

ADOPTED BY THE
MAYOR AND COUNCIL

ORDINANCE NO. 9840

RELATING TO USE TAXATION; ADOPTING THE USE TAX PROVISIONS OF THE
MODEL CITY TAX CODE; REPEALING TUCSON CODE §§ 19-601 AND 602;
AND DECLARING AN EMERGENCY.

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

SECTION 1. Tucson Code (TC) § 19-270 is amended by adding at the end
thereof subsection (f) to read as follows:

(f) In any case, if a federally exempt organization, proprietary club, or non-licensed business rents, leases, licenses, or purchases any tangible personal property for its own storage or use, and no City Privilege or Use Tax or equivalent excise tax has been paid on such transaction, said organization, club, or business shall be liable for the Use Tax upon such acquisitions or use of such property.

SECTION 2. TC § 19-300(a) is amended by adding at the end thereof paragraph
(2) to read as follows:

(2) Every person, engaging or continuing in business within the City, storing or using tangible personal property in this City upon which a Use Tax is imposed by this Chapter.

SECTION 3. TC § 19-600 is renumbered as § 19-130.

SECTION 4. TC §§ 19-601 and 19-602 are repealed.

SECTION 5. Division 6 of Chapter 19, TC, is amended to read as follows:

DIVISION 6 - Use Tax

Sec. 19-600. Use tax: definitions.

For the purposes of this Division only, the following definitions shall apply, in addition to the definitions provided in Division 1:

- (1) "Acquire (for Storage or Use)" means purchase, rent, lease, or license for storage or use.
- (2) "Retailer" also means any person selling, renting, licensing for use, or leasing tangible personal property under circumstances which would render such transactions subject to the taxes imposed in Division 4, if such transactions had occurred within this City.
- (3) "Storage (within the City)" means the keeping or retaining of tangible personal property at a place within the City for any purpose, except for those items acquired specifically and solely for the purpose of sale, rental, lease, or license for use in the regular course of business or for the purpose of subsequent use solely outside the City.
- (4) "Use (of Tangible Personal Property)" means consumption or exercise of any other right or power over tangible personal property incident to the ownership thereof except the holding for the sale, rental, lease, or license for use of such property in the regular course of business.

Sec. 19-610. Use tax: imposition of tax; presumption.

- (a) There is hereby levied and imposed, subject to all other provisions of this Chapter, an excise tax on the storage or use in the City of tangible personal property, for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector.
- (b) The tax rate shall be at an amount equal to two percent (2%) of the:
 - (1) cost of tangible personal property acquired from a retailer, upon every person storing or using such property in this City.

- (2) gross income from the business activity upon every person meeting the requirements of subsection 19-620(b) or (c) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the City for storage or use within the City, to the extent that tax has been collected upon such transaction.
- (3) cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.
- (4) cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.
- (5) (Reserved)
- (c) It shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the City is acquired for storage or use in this City, until the contrary is established by the taxpayer.
- (d) Exclusions. For the purposes of this Division, the acquisition of the following shall not be deemed to be the purchase, rental, lease, or license of tangible personal property for storage or use within the City:
 - (1) stocks, bonds, options, or other similar materials.
 - (2) lottery tickets or shares sold pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
 - (3) Platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
- (e) (Reserved)
- (f) (Reserved)

Sec. 19-620. Use tax: liability for tax.

The following persons shall be deemed liable for the tax imposed by this Division and such liability shall not be extinguished until the tax has been paid to this City, except that a receipt from a retailer separately charging the tax imposed by this Chapter is sufficient to relieve the person acquiring such property from further liability for the tax to which the receipt refers:

- (a) Any person who acquires tangible personal property from a retailer, whether or not such retailer is located in this City, when such person stores or uses said property within the City.

- (b) Any retailer not located within the City, selling, renting, leasing, or licensing tangible personal property for storage or use of such property within the City, may obtain a License from the Tax Collector and collect the Use Tax on such transactions. Such retailer shall be liable for the Use Tax to the extent such Use Tax is collected from his customers.
- (c) Every agent within the City of any retailer not maintaining an office or place of business in this City, when such person sells, rents, leases, or licenses tangible personal property for storage or use in this City shall, at the time of such transaction, collect and be liable for the tax imposed by this Division upon the storage or use of the property so transferred, unless such retailer or agent is liable for an equivalent excise tax upon the transaction.
- (d) Any person who acquires tangible personal property from a retailer located in the City and such person claims to be exempt from the City Privilege or Use tax at the time of the transaction, and upon which no City Privilege Tax was charged or paid, when such claim is not sustainable.
- (e) Every person storing or using tangible personal property under the conditions of a warranty, maintenance, or service contract.

Sec. 19-630. Use tax: record-keeping requirements.

All deductions, exclusions, exemptions, and credits provided in this Division are conditional upon adequate proof of documentation as required by Division 3 or elsewhere in this Chapter.

Sec. 19-640. Use tax: credit for equivalent excise taxes paid another jurisdiction.

In the event that an equivalent excise tax has been levied and paid upon tangible personal property which is acquired to be stored or used within this City, full credit for any and all such taxes so paid shall be allowed by the Tax Collector but only to the extent Use Tax is imposed upon that transaction by this Division.

