



## States' Biofuels Statutes

### STATE OF ARIZONA

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#). These statutes are placed in reverse chronological order using the date of the most recent amendment to the statute. Many biofuels laws were enacted as amendments to previously passed laws.*

*Current through the 2013 Legislative Session of the Arizona General Assembly.*

#### **§ 42-5061. Retail classification; definitions**

- A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:
1. Professional or personal service occupations or businesses that involve sales or transfers of tangible personal property only as inconsequential elements.
  2. Services rendered in addition to selling tangible personal property at retail.
  3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under § 42-5156.
  4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code<sup>1</sup>.
  5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.
  6. Business activity that is properly included in any other business classification that is taxable under this article.
  7. The sale of stocks and bonds.
  8. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is

licensed by law to administer such substances.

9. Prosthetic appliances as defined in § 23-501 prescribed or recommended by a health professional who is licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.2
10. Insulin, insulin syringes and glucose test strips.
11. Prescription eyeglasses or contact lenses.
12. Hearing aids as defined in § 36-1901.
13. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.
14. Sales of motor vehicles to nonresidents of this state for use outside this state if the motor vehicle dealer ships or delivers the motor vehicle to a destination out of this state.
15. Food, as provided in and subject to the conditions of article 3 of this chapter<sup>3</sup> and § 42-5074.
16. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).
17. Textbooks by any bookstore that are required by any state university or community college.
18. Food and drink to a person that is engaged in a business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.
19. Articles of food, drink or condiment and accessory tangible personal property to a school district or charter school if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district or on the premises of the charter school during school hours.
20. Lottery tickets or shares pursuant to title 5, chapter 5.1, article 1.4
21. The sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is

subject to the tax. For the purposes of this paragraph:

- (a) “Monetized bullion” means coins and other forms of money that are manufactured from gold, silver or other metals and that have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.
  - (b) “Precious metal bullion” means precious metal, including gold, silver, platinum, rhodium and palladium, that has been smelted or refined so that its value depends on its contents and not on its form.
22. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16,5 article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under § 28-5739, sales of aviation fuel that are subject to the tax imposed under § 28-8344 and sales of jet fuel that are subject to the tax imposed under article 8 of this chapter.
23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.
24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the Constitution of the United States or the constitution of this state.
25. Tangible personal property sold to:
- (a) A qualifying hospital as defined in § 42-5001.
  - (b) A qualifying health care organization as defined in § 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.
  - (c) A qualifying health care organization as defined in § 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind, visually impaired and multihandicapped children from the time of birth to age twenty-one.
  - (d) A qualifying community health center as defined in § 42-5001.
  - (e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.
  - (f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a

federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.
27. Tangible personal property sold to a person that is subject to tax under this article by reason of being engaged in business classified under the prime contracting classification under § 42-5075 or to a subcontractor working under the control of a prime contractor that is subject to tax under article 1 of this chapter,6 if the property so sold is any of the following:
  - (a) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.
  - (b) Used in environmental response or remediation activities under § 42-5075, subsection B, paragraph 6.
28. The sale of a motor vehicle to:
  - (a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by §§ 28-2154 and 28-2154.01.
  - (b) An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.
29. Tangible personal property purchased in this state by a nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for mentally or physically handicapped persons if the programs are exclusively for training, job placement, rehabilitation or testing.
30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
31. Sales of commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
33. Sales of seeds, seedlings, roots, bulbs, cuttings and other propagative material to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.
34. Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled as defined in § 46-191, has a developmental disability as defined in § 36-551 or has a head injury as defined in § 41-3201 to be more independent and functional.
35. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
36. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.
37. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in § 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.
38. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.
39. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or

transactions under this chapter. For the purposes of this paragraph:

- (a) “Personal property liquidation transaction” means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or on the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.
  - (b) “Personal property liquidator” means a person who is retained to conduct a sale in a personal property liquidation transaction.
- 40. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.
  - 41. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 47 and who is engaged in the business of leasing or renting such property.
  - 42. Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, “poultry” includes ratites.
  - 43. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, “poultry” includes ratites.
  - 44. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.
  - 45. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, that are furnished without additional charge to and intended to be consumed by the transient during the transient’s occupancy.
  - 46. Sales of alternative fuel, as defined in § 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under § 49-426 or 49-480.
  - 47. Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university

libraries or federal, state, county or municipal libraries for use by the public as follows:

- (a) Printed or photographic materials, beginning August 7, 1985.
  - (b) Electronic or digital media materials, beginning July 17, 1994.
48. Tangible personal property sold to a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, “commercial airline” means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.
49. Sales of alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in § 1-215.
50. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.8
51. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under § 42-5075, subsection B, paragraph 6.
52. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization’s net earnings inures to the benefit of any private shareholder or individual.
53. Through August 31, 2014, sales of Arizona centennial medallions by the historical advisory commission.
54. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:
- (a) “Application services” means software applications provided remotely using hypertext transfer protocol or another network protocol.
  - (b) “Curriculum design or enhancement” means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.
55. Sales of motor vehicle fuel and use fuel to a qualified business under § 41-1516 for off-

road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in § 41-1516.

