Repl pgs #8

FEB 28 2008

ORDINANCE NO. 4011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTIONS 62-100, 62-415, 62-416, 62-417, AND 62-465 OF CHAPTER 62, CODE OF THE CITY OF CHANDLER, AND ESTABLISHING EFFECTIVE DATES THEREOF, RELATING TO CONFORMING CHANGES TO THE CHANDLER TAX CODE.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, that the Code of the City of Chandler is hereby amended as follows:

SECTION I. That Section 62-100 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as office, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road,

railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

"Equivalent Excise Tax" means either:

(c) A Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or

(d) An excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or

(e) An excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Jet Fuel" means jet fuel as defined in A.R.S. Section 42-5351.

"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 62-432 for such use. This definition shall not include:

(1) Janitorial equipment and supplies,

(2) Office equipment, office furniture, and office supplies,

(3) Motor vehicles licensed for use upon the highways of the State.

"Modifier" means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) Transference of title and possession occur without the City; and

(2) The stock from which such personal property was taken was not within the corporate limits of the City; and

(3) The order is received at a permanent business location of the seller located outside the City, which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) The order is placed from without the State of Arizona; and

~~(2)The order is placed by other than a resident of the State to be determined in a manner similar to "resides within the City"; and~~

~~(3)~~(2) The property is delivered to the buyer at a location outside the State; and

~~(4)~~(3) The property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

(1) Any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.

(2) Insulin, insulin syringes, and glucose test strips sold with or without a prescription.

(3) Hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

(4) Drugs or medicine, including oxygen.

(5) Equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, or dialysis machine.

(6) Durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

"Qualifying Community Health Center"

(1) Means an entity that is recognized as nonprofit under 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(A) The sole provider of primary care in the community.

(B) A non-hospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(2) Includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty per cent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department Of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

(1) A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(2) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(3) A hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.

(4) A facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

"Receipt (of Notice) by the Taxpayer" means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

"Remediation" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, non-opportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

"Rental Equipment" means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

(1) The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(2) The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Rental Supply" means an expendable or non-expendable repair or replacement part sold to become part of "rental equipment", provided that:

(1) The documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and

(2) The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(3) The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Repairer" means a person who restores or renews products, wares, or articles of manufacture.

"Resides within the City" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"SOLAR DAYLIGHTING" MEANS A DEVICE THAT IS SPECIFICALLY DESIGNED TO CAPTURE AND REDIRECT THE VISIBLE PORTION OF THE SOLAR BEAM, WHILE CONTROLLING THE INFRARED PORTION, FOR USE IN ILLUMINATING INTERIOR BUILDING SPACES IN LIEU OF ARTIFICIAL LIGHTING.

"SOLAR ENERGY DEVICE" MEANS A SYSTEM OR SERIES OF MECHANISMS DESIGNED PRIMARILY TO PROVIDE HEATING, TO PROVIDE COOLING, TO PRODUCE ELECTRICAL POWER, TO PRODUCE MECHANICAL POWER, TO PROVIDE SOLAR DAYLIGHTING OR TO PROVIDE ANY COMBINATION OF THE FOREGOING BY MEANS OF COLLECTING AND TRANSFERRING SOLAR GENERATED ENERGY INTO SUCH USES EITHER BY ACTIVE OR PASSIVE MEANS, INCLUDING WIND GENERATOR SYSTEMS THAT PRODUCE ELECTRICITY. SOLAR ENERGY SYSTEMS MAY ALSO HAVE THE CAPABILITY OF STORING SOLAR ENERGY FOR FUTURE USE. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNED AS A SOLAR ENERGY DEVICE, SUCH AS A TROMBE WALL, AND NOT MERELY AS A PART OF A NORMAL STRUCTURE, SUCH AS A WINDOW.

"Speculative Builder" means either:

(1) An owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 62-416) consisting of:

(A) Custom, model, or inventory homes, regardless of the stage of completion of such homes; or

(B) Improved residential or commercial lots without a structure; or

(2) An owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:

(A) Prior to completion; or

(B) Before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

"Substantially Complete" means the construction contracting or reconstruction contracting:

(1) Has passed final inspection or its equivalent; or

(2) Certificate of occupancy or its equivalent has been issued; or

(3) Is ready for immediate occupancy or use.

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

"Tax Collector" means the Management Services Director or his designee or agent for all purposes under this Chapter.

"Taxpayer" means any person liable for any tax under this Chapter.

"Taxpayer Problem Resolution Officer" means the individual designated by the City to perform the duties identified in Sections 62-515 and 62-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or rate-payers.

SECTION II. That Section 62-415 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-415. Construction contracting: construction contractors.

(a) The tax rate shall be at an amount equal to one and one-half percent (1.5%) 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 62-427.

(4) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

(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 62-465, subsections (g) and (p)

(B) Section 62-660, subsections (g) and (p) 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 62-110, that is deducted from the retail classification pursuant to Section 62-465(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 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 clean rooms that are deducted from the tax base of the retail classification pursuant to Section 62-465, 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.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(A) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, subsection D.

(B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.

(C) Any other information considered to be necessary.

(10) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(11) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(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 III. That Section 62-416 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-416. Construction contracting: speculative builders.

(a) The tax shall be equal to one and one-half percent (1.5%) 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 the 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.

(5) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

(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 62-465, subsections (g) and (p)

(ii) Section 62-660, subsections (g) and (p)

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 clean rooms that are deducted from the tax base of the retail classification pursuant to Section 62-465, 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.

(E) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(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 the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 62-110, that is deducted from the retail classification pursuant to Section 62-465(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 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.

(C) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR

ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(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 IV. That Section 62-417 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-417. 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 one and one-half percent (1.5%) 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 62-415(c)(2); and

(2) The purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

~~(b)~~(c) 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 62-465, subsections (g) and (p)

(ii) Section 62-660, subsections (g) and (p)

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 clean rooms that are deducted from the tax base of the retail classification pursuant to Section 62-465, 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.

(E) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(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 the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 62-110, that is deducted from the retail classification pursuant to Section 62-465(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 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.

(C) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(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)~~(d) 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 62-540, will be based on reportable date.

~~(d)~~(e) (Reserved)

SECTION V. That Section 62-465 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 62-460:

(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 62-455 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) Sales of the following to 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 milk cows, breeding bulls, laying hens, riding or work horses.

(4) (Reserved)

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) 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. §§ 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 62-100 and Regulation 62-100.5.

(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)(49) 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 62-470, 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 62-470 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. Section 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. Section 49-426 or Section 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 62-444 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) Sales of motor vehicles that use alternative fuel 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.

(ll) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, SALES OF SOLAR ENERGY DEVICES. THE RETAILER SHALL REGISTER WITH THE

DEPARTMENT OF REVENUE AS A SOLAR ENERGY RETAILER. BY REGISTERING, THE RETAILER ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

SECTION VI. All provisions of this ordinance shall be effective from and after July 1, 2008.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this 28th day of February, 2008.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and Council of the City of Chandler, Arizona, this 13th day of March, 2008.

ATTEST:

CITY CLERK

MAYOR

Approved As To Form:

CITY ATTORNEY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4011 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 13th day of March, 2008, and that a quorum was present thereat.

CITY CLERK

Published:

#8

FEB 28 2008

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Where Values Make The Difference

MEMORANDUM Management Services Department – Council Memo No. MS 08-041

DATE: FEBRUARY 28, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
DENNIS STRACHOTA, MANAGEMENT SERVICES DIRECTOR
SANDI RODENBECK, TAX & LICENSE MANAGER

FROM: LEE GRAFSTROM, TAX AUDIT SUPERVISOR

SUBJECT: REQUEST FOR INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4011

RECOMMENDATION: Staff recommends introduction and tentative approval of Ordinance No. 4011 of the City Council of the City of Chandler, Arizona, amending Sections 62-100, 62-415, 62-416, 62-417, and 62-465 of Chapter 62, Code of the City of Chandler, and establishing effective dates thereof, relating to conforming changes to the Chandler Tax Code.

DISCUSSION: Following each legislative session, Arizona cities and towns through the Unified Audit Committee (UAC), review new laws to determine those areas of the Model City Tax Code that require adjustment to maintain or achieve conformity with State law. This committee meets with taxpayer advocates and business representatives to draft tax code changes, which are then forwarded to the Municipal Tax Code Commission for approval. Once the Commission approves the changes to the Model code, they are presented to each City Council.

On February 8, 2008, the Municipal Tax Code Commission approved three changes to conform the Model City Tax Code to the Arizona Revised Statutes (A.R.S.). Changes included in this package are an exemption for Solar Energy Devices; an exemption for Architectural and Engineering Fees included in a construction contract; and a clarification to the definition of "Out-of-State Sale." All of the changes apply prospectively, with an effective date of July 1, 2008. Accordingly, there are no related refunds anticipated with these changes.

Solar Energy Devices

In 2005, the Legislature approved a privilege tax exemption for "Solar Energy Devices," with the hope that exemption would spur increased deployment of such devices, reducing the demand for electricity throughout the State. These changes bring the City code into conformity with State statute, allowing a new exemption for the sale or provision and installation of "Solar Energy Devices" under the Retail and Construction Contracting classifications. The exemption includes devices that provide passive day lighting while restricting heat transfer, devices that generate electrical power by capturing solar energy or wind power, and also passive heat storage systems, such as the use of a Trombe wall in construction. Specific tax code changes are as follows:

- **Section 100:** Definitions added for "Solar Daylighting" and "Solar Energy Device."
  The new language is identical to A.R.S. 42-5001(14) & (15).
- **Sections 415(b)(11), 416(c)(2)(C), and 417(c)(2)(C):** New subsections are added to create the deduction for Solar Energy Devices under the Contracting classifications, with a sunset date of January 1, 2011 included.
  The new language is identical to A.R.S. 42-5075(B)(14).
- **Section 465(ll):** New subsection is added to create the deduction for sales of Solar Energy Devices under the Retail classification – no sunset date in this category.
  The new language is identical to A.R.S. 42-5061(N).

Architectural and Engineering Fees

These changes bring the City code into conformity with State statute, allowing a new exclusion for gross income related to the "direct costs" of architectural and engineering services included in a construction contract. Although "direct costs" are not clearly defined in statute, there have been cases that limit qualifying costs, and the Department of Revenue is preparing guidance on this issue that will also apply to the cities. This change is a simplification for the construction industry, where many contractors now provide both design and construction services for their clients. Under the existing code, exempting the design phase of such transactions is accomplished through the use of separate contracts and legal entities. This change will allow these firms to include all services in a single contract. Specific tax code changes are as follows:

- **Sections 415(a)(4), 416(b)(5), and 417(b):** New subsections are added to create the exclusion of gross income related "direct costs" of architectural and engineering services.
  The new language is identical to A.R.S. 42-5075(J).

"Out-of-State Sale" (OSS) Definition

For some time, taxpayer advocates have requested the removal of the "non-resident" requirement from this definition, on the basis that it may violate constitutional protections against the taxation of interstate commerce. One reason for keeping this clause related to cities that had adopted Model Option #1. MO #1 allowed an OSS exemption without requiring the order to be placed from outside the State. This effectively exempted sales to tourists and other "non-residents,"

even when the sales occurred entirely in the city. Chandler did not adopt MO #1. After lengthy debate, all affected cities agreed to eliminate Model Option #1, and also join the other cities and towns in removing the "non-resident" clause.

- **Section 100, "Out-of-State Sale":** The change eliminates subsection (2), which required the sale must be to a "non-resident" to qualify for the exemption.

FINANCIAL IMPLICATIONS: Although preliminary data provided by the Department of Revenue indicates that very few taxpayers have taken advantage of the Solar Energy Device deduction so far, it is anticipated that this activity will expand in the future. ADOR's claimed deduction estimates were loosely allocated based on population, so determining how much of this activity actually occurred in the City during the period is extremely difficult. However, even using the high end of the estimates, it is unlikely that this exemption would have resulted in a reduction of Contracting and Retail revenues greater than $8,000 during each of the past two years, had the deduction been in place during that period. This exemption may also have an adverse collateral impact on revenues from the Utilities classification one day. However, at this time there are too few devices in place that can efficiently replace traditional electrical generation to have any significant impact.

The exclusion for Architectural and Engineering Fees is not expected to have any impact on revenue. This change merely simplifies practices of the construction industry, by eliminating the need to segregate such fees from the remainder of the firm's construction activity. It is presumed that all current activity that qualifies for exclusion is likely being reported as an exempt professional service provided by an architectural/engineering firm. We are not aware of any firm that is currently paying tax to the City on such fees.

Changing the definition of "Out-of-State Sale" will have no impact on revenue.

PROPOSED MOTION: Move to introduce and tentatively approve Ordinance No. 4011 of the City Council of the City of Chandler, Arizona, amending Sections 62-100, 62-415, 62-416, 62-417, and 62-465 of Chapter 62, Code of the City of Chandler, and establishing an effective date thereof, relating to conforming changes to the Chandler Tax Code.

LG w/attachment

ORDINANCE NO. 4001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTIONS 62-100, 62-415, 62-416, 62-417, AND 62-465 OF CHAPTER 62, CODE OF THE CITY OF CHANDLER, AND ESTABLISHING EFFECTIVE DATES THEREOF, RELATING TO CONFORMING CHANGES TO THE CHANDLER TAX CODE.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, that the Code of the City of Chandler is hereby amended as follows:

SECTION I. That Section 62-100 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as office, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road,

railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

"Equivalent Excise Tax" means either:

(c) A Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or

(d) An excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or

(e) An excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Jet Fuel" means jet fuel as defined in A.R.S. Section 42-5351.

"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 62-432 for such use. This definition shall not include:

(1) Janitorial equipment and supplies,

(2) Office equipment, office furniture, and office supplies,

(3) Motor vehicles licensed for use upon the highways of the State.

"Modifier" means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) Transference of title and possession occur without the City; and

(2) The stock from which such personal property was taken was not within the corporate limits of the City; and

(3) The order is received at a permanent business location of the seller located outside the City, which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) The order is placed from without the State of Arizona; and

~~(2)The order is placed by other than a resident of the State to be determined in a manner similar to "resides within the City"; and~~

~~(3)~~(2) The property is delivered to the buyer at a location outside the State; and

~~(4)~~(3) The property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

(1) Any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.

(2) Insulin, insulin syringes, and glucose test strips sold with or without a prescription.

(3) Hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

(4) Drugs or medicine, including oxygen.

(5) Equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, or dialysis machine.

(6) Durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

"Qualifying Community Health Center"

(1) Means an entity that is recognized as nonprofit under 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(A) The sole provider of primary care in the community.

(B) A non-hospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(2) Includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty per cent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department Of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

(1) A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(2) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(3) A hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.

(4) A facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

"Receipt (of Notice) by the Taxpayer" means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

"Remediation" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, non-opportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

"Rental Equipment" means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

(1) The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(2) The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Rental Supply" means an expendable or non-expendable repair or replacement part sold to become part of "rental equipment", provided that:

(1) The documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and

(2) The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and

(3) The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Repairer" means a person who restores or renews products, wares, or articles of manufacture.

"Resides within the City" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"SOLAR DAYLIGHTING" MEANS A DEVICE THAT IS SPECIFICALLY DESIGNED TO CAPTURE AND REDIRECT THE VISIBLE PORTION OF THE SOLAR BEAM, WHILE CONTROLLING THE INFRARED PORTION, FOR USE IN ILLUMINATING INTERIOR BUILDING SPACES IN LIEU OF ARTIFICIAL LIGHTING.

"SOLAR ENERGY DEVICE" MEANS A SYSTEM OR SERIES OF MECHANISMS DESIGNED PRIMARILY TO PROVIDE HEATING, TO PROVIDE COOLING, TO PRODUCE ELECTRICAL POWER, TO PRODUCE MECHANICAL POWER, TO PROVIDE SOLAR DAYLIGHTING OR TO PROVIDE ANY COMBINATION OF THE FOREGOING BY MEANS OF COLLECTING AND TRANSFERRING SOLAR GENERATED ENERGY INTO SUCH USES EITHER BY ACTIVE OR PASSIVE MEANS, INCLUDING WIND GENERATOR SYSTEMS THAT PRODUCE ELECTRICITY. SOLAR ENERGY SYSTEMS MAY ALSO HAVE THE CAPABILITY OF STORING SOLAR ENERGY FOR FUTURE USE. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNED AS A SOLAR ENERGY DEVICE, SUCH AS A TROMBE WALL, AND NOT MERELY AS A PART OF A NORMAL STRUCTURE, SUCH AS A WINDOW.

"Speculative Builder" means either:

(1) An owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 62-416) consisting of:

(A) Custom, model, or inventory homes, regardless of the stage of completion of such homes; or

(B) Improved residential or commercial lots without a structure; or

(2) An owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:

(A) Prior to completion; or

(B) Before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

"Substantially Complete" means the construction contracting or reconstruction contracting:

(1) Has passed final inspection or its equivalent; or

(2) Certificate of occupancy or its equivalent has been issued; or

(3) Is ready for immediate occupancy or use.

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

"Tax Collector" means the Management Services Director or his designee or agent for all purposes under this Chapter.

"Taxpayer" means any person liable for any tax under this Chapter.

"Taxpayer Problem Resolution Officer" means the individual designated by the City to perform the duties identified in Sections 62-515 and 62-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or rate-payers.

SECTION II. That Section 62-415 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-415. Construction contracting: construction contractors.

(a) The tax rate shall be at an amount equal to one and one-half percent (1.5%) 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 62-427.

(4) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

(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 62-465, subsections (g) and (p)

(B) Section 62-660, subsections (g) and (p) 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 62-110, that is deducted from the retail classification pursuant to Section 62-465(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 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 clean rooms that are deducted from the tax base of the retail classification pursuant to Section 62-465, 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.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(A) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, subsection D.

(B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.

(C) Any other information considered to be necessary.

(10) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(11) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(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 III. That Section 62-416 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-416. Construction contracting: speculative builders.

(a) The tax shall be equal to one and one-half percent (1.5%) 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 the 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.

(5) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

(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 62-465, subsections (g) and (p)

(ii) Section 62-660, subsections (g) and (p)

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 clean rooms that are deducted from the tax base of the retail classification pursuant to Section 62-465, 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.

(E) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(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 the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 62-110, that is deducted from the retail classification pursuant to Section 62-465(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 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.

(C) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR

ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(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 IV. That Section 62-417 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-417. 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 one and one-half percent (1.5%) 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 62-415(c)(2); and

(2) The purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

~~(b)~~(c) 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 62-465, subsections (g) and (p)

(ii) Section 62-660, subsections (g) and (p)

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 clean rooms that are deducted from the tax base of the retail classification pursuant to Section 62-465, 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.

(E) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(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 the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 62-110, that is deducted from the retail classification pursuant to Section 62-465(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 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.

(C) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(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)~~(d) 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 62-540, will be based on reportable date.

~~(d)~~(e) (Reserved)

SECTION V. That Section 62-465 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 62-460:

(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 62-455 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) Sales of the following to 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 milk cows, breeding bulls, laying hens, riding or work horses.

(4) (Reserved)

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) 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. §§ 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 62-100 and Regulation 62-100.5.

(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)(49) 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 62-470, 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 62-470 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. Section 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. Section 49-426 or Section 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 62-444 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) Sales of motor vehicles that use alternative fuel 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.

(ll) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, SALES OF SOLAR ENERGY DEVICES. THE RETAILER SHALL REGISTER WITH THE

DEPARTMENT OF REVENUE AS A SOLAR ENERGY RETAILER. BY REGISTERING, THE RETAILER ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

SECTION VI. All provisions of this ordinance shall be effective from and after July 1, 2008.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this 28th day of February, 2008.

ATTEST:

CITY CLERK MAYOR

PASSED AND ADOPTED by the Mayor and Council of the City of Chandler, Arizona, this 13th day of March, 2008.

ATTEST:

CITY CLERK MAYOR

Approved As To Form:

CITY ATTORNEY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4011 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 13th day of March, 2008, and that a quorum was present thereat.

CITY CLERK

Published: