital equipment: in general.

- (a) The term "income-producing capital equipment" applies only when the purchaser or lessor is directly using, such equipment primarily for the purpose of directly producing income in his normal course of business. For example:
 - (1) Rental of a printing press to a job printer would qualify. Rental of the same equipment to a trade school or an airline company would not qualify.
 - (2) A lease of an electric generator rated at 75KV to an electric utility company or a manufacturer or job printer would qualify. The same lease to a telecommunications company or an irrigation district would not qualify.
- (b) Note the "two-pronged test" this definition requires:
 - (1) the purchaser or lessor must be engaged in a business that directly uses the item to produce income; and
 - (2) the item is to be directly used in the production of income. Ancillary equipment for backup power, removal of wastes, storage, transport of materials, etc. do not qualify unless the definition allows it for that specific business activity.

Reg. 8A-110.2. Income-producing capital equipment: manufacturing equipment; job printing equipment.

- (a) Manufacturing involves the change of tangible personal property into a new form of tangible personal property. This may involve activities often called "processing" or "fabricating", for example: making electronic parts in quantity, refining crude oil, pasteurizing milk, fabricating a mobile home, producing syrup for soft drinks from other ingredients. Therefore, there are four reasons why an activity is not considered manufacturing, as follows, with examples.
 - (1) The activity is specifically defined elsewhere in this Chapter. For example: publishing; construction contracting; baking or cooking food (defined as restaurant activity).
 - (2) The activity does not begin with a physical product ("raw materials"). For example: word processing; electronic data processing; photography; video or sound recording by a recording studio.
 - (3) The activity does not physically change the raw materials into another form of tangible personal property. For example: sorting or "screening" sand, gravel, or rock; picking cotton; stuffing envelopes; chilling (but not freezing) water; cooling or heating air.

- (4) The "finished product" is not tangible personal property available for sale. For example: broadcasting by radio or television waves; cooling or heating air; electronic data processing.
- (b) Manufacturing is limited to those activities involving the actual changing of tangible personal property into another form, and not to include any other activities of persons involved in the business of manufacturing. Therefore,
- (1) Items typically called "work in process" are often produced from "raw materials" or other "work in process" and then stockpiled until needed at a later stage in production (or perhaps sold in this form). For the purposes of this Chapter, the activity of manufacturing is deemed to cease when the last act of physically combining, separating, or otherwise changing of this "work in process" ceases, and does not resume until such "work in process" is again used in the production process as "raw material" for such process.
 - (2) "In-line" inspection procedures (between the 5th and 6th steps of an assembly process, for example) shall be deemed part of the activity of manufacturing, provided that the material so inspected is not physically removed from the location of the production process (removal to the Quality Assurance labs or the stockroom, for example, would be deemed to be removal from the physical location of the production process). Therefore, activities that occur in the Quality Assurance labs, stockroom, or other such locations are by definition not part of the activity of manufacturing.
 - (3) Packaging shall be deemed part of the manufacturing activity if:
 - (A) the packaging process is an integral part of the production process, and
 - (B) the goods so packaged have come directly from the production process (or from an "in-line" inspection as defined above).
 - (4) Only "in-line" materials handling shall be deemed as part of the activity of manufacturing, in a manner similar to "in-line" inspection procedures. Therefore delivery or the moving of materials up to and including delivery to the first stage of the production process (or the first stage of separate phase of production, when in reference to "work in process") is not part of the manufacturing activity. In like manner, delivery to the stockroom, Quality Assurance labs, or other such place not deemed part of the production process, and that and all subsequent movement of such materials until they have once again entered the production process, are deemed not to be part of the activity of manufacturing.
- (c) The activity of job printing shall be determined in a manner similar to that provided above relating to "manufacturing".
- (d) The following items are specifically not included as machinery or equipment which is acquired for use primarily during the activity of manufacturing or job printing:
- (1) equipment used primarily for the storage of materials when not being physically changed (for example, storage vats or bins, holding tanks).
 - (2) materials handling equipment (for example, dollies, fork lifts, hand trucks) not used directly "in-line".

