

ORDINANCE NO. 4

AN ORDINANCE OF THE CITY OF APACHE JUNCTION,
ARIZONA IMPOSING AND LEVYING A TRANSACTION PRIVILEGE
TAX, AS AUTHORIZED BY THE CONSTITUTION OF THE STATE OF
ARIZONA, ARTICLE 9, SECTION 6.

Article 8-5 TRANSACTION PRIVILEGE TAX

- 8-5-1 Definitions
- 8-5-2 Permit Requirements
- 8-5-3 Imposition of Tax -- Tax Schedule
- 8-5-4 Exemptions
- 8-5-5 Administration and Procedures
- 8-5-6 Assessment and Appeal
- 8-5-7 Violations

Section 8-5-1 Definitions

In this article unless the context requires otherwise:

- A. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts. This definition shall not be interpreted to include activities listed in paragraphs 2, 3, 4, 5, 8 and 9 of Section 8-5-3 (A) of this article.
- B. "Auditor" means any city employee or agent authorized by the tax collector to audit records of a person subject to the tax specified by this chapter and may include an employee of another city or town.
- C. "Business" includes 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.
- D. "Contracting" means engaging in business as a contractor.
- E. "Contractor" means a person who, for either a fixed sum, price, fee, percentage, bonus or other compensation other than actual wages, undertakes to or offers to undertake to, or purports to have 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, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. The term "contractor" includes subcontractors, specialty contractors, developers and speculative builders.
- F. "Engaging", when used with reference to engaging or continuing in business, means the exercise of corporate or franchise powers.

- G. "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses.
- H. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sales shall not be included as gross income; "gross income" or "gross proceeds of sale" shall not be construed to include goods, wares or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in the "gross income" or "gross proceeds of sales", as the case may be.
- I. "Gross receipts" means the total amount of sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, materials used, labor service performed, interest paid, losses or any other expense. The term does not include cash discounts allowed and taken or the sale price of property returned by customers, when the full sale price thereof is refunded either in cash or by credit.
- J. "Hotel" means any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house, apartment house, trailer or other lodging place within the City of Apache Junction offering lodging, wherein the owner and operator thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes or hospitals.
- K. "Lodging" and "lodging space" means the use or possession, or the right to the use or possession, of any room or apartment in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room, including storage or parking space for the property of a transient.
- L. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to such materials new forms, qualities, properties or combinations. This definition shall not be interpreted to include activities listed in paragraphs 2, 3, 4, 5, 8 and 9 of Section 8-5-3 (A) of this code.

- M. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture. This definition shall not be interpreted to include activities listed in paragraphs 2, 3, 4, 5, 8 and 9 of Section 8-5-3 (A) of this code.
- N. "Notice" means a written instrument served by the town as follows, with time commencing from date of mailing, serving, filing or recording:
1. By registered or certified mail to the last known address of the person to whom it is required to be given; or
 2. By personal service upon the person or his lawful representative; or
 3. By filing or recording with a clerk of the superior court or a county recorder.
- O. "Owner-builder" means a person who owns or leases real property within the City acting as a contractor in constructing any improvement upon the real property which real property as improved is held by such person for his use or for rental purposes. An owner-builder who sells such real property as improved at any time on or before the expiration of twenty-four months after an occupancy permit for such improvement is issued, or if no permit is issued, within twenty-four months after final inspection of the improvement or when the improvement is completed, whichever is later, shall be treated as a "prime contractor" for purposes of this article. For purposes of this definition, a "sale" of real property as improved includes any form of transaction whether characterized as a lease or otherwise which in substance is a sale and includes any lease of the improvement for a term of thirty years or more with all options for renewal being included as a part of the term.
- P. "Permanent resident" means any person who, as of a given date, has occupied lodging space or has paid or become obligated to pay for the right to occupy lodging space, in a particular hotel for the thirty consecutive days next preceding such date, or has signed and performs under a lease.
- Q. "Person" or "company", herein used interchangeably, means an individual, officer, agent, firm, partnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly intended by the context.
- R. "Prime contractor" means a contractor which the owner or lessee of the real property being improved treats as being responsible for administration, construction and completion of the improvement. For purposes of this definition, a person who, for either a fixed sum, price, fee, percentage, bonus or other compensation other than actual wages, undertakes to or offers to undertake to, or submits a bid to, or does himself or by or through others, supervises the construction of the improvement, or coordinates the construction of the improvement, or both, is a prime contractor, unless such supervisor or coordinator demonstrates, to

the City's satisfaction, that another contractor is, in fact, the prime contractor for the improvement; provided, a person acting on behalf of an owner-builder rendering consulting services shall not be regarded as a prime contractor if:

