

COMMITTEE ON FINANCE
SENATE AMENDMENTS TO S.B. 1392
(Reference to printed bill)

- 1 Page 2, line 37, after "INCLUDE" strike remainder of line insert "A"
- 2 Line 38, strike the first comma
- 3 Page 4, line 43, strike "WORDS" insert "WORKS"
- 4 Page 5, line 26, strike "PROVISION" insert "PROVIDE"
- 5 Line 38, strike "HTTP" insert "HYPERTEXT TRANSFER PROTOCOL"
- 6 Line 40, strike "THE OPERATION OF ONE OR MORE DATA CENTERS THAT ENABLE" insert
- 7 "PROVIDING"
- 8 Line 41, strike "TO ACCESS" insert ", AND THOSE AUTHORIZED BY THE PERSON'S
- 9 CUSTOMERS, WITH ACCESS TO"
- 10 Line 42, strike "CONNECTED"
- 11 Strike line 43, insert "LOCATED WITHIN A DATA CENTER ENVIRONMENT OPERATED BY
- 12 THE PERSON."
- 13 Page 6, line 2, strike "THE BUILDING" insert "SPACE TO OPERATE ONE OR MORE
- 14 SERVERS"
- 15 Line 5, after "CUSTOMERS" insert ", AND THOSE AUTHORIZED BY THE PERSON'S
- 16 CUSTOMERS,"
- 17 Line 7, after "SERVERS" insert "LOCATED"; strike "COLOCATION FACILITY" insert
- 18 "DATA CENTER ENVIRONMENT"; strike "OWNED" insert "OPERATED"
- 19 Line 17, strike "SUBSCRIPTION-BASED"
- 20 Line 19, strike "THROUGH THE INTERNET OR WIRELESSLY" insert "REMOTELY
- 21 ACCESSED"
- 22 Line 21, strike "SUBSCRIPTION" insert "SERVICE"; after "INCLUDE" insert "THE
- 23 RIGHT TO"; strike "PRODUCTS" insert "GOODS"
- 24 Line 39, after "THE" insert "RIGHT TO"

- 1 Page 7, line 29, after "1." insert "THE"; strike "OR" insert a comma; after
2 "PROCEEDS" insert ", PURCHASE PRICE OR SALES PRICE"
- 3 Lines 30 and 31, strike "OR" insert a comma; after "LICENSING" insert
4 ", PURCHASING OR USING"
- 5 Line 38, after "FILES" insert "SUCH AS CACHE FILES"
- 6 Between lines 40 and 41, insert:
7 "2. PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS
8 TRANSFERRED ELECTRONICALLY MAY BE TAXED ONLY AS PROVIDED BY SECTIONS
9 42-5061 AND 42-6015."
- 10 Renumber to conform
- 11 Strike pages 8 through 12
- 12 Page 13, strike lines 1 through 18
- 13 Renumber to conform
- 14 Page 14, strike line 5
- 15 Line 6, strike "(a)" insert "1."
- 16 Line 8, strike "(b)" insert "2."
- 17 Line 9, after the period insert "IN THE ABSENCE OF A DELIVERY ADDRESS, THE
18 PURCHASER'S BILLING ADDRESS MAY BE USED FOR THE PURPOSES OF THIS
19 PARAGRAPH."
- 20 Strike lines 10 through 27
- 21 Line 32, after the comma insert "SELLING, RENTING OR"
- 22 Line 33, after "SELLING" insert ", RENTING OR LICENSING FOR USE OF"
- 23 Page 32, between lines 28 and 29, insert:
24 "Sec. 5. Section 42-5151, Arizona Revised Statutes, is amended to
25 read:
26 42-5151. Definitions
27 In this article, unless the context otherwise requires:
28 1. "Ancillary services" means those services so designated in
29 federal energy regulatory commission order 888 adopted in 1996 that include
30 the services necessary to support the transmission of electricity from
31 resources to loads while maintaining reliable operation of the transmission
32 system according to good utility practice.

1 2. "Electric distribution service" means distributing electricity to
2 retail electric customers through the use of electric distribution
3 facilities.

4 3. "Electric generation service" means providing electricity for
5 sale to retail electric customers but excluding electric distribution or
6 transmission services.

7 ~~6.~~ 4. "Electricity" means electric energy, electric capacity or
8 electric capacity and energy.

9 ~~7.~~ 5. "Electricity supplier" means a person, whether acting in a
10 principal, agent or other capacity, that offers to sell electricity to a
11 retail electric customer in this state.

12 ~~4.~~ 6. "Electric transmission service" means transmitting
13 electricity to retail electric customers or to electric distribution
14 facilities so classified by the federal energy regulatory commission or, to
15 the extent permitted by law, so classified by the Arizona corporation
16 commission.

17 ~~5.~~ 7. "Electric utility services" means the business of providing
18 electric ancillary services, electric distribution services, electric
19 generation services, electric transmission services and other services
20 related to providing electricity.

21 8. "Natural gas" means natural or artificial gas, and includes
22 methane and propane gas, the natural gas commodity, natural gas pipeline
23 capacity or natural gas commodity and pipeline capacity.

24 9. "Natural gas utility services" means the business of selling
25 natural gas or providing natural gas transportation services or other
26 services related to providing natural gas.

27 10. "Notice" means written notice served personally or by certified
28 mail and addressed to the last known address of the person to whom such
29 notice is given.

30 11. "Other services" includes metering, meter reading services,
31 billing and collecting services.

1 12. "Person" means an individual, firm, partnership, joint venture,
2 association, corporation, estate, trust, receiver or syndicate, this state
3 or a county, city, municipality, district or other political subdivision or
4 agency thereof.

5 13. "PREWRITTEN COMPUTER SOFTWARE" HAS THE SAME MEANING PRESCRIBED
6 IN SECTION 42-5001.

7 ~~13.~~ 14. "Purchase" means any transfer, exchange or barter,
8 conditional or otherwise, in any manner or by any means, of tangible
9 personal property for a consideration, including transactions by which the
10 possession of property is transferred but the seller retains the title as
11 security for payment.

12 ~~14.~~ 15. "Purchase price" or "sales price" means the total amount
13 for which tangible personal property is sold, including any services that
14 are a part of the sale, valued in money, whether paid in money or
15 otherwise, and any amount for which credit is given to the purchaser by the
16 seller without any deduction on account of the cost of the property sold,
17 materials used, labor or services performed, interest charged, losses or
18 other expenses, but does not include:

19 (a) Discounts allowed and taken.

20 (b) Charges for labor or services in installing, remodeling or
21 repairing.

22 (c) Freight costs billed to and collected from a purchaser by a
23 retailer for tangible personal property ~~which~~ THAT, on the order of the
24 retailer, is shipped directly from a manufacturer or wholesaler to the
25 purchaser.

26 (d) Amounts attributable to federal excise taxes imposed by 26
27 United States Code section 4001, 4051 or 4081 on sales of heavy trucks and
28 trailers and automobiles or on sales of use fuel, as defined in section
29 28-5601.

30 (e) The value of merchandise that is traded in on the purchase of
31 new or pre-owned merchandise when the trade-in allowance is deducted from

1 the sales price of the new or pre-owned merchandise before the completion
2 of the sale.

3 ~~15.~~ 16. "Retail electric customer" means a person who purchases
4 electricity for that person's own use, including use in that person's trade
5 or business, and not for resale, redistribution or retransmission.

6 17. "Retailer" includes:

7 (a) Every person engaged in the business of making sales of tangible
8 personal property for storage, use or other consumption or in the business
9 of making sales at auction of tangible personal property owned by that
10 person or others for storage, use or other consumption. If in the opinion
11 of the department it is necessary for the efficient administration of this
12 article to regard any salesmen, representatives, peddlers or canvassers as
13 the agents of the dealers, distributors, supervisors or employers under
14 whom they operate or from whom they obtain the tangible personal property
15 sold by them, regardless of whether they are making sales on their own
16 behalf or on behalf of such dealers, distributors, supervisors or
17 employers, the department may so regard them and may regard the dealers,
18 distributors, supervisors or employers as retailers for purposes of this
19 article.

20 (b) A person who solicits orders for tangible personal property by
21 mail if the solicitations are substantial and recurring or if the retailer
22 benefits from any banking, financing, debt collection, telecommunication,
23 television shopping system, cable, optic, microwave or other communication
24 system or marketing activities occurring in this state or benefits from the
25 location in this state of authorized installation, servicing or repair
26 facilities.

27 ~~16.~~ 18. "Retail natural gas customer" means a person who purchases
28 natural gas for that person's own use, including use in that person's trade
29 or business, and not for resale, redistribution or retransmission.

30 ~~18.~~ 19. "Solar daylighting" means a device that is specifically
31 designed to capture and redirect the visible portion of the solar beam,

1 while controlling the infrared portion, for use in illuminating interior
2 building spaces in lieu of artificial lighting.

3 ~~19.~~ 20. "Solar energy device" means a system or series of
4 mechanisms designed primarily to provide heating, to provide cooling, to
5 produce electrical power, to produce mechanical power, to provide solar
6 daylighting or to provide any combination of the foregoing by means of
7 collecting and transferring solar generated energy into such uses by either
8 active or passive means, including wind generator systems that produce
9 electricity. Solar energy systems may also have the capability of storing
10 solar energy for future use. Passive systems shall clearly be designed as
11 a solar energy device, such as a trombe wall, and not merely as a part of a
12 normal structure, such as a window.

13 21. "SPECIFIED DIGITAL GOODS" HAS THE SAME MEANING PRESCRIBED IN
14 SECTION 42-5001.

15 ~~20.~~ 22. "Storage" means keeping or retaining tangible personal
16 property purchased from a retailer for any purpose except sale in the
17 regular course of business or subsequent use solely outside this state.
18 For the purposes of this paragraph, sale in the regular course of business
19 does not include the transfer of title or possession of coal back and forth
20 between an owner or operator of a power plant and a person who is
21 responsible for refining coal if both of the following apply:

22 (a) The transfer of title or possession of the coal is for the
23 purpose of refining the coal.

24 (b) The title or possession of the coal is transferred back to the
25 owner or operator of the power plant after completion of the coal refining
26 process. For the purposes of this subdivision, "coal refining process"
27 means the application of a coal additive system that aids the reduction of
28 power plant emissions during the combustion of coal and the treatment of
29 flue gas.

30 ~~21.~~ 23. "Taxpayer" means:

31 (a) Any retailer or person storing, using or consuming tangible
32 personal property OF WHICH the storage, use or consumption ~~of which~~ is

1 subject to the tax imposed by this article when ~~such~~ THE tax was not paid
2 to a retailer.

3 (b) ANY VENDOR OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL
4 GOODS TRANSFERRED ELECTRONICALLY OR PERSON USING SUCH ITEMS OF WHICH THE
5 USE IS SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE IF THE TAX WAS NOT PAID
6 TO A VENDOR.

7 24. "TRANSFERRED ELECTRONICALLY" HAS THE SAME MEANING PRESCRIBED IN
8 SECTION 42-5001.

9 ~~22.~~ 25. "Use or consumption" means the exercise of any right or
10 power over tangible personal property, PREWRITTEN COMPUTER SOFTWARE OR
11 SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY, incidental to owning
12 the property except holding for sale or selling the property in the regular
13 course of business. For the purposes of this paragraph, selling the
14 property in the regular course of business does not include the transfer of
15 title or possession of coal back and forth between an owner or operator of
16 a power plant and a person who is responsible for refining coal if both of
17 the following apply:

18 (a) The transfer of title or possession of the coal is for the
19 purpose of refining the coal.

20 (b) The title or possession of the coal is transferred back to the
21 owner or operator of the power plant after completion of the coal refining
22 process. For the purposes of this subdivision, "coal refining process"
23 means the application of a coal additive system that aids the reduction of
24 power plant emissions during the combustion of coal and the treatment of
25 flue gas.

26 ~~23.~~ 26. "Utility business" means a person that is engaged in the
27 business of providing electric utility services to retail electric
28 customers or natural gas utility services to retail natural gas customers.

1 Sec. 6. Title 42, chapter 5, article 4, Arizona Revised Statutes, is
2 amended by adding section 42-5155.01, Arizona Revised Statutes, to read:

3 42-5155.01. Levy of tax; prewritten computer software and
4 specified digital goods transferred
5 electronically; rate; purchaser's liability

6 A. AN EXCISE TAX IS LEVIED AND IMPOSED ON THE USE OR CONSUMPTION IN
7 THIS STATE OF PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS
8 TRANSFERRED ELECTRONICALLY AS A PERCENTAGE OF THE ACQUISITION PRICE.

9 B. THE TAX IMPOSED BY THIS SECTION APPLIES TO ANY PURCHASER THAT
10 PURCHASES PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS
11 TRANSFERRED ELECTRONICALLY FOR RESALE BUT SUBSEQUENTLY USES OR CONSUMES THE
12 ITEMS.

13 C. THE TAX RATE IS THE RATE OF TAX PRESCRIBED BY SECTION 42-5010,
14 SUBSECTION A AS APPLIED TO RETAILERS.

15 D. IN ADDITION TO THE RATE PRESCRIBED BY SUBSECTION C OF THIS
16 SECTION, AN ADDITIONAL RATE INCREMENT OF SIX-TENTHS OF ONE PERCENT IS
17 IMPOSED AND SHALL BE COLLECTED THROUGH JUNE 30, 2021. THE TAXPAYER SHALL
18 PAY TAXES PURSUANT TO THIS SUBSECTION AT THE SAME TIME AND IN THE SAME
19 MANNER AS UNDER SUBSECTION C OF THIS SECTION. THE DEPARTMENT SHALL
20 SEPARATELY ACCOUNT FOR THE REVENUES COLLECTED WITH RESPECT TO THE RATE
21 IMPOSED PURSUANT TO THIS SUBSECTION, AND THE STATE TREASURER SHALL PAY ALL
22 OF THOSE REVENUES IN THE MANNER PRESCRIBED BY SECTION 42-5029,
23 SUBSECTION E.

24 E. EACH PERSON USING OR CONSUMING PREWRITTEN COMPUTER SOFTWARE OR
25 SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY IN THIS STATE IS LIABLE
26 FOR THE TAX. THE PERSON'S LIABILITY IS NOT EXTINGUISHED UNTIL THE TAX HAS
27 BEEN PAID TO THIS STATE.

28 F. A RECEIPT FROM A VENDOR THAT MAINTAINS A PLACE OF BUSINESS IN
29 THIS STATE OR FROM A VENDOR THAT IS AUTHORIZED BY THE DEPARTMENT TO COLLECT
30 THE TAX, UNDER RULES ADOPTED BY THE DEPARTMENT, AND THAT IS FOR THE
31 PURPOSES OF THIS ARTICLE REGARDED AS A RETAILER MAINTAINING A PLACE OF
32 BUSINESS IN THIS STATE, GIVEN TO THE PURCHASER AS PROVIDED IN SECTION

1 42-5161 IS SUFFICIENT TO RELIEVE THE PURCHASER FROM FURTHER LIABILITY FOR
2 THE TAX TO WHICH THE RECEIPT REFERS.

3 G. ALL EXEMPTIONS UNDER SECTION 42-5159 APPLY TO THE TAX UNDER THIS
4 SECTION AS IF THE PREWRITTEN COMPUTER SOFTWARE AND SPECIFIED DIGITAL GOODS
5 TRANSFERRED ELECTRONICALLY WERE TANGIBLE PERSONAL PROPERTY.

6 H. A PERSON WHO USES OR CONSUMES PREWRITTEN COMPUTER SOFTWARE OR
7 SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY ON WHICH A TAX IS
8 IMPOSED BY THIS ARTICLE AND ON WHICH THE TAX HAS NOT BEEN COLLECTED BY A
9 REGISTERED VENDOR SHALL PAY THE TAX AS PROVIDED BY THIS ARTICLE, BUT EACH
10 VENDOR MAINTAINING A PLACE OF BUSINESS IN THIS STATE AND MAKING SALES OF
11 PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS TRANSFERRED
12 ELECTRONICALLY FOR USE OR CONSUMPTION IN THIS STATE SHALL COLLECT THE TAX
13 FROM THE PURCHASER OR USER UNLESS THE PROPERTY IS EXEMPT UNDER THIS ARTICLE
14 OR THE PURCHASER OR USER PAYS THE TAX DIRECTLY TO THE DEPARTMENT AS
15 PROVIDED BY SECTION 42-5167.

16 I. EACH VENDOR ENGAGED IN THE BUSINESS OF SELLING, LEASING, OR
17 LICENSING THE USE OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL
18 GOODS TRANSFERRED ELECTRONICALLY OF WHICH THE USE OR CONSUMPTION IS SUBJECT
19 TO THE TAX IMPOSED BY THIS ARTICLE, AND EACH PERSON WHO ACQUIRES ANY SUCH
20 PROPERTY FOR USE OR CONSUMPTION IN THIS STATE, AND FOR WHICH THE TAX IS NOT
21 PAID TO THE VENDOR, SHALL FILE A RETURN WITH THE DEPARTMENT ON OR BEFORE
22 THE TWENTIETH DAY OF THE MONTH NEXT SUCCEEDING THE MONTH IN WHICH THE
23 PROPERTY IS BROUGHT INTO THIS STATE FOR USE OR CONSUMPTION. THE RETURN
24 SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT AND SHALL SHOW THE AMOUNT
25 OF PROPERTY SOLD, LEASED OR LICENSED FOR USE OR CONSUMPTION OR ACQUIRED FOR
26 USE OR CONSUMPTION IN THIS STATE DURING THE PRECEDING MONTH. THE RETURN
27 SHALL BE VERIFIED BY OATH OR AFFIRMATION OF THE VENDOR OR PERSON MAKING THE
28 REPORT, OR THE PERSON'S AGENT, AND SHALL BE ACCOMPANIED BY PAYMENT OF THE
29 TAX SHOWN TO BE DUE. THE RETURN AND TAX ARE DELINQUENT IF NOT RECEIVED BY
30 THE DEPARTMENT ON OR BEFORE THE BUSINESS DAY PRECEDING THE LAST BUSINESS
31 DAY OF THE MONTH WHEN DUE.

1 J. NOTWITHSTANDING SUBSECTION I OF THIS SECTION, A PERSON WHO IS
2 REQUIRED TO FILE A RETURN UNDER ARTICLE 1 OF THIS CHAPTER MAY REPORT AND
3 PAY THE TAX LIABILITY UNDER THIS ARTICLE ON THE SAME RETURN AND FILING
4 BASIS AS THE TAXES REPORTED UNDER ARTICLE 1 OF THIS CHAPTER.

5 K. FOR GOOD CAUSE THE DEPARTMENT MAY EXTEND THE TIME FOR MAKING A
6 RETURN AND PAYING THE TAX, BUT THE TIME FOR FILING THE RETURN MAY NOT BE
7 EXTENDED BEYOND THE FIRST DAY OF THE THIRD MONTH NEXT SUCCEEDING THE
8 REGULAR DUE DATE OF THE RETURN.

9 Sec. 7. Section 42-5167, Arizona Revised Statutes, is amended to
10 read:

11 42-5167. Use tax direct payment

12 A. A person may elect to pay use taxes directly to the department
13 under this article if the person:

14 1. Applies to the department for a use tax direct payment permit.
15 The application must be on a form prescribed by the department setting
16 forth the name under which the applicant transacts or intends to transact
17 business, the location of the place or places of business where the
18 applicant intends to make direct payment of use taxes and any other
19 information that the department may require. The application must be
20 signed, in the case of:

21 (a) A natural person, by the owner.

22 (b) An association or partnership, by a member or partner.

23 (c) A corporation, by an executive officer or another person
24 specifically authorized by the corporation to sign the application.

25 2. Agrees to self-assess and pay directly to the department any use
26 tax liability incurred under this article.

1 3. Certifies to the department that the person purchased for the
2 person's own use ANY COMBINATION OF tangible personal property, PREWRITTEN
3 COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY at
4 a cost of five hundred thousand dollars or more, in the aggregate, during
5 the immediately preceding calendar year.

6 B. The department shall issue a use tax direct payment permit to any
7 applicant that meets the requirements of subsection A of this section.

8 C. If the department deems it necessary to protect the revenues to
9 be collected under this section, it may require a person to file a bond to
10 secure the payment of such amounts pursuant to section 42-1102.

11 D. A person who holds a valid use tax direct payment permit shall:

12 1. Self-assess and pay directly to the department use taxes due
13 under this article for all tangible personal property, PREWRITTEN COMPUTER
14 SOFTWARE AND SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY THAT ARE
15 subject to use tax.

16 2. Report the tax on a tax return prescribed by the department.

17 E. A holder of a use tax direct payment ~~certificate~~ PERMIT may issue
18 a use tax direct payment certificate to any retailer or seller, subject to
19 all of the following:

20 1. The certificate shall be in a form prescribed by the department
21 and must be signed by and bear the name, address and permit number of the
22 holder of the use tax direct payment permit.

23 2. The certificate is effective until the permit holder revises or
24 withdraws the certificate or until the retailer or seller receives actual
25 notice that the department has revoked the permit.

26 3. The certificate relieves the retailer or seller of the duty to
27 collect use tax only if taken in good faith from a person who holds a use
28 tax direct payment permit. The department may periodically publish on its
29 ~~web-site~~ WEBSITE a list of taxpayers by name with tax identification
30 numbers who have been issued direct payment permits. A purchaser holding a
31 direct payment permit who issues a use tax direct payment certificate that
32 is accepted in good faith by a retailer or seller of tangible personal

property OR A VENDOR OF PREWRITTEN COMPUTER SOFTWARE OR SPECIFIED DIGITAL GOODS TRANSFERRED ELECTRONICALLY shall be liable for use tax and related interest and penalties with respect to any transaction that the department subsequently determines properly subjects the vendor to the transaction privilege tax and not use tax. The vendor shall be relieved of the duty to pay transaction privilege tax on such transactions.

4. In addition to any use tax liabilities, a holder of a use tax direct payment permit that gives a use tax direct payment certificate to a retailer or seller is subject to the same penalty provisions that apply to a retailer or seller."

Renumber to conform

Page 32, line 33, after "ON" insert "SALES, RENTALS OR"

Lines 38 and 39, strike "BASED ON THE CERTIFICATE PROVIDED PURSUANT TO SECTION 42-5009, SUBSECTION R"

Page 34, line 10, after "from" insert "sales, rentals and"

Line 13, after "tax" insert "and use tax"

Line 17, after "taxes" insert "and use taxes"

After line 24, insert:

"Sec. 11. Effective date

This act is effective from and after the last day of the month of the general effective date of the fifty-third legislature, second regular session."

Amend title to conform

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C: dmt