- (3) ancillary testing equipment of all kinds (for example, testing equipment in the Quality Assurance area or in the stockroom).
- (4) ancillary packaging equipment of all kinds (for example, packaging equipment in the stockroom or mailroom).
- (5) ancillary equipment used for the treatment or removal of waste products of the activity (for example, air-scrubbing equipment, wastewater treatment equipment).
- (6) any structural changes to real property (for example, plumbing or electrical changes to a structure, loading docks).

Reg. 8A-115.1. Computer hardware, software, and data services.

(a) Definitions.

- (1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.
- (2) "Computer Software" (also called "computer program") is tangible personal property, and includes:
 - (A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
 - (B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.
- (3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, 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 8A-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.
 - (C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.
 - (2) Training services related to computer hardware or software, provided further that:
 - (A) the provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.
 - (B) training deemed a direct customer service does not include:
 - (i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.
 - (ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.
 - (3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).

- (4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(f) (Reserved)

Reg. 8A-120.1. (Reserved)

Reg. 8A-200.1. When refundable deposits are includable in gross income.

Refundable deposits shall be includable as gross income of the taxpayer for the month in which received, and will be allowed as deductible refunds for the month in which actually paid back, unless the taxpayer:

- (1) maintains all such deposits in a separate investment account which is not subject to use or expenditure by the taxpayer; and
- (2) pays interest at at least one-half of one percent (1/2%) per month from the date of deposit to the depositor, payable upon refund which shall not be later than thirty (30) days subsequent to the return of the equipment or other end of period of possession involved; and
- (3) includes forfeited deposits in gross income at time of forfeiture.

Reg. 8A-250.1. Excess tax collected.

If a taxpayer collects taxes in excess of the combined tax from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers.

Reg. 8A-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 8A-270:

- (a) rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.
- (b) producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.
- (c) sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

Reg. 8A-270.2. Proprietary clubs.

- (a) Equity requirements. In order to qualify for exclusion under Section 8A-270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member-owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one or more of its employees and it is not engaged in any business activity connected with the operation of the club.
- (b) Gross revenue requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of subsection 8A-270(c)(1),
 - (1) the following shall be excluded:
 - (A) membership dues.
 - (B) membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.
 - (C) assessments.
 - (D) special fund raising events, raffles, etc.
 - (E) donations, gifts, or bequests.
 - (F) gate receipts, admissions, and program advertising for not more than one tournament in any calendar year.
 - (2) the following must be included:
 - (A) green fees, court use fees, and similar charges for the actual use of a facility or part thereof.
 - (B) pro shop sales if the shop is owned by the club.
 - (C) golf cart rental if the carts are owned by the club.
 - (D) rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.
 - (E) all receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and similar receipts.
 - (F) locker and locker room fees and attendants charges if paid to the club.
 - (G) tournament entry fees other than entry fees for the one annual tournament exempt under subsection (b)(1)(F) above.

Reg. 8A-300.1. Who must apply for a license.

- (a) For the purposes of determining whether a license is required under Section 8A-300, a person shall be deemed to be "engaged in or continuing in business" within the City, if he meets any of the following conditions:
 - (1) He is engaged in any activity subject to the City's Privilege Taxes as principal or broker.

- (2) He has or maintains within the City 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 City 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 City.
- (3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City from customers, consumers, or users located within the City, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City.
- (4) (Reserved)
- (5) He is required to report and pay the tax upon Rental Occupancy imposed by Section 8A-440.

(b) (Reserved)

Reg. 8A-350.1. Recordkeeping: income.

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

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

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

Reg. 8A-350.2. Recordkeeping: expenditures.

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

- (a) the total price of all goods acquired for use or storage in the City.
- (b) the date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.
- (c) documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) the gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) as applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
 - (1) all construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) franchise and license fee payments and computations thereto which relate to:
 - (A) utility service
 - (B) telecommunication service.

