

RESOLUTION NO. 21-2001

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2001 AMENDMENTS TO THE TAX CODE OF THE CITY OF BENSON."

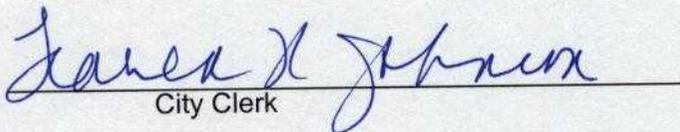
BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA:

THAT certain document entitled "THE 2001 AMENDMENTS TO THE TAX CODE OF THE CITY OF BENSON", three copies of which are on file in the office of the city clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the city clerk.

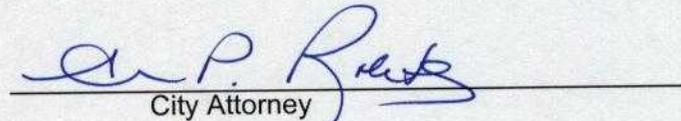
PASSED AND ADOPTED BY THE Mayor and Council of the City of Benson, Arizona, this 15th day of October, 2001.


Mike Montroy, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

2001 AMENDMENTS TO THE TAX CODE OF THE CITY OF BENSON

Section 1. Section 8A-415 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-415. Construction contracting: Construction contractors.

- (a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.
- (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.
 - (2) (Reserved)
 - (3) gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 8A-427.
- (b) Deductions and exemptions.
- (1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.
 - (2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).
 - (3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
 - (A) Section 8A-465, subsections (g) and (p)
 - (B) (Reserved)shall be exempt or deductible, respectively, from the tax imposed by this Section.
 - (4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 8A-110, THAT IS DEDUCTED FROM THE RETAIL CLASSIFICATION PURSUANT TO SECTION 8A-465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be ~~deducted~~ EXEMPT from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
 - (A) to be incorporated into real property.
 - (B) to become so affixed to real property that it becomes part of the real property.
 - (C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
 - (5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
 - (6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 8A-465, subsection (g) shall be exempt from the tax imposed under this Section.
 - (7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the

construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

- (8) THE GROSS PROCEEDS OF SALES OR GROSS INCOME RECEIVED FROM A POST-CONSTRUCTION CONTRACT TO PERFORM POST-CONSTRUCTION TREATMENT OF REAL PROPERTY FOR TERMITE AND GENERAL PEST CONTROL, INCLUDING WOOD DESTROYING ORGANISMS, SHALL BE EXEMPT FROM TAX IMPOSED UNDER THIS SECTION.

(c) "Subcontractor" means a construction contractor performing work for either:

- (1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number.
- (2) an owner-builder who has provided the subcontractor with a written declaration that:
- (A) the owner-builder is improving the property for sale; and
 - (B) the owner-builder is liable for the tax for such construction contracting activity; and
 - (C) the owner-builder has provided the contractor his City Privilege License number.
- (3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

Section 2. Section 8A-416 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-416. Construction contracting: speculative builders.

- (a) The tax shall be equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.
- (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.
- (2) "Improved Real Property" means any real property:
- (A) upon which a structure has been constructed; or
 - (B) where improvements have been made to land containing no structure (such as paving or landscaping); or
 - (C) which has been reconstructed as provided by Regulation; or
 - (D) where water, power, and streets have been constructed to the property line.
- (3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
- (4) "Partially Improved Residential Real Property," as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) Exclusions.

- (1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.
- (2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.
- (3) (Reserved)
- (4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in (a)(4) above to another speculative builder only if all of the following conditions are satisfied:
 - (A) The speculative builder purchasing the partially improved residential real property has a valid City privilege license for construction contracting as a speculative builder; and
 - (B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and
 - (C) The seller also:
 - (i) maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and
 - (ii) retains a copy of the written declaration provided by the buyer for the transaction; and
 - (iii) is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City privilege tax return where he claims the exclusion.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

- (A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
 - (i) Section 8A-465, subsections (g) and (p)
 - (ii) (Reserved)shall be exempt or deductible, respectively, from the tax imposed by this Section.
- (B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
- (C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 8A-465, subsection (g) shall be exempt from the tax imposed under this section.
- (D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

- (2) Deductions.
- (A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
- (B) The gross proceeds of sales or gross income that is derived from A CONTRACT ENTERED INTO FOR the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 8A-110, THAT IS DEDUCTED FROM THE RETAIL CLASSIFICATION PURSUANT TO SECTION 8A-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be ~~deducted~~ EXEMPT from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
- (i) to be incorporated into real property.
- (ii) to become so affixed to real property that it becomes part of the real property.
- (iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
- (3) Tax credits.
- The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:
- (A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.
- (B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
- (C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

Section 3. Section 8A-417 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-417. Construction contracting: owner-builders who are not speculative builders.

- (a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to two and one-half percent (2.5%) of:
- (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 8A-415(c)(2); and
- (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

- (A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
- (i) Section 8A-465, subsections (g) and (p)
 - (ii) (Reserved)
- shall be exempt or deductible, respectively, from the tax imposed by this Section.
- (B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
- (C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 8A-465, subsection (g) shall be exempt from the tax imposed under this Section.
- (D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(2) Deductions.

- (A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
- (B) The gross proceeds of sales or gross income that is derived from A CONTRACT ENTERED INTO FOR the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 8A-110, THAT IS DEDUCTED FROM THE RETAIL CLASSIFICATION PURSUANT TO SECTION 8A-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be ~~deducted~~ EXEMPT from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
- (i) to be incorporated into real property.
 - (ii) to become so affixed to real property that it becomes part of the real property.
 - (iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

- (A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid

directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

- (B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
 - (C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.
- (c) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 8A-540, will be based on reportable date.
- (d) (Reserved)

Section 4. Section 8A-445 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:
 - (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
 - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
 - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 8A-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) (Reserved)
- (g) (Reserved)

- (h) (Reserved)
- (i) (Reserved)
- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 8A-444 of this code.
- (k) (Reserved)
- (l) (Reserved)
- (m) (Reserved)
- (n) Notwithstanding the provisions of Section 8A-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) CHARGES BY ANY HOSPITAL, ANY LICENSED NURSING CARE INSTITUTION, OR ANY KIDNEY DIALYSIS FACILITY TO PATIENTS OF SUCH FACILITIES FOR THE USE OF ROOMS OR OTHER REAL PROPERTY DURING THE COURSE OF THEIR TREATMENT BY SUCH FACILITIES ARE EXEMPT.
- (q) CHARGES TO PATIENTS RECEIVING "PERSONAL CARE" OR "DIRECTED CARE", BY ANY LICENSED ASSISTED LIVING FACILITY, LICENSED ASSISTED LIVING CENTER OR LICENSED ASSISTED LIVING HOME AS DEFINED AND LICENSED PURSUANT TO CHAPTER 4 TITLE 36 ARIZONA REVISED STATUTES AND TITLE 9 OF THE ARIZONA ADMINISTRATIVE CODE ARE EXEMPT.

Section 5. Section 8A-450 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-450. Rental, leasing, and licensing for use of tangible personal property.

- (a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.
- (b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
- (c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:
 - (1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

- (2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
- (3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 8A-410, or to a radio station, television station, or subscription television system.
- (4) rental, leasing, or licensing for use of the following:
 - (A) prosthetics.
 - (B) income-producing capital equipment.
 - (C) mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.
- (5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property 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 for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
- (7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) the gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.
- (9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) rental, leasing and licensing for use of ~~motor vehicles~~ AN ALTERNATIVE FUEL VEHICLE ~~that use alternative fuel~~ as defined in A.R.S. Section 43-1086 ~~on or after May 5, 1999~~ IF SUCH 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 A.R.S. SECTION 1-215.

Section 6. Section 8A-465 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 8A-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-City sales or out-of-State sales.

- (c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.
- (d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.
- (e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.
- (f) sales of prosthetics.
- (g) sales of income-producing capital equipment.
- (h) sales of rental equipment and rental supplies.
- (i) sales of mining and metallurgical supplies.
- (j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.
- (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) sales of 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) sales made directly to the Federal government to the extent of:
 - (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
 - (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.
- (o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 8A-455 or the equivalent excise tax upon such income.
- (p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of 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 for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (q) food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food

instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food.

- (r) (Reserved)
 - (1) (Reserved)
 - (2) (Reserved)
 - (3) (Reserved)
 - (4) (Reserved)
- (s) sales of groundwater measuring devices required by A.R.S. Section 45-604.
- (t) (Reserved)
- (u) sales of 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) (Reserved)
- (y) (Reserved)
- (z) (Reserved)
- (aa) the sale of tangible personal property used in remediation contracting as defined in Section 8A-100 and Regulation 8A-100.5.
- (bb) 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:
 - (1) printed or photographic materials.
 - (2) electronic or digital media materials.
- (cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 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) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 8A-470, 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.
- (ee) for the purposes of this Section, a sale of wireless telecommunication 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 telecommunication services that are taxable under Section 8A-470 is considered to be a sale for resale in the regular course of business.

- (ff) sales of alternative fuel as defined in A.R.S. § 1-215, to 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. § 49-426 or § 49-480.
- (gg) sales of food, beverages, condiments and accessories to 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) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 8A-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) For the purposes of this Section, 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) Sales of food, beverages, condiments and accessories to 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 ~~on or after May 5, 1999~~ 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 7. Section 8A-470 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-470. Telecommunication services.

- (a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.
 - (1) Telecommunication services shall include:
 - (A) two-way voice, sound, and/or video communication over a communications channel.
 - (B) one-way voice, sound, and/or video transmission or relay over a communications channel.
 - (C) facsimile transmissions.
 - (D) providing relay or repeater service.
 - (E) providing computer interface services over a communications channel.
 - (F) time-sharing activities with a computer accomplished through the use of a communications channel.
 - (2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:
 - (A) all fees for connection to a telecommunication system.

- (B) toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.
 - (C) fees charged for access to or subscription to or membership in a telecommunication system or network.
 - (D) charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.
- (b) Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.
- (c) Interstate transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.
- (d) (Reserved)
- (e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in A.R.S. Section 9-505, shall be exempt from the tax imposed by this Section.
- (f) Prepaid calling cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 8A-460 are exempt from the tax imposed under this Section.
- (g) INTERNET ACCESS SERVICES – THE GROSS INCOME SUBJECT TO TAX UNDER THIS SECTION SHALL NOT INCLUDE SALES OF INTERNET ACCESS SERVICES TO THE PERSON'S SUBSCRIBERS AND CUSTOMERS. FOR THE PURPOSES OF THIS SUBSECTION:
- (1) "INTERNET" MEANS THE COMPUTER AND TELECOMMUNICATIONS FACILITIES THAT COMPRISE THE INTERCONNECTED WORLDWIDE NETWORK OF NETWORKS THAT EMPLOY THE TRANSMISSION CONTROL PROTOCOL OR INTERNET PROTOCOL, OR ANY PREDECESSOR OR SUCCESSOR PROTOCOL, TO COMMUNICATE INFORMATION OF ALL KINDS BY WIRE OR RADIO.
 - (2) "INTERNET ACCESS" MEANS A SERVICE THAT ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC MAIL OR OTHER SERVICES OVER THE INTERNET. INTERNET ACCESS DOES NOT INCLUDE TELECOMMUNICATION SERVICES PROVIDED BY A COMMON CARRIER.

Section 8. Section 8A-500 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-500. Administration of this Chapter; rule making.

- (a) The administration of this Chapter is vested in and exercised by the City of Benson, and except as otherwise provided, and all payments shall be made to the City of Benson. The City may, pursuant to an intergovernmental agreement, contract with the State of Arizona Department of Revenue for the administration of the tax. In such cases, "Tax Collector" shall also mean the Arizona Department of Revenue, when acting as agent in administering this tax.
- (b) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.

- (c) Except where such Regulations would conflict with administrative regulations adopted by the City Council or with provisions of this Chapter, all regulations on the Transaction Privilege Tax adopted by the Arizona Department of Revenue under the authority of A.R.S. Section 42-1005 shall be considered Regulations of this Chapter and enforceable as such.
- (d) Taxpayers shall be subject to the State taxpayer bill of rights (A.R.S. § 42-2051 et. seq).
- (e) THE UNIFIED AUDIT COMMITTEE SHALL PUBLISH UNIFORM GUIDELINES THAT INTERPRET THE MODEL CITY TAX CODE AND THAT APPLY TO ALL CITIES AND TOWNS THAT HAVE ADOPTED THE MODEL CITY TAX CODE AS PROVIDED BY A.R.S. SECTION 42-6005.
 - (1) PRIOR TO FINALIZATION OF UNIFORM GUIDELINES THAT INTERPRET THE MODEL CITY TAX CODE, THE UNIFIED AUDIT COMMITTEE SHALL DISSEMINATE DRAFT GUIDELINES FOR PUBLIC COMMENT.
 - (2) PURSUANT TO A.R.S. SECTION 42-6005(D), WHEN THE STATE STATUTES AND THE MODEL CITY TAX CODE ARE THE SAME AND WHERE THE ARIZONA DEPARTMENT OF REVENUE HAS ISSUED WRITTEN GUIDANCE, THE DEPARTMENT'S INTERPRETATION IS BINDING ON CITIES AND TOWNS.

Section 9. Section 8A-510 of the Tax Code of the City of Benson is amended to read:

Sec. 8A-510. Divulging of information prohibited; exceptions allowing disclosure.

- (a) Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.
- (b) The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the Federal Government, the State of Arizona, or any political subdivisions.
- (c) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.
- (d) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.
- (e) Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the City.
- (f) The Tax Collector ~~may~~ SHALL provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Section 42-6003, ~~relating to the assessment and collection of intermunicipal taxes,~~ A.R.S. SECTION 42-6005, AND A.R.S. SECTION 42-6056.
- (g) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 8A-435 upon publishing and distribution of periodicals.
- (h) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.

Section 10. Article V of the Tax Code of the City of Benson is amended by adding Section 8A-542 to read:

Sec. 8A-542. PROSPECTIVE APPLICATION OF NEW LAW OR INTERPRETATION OR APPLICATION OF LAW.

- (a) UNLESS EXPRESSLY AUTHORIZED BY LAW, THE TAX COLLECTOR SHALL NOT APPLY ANY NEWLY ENACTED LEGISLATION RETROACTIVELY OR IN A MANNER THAT WILL PENALIZE A TAXPAYER FOR COMPLYING WITH PRIOR LAW.
- (b) IF THE TAX COLLECTOR ADOPTS A NEW INTERPRETATION OR APPLICATION OF ANY PROVISION OF THIS CHAPTER OR DETERMINES THAT ANY PROVISION APPLIES TO A NEW OR ADDITIONAL CATEGORY OR TYPE OF BUSINESS AND THE CHANGE IN INTERPRETATION OR APPLICATION IS NOT DUE TO A CHANGE IN THE LAW:
 - (1) THE CHANGE IN INTERPRETATION OR APPLICATION APPLIES PROSPECTIVELY ONLY UNLESS IT IS FAVORABLE TO TAXPAYERS.
 - (2) THE TAX COLLECTOR SHALL NOT ASSESS ANY TAX, PENALTY OR INTEREST RETROACTIVELY BASED ON THE CHANGE IN INTERPRETATION OR APPLICATION.
- (c) FOR PURPOSES OF SUBSECTION (b), "NEW INTERPRETATION OR APPLICATION" INCLUDES POLICIES AND PROCEDURES WHICH DIFFER FROM ESTABLISHED INTERPRETATIONS OF THIS CHAPTER.
- (d) TAX LIABILITIES, PENALTIES AND INTEREST PAID BEFORE A NEW INTERPRETATION OR APPLICATION OF A PROVISION OF THIS CHAPTER SHALL NOT BE REFUNDED UNLESS THE TAXPAYER REQUESTING THE REFUND PROVIDES EVIDENCE SATISFACTORY TO THE TAX COLLECTOR THAT ALL SUCH AMOUNTS WILL BE REFUNDED TO THE PERSON WHO PAID AN ADDED CHARGE TO COVER THE TAX.

Section 11. Regulation 8A-115.1 of the Tax Code of the City of Benson is amended to read:

Reg. 8A-115.1. Computer hardware, software, and data services.

- (a) Definitions.
 - (1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.
 - (2) "Computer Software" (also called "computer program") is tangible personal property, and includes:
 - (A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
 - (B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

- (3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.
 - (4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.
 - (5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.
- (b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:
- (1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.
 - (2) Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:
 - (A) the entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.
 - (B) the entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.
 - (C) license fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.
 - (D) the entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.
 - (E) any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:
 - (i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
 - (ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
 - (iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.
- (c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

- (1) statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.
 - (2) additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.
- (d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.
- (e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 8A-100.2(e):
- (1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.
 - (A) ~~Customer~~ CUSTOM computer programming is deemed a professional service regardless of the form in which the programming is transferred.
 - (B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.
 - (C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.
 - (2) Training services related to computer hardware or software, provided further that:
 - (A) the provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.
 - (B) training deemed a direct customer service does not include:
 - (i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.
 - (ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.
 - (3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).
 - (4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.
- (f) (Reserved)

Work Order

Technician Service Code

WRENCH

Please Remit To:

Pro Office Equipment

599 E Wilcox Dr

Sierra Vista, AZ 85635

Telephone (520) 458-0443

Facsimile (520) 458-1011

TOSHIBA * 3580

SNHD025611 * ID0288

Work Order Date: 10/22/2001

Work Order Number: 9309

Reference Number:

Terms: Net 30

Ship To: (Location)

CITY OF BENSON

P.O. BOX 2223

Bill To: **BENSON**

CITY OF BENSON

P.O. BOX 2223

BENSON, AZ 85602

(520) 586-2245

BENSON, AZ 85602

(520) 586-2245

Problem

CODE "CB1"

Solution

TRAY 1157 Motor is burnt out

Notes

Labor

Start Meter	End Meter	Start Date	Start Time	Comp Date	Comp Time	Job Time	Qty	Rate	Ext Labor
	141733	10/22	1100	10/22	1120				

Qty	Part Number	Description	Parts	Unit Price	Ext Parts

Qty	Product Code	Description	Supplies	Sub Parts	Unit Price	Ext Supplies

Terms: Net 30

Contract Type: Contract Type: MONTHL

Pt	Lb	Dr	FR	Tn	Dv	Pp
<input checked="" type="radio"/>	<input type="radio"/>					

Estimate:

This Estimate is Good For 10 Days

Date:

Customer Acceptance

Thank You

We guarantee all parts and supplies installed by us against defects in materials and workmanship for a period of 30 days. Original service problems, recurring within 30 days, will be covered under this guarantee. New or unrelated service problems will be considered as chargeable calls. Intermittent problems can not and will not be guaranteed.

Sub Supply	
Total Labor:	
Total Parts:	
Total Supplies:	
Sub Total:	
Sales Tax:	
Total Due:	

Call Log	Last Call	Last Drum	Last Dev	Last Toner	Last CI	Last UFR	Last LFR	SA Dates	SA Meter
10/22/01	09/17/01		06/30/00	09/19/01				07/01/01	100,000
8:42	132,581			132,581				06/30/02	500,000

Last Problem: going through a lot of toner - 3 in three days

Last Solution: EXTENSIVE CLNG OF INT/EXT. MINOR ADJ OF EXP LEVELS.

Last Notes:

Last Code: cs

Last Tech: TDC

Install Date: 06/30/2000