1. Such person does not guarantee a maximum price for the improvement to the owner-builder;
 2. Such person does not contract with contractors constructing the improvement; and
 3. Such person is not responsible to the owner-builder for the administration, construction and completion of the improvement.
- S. "Repairer" means a person who restores or renews products, wares or articles of manufacture. This definition shall not be interpreted to include activities listed in paragraphs 2, 3, 4, 5, 8 and 9 of Section 8-5-3 (A) of this article.
- T. "Retailer" means every person engaged in the business of making sales at retail, and when in the opinion of the tax collector it is necessary for the efficient administration of this article, includes dealers, distributors, supervisors and employers, and salesmen, representatives, peddlers or canvassers as the agents of such dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on the behalf of such dealers, distributors, supervisor or employers.
- U. "Retail sale" or "sale at retail" means a sale for any purpose other than for resale in the form of tangible personal property but the expressions of "transfer of possession", "lease" and "rental" as used in the definition of "sale", mean only such transactions as are found upon investigation to be in lieu of sales as defined without the words "lease" or "rental".
- V. "Room rental" means the total charge, exclusive of all federal, state and municipal taxes, made by any hotel for lodging or lodging space furnished any transient. If the charge made by such hotel to such transient includes any charge for services or accommodations in addition to that of lodging, or the use of lodging space, then such portion of the total charge as represents only room or lodging space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.
- W. "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration or any agreement therefor, and includes, but is not limited to:
1. Any transaction whereby the possession of property is transferred, but the seller retains a security interest for the payment of the purchase price.

2. The fabrication of tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work, where such fabrication is customarily included in the sale price of similar tangible personal property sold to consumers.
 3. The furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.
- X. "Stock" means the goods and wares of a person kept for sale and traffic, and for the purpose of this article shall include, but not be limited to all tangible personal property specially ordered for any customer, if for any reason such specially ordered property is brought into the City prior to completion of the sale.
- Y. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses.
- Z. "Tax collector" means the Council of the City of its authorized agent.
- AA. "Taxpayer" means any person liable for any tax imposed by this article.
- BB. "Transient" means any person who, for any period of not more than thirty days, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel for which lodging or use of lodging space a charge is made.
- CC. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale by a licensed retailer and does not sell tangible personal property for consumption by the purchaser. When a person normally selling for resale makes any sale at retail or for consumption by the purchaser, such person is defined as a "retailer" for purposes of this article.

Sec. 8-5-2 Permit Requirements

- A. Every person having a gross proceeds of sales or gross income upon which a privilege tax is imposed by this article desiring to engage in or to continue in business activities within the town shall make application to the tax collector for a transaction privilege permit, accompanied by a fee of two dollars, and no person shall engage in business or continue in business within the town until he shall have such a permit. This fee shall become effective for all new permits at the start of the day on which this article becomes effective. Previously existing privilege licenses shall be considered to be transaction privilege permits for the purposes of this article.

- 8-5-2 BUSINESS 8-5-2
- B. Application for privilege permits required under this article shall be made upon forms prescribed by the tax collector.
 - C. It shall be a condition precedent to issuance of a permit that all provisions of this code, ordinances, regulations and requirements affecting the public peace, health and safety be complied with in toto.
 - D. The privilege permit required by Section 8-5-2 (A) shall be good so long as all returns and tax payments are made as required by this article.
 - E. Upon the failure of any person to pay the required tax, penalty and interest within a period of thirty days after it becomes due, the tax collector may give such person notice of intent to cancel the privilege permit. If the person so notified requests a hearing within ten days from notice, he shall be granted a hearing before the tax collector. Upon a finding by the tax collector that tax, penalty and interest is unpaid and has remained unpaid at least thirty days, or if no request for hearing has been received within ten days after notification as herein provided, the privilege permit shall be cancelled and such permit shall not be reissued until all such taxes, penalty and interest due shall have been paid.
 - F. Any person whose privilege permit has been cancelled shall be required to pay a fee of twenty-five dollars for each reissue of a permit and such permit shall not be reissued until all taxes, penalties and interest have been paid. The tax collector may, at his discretion, reissue under the previous permit number or issue a new permit.
 - G. A person engaged in or conducting taxable business in two or more established locations within the City shall be required to obtain a separate permit for each location, except that for the business of leasing or renting the use or occupancy of real property, only one application for such property within the City shall be required; however, the applicant shall be required to list all such property by street address or other satisfactory identification and shall notify the tax collector within ten days after sale or acquisition of any such real property, clearly identified by location in such instance.
 - H. At the time a taxable business is sold, or when any other ownership change occurs, a new privilege permit shall be obtained for each permit effective at the time of such change.
 - I. Any person holding a privilege permit shall be required to notify the tax collector of any change in either mailing address or location within fifteen days after such change occurs. A fee of one dollar shall be required whenever any change in location of a business within the City occurs.
 - J. The permit prescribed in Section 8-5-2 (A) shall be nontransferable and shall be displayed in some conspicuous part of the applicant's place of business.

Sec. 8-5-3 Imposition of Tax -- Tax Schedule

There is hereby levied and shall be collected by the tax collector for the purpose of raising revenue to be used in defraying the necessary expenses of the City, privilege taxes measured by the amounts or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales or gross income, as the case may be, in accordance with the following schedule:

- A. Percentage of tax and business liable to taxation. An amount equal to one percent of the gross proceeds of sale or gross income from the business upon every person engaging in or continuing within the City in the following businesses:
1. Transporting for hire persons or property by any means of transportation, from a point within the City to another point within the City or from a point within the City to another point within the State of Arizona; provided, that the levy shall not apply to common or contract carriers paying a tax under the provisions of Arizona Revised Statutes Section 40-641.
 2. Mining, quarrying, smelting or producing for sale, profit or commercial use, any oil, natural gas, limestone, sand, gravel, copper, gold, silver or other mineral product, compound or combination of mineral products, or felling, producing or preparing timber or any produce of the forest for sale, profit or commercial use. In computing the tax, the price shall be reduced by the actual freight paid by any person from the place of production to the place of delivery when the freight is included in the sale prices of the products.
 3. Producing and furnishing, or furnishing to consumers, electricity, electric lights, current, power or gas, natural or artificial, and water.
 4. Transmitting local or long distance messages or conversations by telephone, or messages by telegraph, from a point within the City to another point within the State of Arizona, including gross income derived from tolls, subscriptions and services on behalf of subscribers, or by publication of a directory of the names of subscribers.
 5. Operating a pipe line for transporting oil, or natural or artificial gas, through pipes or conduits from a point within the City to another point in the City or in the state.
 6. Operating private railroad car lines, as they are defined in Title 42, Chapter 4, Article 3, Arizona Revised Statutes, from one point within the town to another point in the City or state.

7. Publication of newspapers, magazines or other periodicals and publications, when published within the City, including the gross income derived from advertising, notices and subscriptions sold within the City: Subscriptions sold within the City for newspapers, magazines or other periodicals and publications published without the town shall also be taxable under this section, and advertising sold within the town shall likewise be taxable.
8. Job printing, engraving, embossing and copying, advertising by billboards, direct mail, radio, television or by any means calculated to appeal to prospective purchasers or users.
9. The contracting business or acting as a prime contractor, or both.
 - a. For purposes of this classification, there shall be subtracted from the gross income, gross proceeds of sale or gross receipts subject to the privilege tax, a deduction in the amount of thirty-five percent of said gross income, gross proceeds of sale or gross receipts in lieu of any labor, shop or subcontractor deductions. Subcontractors or others who perform services in respect of the improvement, building, highway, road, railroad, excavation or other structure, project, development or improvement (hereinafter "job") are exempt from the privilege tax on their gross income, gross proceeds of sale or gross receipts derived from the job if they can demonstrate to the City's satisfaction that the job was within the control of a prime contractor or prime contractors and that such prime contractor paid or should have paid the privilege tax upon the gross income, gross proceeds of sale or gross receipts attributable to the job and from which the subcontractors or others were paid.
 - b. An owner-builder, who is not a prime contractor, shall pay the privilege tax or use tax, as the case may be, upon the sales to him or to his account of all tangible personal property incorporated or fabricated into any structure, project, development or improvement undertaken by him; provided, if the owner-builder is treated as a prime contractor for privilege tax purposes, he shall deduct from the gross income, gross proceeds of sale or gross receipts derived from the sale (as defined under owner-builder) of the real property as improved by him:
 - (1) An amount of thirty-five percent of said gross income, gross proceeds of sale or gross receipts in lieu of any labor, shop or subcontractor deductions;
 - (2) Either a tax credit equal to the amount of privilege or use tax, or the equivalent tax, paid to the City of Apache Junction or another city or town in respect of the tangible personal property incorporated or fabricated into the said structure, project, development or improvement undertaken by him; and