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

57. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, “renewable energy credit” means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

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

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms “manufacturing”, “processing”, “fabricating”, “job printing”, “refining” and “metallurgical” as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. “Metallurgical operations” includes leaching, milling, precipitating, smelting and refining.
2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. “Mining” includes underground, surface and open pit operations for extracting ores and minerals.
3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.
4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.
5. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.
6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas,



artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:
  - (a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.
  - (b) Any foreign government.
  - (c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.
8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.
9. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.
10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.
11. Buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.
12. Groundwater measuring devices required under § 45-604.
13. New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops

and products in this state. For the purposes of this paragraph:

- (a) “New machinery and equipment” means machinery and equipment that have never been sold at retail except pursuant to leases or rentals that do not total two years or more.
- (b) “Self-powered implements” includes machinery and equipment that are electric-powered.

14. Machinery or equipment used in research and development. For the purposes of this paragraph, “research and development” means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

15. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

- (a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.
- (b) Any satellite television or data transmission facility, if both of the following conditions are met:
  - i. Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.
  - ii. Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services. For the purposes of subdivision (b) of this paragraph, “test period” means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

16. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 14 of this subsection, of semiconductor products. For the purposes of this paragraph, “clean room” means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:
  - (a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.
  - (b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.
17. Machinery and equipment used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.
18. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.
19. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state and that are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.
20. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:
  - (a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.
  - (b) Machinery or equipment purchased to replace machinery or equipment for

which an exemption was previously claimed and taken under this paragraph.

- (c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

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

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

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

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

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

26 United States Code section 4051.

- F. In computing the tax base, gross proceeds of sales or gross income from the sale of use fuel, as defined in § 28-5601, does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4091.
- G. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.
- H. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.
- I. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to businesses classified under the:
  - 1. Transporting classification.
  - 2. Utilities classification.
  - 3. Telecommunications classification.
  - 4. Pipeline classification.
  - 5. Private car line classification.
  - 6. Publication classification.
  - 7. Job printing classification.
  - 8. Prime contracting classification.
  - 9. Restaurant classification.
- J. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:
  - 1. Sales made directly to the United States government or its departments or agencies by a

manufacturer, modifier, assembler or repairer.

2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.
  3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.
  4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.
- K. There shall be deducted from the tax base fifty per cent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies that is not deducted under subsection J of this section.
- L. The department shall require every person claiming a deduction provided by subsection J or K of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.
- M. In computing the tax base, gross proceeds of sales or gross income does not include:
1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.
  2. The waste tire disposal fee imposed pursuant to § 44-1302.
- N. There shall be deducted from the tax base the amount received from sales of solar energy devices. The retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.
- O. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under § 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.
- P. For the purposes of this section, a sale of wireless telecommunications equipment to a person

who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under § 42-5064 is considered to be a sale for resale in the regular course of business.

- Q. Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this section.
- R. For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of:
  - 1. Operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
  - 2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.
- S. If a seller is entitled to a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section, the department may require the purchaser to establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and interest which the seller would have been required to pay under article 1 of this chapter<sup>9</sup> if the seller had not made a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter<sup>10</sup> and related to the tangible personal property purchased. The amount shall be treated as transaction privilege tax to the purchaser and as tax revenues collected from the seller to designate the distribution base pursuant to § 42-5029.
- T. For the purposes of § 42-5032.01, the department shall separately account for revenues collected under the retail classification from businesses selling tangible personal property at retail:
  - 1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.11
  - 2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.
- U. In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by §§ 28-2154 and 28-2154.01, there shall be

deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

V. For the purposes of this section:

1. "Aircraft" includes:

- (a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.
  - (b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.
2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.
  3. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

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

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.
2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.
3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.
4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.



5. “Repairer” means a person who restores or renews products, wares or articles of manufacture.
6. “Subcontract” means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor’s obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract. For the purposes of this paragraph, “contractor” has its ordinary and common meaning and does not have the meaning prescribed by § 42-5001.

### **Credits**

Added as § 42-1310.01 by Laws 1988, Ch. 161, § 4, eff. July 1, 1989. Amended by Laws 1989, Ch. 132, § 17, eff. May 3, 1989; Laws 1989, Ch. 299, § 1; Laws 1990, Ch. 103, § 4, eff. April 23, 1990; Laws 1990, Ch. 239, § 2; Laws 1990, 3rd S.S., Ch. 9, § 20; Laws 1991, Ch. 128, § 2; Laws 1991, Ch. 158, § 12; Laws 1991, Ch. 176, § 7; Laws 1991, Ch. 200, § 1; Laws 1991, Ch. 224, § 4, eff. Oct. 1, 1991; Laws 1992, Ch. 18, § 8; Laws 1992, Ch. 63, § 1; Laws 1992, Ch. 135, § 1, eff. June 2, 1992; Laws 1992, Ch. 162, § 1; Laws 1992, Ch. 222, § 2; Laws 1992, Ch. 238, § 1, eff. Jan. 1, 1993; Laws 1993, Ch. 56, § 1, eff. Oct. 1, 1993; Laws 1993, Ch. 118, § 1; Laws 1993, Ch. 132, § 1; Laws 1993, Ch. 199, § 2; Laws 1993, Ch. 206, § 1; Laws 1993, Ch. 258, § 5; Laws 1994, Ch. 41, § 15; Laws 1994, Ch. 174, § 1; Laws 1994, Ch. 240, § 1; Laws 1994, Ch. 307, § 1, eff. Oct. 1, 1994; Laws 1994, Ch. 309, § 6, eff. April 25, 1994; Laws 1994, Ch. 328, § 2; Laws 1994, Ch. 377, § 1, eff. July 1, 1995; Laws 1995, Ch. 138, § 1; Laws 1995, Ch. 178, § 46; Laws 1995, Ch. 200, § 2; Laws 1995, Ch. 267, § 1; Laws 1996, Ch. 322, § 1; Laws 1996, 6th S.S., Ch. 1, § 1; Laws 1997, Ch. 1, § 459, eff. Oct. 1, 1997; Laws 1997, Ch. 8, § 60, eff. Oct. 1, 1997; Laws 1997, Ch. 61, § 2; Laws 1997, Ch. 116, § 2. Renumbered as § 42-5061 and amended by Laws 1997, Ch. 150, §§ 87, 88, eff. Jan. 1, 1999. Amended by Laws 1997, Ch. 165, § 2; Laws 1997, Ch. 178, § 1; Laws 1997, Ch. 227, § 1; Laws 1997, Ch. 274, § 55; Laws 1998, Ch. 1, § 164, eff. Jan. 1, 1999; Laws 1998, Ch. 105, § 1; Laws 1998, Ch. 105, § 4, eff. Jan. 1, 1999; Laws 1998, Ch. 132, § 1, eff. Jan. 1, 1999; Laws 1998, Ch. 206, § 1; Laws 1998, Ch. 206, § 3, eff. Jan. 1, 1999; Laws 1998, Ch. 221, § 8, eff. Jan. 1, 1999; Laws 1998, Ch. 283, § 12; Laws 1998, Ch. 283, § 19, eff. Jan. 1, 1999; Laws 1998, Ch. 286, § 3; Laws 1998, Ch. 286, § 6, eff. Jan. 1, 1999. Amended by Laws 1999, Ch. 5, § 15; Laws 1999, Ch. 87, § 1; Laws 1999, Ch. 153, § 1; Laws 1999, Ch. 167, § 1; Laws 1999, Ch. 168, § 14, eff. May 5, 1999; Laws 1999, Ch. 180, § 1; Laws 1999, Ch. 246, § 1; Laws 1999, Ch. 267, § 1; Laws 1999, Ch. 290, § 10; Laws 2000, Ch. 63, § 5; Laws 2000, Ch. 372, § 7; Laws 2000, Ch. 401, § 1; Laws 2000, Ch. 405, § 23, eff. April 28, 2000; Laws 2000, 7th S.S., Ch. 1, § 12, eff. Dec. 14, 2000; Laws 2001, Ch. 115, § 9; Laws 2001, Ch. 137, § 1; Laws 2001, Ch. 287, § 89; Laws 2001, Ch. 314, § 1; Laws 2002, Ch. 326, § 14; Laws 2003, Ch. 105, § 6; Laws 2004, Ch. 61, § 2; Laws 2004, Ch. 296, § 3; Laws 2004, Ch. 326, § 8, eff. June 3, 2004; Laws 2005, Ch. 80, § 4; Laws 2005, Ch. 278, § 8; Laws 2005, Ch. 317, § 5; Laws 2006, Ch. 76, § 1; Laws 2006, Ch. 333, § 2; Laws 2006, Ch. 371, § 1; Laws 2007, Ch. 169, § 2; Laws 2008, Ch. 60, § 7; Laws 2008, Ch. 194, § 1; Laws 2010, Ch. 52, § 1, eff. Oct. 1, 2010; Laws 2010, Ch. 225, § 3; Laws 2011, Ch. 300, § 1; Laws 2012, Ch. 3, § 23; Laws 2012, Ch. 170, § 41; Laws 2012, Ch. 232, § 2; Laws 2012, Ch. 297, § 17; Laws 2012, Ch. 331, § 3; Laws 2013, Ch. 255, § 13, eff. Jan. 1, 2015.