

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1170

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 42, chapter 5, article 1, Arizona Revised Statutes,  
3 is amended by adding section 42-5005.01, to read:

4 42-5005.01. Presumption to obtain privilege license; definition

5 A. A PERSON IS PRESUMED TO HAVE SUFFICIENT ACTIVITY WITHIN THIS STATE  
6 TO BE REQUIRED TO OBTAIN A PRIVILEGE LICENSE PURSUANT TO SECTION 42-5005,  
7 UNLESS THE PRESUMPTION IS REBUTTED, IF ANY COMMONLY CONTROLLED PERSON  
8 MAINTAINS A DISTRIBUTION CENTER, WAREHOUSE, FULFILLMENT CENTER, OFFICE OR  
9 SIMILAR LOCATION WITHIN THIS STATE THAT FACILITATES THE DELIVERY OF TANGIBLE  
10 PERSONAL PROPERTY SOLD BY THE PERSON TO ITS CUSTOMERS. THIS PRESUMPTION MAY  
11 BE REBUTTED BY DEMONSTRATING THAT THE ACTIVITIES CONDUCTED BY THE COMMONLY  
12 CONTROLLED PERSON IN THIS STATE ARE NOT SIGNIFICANTLY ASSOCIATED WITH THE  
13 PERSON'S ABILITY TO ESTABLISH OR MAINTAIN A MARKET IN THIS STATE FOR THE  
14 PERSON'S SALES.

15 B. FOR THE PURPOSES OF THIS SECTION, "COMMONLY CONTROLLED PERSON"  
16 MEANS ANY PERSON THAT IS A MEMBER OF THE SAME CONTROLLED GROUP OF  
17 CORPORATIONS, AS DEFINED IN SECTION 1563(a) OF THE INTERNAL REVENUE CODE, AS  
18 THE PERSON OR ANY OTHER ENTITY THAT, NOTWITHSTANDING ITS FORM OF  
19 ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE PERSON AS A  
20 CORPORATION THAT IS A MEMBER OF THE SAME CONTROLLED GROUP OF CORPORATIONS, AS  
21 DEFINED IN SECTION 1563(a) OF THE INTERNAL REVENUE CODE.

22 Sec. 2. Section 42-5162, Arizona Revised Statutes, is amended to read:

23 42-5162. Monthly return; time for payment; extension of time;  
24 quarterly payment

25 A. ~~Except as provided in section 42-5169,~~ Every retailer engaged in  
26 the business of making sales of tangible personal property the use, storage  
27 or consumption of which is subject to the tax imposed by this article, and  
28 every person who purchases for use, storage or consumption any such property

1 for which the tax is not paid to the retailer, shall file a return with the  
2 department on or before the twentieth day of the month next succeeding the  
3 month in which the tax accrues. The return shall be on a form prescribed by  
4 the department and shall show the tangible personal property sold for use,  
5 storage or consumption or purchased for use, storage or consumption within  
6 the state during the preceding calendar month. Such return shall be verified  
7 by oath or affirmation of the retailer or person making the report, or his  
8 agent, and shall be accompanied by payment of the tax shown to be due. The  
9 return and tax are delinquent if not postmarked on or before the twenty-fifth  
10 day of the month when due or if not received by the department on or before  
11 the business day preceding the last business day of that month for those  
12 taxpayers electing to file by mail, or are delinquent if not received by the  
13 department on the business day preceding the last business day of the month  
14 when due for those taxpayers electing to file in person.

15 B. The department ~~may~~, for any taxpayer whose estimated annual  
16 liability for taxes imposed by this article is between five hundred and one  
17 thousand two hundred fifty dollars, MAY authorize such taxpayer to pay such  
18 taxes on a quarterly basis. The department ~~may~~, for any taxpayer whose  
19 estimated annual liability for taxes imposed by this article is five hundred  
20 dollars or less, MAY authorize such taxpayer to pay such taxes on an annual  
21 basis.

22 C. For good cause shown the department may extend the time for making  
23 a return and paying the tax, but the time for filing the return shall not be  
24 extended beyond the first day of the third month next succeeding the regular  
25 due date of the return.

26 Sec. 3. Repeal

27 Section 42-5169, Arizona Revised Statutes, is repealed.

28 Sec. 4. Section 43-321, Arizona Revised Statutes, is amended to read:

29 43-321. Information required in returns

30 Each return required to be filed under this title shall contain the  
31 following:

1           1. It shall contain or be verified by a declaration that it is made  
2 under penalties of perjury. The declaration shall be written or in a form  
3 prescribed by the department pursuant to section 42-1105, subsection B.

4           2. A specific statement of the items of the taxpayer's gross income  
5 and the adjustments, deductions and credits allowed by this title.

6           ~~3. A specific statement of the taxpayer's use tax liability pursuant  
7 to section 42-5169.~~

8           ~~4.~~ 3. Such other information as the department may by rule prescribe  
9 for the purpose of carrying out the provisions of this title.

10           Sec. 5. Forgiveness of penalty

11           Notwithstanding the failure to declare any use tax liability, the  
12 penalties prescribed by title 42, chapter 1, article 3, Arizona Revised  
13 Statutes, for failing to declare the taxpayer's use tax liability pursuant to  
14 section 42-5169, Arizona Revised Statutes, as repealed by this act, do not  
15 apply and the department of revenue shall waive any applicable penalties.

16           Sec. 6. Waiver of transaction privilege tax; retail  
17 classification; distribution or fulfillment  
18 presence; retroactivity

19           A. On or before August 31, 2013, the department of revenue shall waive  
20 any transaction privilege tax under the retail classification pursuant to  
21 section 42-5010, subsection A, paragraph 1, subdivision (m) and subsection G,  
22 Arizona Revised Statutes, of a person required to obtain a privilege license  
23 as the result of the presumption of sufficient activity pursuant to  
24 section 42-5005.01, Arizona Revised Statutes.

25           B. Notwithstanding section 42-1123, Arizona Revised Statutes, interest  
26 does not accrue on any amount of taxes waived under this section and no  
27 penalty is imposed with respect to any amount waived under this section.

28           C. This section is effective retroactively to from and after December  
29 31, 2005.

30           Sec. 7. Retroactivity

31           A. Sections 42-5162 and 43-321, Arizona Revised Statutes, as amended  
32 by this act, are effective retroactively to July 20, 2011.

1           B. Section 42-5169, Arizona Revised Statutes, as repealed by this act,  
2 is effective retroactively to July 20, 2011.

3           Sec. 8. Effective date

4           Section 42-5005.01, Arizona Revised Statutes, as added by this act, is  
5 effective on the earlier of September 1, 2013, or the effective date of  
6 federal legislation authorizing the states to require a seller to collect  
7 taxes on sales of goods to in-state purchasers without regard to the location  
8 of the seller, except that if the federal legislation is enacted before  
9 August 15, 2013, and the effective date of the federal legislation is after  
10 September 1, 2013, but on or before January 1, 2014, section 42-5005.01,  
11 Arizona Revised Statutes, as added by this act, becomes effective on  
12 January 1, 2014."

13 Amend title to conform

and, as so amended, it do pass

JAVAN D. MESNARD  
Chairman

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