- (4) the validity of any claims of proof of exemption, as provided by Regulation.
 - (5) a claimed alternative prior value for reconstruction.
 - (6) (Reserved)
 - (7) (Reserved)
 - (8) payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.
 - (9) payments by tenants subject to the tax upon Rental Occupancy imposed by Section 8A-440.
- (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.

Reg. 8A-350.3. Recordkeeping: out-of-City and out-of-State sales.

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

Reg. 8A-360.1. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

Reg. 8A-360.2. Proof of exemption: exemption certificate.

For the purpose of proof of exemption, in transactions other than those in which the proof is set by standard documentation as detailed in Regulations 8A-350.1 and 8A-360.1, the minimum acceptable proof and documentation for each transaction shall be the completion, at the time of the transaction, in all material respects, of a certificate containing all the information set forth below. For the purpose of validating the vendor's claim of exemption, such certificate is sufficient if executed by any person with apparent authority to act for the customer, and the information provided validates the claim.

INVALID UNLESS COMPLETED IN FULL

VENDOR'S NAME _____ Sales Invoice No. _____

Customer's Exemption Claim
City of Apache Junction Privilege License (Sales) Tax

Customer's Business Name: _____

Customer's Business Address: _____

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

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

ITEMS CLAIMED AS EXEMPT FROM TAX

_____ : All Items on This Invoice or Purchase Order.

_____ : Only Those Items marked with An "E".

REASON FOR CLAIMED EXEMPTION:

_____ : The items claimed as exempt are sold, rented, leased, or licensed
by the above named customer in the normal course of its business activity.

_____ : The items claimed as exempt are exempt from the City of Apache
Junction Privilege Tax for the following specific reason(s):

CUSTOMER'S CERTIFICATE

I certify that the above information is accurate to the best of my information and belief, and that I am authorized by the Customer above to acquire the items claimed as exempt on a tax-free basis on its behalf. I further understand that the making of a false or fraudulent claim to obtain a tax exemption is a Class One Misdemeanor under City Code Section 8A-580.

Name _____ Date _____

Title _____

Reg. 8A-405.1. Local advertising examples.

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

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

Reg. 8A-405.2. Advertising activity within the City.

A person engaged in advertising activity shall be considered to be doing business entirely within the City if all or a major portion of the dissemination facilities such as broadcasting studios, printing plants, or distribution centers are located within the City limits. Billboard and other outdoor advertising companies shall be considered to be doing business within the City to the extent they have billboards or similar displays within the City. Remote studios patched to an in-City studio and subject to engineering modulation or control at the in-City studio are considered studios doing business in the City.

Reg. 8A-415.1. Distinction between the categories of construction contracting.

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

- (a) A person performing improvements to real property is one of the following:
 - (1) an "Owner-Builder" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-builder" may also be a "speculative builder".

- (2) a "Prime Contractor" when performing work for the owner or lessor or lessee-in-possession of the real property, unless that person has provided a written declaration stating that:
 - (A) the owner-builder is improving the property for sale; and
 - (B) the owner-builder is liable for the tax for such construction contracting activity; and
 - (C) the owner-builder has provided the contractor both his Arizona Transaction Privilege Tax License number and his City Privilege License number.
- (3) a "Subcontractor" when performing work for either:
 - (A) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor both his Arizona Transaction Privilege License number and his City Privilege License number.
 - (B) an owner-builder who has provided the subcontractor with a written declaration as provided in subsections (a)(2)(A) through (a)(2)(C) above.
- (b) An owner or lessor ("owner-builder") of improved real property is one of the following:
 - (1) a "Speculative Builder" if he sells such property within twenty-four (24) months after the improvement is "substantially completed".
 - (2) an "owner builder who is not a speculative builder" in all other cases.
- (c) The terms "owner", "lessor", and "lessee-in-possession" shall be deemed to include any authorized agent for such person.

Reg. 8A-415.2. Distinction between construction contracting and certain related activities.

