



Chandler · Arizona
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MEMORANDUM

Management Services Memo No. 10-001

DATE: JULY 30, 2009

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
RICH DLUGAS, ASSISTANT CITY MANAGER
DENNIS STRACHOTA, MANAGEMENT SERVICES DIRECTOR
DAWN LANG, ASSISTANT DIRECTOR FOR FINANCE
SANDI RODENBECK, TAX & LICENSE MANAGER

FROM: LEE GRAFSTROM, TAX AUDIT SUPERVISOR

SUBJECT: REQUEST FOR INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4159

RECOMMENDATION: Staff recommends introduction and tentative approval of Ordinance No. 4159 of the City Council of the City of Chandler, Arizona, amending Sections 62-415, 62-416, 62-417, 62-450, 62-570, and Regulation 62-350.3 of Chapter 62, Code of the City of Chandler, and establishing effective dates thereof, relating to conforming changes to the Chandler Tax Code.

DISCUSSION: Arizona allows incorporated cities and towns to have a separate tax base for their transaction privilege tax (TPT), more commonly referred to as sales tax. Arizona's Model City Tax Code (MCTC) is the document that standardizes which taxes a municipality can choose to levy, however the state does preempt cities and towns from taxing certain activities and transactions. Any changes to the MCTC must be approved by the Municipal Tax Code Commission (Commission), and all municipalities that have adopted the code must adopt approved changes. The Commission is comprised of nine mayors or city council members appointed by the Governor, Senate President, and Speaker of the House, along with the Director of the Department of Revenue, as an ex-officio member.

The MCTC was created in response to concerns about differences in local transaction privilege tax codes and the resulting compliance difficulties. The MCTC provides uniformity while at the same time retaining the right of individual municipalities to determine which activities are taxed and exemptions granted, thereby leaving the determination of the local sales tax base up to the individual city or town council. Municipalities also determine their own tax rates for different taxable activities. Chandler's tax rates are set by a majority vote of the Mayor and Council.

Each city can choose which activities are taxable under the MCTC; however, if they choose to tax a particular activity, then it must be done in accordance with the MCTC. The code itself consists of standard language, often referred to as “model” language, along with two groups of options, Local Options and Model Options. The options provide alternative language for a particular code section that any city or town can choose to incorporate in place of model language. Generally, Local Options add or substitute language in a given section, while Model Options remove model language from a section. The options give each city an opportunity to fine-tune the tax code for their unique economic environment.

The final piece of the Model City Tax Code is a collection of city-based exceptions that are referred to as “green page” items. A green page item replaces an existing Model section with language that applies only to that specific city. Although common when the Model Code was first created, there has been considerable pressure by taxpayer advocates and the Legislature to eliminate these differences. Currently, there is a gentlemen’s agreement in place that effectively prohibits any city or town from bringing forward any new “green pages”.

Following each legislative session, Arizona cities and towns acting collectively through the Unified Audit Committee, 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. Any changes to the MCTC that are approved by the Commission must be adopted by the City Council, unless the change is a Local Option or Model Option, which the City may choose to select as they see fit.

On May 1, 2009, the Municipal Tax Code Commission approved several changes to the Model City Tax Code. The tax code changes included in this package are as follows:

Sections 1-3: These sections incorporate last year's legislative changes to A.R.S. 42-6004, modifying the Development Fee exemption found in MCTC Sections 415, 416, and 417. These changes serve to clarify the exemptions, and are the result of a cooperative effort between the UAC and taxpayer advocates to craft language that was administratively workable without altering the legislative intent of the original exemption. These sections have a retroactive effective date of September 1, 2006 to coincide with the original exemption.

Section 4: This is a technical correction, adding the exemption for Solar Energy devices to Section 450, Rental of Tangible Personal Property, allowing for the exempt leasing of solar energy devices. This section was inadvertently left out when the same exemption was added to the Contracting, Retail, and Use tax activities last year. This change has a retroactive effective date of July 1, 2008 to align it with the other matching exemptions.

Section 5: This change adds language to Section 570 allowing the Tax Collector to provide additional extensions of time for a taxpayer to file a protest. This simply codifies a long-standing practice of allowing taxpayers that are making the effort to comply, reasonable additional time to provide information before going to hearing. This section has a retroactive effective date of July 1, 2008 to align it with Sections 4 and 6 for ease of ordinance preparation.

Section 6: This is also a technical correction, removing the reference to residency requirements in Regulation 350.3 that was overlooked when similar language was removed from the definition of "Out-of-State sales" in Section 100 last year. This change is also retroactive to July 1, 2008 to align it with the original definition change.

FINANCIAL IMPLICATIONS: The exemption of Development Fees from the tax base for Contracting has not resulted in a significant reduction in revenue, primarily because there have been so few new building permits issued since enactment. We have processed numerous refund claims for this exemption, however, given the retroactive effective date, there have been far fewer claims than originally anticipated. While these exemptions do have an adverse impact on revenue, that impact is negligible given the broader drop off in Contracting.

Preliminary data provided by the Department of Revenue indicates that very few taxpayers have taken advantage of the Solar Energy Device deduction in any tax category, however it is anticipated that this activity is likely to expand in the future. Looking at the past three years and using even the highest activity estimates, this exemption would not have resulted in a reduction of Contracting or Retail revenues greater than \$8,000 during any year. Given the expense of these systems, a form of rental/financing plan is becoming a more common method of acquiring one. We have heard that some potential vendors are waiting for local adoption of the exemption in the Rental activity before moving forward, so we may see an increase in activity after adoption. 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 change to protest procedures and the definition correction will have no impact on revenue.

PROPOSED MOTION: Move to introduce and tentatively approve Ordinance No. 4159 of the City Council of the City of Chandler, Arizona, amending Sections 62-415, 62-416, 62-417, 62-450, 62-570, and Regulation 62-350.3 of Chapter 62, Code of the City of Chandler, and establishing effective dates thereof, relating to conforming changes to the Chandler Tax Code.

ORDINANCE NO. 4159

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTIONS 62-415, 62-416, 62-417, 62-450, 62-570, AND REGULATION 62-350.3 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 62-415 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.~~ ANY AMOUNT ATTRIBUTABLE TO DEVELOPMENT FEES THAT ARE INCURRED IN RELATION TO THE CONSTRUCTION, DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY AND PAID BY THE TAXPAYER AS DEFINED IN THE MODEL CITY TAX CODE OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER. FOR THE PURPOSES OF THIS PARAGRAPH:
- (A) THE ATTRIBUTABLE AMOUNT SHALL NOT EXCEED THE VALUE OF THE DEVELOPMENT FEES ACTUALLY IMPOSED.
- (B) THE ATTRIBUTABLE AMOUNT IS EQUAL TO THE TOTAL AMOUNT OF DEVELOPMENT FEES PAID BY THE TAXPAYER OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER AND THE TOTAL DEVELOPMENT FEES CREDITED IN EXCHANGE FOR THE CONSTRUCTION OF, CONTRIBUTION TO OR DEDICATION OF REAL PROPERTY FOR PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES NECESSARY TO THE DEVELOPMENT. THE REAL PROPERTY MUST BE THE SUBJECT OF THE DEVELOPMENT FEES.
- (C) "DEVELOPMENT FEES" MEANS FEES IMPOSED TO OFFSET CAPITAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES TO A DEVELOPMENT AND AUTHORIZED PURSUANT TO SECTION 9-463.05, SECTION 11-1102 OR TITLE 48 REGARDLESS OF THE JURISDICTION TO WHICH THE FEES ARE PAID.
- (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 II. 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.~~ ANY AMOUNT ATTRIBUTABLE TO DEVELOPMENT FEES THAT ARE INCURRED IN RELATION TO THE CONSTRUCTION, DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY AND PAID BY THE TAXPAYER AS DEFINED IN THE MODEL CITY TAX CODE OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER SHALL BE EXEMPT FROM THE TAX IMPOSED UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH:
- (i) THE ATTRIBUTABLE AMOUNT SHALL NOT EXCEED THE VALUE OF THE DEVELOPMENT FEES ACTUALLY IMPOSED.
- (ii) THE ATTRIBUTABLE AMOUNT IS EQUAL TO THE TOTAL AMOUNT OF DEVELOPMENT FEES PAID BY THE TAXPAYER OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER AND THE TOTAL DEVELOPMENT FEES CREDITED IN EXCHANGE FOR THE CONSTRUCTION OF, CONTRIBUTION TO OR DEDICATION OF REAL PROPERTY FOR PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES NECESSARY TO THE DEVELOPMENT. THE REAL PROPERTY MUST BE THE SUBJECT OF THE DEVELOPMENT FEES.
- (iii) "DEVELOPMENT FEES" MEANS FEES IMPOSED TO OFFSET CAPITAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES TO A DEVELOPMENT AND AUTHORIZED PURSUANT TO SECTION 9-463.05, SECTION 11-1102 OR TITLE 48 REGARDLESS OF THE JURISDICTION TO WHICH THE FEES ARE PAID.
- (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 III. 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.
- (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.~~ ANY AMOUNT ATTRIBUTABLE TO DEVELOPMENT FEES THAT ARE INCURRED IN RELATION TO THE CONSTRUCTION, DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY AND PAID BY THE TAXPAYER AS DEFINED IN THE MODEL CITY TAX CODE OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER SHALL BE EXEMPT FROM THE TAX IMPOSED UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH:

(i) THE ATTRIBUTABLE AMOUNT SHALL NOT EXCEED THE VALUE OF THE DEVELOPMENT FEES ACTUALLY IMPOSED.