- (3) A tax credit equal to the amount of privilege taxes paid by the contractor or subcontractors to the City of Apache Junction on the gross income, gross proceeds of sale or gross receipts derived by the contractor or subcontractor from the construction of the improvement upon the real property owned or leased by the owner-builder and sold by him.
- c. Reporting by contractors. Contractors shall report on a progressive billing basis or cash receipts basis, but home builders, speculative or otherwise, and owner-builders shall report as gross income, gross proceeds of sale or gross receipts the total selling price at the time of closing of escrow or transfer of title.
- d. Deductions allowable and pertaining to the gross income, gross proceeds of sale or gross receipts may not be taken prior to the time that said proceeds or receipts are reported.
10. Restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, bars, taverns or similar establishments where articles of food or drink are sold, and catering or sale of food and drink from mobile units within the town. Articles of food or drink prepared for service or resale by another person may be deducted, providing that the person reselling has a valid privilege permit for such purpose.
11. Selling at retail such property used by human beings for food, drink or condiment, whether simple, mixed or compound, where such property is not customarily sold for consumption on the premises commonly and generally known as the business of selling groceries at retail.
- The sale to hotels, restaurants, lunchrooms, boarding houses or similar establishments of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded, where such articles are customarily prepared and served to patrons for consumption on the premises, shall be deemed wholesale sales as to such commodities, providing that the person reselling has a valid privilege permit for such purpose.
12. Selling any tangible personal property whatsoever at retail or to the ultimate consumer, including but not limited to sale of new and used vehicles of any type, and sales made from mobile units when within the town. Gross receipts from painting signs on structures within the town or upon vehicles while within the town shall be taxed as retail sales, without deduction. Sales of tangible personal property within the State of Arizona which result from activities of agents or representatives of a person whose principal office within Arizona is within the City of Apache Junction shall be taxable, provided that delivery is made from the City.

13. Operating or conducting amusements including but not limited to theaters, movies, operas, exhibitions, concerts, carnivals, circuses, shows of any type or nature, amusement park admissions, amusement rides, menageries, fairs, races, contests, games, golf courses, tennis courts, batting or driving ranges, riding on any animals, juke boxes, pinball machines, billiard and pool parlors, bowling alleys, dance halls, public dances, boxing or wrestling matches, or any other business charging admission fees for exhibition or amusement. Nonprofit private clubs where basic membership fees cover use of amusement facilities, and amusements conducted by the organizations themselves on an occasional basis to raise funds for projects of bona fide religious organizations, nonprofit educational institutions and nonprofit fraternal or service clubs are exempt.
 14. Leasing or renting for a consideration any tangible personal property; sales of tangible personal property to be so leased or rented shall be deemed to be resale sales.
 15. Leasing or renting for a consideration the use or occupancy of real property, including any improvements, rights or interest in such property.
- B. Basis for taxation under certain conditions.
1. In determining value as applied to sales from one to another person, or other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the council may prescribe uniform and equitable rules for determining the value upon which the tax herein levied shall be based, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character of other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.
 2. For the purpose of computing the tax by this article, "conditional or time sales" shall be treated as credit sales and tax shall be based only upon the amounts received under such security agreements, but if the seller transfers his interest in such agreements to a third person, he shall pay an amount based upon the full sale price of the commodity, unless a record is kept of payments thereafter made on the contract in such manner that the tax collector may at all times ascertain from the records of the seller the amount paid thereon by the purchaser. If at any time the tax collector cannot ascertain the amount paid thereon, the tax shall be computed to include any amounts not shown to be paid by the records of the seller to the satisfaction of the tax collector.
 3. When any person is engaged in an occupation or business to which Section 8-5-3 is applicable, such person's books shall be kept so as to show separately the gross proceeds of sale of tangible personal property and the gross income from sales of nontaxable service, and if not so kept, the tax shall be based upon the total of such person's gross proceeds of sales of tangible personal property and gross income from service.

4. When any person is engaged in the business of selling tangible personal property at both wholesale and retail, the retail rate shall be applied only to the gross proceeds of the sales made other than at wholesale when such person's books are kept so as to show separately the gross proceeds of sales of each class, and when such books are not so kept, the retail rate shall be applied to the gross proceeds of every sale so made.
5. For the purpose of Section 8-5-3, the total amount of gross income, gross receipts or gross proceeds of sale shall be deemed to be the amount of the sale, exclusive of the tax imposed by Section 8-5-3, providing the person upon whom the tax is imposed shall establish to the satisfaction of the tax collector that any tax collected from customers has been added to the sale price and not absorbed by him.

Sec. 8-5-4 Exemptions

The following shall not be subject to taxation under this article:

- A. Any business, calling, profession or occupation where the general law of the State of Arizona or general law of the United States of America preclude the levying of such a tax.
- B. Sales in interstate or foreign commerce when prohibited from being so taxed by the Constitution or general laws of the United States or by the Constitution of the State of Arizona.
- C. Professional services, instruction and other services not connected with the making of retail sales.
- D. Contracting, retail sales and any other taxable activity for the City of Apache Junction.
- E. Sales of gasoline upon which a tax has been imposed under the provisions of Title 28, Chapter 9, Article 9, Arizona Revised Statutes.
- F. Sales of tangible personal property to a person licensed as a contractor under Title 32, Chapter 10, Arizona Revised Statutes, who holds a valid privilege tax permit for engaging in or continuing in the business of contracting when the property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement in fulfillment of a contract therefor.
- G. Sales of tangible personal property made directly to the United States Government, its departments or agencies, by the manufacturer, modifier, assembler or repairer. A deduction of fifty percent shall be permitted where such sales are made by persons other than those specified in the previous sentence.

- H. Sales of tangible personal property by persons engaging in or continuing in the business of processing, manufacturing, fabricating, modifying, assembling or repairing, when such sales are made for resale and not at retail and not to an ultimate consumer.

This subsection shall not apply to any sales of tangible personal property which are not the same as or similar to tangible personal property sold through distributors, jobbers, wholesalers, retailers or other persons than those substantially and principally engaging or continuing in the actual manufacturing, processing, fabricating, modifying or assembling thereof.

- I. Sales of tangible personal property to manufacturers, modifiers, or assemblers where such property directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.
- J. Services provided in connection with retail sales if invoices to the customer, sales tickets, cash register tapes and all other business records show separate charges for such services. This exemption shall apply only where such service is not customarily included in the retail sale itself and where such service is not an essential element in the retail sale itself. No deduction shall be allowed for fabrication labor of retail items sold.
- K. Sales of tangible personal property in which all of the following occur without the City limits of the City of Apache Junction.
1. The placement of the order.
 2. The stock from which delivery was made.
 3. The transference of title and possession.

For the purposes of this exemption, any person engaging or continuing in the business to which this exemption is applicable shall maintain and keep accounting records or books indicating separately the gross proceeds of sale or gross income of tangible personal property which occur without the town limits, and if not so maintained the tax to be imposed will be upon the total of such person's gross proceeds of sale or gross income.

- L. The sale of drugs on the prescription of a member of the medical, dental or veterinary profession who is licensed by law to administer such drugs.
- M. All personal property purchased in this City by any hospital organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or operated by the state or any political subdivision of this state.

- N. The sale of stock and bonds.
- O. Sales of machinery or equipment to be used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations, including leaching, milling, precipitating, smelting and refining.
- P. Sales of machinery or equipment to be used directly in the process of extracting ore or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and for the handling, loading or transportation of such extracted material to the surface.
- Q. Sales to telephone or telegraph companies of central office switching equipment, switchboards, private branch exchange equipment, microwave radio and carrier equipment and coaxial cable.
- R. Sales of machinery, equipment or transmission lines to be used directly in the production or transmission of electrical power, but not for such machinery, equipment or transmission lines that are to be used for distribution and not for transformers and control equipment to be used at transmission substation sites.
- S. Sales of pipes or valves four inches in diameter or larger to be used for transporting oil, natural gas, artificial gas, water or coal slurry.
- T. Sales of aircraft, navigational and communication instruments and other accessories and related equipment to be used in conjunction with or to become part of aircraft to be used in the transportation of persons, property or U.S. Mail in intrastate, interstate or foreign air transportation for hire by airlines holding a federal or state certificate of public convenience and necessity or holding a foreign air carrier permit.
- U. Sales of railroad rolling stock, rails, ties and signal control equipment to be used directly in the transportation of persons or property in intrastate or interstate transportation for hire.
- V. Sales of machinery or equipment to be used directly in the drilling for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

Sec. 8-5-5 Administration and Procedures

- A. Vested administration and payment of tax. The administration of this article is vested in and exercised by the City of Apache Junction, except as otherwise specifically provided, and all payments shall be made to the City of Apache Junction. If payment is made in any other form than money which is legal tender in the State of Arizona and the United States of America, the tax obligation shall not be ended until the check, bank draft or money order has been honored by the person on whom drawn.

- B. Presumption that all gross receipts are taxable. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all gross receipts are subject to the tax until the contrary is established by the person seeking the exemption from said taxation.
- C. Burden of proving sale was not at retail. The burden of proving that a sale of tangible personal property was not a sale at retail shall be upon the person who made it, unless such person shall have taken from the purchaser a certificate to the effect that the property was purchased for resale.
- D. Tax imposed is cumulative and supplemental to others. The tax imposed by this article shall be cumulative and supplemental to all other taxes levied by law.
- E. Records of taxpayer. It shall be the duty of every person engaging or continuing in business activities within this town for which a privilege tax is imposed by this article to keep and preserve for a minimum of three years, suitable records of the gross income, gross receipts of sales, invoices for goods and merchandise purchased and sold, resale certificates, job labor records and all other such books or accounts as shall be necessary to determine the amount of tax for which such person is liable under the provisions of this article. Collection of back privilege taxes by the town shall be limited to a period of three years prior to the date when the tax collector began an audit of the taxpayer's books, wrote to the person through use of ordinary mail concerning an apparent violation of the article, or took some other recorded action to require a privilege tax permit application or other compliance with the article. All records mentioned in this subdivision above, shall be open for examination at any time by the tax collector.
- F. Divulging of information forbidden. It is unlawful for any officer, employee or agent of the City of Apache Junction to make known in any manner whatsoever the business affairs, operations or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of his official duty, or the amount or source of income, profits, leases, expenditures or any particular thereof, set forth or disclosed in any return or report, or the amount of tax paid. The council may, by motion, authorize an examination of the reports made pursuant to this article by the United States Director of Internal Revenue or the proper officials of the State of Arizona. Successors, receivers, trustees, executors, administrators and assignees, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected interest and penalties. Divulging of applicable information to any authorized employee or agent of an incorporated city or town shall be permitted when an employee or agent of another incorporated city or town is authorized by the tax collector to conduct audits for the City of Apache Junction. Information supplied on privilege permit applications shall not be considered as confidential. Any officer, employee or agent of the City of Apache Junction shall be authorized to divulge such confidential information as may be necessary upon the order of a court of competent jurisdiction.

- G. Inadequate records. In the event the records of the gross income, gross receipts or gross proceeds of sales of the business, kept by the taxpayer, are deemed by the tax collector to be unsuitable, or the taxpayer does not keep such other books or records as may be necessary to determine the amount of the tax for which he is liable under the provisions of this article, the tax collector may prescribe the form and manner of keeping such books and records. In the event the taxpayer fails or refuses to follow such prescribed form, and the tax collector cannot ascertain from the records kept by the taxpayer the gross income, gross receipts or gross proceeds of sale of the business or the amount of the tax for which the taxpayer is liable under the provisions of this article, the tax collector may proceed as though such taxpayer failed or refused to make a return in the manner prescribed by this article.
- H. When tax payable. Except as otherwise specified in this article, the taxes levied under this article shall be due and payable on or before the fifteenth day of the month next succeeding the period in which the tax accrues and shall be delinquent five days thereafter. The taxpayer shall, on or before the fifteenth day of the stated month, make out a return showing the gross amount, any authorized deductions, taxable amount and amount of the tax due for the preceding month. 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 employee 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.
1. In any case where the taxpayer has a reported total "taxable amount" of fifteen hundred dollars or less for the previous calendar quarter of the year, the taxpayer may make application to report and pay the tax on a quarterly basis, upon the written approval of the tax collector. Any taxpayer on a quarterly reporting basis must report and pay accrued tax due on or before the fifteenth day of the month following the calendar quarter to be reported.
 2. If the taxpayer later reports a total "taxable amount" for any quarter of fifteen hundred dollars or more, he shall report and pay on a monthly basis.
- I. Cash receipts or accrual basis. The taxpayer may elect to file returns and pay his tax either on a cash receipts or accrual basis, but the taxpayer shall not change from one basis to the other, without the prior written approval of the tax collector. As a condition of granting such approval, the tax collector may require an audit of the taxpayer's records.

- J. Consolidated returns. Any person engaging in two or more forms of business of like classification taxable under this article may file a consolidated return covering all business activities of like classification in which he is engaged within the town.
- K. Extension of time for making returns. The tax collector may for good cause extend the date for making any return required under the provisions of this article, but the date for filing such return shall not be extended beyond the fifteenth day of the second month next succeeding the regular due date.
- L. Penalty for delinquency. Any taxpayer who shall have failed to pay such tax within five days from the date upon which such payment shall have become due shall be subject to and shall pay a penalty of ten percent of the amount of such tax, together with interest on such tax at the rate of one-half of one percent per month or fraction thereof until paid.
- M. Correction of errors. If the taxpayer makes an error or errors in computing the tax assessable against him, the tax collector shall correct such error and notify the taxpayer promptly by ordinary mail that such correction has been made. Any additional tax for which the taxpayer becomes liable shall be payable within ten days after the letter or form showing the correction is mailed to the taxpayer. If the taxpayer makes an error which results in overpayment of tax, the tax collector shall allow credit against tax due on future returns or shall authorize a refund to the taxpayer.
- N. Duties of person quitting business, his successor or assignee. Any person who sells his business or stock of goods or quits business shall be required to make the return provided for under this article within fifteen days after the date he sold his business or stock of goods or quit business, and his successor in business or assignee shall be required to withhold a sufficient amount of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the tax collector showing that the taxes have been paid, or a certificate that no taxes are due.
1. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided and the taxes shall be due and unpaid after the fifteen-day period herein provided, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operations of the business by the former owner.
 2. Transaction privilege tax liability of the purchaser shall be limited to no more than that accrued during a period of one full year prior to the date such business purchase becomes effective.

3. It is unlawful for the purchaser to refuse or fail to pay the back taxes accrued during said period within thirty days after the tax collector mails a letter or other notice by ordinary mail to the purchaser requesting such payment of back taxes.
0. Tax shall be lien. The tax imposed by this article, if not reported and paid by the due date specified by this article, shall constitute a lien on the property of any person subject to this article. The procedure to perfect such lien shall be as follows:
 1. The tax collector shall give written notice to the taxpayer at his last known mailing address by certified or registered mail, or such notice may be sent to the address at which the business is conducted. This written notice shall indicate that the City will file a lien on the subject property unless the taxpayer reports and pays all the tax past due including any penalties and interest due under this article or provides satisfactory evidence to the tax collector that no taxes are due, within a period of thirty days from service or receipt of said written notice.
 2. If the taxpayer does not pay taxes due or provide evidence that no taxes are due within thirty days after service or receipt of said written notice, the tax collector may prepare in triplicate copies of a "Notice and Claim of Lien" and file one copy with the county recorder of the county in which the property is located. The tax collector shall then send by certified or registered mail a copy to the taxpayer at his last known mailing address or at the address at which the business is conducted. The "Notice and Claim of Lien" shall contain the following:
 - a. A description of the property sufficient for identification.
 - b. The name of the taxpayer as owner or reputed owner of the property.
 - c. The amount of the delinquent tax, including penalties and interest; or if this amount cannot be determined precisely because suitable records and books were not made available by the taxpayer, the amount assessed, including penalties and interest, by the tax collector as authorized by this article when such books and records are not available or are unsuitable.

From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure and order of sale. The City shall have the right to bring an action to enforce the lien in the superior court of the county in which the property is located, at any time after its recording, but failure to enforce the lien by such actions shall not affect its validity. The recorded "Notice and Claim of Lien" shall be prima facie evidence of the truth of all matters recited therein and the regularity of all proceedings prior to the recording therein.

A prior recording for the purposes provided in this section shall not be a bar to the subsequent recording of a lien for such purposes, and any number of such liens on the same property may be enforced in the same action.

- P. Tax collector may examine books and papers. The tax collector may examine any books, papers, records or other data bearing upon the correctness of any return or for the purpose of making a return where none has been made, as required by the provisions of this article. If any person shall fail to appear before the tax collector or to answer any material question or to produce any books, records, papers or other data when requested to do so, such failure or refusal shall be reported to the City attorney, who shall thereupon institute proceedings in the superior court of the county where such witness resides to obtain compliance.
- Q. Taxpayer's liability. The liability of the taxpayer for taxes due shall remain the same, whether he collects sufficient added payments from his customers to cover such taxes due.
1. Where the taxpayer fails to show "tax collected", deductible "repair labor" and other deductible "service" on invoices to customers, sales slips and cash register slips, and on all applicable books and records, he shall be liable for taxation on his full gross receipts without allowance for such items.
 2. The burden of proof for all deductions by any taxpayer shall be on the taxpayer, who must prove to the satisfaction of the tax collector that such deductions shall have been legal and proper under this article. A person taking deductions for "resale" or for "payments to subcontractors" shall not take such deductions unless the persons for whom the deductions are taken have obtained the required privilege tax permits.
- R. Tax liabilities of partners. All taxes assessed under the provisions of this article upon the business activities of a partnership shall be a liability and charges against each and all of the individual partners; but when paid by the partnership, such liability against each and all of the individual partners shall cease.

Sec. 8-5-6 Assessment and Appeal

- A. Assessment procedure. If any person who is required to file a return under the provisions of this article fails or refuses to make a return, the tax collector shall proceed, in such a manner as he may deem best, to obtain facts and information on which to base the assessment of the tax herein prescribed; and to this end the tax collector may make examination of the books, records and papers of any such person; and may take the evidence on oath of any person whom he may believe to be in possession of facts or information pertinent to the subject of

3. If court action has been taken by the taxpayer under paragraph 2 above, all subsequent payments due shall be paid on or before the due date. However, if each tax form is plainly marked "Paid Under Protest", such subsequent payments shall be treated as part of the original protest until such time as court remedies have been exhausted or the court action withdrawn by the taxpayer.