Sec. 19-650. Use tax: exclusion when acquisition subject to Use Tax is taxed or taxable elsewhere in this Chapter; limitation.

The tax levied by this Division does not apply to the storage or use in this City of tangible personal property acquired in this City, the gross income from the sale, rental, lease, or license of which were included in the measure of the tax imposed by Division 4 of this Chapter; provided, however, that any person who has acquired tangible personal property from a vendor in this City without paying the City Privilege Tax because of a representation to the vendor that the property was not subject to such tax, when such claim is not sustainable, may not claim the exclusion from such Use Tax provided by this Section.

Sec. 19-660. Use tax: exemptions.

The storage or use in this City of the following tangible personal property is exempt from the Use Tax imposed by this Division:

- (a) tangible personal property brought into the City by an individual who was not a resident of the City at the time the property was acquired for his own use, if the first actual use of such property was outside the City, unless such property is used in conducting a business in this City.
- (b) tangible personal property, the value of which does not exceed the amount of one thousand dollars (\$1,000) per item, acquired by an individual outside the limits of the City for his personal use and enjoyment.
- (c) charges for delivery, installation, or other customer services, as prescribed by Regulation.
- (d) charges for repair services, as prescribed by Regulation.
- (e) separately itemized charges for warranty, maintenance, and service contracts.
- (f) prosthetics.
- (g) income-producing capital equipment.
- (h) rental equipment and rental supplies.
- (i) mining and metallurgical supplies.
- (j) motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes.
- (k) tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid Privilege License for engaging or continuing in the business of construction contracting, and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

- (m) tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 19-410, or by a radio station, television station, or subscription television system.
- (o) food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 19-455, but not food consumed by owners, agents, or employees of such business.
- (p) tangible personal property acquired by a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property is in fact used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (q) food for home consumption.
- (r) the following tangible personal property purchased by persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry or ratites:
 - (1) seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.
 - (2) feed for livestock, poultry or ratites, including salt, vitamins, and other additives to such feed.
 - (3) livestock, poultry or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milch cows, breeding bulls, laying hens, riding or work horses.
 - (4) neat animals, horses, asses, sheep, swine, or goats acquired for the purpose of becoming breeding or production stock, including the acquisition of breedings or ownership shares in such animals.

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

- (s) groundwater measuring devices required by A.R.S. Section 45-604.
- (t) paintings, sculptures, or similar works of fine art, provided that such works of fine art are purchased from the original artist; and provided further that "art creations", such as jewelry, macramé, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether purchased from the artist or from another.
- (u) aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562, and 3-563.
- (w) (Reserved)
- (x) food and drink which a properly licensed restaurant provides without monetary charge to its employees for their own consumption on the premises during such employees' hours of employment.
- (y) (Reserved)
- (z) (Reserved)
- (aa) tangible personal property used in remediation contracting as defined in Section 19-100 and Regulation 19-100.5.
- (bb) materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
 - (1) printed or photographic materials.
 - (2) electronic or digital media materials.
- (cc) food, beverages, condiments and accessories used for serving food and beverages by a commercial airline, as defined in A.R.S. Section 42-5061(A)(50), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (dd) wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 19-470.

(ee) (Reserved)

(ff) alternative fuel as defined in A.R.S. Section 1-215, by a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.

(gg) food, beverages, condiments and accessories purchased by or for a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(hh) personal hygiene items purchased by a person engaged in the business of and subject to tax under Sections 19-66 or 19-444 if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

(ii) the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

(jj) food, beverages, condiments, and accessories purchased by or for a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(kk) (Reserved)

(ll) sales of motor vehicles that use alternative fuel as defined in A.R.S. Section 43-1086, if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

SECTION 6. Regulation 19-115.1 of the Regulations of Chapter 19, TC, is amended by adding at the end thereof new subsection (f) to read as follows:

- (f) The purchase, rental, lease, or license for use of computer hardware, storage media, or computer software which is not deemed custom programming is deemed the use or storage of tangible personal property for the purpose of this Chapter, and the amount which may be subject to Use Tax shall be determined in the same manner as the determination of the gross income from the sale, rental, lease, or license for use of such.

SECTION 7. Regulation 19-300.1(a) of the Regulations of Chapter 19, TC, is amended by adding new paragraph (4) to read as follows:

- (4) He is regularly engaged in any activity subject to the City's Use Tax; provided, however, that individuals are not normally required to obtain a license because they acquire items outside the City for their own or their family's personal use and enjoyment.

SECTION 8. Regulation 19-350.2(5) of the Regulations of Chapter 19, TC, is amended by adding new subparagraph (f) to read as follows:

- f. all claimed exemptions to the Use Tax imposed by Division 6 of this Chapter.

SECTION 9. Regulation 19-520.1(a) of the Regulations of Chapter 19, TC, is amended by adding new paragraph (6) to read as follows:

- (6) That total amount subject to Use Tax, summarized as "net taxable", and the Use Tax due and payable for that reporting period.

SECTION 10. Sections 1 through 9 of this Ordinance are effective on and after July 1, 2003.

SECTION 11. Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class two misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

SECTION 12. If any provision of this Ordinance, or the application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or

applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 13. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 14. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, _____.

MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:


CITY ATTORNEY

CITY MANAGER


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4/24/03 2:30 PM