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

- (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).
 - (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) Prefabricated buildings; manufactured housing.
- (1) Any prefabricated building or manufactured housing with respect to which an affidavit of affixture has been recorded pursuant to A.R.S. Section 42-641.01 shall be deemed an improvement of real property, and any improvement or alteration of such prefabricated building or manufactured housing shall be deemed construction contracting activity.
 - (2) Any prefabricated building or manufactured housing with respect to which an affidavit of affixture has not been recorded shall be deemed tangible personal property for all purposes of this Chapter.
 - (3) A "mobile home" shall qualify for this definition only to the extent that such affidavit of affixture has been recorded at the time of sale.
- (d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
- (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
 - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
 - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
 - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

Reg. 8A-416.1. Speculative builders: homeowner's bona fide non-business sale of a family residence.

- (a) A sale of real property which has been improved within twenty-four (24) months prior to the sale shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:
 - (1) the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and

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

Reg. 8A-416.2. Reconstruction contracting.

- (a) "Reconstruction (of Real Property)" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:
 - (1) a structure existed on said real property prior to the reconstruction activity; and
 - (2) the "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and
 - (3) the total cost of all construction contracting activities performed on said real property in the twenty-four (24) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and
 - (4) the structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.
- (b) Except as provided in subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Such value shall be the full cash value of the property for secondary taxes as determined by the County Assessor, as such statement of value includes both the land and improvements, without any deduction or diminution. The value shall be as set in the year which is immediately preceding the year in which the reconstruction improvements are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply.

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

Reg. 8A-425.1. Distinction between job printing and certain related activities.

- (a) Computerized Printing. Computerized versions of all items which would be taxable under Section 8A-425 if performed without computerized assistance are considered taxable under that Section, and therefore, are not exempt services.
- (b) Book publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.
- (c) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

Reg. 8A-435.1. Distinction between publishing of periodicals and certain related activities.

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

Reg. 8A-445.1. (Reserved)

**Reg. 8A-445.2. Rental, leasing, and licensing of real property as lodging:
refundable and non-refundable deposits.**

- (a) Nonrefundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt.
- (b) "Security deposits" and other refundable deposits are deemed gross income at the time such deposits become forfeit, provided that they are maintained in the manner required for security deposits by the Arizona Residential Landlord and Tenant Act, Chapter 10, Title 33, Arizona Revised Statutes. Failure to comply with such provisions with regard to refundable deposits makes such deposits gross income at the time of receipt.

**Reg. 8A-445.3. Rental, leasing, and licensing of real property as lodging:
room and board; furnished lodging.**

- (a) Room and board.
 - (1) Rooming houses, lodges, or other establishments providing both lodging and meals, shall maintain a record of the separate charges made for the lodging and the meals.
 - (2) The charge for lodging shall be subject to the tax imposed by Section 8A-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 8A-455.
- (b) Furnished lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging, and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property, unless:
 - (1) Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished; and
 - (2) The lessor separately charges tenants for lodging and for furnishings; and
 - (3) The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.

If all of the above conditions are met, such person shall report both sources of income separately to the City.

Reg. 8A-447.1. (Reserved)

**Reg. 8A-450.1. Distinction between rental, leasing, and licensing for use of
tangible personal property and certain related activities.**

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

- (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
- (3) Rental of pumps or cranes is rental of tangible personal property, regardless of whether or not an operator is included with the equipment rented.

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

Reg. 8A-450.2. Rental, leasing, and licensing for use of tangible personal property: membership fees; other charges.

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

Reg. 8A-450.3. Rental, leasing, and licensing for use of equipment with operator.

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

Reg. 8A-450.4. Rental, leasing, and licensing for use of tangible personal property: semi-permanently or permanently installed tangible personal property.

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

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

Reg. 8A-455.1. Gratuities related to restaurant activity.

Gratuities charged by or collected by persons subject to the tax imposed by Section 8A-455 may be excluded from gross income if:

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

Reg. 8A-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 8A-460:
- (1) tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 8A-415 through 8A-418.
 - (2) Sales of feed at wholesale, per Section 8A-420.
 - (3) job printing, per Section 8A-425.
 - (4) mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 8A-430.
 - (5) publication of newspapers, magazines, and other periodicals, per Section 8A-435.
 - (6) rental, leasing, and licensing of real or tangible personal property, per Sections 8A-445 or 8A-450.
 - (7) restaurants and bars, per Section 8A-455.
 - (8) telecommunications services, per Section 8A-470.
 - (9) utility services, per Section 8A-480.

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

Reg. 8A-460.2. Retail sales: trading stamp company transactions.

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

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

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

Reg. 8A-460.3. Retail sales: membership fees of retailers.

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

Reg. 8A-460.4. Retail sales: professional services.

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

- (3) Use of a hair care product on a client's hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client's use thereafter and without the professional's assistance, the transfer of the bottle of hair care product is deemed not inconsequential.
- (4) If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

Reg. 8A-460.5. Retail sales: monetized bullion; numismatic value of coins.

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

Reg. 8A-460.6. Retail sales: consignment sales.

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

Reg. 8A-465.1. Retail sales: repair services.

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

Reg. 8A-465.2. (Reserved)

Reg. 8A-465.3. Retail sales: sale of containers, paper products, and labels.

- (a) The sale of a "primary container" to a retailer or manufacturer is exempt. "Primary Container" means packaging material or a container such as a bottle, can, cup, bag, box, etc., which contains personal property prior to such property's sale and which is necessarily transferred with the tangible personal property it contains at the time of sale. Examples of such exempt primary containers include but are not limited to:
 - (1) packaging materials sold to a manufacturer of video equipment for containment of the product during shipment.
 - (2) cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or contained meat.
 - (3) bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where such bags or containers are necessary to contain and measure the amount purchased by the customer.
- (b) Sales of containers other than primary containers as defined above, are not exempt and are thus subject to tax. Examples of such taxable containers include but not limited to:
 - (1) shopping bags sold to grocery stores, department stores, or other retailers.
 - (2) gift wrapping and gift boxes provided to the customer without charge.
 - (3) paper bags and similar containers sold to restaurants for containment of individually wrapped or contained food for consumption off the premises (including food which was originally sold for consumption on the premises but a portion of which is removed thereafter).
- (c) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a direct customer service and not a sale. Such gift paper, boxes, tissue paper, ribbons, etc., shall be subject to tax when sold to the retailer.

- (d) Restaurants are not retailers, and are taxed under Section 8A-455. Paper (and similar products, such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks, etc., sold to restaurants and others taxable under Section 8A-455 are taxable to the purchaser at the time of purchase as products consumed by the business.
- (e) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made.
- (f) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it, and is not exempt as a sale for resale.

Reg. 8A-465.4. (Reserved)

Reg. 8A-470.1. Telecommunication services.

- (a) Gross income from the business activity of providing telecommunication services to consumers within this City shall not include:
 - (1) charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 8A-415, 8A-416, or 8A-417 (construction contracting); 8A-445 (real property rental); 8A-450 (tangible personal property rental); or 8A-460 (retail sales); depending upon the nature of the work performed.
 - (2) separately billed advertising charges which are subject to the provisions of Section 8A-405 or 8A-435.
- (b) Mobile equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones, portable hand-held two-way radios, paging devices, etc.), the provider shall, for the purposes of the tax imposed by this Section, determine whether such provider's customers are "within this City" as follows:
 - (1) by the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.
 - (2) in all other cases, the business location of the telecommunications provider.

Reg. 8A-475.1. Distinction between transporting for hire and certain related activities.

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

Reg. 8A-520.1. (Reserved)

Reg. 8A-520.2. Change of method of reporting.

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

Reg. 8A-555.1. (Reserved)

Reg. 8A-571.1. Collection of tax in jeopardy.

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

- (a) the taxpayer is going out of business.
- (b) the taxpayer has no City Privilege License or has no permanent business location in the State.
- (c) the taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the City on three (3) or more occasions within the previous thirty-six (36) calendar months.
- (d) the taxpayer has remitted payment by check, which has been dishonored.
- (e) the taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 8A-555.1.