D. Collection of delinquent taxes.

1. If any tax imposed by this article, or any portion thereof, is not paid within thirty days after the same becomes delinquent, the tax collector shall be empowered to commence court action in any appropriate court of competent jurisdiction to collect tax, penalties and interest due, and to utilize any and all appropriate remedies as authorized under the laws of the State of Arizona. Such actions may be commenced whether separate criminal charges have been filed to cover alleged failure to comply with this article.
2. Every tax imposed by this article 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 town and it shall be payable to and recoverable by the tax collector.

E. Adoption of administrative procedure. The council is hereby authorized to adopt written administrative regulations to implement the enforcement of this article or to further define terms used in the article. Such administrative regulations shall be enforceable as though they were integral portions of the article itself.

F. State of Arizona administrative procedures. Except where such regulations would conflict with administrative regulations adopted by the council or with provisions of this article, all regulations on the transaction privilege tax adopted by the State Department of Revenue under the authority of Title 41, Chapter 6, Article 1, Arizona Revised Statutes and amendments thereto, shall be considered as part of this article and enforceable as such.

Sec. 8-5-7 Violations

- A. Advertisement regarding taxes. It is unlawful for any person engaged in any of the businesses classified in Section 8-5-3 to advertise or hold out to the public in any manner, directly or indirectly, that the tax herein imposed is not considered as an element in the price to the consumer.
- B. Permit required. It is unlawful for any person engaging in a business subject to the city transaction privilege tax to fail to obtain a permit before beginning or continuing such business.

inquiry, which oath the tax collector may administer. If no other information is readily available, the tax collector may make a reasonable judgment on the basis of past reports by the taxpayer or by any predecessor. When the tax collector has reached a decision as to the assessment, he shall notify the taxpayer in writing of such assessment, which shall become final within thirty days after such notice has been mailed or served, unless the taxpayer shall notify the tax collector in writing of a request for a tax hearing within said thirty days.

- B. Hearing at taxpayer's request. When a taxpayer requests a hearing as indicated in Section 8-5-6 (A) such hearing shall normally be held in the offices of the City of Apache Junction provided that the tax collector may choose another suitable room in the same city or by mutual agreement with the taxpayer, he may hold the hearing in such other place as may prove desirable. The hearing shall be conducted by the tax collector, and it shall be closed to all except the tax collector and his authorized representatives and the taxpayer and his authorized representatives, unless the taxpayer agrees in writing to waive restrictions on release of confidential information. The tax collector shall provide the taxpayer with not less than ten days notice of the date, time and place of the hearing. During the hearing the taxpayer or his authorized representative may present any evidence he deems appropriate to the issues or questions under consideration. Within fifteen days after the conclusion of the hearing, the tax collector shall affirm, modify or vacate any decision made with respect to the issues or questions discussed in the course of the hearing. Notice of said decision shall be provided to the taxpayer by the tax collector as provided in this article, and said decision shall be effective in ten days after service of notice.
- C. Payment under protest. If any person feels aggrieved by a tax assessment or believes that any or all of his activities are not subject to the privilege tax required by this article, he shall pay the amount of such assessment or tax claimed due before the delinquent date and shall at that time give notice in writing to the tax collector that all or part of such payment is made under protest, and shall in the notice give the grounds and reasons for such protest and that a certain part thereof or that the total sum is protested.
1. Within ten days after receipt of such protest, the tax collector shall reply in writing to the last known mailing address of the taxpayer, stating whether the assessment or tax applied is to be changed as requested, and giving reasons for the decision.
 2. If the taxpayer is then dissatisfied, he may take appropriate action in the superior court to recover payments made under protest. Court action shall be taken within sixty days after the tax collector has mailed his reply as required by paragraph 1, above. Failure to take court action within the required sixty day period shall make the protest null and void.

- C. Tax collection from customers. Any person, who collects added payments from customers stated or indicated to be for the purpose of meeting privilege tax obligations of such person, shall be required to use such money only for such purpose. It is unlawful for any person to fail to pay privilege tax due to the City of Apache Junction within a period of thirty days after the date such tax is due if evidence is provided that such person has at any time collected such added payments from customers.
- D. Failure to make return. It is unlawful for any person or for any officer or agent of any company or corporation to fail or refuse to make the returns and to pay the tax provided to be paid by the provisions of this article, or to make or permit to be made any false or fraudulent return or false statement in any return required by this article; or for any reason to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for any person or officer or agent of a company to fail or refuse to permit the examination of any book, paper, account, record or other data by the tax collector as required by this article; or to violate any of the other provisions of this article.

PASSED AND ADOPTED by the Mayor and Common Council of
Apache Junction, Arizona this 31st day of January
1979.

Roy Hudson
Mayor

ATTEST:

Lizabel C. Ballard
City Clerk

APPROVED AS TO FORM:

Susan D. Goodwin
City Attorney