(ii) THE ATTRIBUTABLE AMOUNT IS EQUAL TO THE TOTAL AMOUNT OF DEVELOPMENT FEES PAID BY THE TAXPAYER OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER AND THE TOTAL DEVELOPMENT FEES CREDITED IN EXCHANGE FOR THE CONSTRUCTION OF, CONTRIBUTION TO OR DEDICATION OF REAL PROPERTY FOR PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES NECESSARY TO THE DEVELOPMENT. THE REAL PROPERTY MUST BE THE SUBJECT OF THE DEVELOPMENT FEES.

(iii) "DEVELOPMENT FEES" MEANS FEES IMPOSED TO OFFSET CAPITAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES TO A DEVELOPMENT AND AUTHORIZED PURSUANT TO SECTION 9-463.05, SECTION 11-1102 OR TITLE 48 REGARDLESS OF THE JURISDICTION TO WHICH THE FEES ARE PAID.

(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.
- (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.
- (e) (Reserved)

SECTION IV. That Section 62-450 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-450. Rental, leasing, and licensing for use of tangible personal property.

- (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 activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.
- (b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
- (c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:
 - (1) Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
 - (2) Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
 - (3) Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 62-410, or to a radio station, television station, or subscription television system.
 - (4) Rental, leasing, or licensing for use of the following:
 - (A) Prosthetics,
 - (B) Income-producing capital equipment,
 - (C) Mining and metallurgical supplies.These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.
 - (5) Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

- (6) Separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
- (7) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) (Reserved)
- (9) Rental, leasing or licensing of aircraft that would qualify as aircraft acquired for use outside the state, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) Rental, leasing and licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (11) RENTAL, LEASING, AND LICENSING FOR USE OF SOLAR ENERGY DEVICES, FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008. THE LESSOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY RETAILER. BY REGISTERING, THE LESSOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO LEASES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND CITY, AS APPLICABLE, FOR EXAMINATION.

SECTION V. That Section 62-570 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Sec. 62-570. Administrative review; petition for hearing or for redetermination; finality of order.

For the purpose of this section, "Municipal Tax Hearing Office" means the administrative offices of the Municipal Tax Hearing Officer.

- (a) Informal Conference. A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.
- (b) Administrative Review.
 - (1) Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:
 - (A) Within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit has been denied; or
 - (B) By voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment; or

- (C) By petition accompanying a timely filed return contesting an amount reported but not paid; or
 - (D) By petition requesting review of denial of waiver of penalty as provided in subsection 62-540(g).
- (2) Extension to file a petition. In all cases, the taxpayer may request ~~only one (1) AN~~ extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay ~~and time of delay requested~~, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow A FORTY-FIVE (45) DAY such extension to file a petition; when such written request has been properly and timely made by the taxpayer, ~~but such extension shall not exceed forty five (45) days beyond the time provided for originally filing a petition.~~ THE TAX COLLECTOR MAY GRANT AN ADDITIONAL EXTENSION AND MAY DETERMINE THE CORRESPONDING TIME OF ANY SUCH EXTENSION AT HIS SOLE DISCRETION.
- (3) Requirements for petition.
- (A) The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted, and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.
 - (B) The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.
 - (C) The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under the Section.
- (4) Transmittal to Hearing Officer. The city/town shall designate a Hearing Officer, who may be other than an employee of the City. The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Officer within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Municipal Tax Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition.
- (5) Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in

the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same.

- (6) Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.
 - (7) Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.
 - (8) Notice of refund or adjusted assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision.
- (c) Stipulations that future tax is also protested. A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income.
- (d) When an assessment is final.
- (1) If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by subsection (b) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due and any tax, interest, or penalty determined to be due shall be final as provided in subsections 62-545(a) and 62-555(f).
 - (2) The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by subsection (b)(8) above, unless the taxpayer appeals the order or decision in the manner provided in Section 62-575.
- (e) (Reserved)

SECTION VI. That Regulation 62-350.3 of Chapter 62, Code of the City of Chandler is hereby amended as follows:

Reg. 62-350.3. Recordkeeping: out-of-City and out-of-State sales.

- (a) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.
- (b) Out-of-State Sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:

- (1) Documentation of location of the buyer at the time of order placement; and
- ~~(2) Documentation of residency of the buyer, determined in the manner one determines if a person "resides within the City"; and~~
- ~~(3)~~(2) Shipping, delivery, or freight documents showing where the buyer took delivery; and
- ~~(4)~~(3) Documentation of intended location of use or storage of the tangible personal property sold to such buyer.

SECTION VII. Provisions of Sections I, II, and III of this ordinance shall be effective from and after September 1, 2006. Provisions of Sections IV, V, and VI 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 30th day of July, 2009.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and Council of the City of Chandler, Arizona, this 13th day of August, 2009.

ATTEST:

CITY CLERK

MAYOR

Approved As To Form:

CITY ATTORNEY



CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4159 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 August, 2009, and that a quorum was present thereat.

CITY CLERK

Published: