

ORDINANCE NO. 5190

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO TRANSACTION PRIVILEGE TAXES; AMENDING MESA PRIVILEGE AND EXCISE TAX CODE SECTIONS 5-10-100, 5-10-200, 5-10-445, 5-10-465, 5-10-480, 5-10-485, AND 5-10-660; PROVIDING FOR EFFECTIVE DATES THEREOF.

WHEREAS, by Resolution No. 5831 the Mayor and Council of the City of Mesa adopted the Model City Tax Code as Mesa City Code Title 5, Chapter 10 "Chapter 10 Privilege and Excise Taxes"; and

WHEREAS, the Municipal Tax Code Commission voted to amend the Model City Tax Code on January 11, 2013, March 29, 2013, and May 24, 2013 by amending Sections 5-10-100, 5-10-200, 5-10-445, 5-10-465, 5-10-480, 5-10-485, and 5-10-660; and

WHEREAS, the Mayor and Council of the City of Mesa desire to codify the aforementioned amendments to the Model City Tax Code by amending the Mesa City Code Title 5, Chapter 10.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Text written in **BOLD ALL CAPS** indicates new language.
~~Strikethrough~~ fonts indicate deletions.

SECTION 1. Mesa City Code Sections 5-10-200, 5-10-465 Subsections (X), (GG), (NN), (OO), (PP), (QQ), and (RR), and 5-10-660 Subsections (X), (GG), (NN), (OO), (PP), (QQ), and (RR), are amended to read as follows:

5-10-200: DETERMINATION OF GROSS INCOME; IN GENERAL:

(D) FOR THE PURPOSES OF THIS CHAPTER THE TOTAL AMOUNT OF GROSS INCOME, GROSS RECEIPTS OR GROSS PROCEEDS OF SALES FOR NUCLEAR FUEL SHALL BE DEEMED TO BE THE VALUE OF THE PURCHASE PRICE OF URANIUM OXIDE USED IN PRODUCING THE FUEL. THE TAX IMPOSED BY THIS CHAPTER MAY BE IMPOSED ONLY ONCE FOR ANY ONE QUANTITY OR BATCH OF NUCLEAR FUEL REGARDLESS OF THE NUMBER OF TRANSACTIONS OR FINANCING ARRANGEMENTS WHICH MAY OCCUR WITH RESPECT TO THAT NUCLEAR FUEL.

5-10-465: RETAIL SALES; EXEMPTIONS:

Income derived from the following sources is exempt from the tax imposed by Section 5-10-460:

(X) ~~(Reserved)~~ SALES OF FOOD AND DRINK TO A PERSON WHO IS ENGAGED IN BUSINESS THAT IS CLASSIFIED UNDER THE RESTAURANT CLASSIFICATION AND THAT PROVIDES SUCH FOOD AND DRINK WITHOUT MONETARY CHARGE

TO ITS EMPLOYEES FOR THEIR OWN CONSUMPTION ON THE PREMISES DURING SUCH EMPLOYEES' HOURS OF EMPLOYMENT.

- (GG) Food, beverages, condiments and accessories to a public educational entity pursuant to any of the provisions of Title 15, Arizona Revised Statutes, **INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 15-802**; 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.
- (NN) **SALES OF MAGAZINES OR OTHER PERIODICALS OR OTHER PUBLICATIONS BY THIS STATE TO ENCOURAGE TOURIST TRAVEL.**
- (OO) **SALES OF PAPER MACHINE CLOTHING, SUCH AS FORMING FABRICS AND DRYER FELTS, SOLD TO A PAPER MANUFACTURER AND DIRECTLY USED OR CONSUMED IN PAPER MANUFACTURING.**
- (PP) **SALES OF OVERHEAD MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS USED IN PERFORMING A CONTRACT BETWEEN THE UNITED STATES GOVERNMENT AND A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, INCLUDING PROPERTY USED IN PERFORMING A SUBCONTRACT WITH A GOVERNMENT CONTRACTOR WHO IS A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, TO WHICH TITLE PASSES TO THE GOVERNMENT UNDER THE TERMS OF THE CONTRACT OR SUBCONTRACT.**
- (QQ) **SALES OF COAL, PETROLEUM, COKE, NATURAL GAS, VIRGIN FUEL OIL AND ELECTRICITY SOLD TO A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR AS DEFINED IN A.R.S. SECTION 41-1514.02 AND DIRECTLY USED OR CONSUMED IN THE GENERATION OR PROVISION OF ON-SITE POWER OR ENERGY SOLELY FOR ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING OR ENVIRONMENTAL PROTECTION. THIS PARAGRAPH SHALL APPLY FOR TWENTY FULL CONSECUTIVE CALENDAR OR FISCAL YEARS FROM THE DATE THE FIRST PAPER MANUFACTURING MACHINE IS PLACED IN SERVICE. IN THE CASE OF AN ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR WHO DOES NOT MANUFACTURE PAPER, THE TIME PERIOD SHALL BEGIN WITH THE DATE THE FIRST MANUFACTURING, PROCESSING OR PRODUCTION EQUIPMENT IS PLACED IN SERVICE.**
- (RR) **SALES OR GROSS INCOME DERIVED FROM SALES OF MACHINERY, EQUIPMENT, MATERIALS AND OTHER TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY TO CONSTRUCT A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING FACILITY AS DESCRIBED IN A.R.S. SECTION 41-1514.02. THIS**

SUBSECTION APPLIES FOR TEN FULL CONSECUTIVE CALENDAR OR FISCAL YEARS AFTER THE START OF INITIAL CONSTRUCTION.

5-10-660: USE TAX; EXEMPTIONS:

The storage or use in this City of the following tangible personal property is from the use tax imposed by this Article:

- (X) ~~(Reserved)~~ SALES OF FOOD AND DRINK TO A PERSON WHO IS ENGAGED IN BUSINESS THAT IS CLASSIFIED UNDER THE RESTAURANT CLASSIFICATION AND THAT PROVIDES SUCH FOOD AND DRINK WITHOUT MONETARY CHARGE TO ITS EMPLOYEES FOR THEIR OWN CONSUMPTION ON THE PREMISES DURING SUCH EMPLOYEES' HOURS OF EMPLOYMENT.
- (GG) Food, beverages, condiments and accessories to a public educational entity pursuant to any of the provisions of Title 15, Arizona Revised Statutes, INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 15-802; 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.
- (NN) SALES OF MAGAZINES OR OTHER PERIODICALS OR OTHER PUBLICATIONS BY THIS STATE TO ENCOURAGE TOURIST TRAVEL.
- (OO) SALES OF PAPER MACHINE CLOTHING, SUCH AS FORMING FABRICS AND DRYER FELTS, SOLD TO A PAPER MANUFACTURER AND DIRECTLY USED OR CONSUMED IN PAPER MANUFACTURING.
- (PP) SALES OF OVERHEAD MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS USED IN PERFORMING A CONTRACT BETWEEN THE UNITED STATES GOVERNMENT AND A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, INCLUDING PROPERTY USED IN PERFORMING A SUBCONTRACT WITH A GOVERNMENT CONTRACTOR WHO IS A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, TO WHICH TITLE PASSES TO THE GOVERNMENT UNDER THE TERMS OF THE CONTRACT OR SUBCONTRACT.
- (QQ) SALES OF COAL, PETROLEUM, COKE, NATURAL GAS, VIRGIN FUEL OIL AND ELECTRICITY SOLD TO A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR AS DEFINED IN A.R.S. SECTION 41-1514.02 AND DIRECTLY USED OR CONSUMED IN THE GENERATION OR PROVISION OF ON-SITE POWER OR ENERGY SOLELY FOR ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING OR ENVIRONMENTAL PROTECTION. THIS PARAGRAPH SHALL APPLY FOR TWENTY FULL CONSECUTIVE CALENDAR OR FISCAL YEARS FROM THE DATE THE FIRST PAPER MANUFACTURING MACHINE IS PLACED IN SERVICE. IN THE CASE OF AN ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER

OR PROCESSOR WHO DOES NOT MANUFACTURE PAPER, THE TIME PERIOD SHALL BEGIN WITH THE DATE THE FIRST MANUFACTURING, PROCESSING OR PRODUCTION EQUIPMENT IS PLACED IN SERVICE.

(RR) SALES OR GROSS INCOME DERIVED FROM SALES OF MACHINERY, EQUIPMENT, MATERIALS AND OTHER TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY TO CONSTRUCT A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING FACILITY AS DESCRIBED IN A.R.S. SECTION 41-1514.02. THIS SUBSECTION APPLIES FOR TEN FULL CONSECUTIVE CALENDAR OR FISCAL YEARS AFTER THE START OF INITIAL CONSTRUCTION.

SECTION 2. Mesa City Code Sections 5-10-100, 5-10-465 Subsection (MM), 5-10-660 Subsection (MM), and 5-10-480 Subsection (I), are amended to read as follows:

5-10-100: GENERAL DEFINITIONS:

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

Business: INCLUDES all activities or acts, personal or corporate, engaged in **OR** caused to be engaged in with the object of gain, benefit, or advantage, either directLY or indirectLY, but **DOES** not **INCLUDE EITHER:** casual activities or sales; **OR THE TRANSFER OF ELECTRICITY FROM A SOLAR PHOTOVOLTAIC GENERATION SYSTEM TO AN ELECTRIC UTILITY DISTRIBUTION SYSTEM.**

5-10-465: RETAIL SALES; EXEMPTIONS:

Income derived from the following sources is exempt from the tax imposed by Section 5-10-460:

(MM) SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.

5-10-660: USE TAX; EXEMPTIONS:

The storage or use in this City of the following tangible personal property is from the use tax imposed by this Article:

(MM) SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE

**KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES
DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.**

5-10-480: UTILITY SERVICES:

- (I) **THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.**

SECTION 3. The Mesa City Code Section 5-10-100 is amended to read as follows:

5-10-100: GENERAL DEFINITIONS:

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

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:

7. ~~Under no circumstances shall "prosthetic" include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person.~~ **ORTHODONTIC DEVICES DISPENSED BY A DENTAL PROFESSIONAL WHO IS LICENSED UNDER TITLE 32, CHAPTER 11 TO A PATIENT AS PART OF THE PRACTICE OF DENTISTRY.**
8. **UNDER NO CIRCUMSTANCES SHALL "PROSTHETIC" INCLUDE MEDICAL MARIJUANA REGARDLESS OF WHETHER IT IS SOLD OR DISPENSED PURSUANT TO A PRESCRIPTION, RECOMMENDATION, OR WRITTEN CERTIFICATION BY ANY AUTHORIZED PERSON.**

SECTION 4. The Mesa City Code Section 5-10-445 Subsection (S) is amended to read as follows:

5-10-445: RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:

~~(S) The gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation. For the purposes of this paragraph:~~

- ~~1. "Affiliated Corporation" means a corporation that meets one of the following conditions:~~

- ~~(a) The corporation owns or controls at least eighty per cent of the lessor.~~
- ~~(b) The corporation is at least eighty per cent owned or controlled by the lessor.~~
- ~~(c) The corporation is at least eighty per cent owned or controlled by a corporation that also owns or controls at least eighty per cent of the lessor.~~
- ~~(d) The corporation is at least eighty per cent owned or controlled by a corporation that is at least eighty per cent owned or controlled by a reciprocal insurer.~~

~~2. For the purposes of Subsection (1), ownership and control are determined by reference to the voting shares of a corporation.~~

~~3. "Reciprocal Insurer" has the same meaning as prescribed in A.R.S. Section 20-762.~~

(S) LEASING REAL PROPERTY BETWEEN AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS. FOR THE PURPOSES OF THIS PARAGRAPH:

- 1. "AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS" MEANS THE LESSOR HOLDS A CONTROLLING INTEREST IN THE LESSEE, THE LESSEE HOLDS A CONTROLLING INTEREST IN THE LESSOR, AN AFFILIATED ENTITY HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND THE LESSEE OR AN UNRELATED PERSON HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND LESSEE.**
- 2. "CONTROLLING INTEREST" MEANS DIRECT OR INDIRECT OWNERSHIP OF AT LEAST EIGHTY PER CENT OF THE VOTING SHARES OF A CORPORATION OR OF THE INTERESTS IN A COMPANY, BUSINESS OR PERSON OTHER THAN A CORPORATION.**
- 3. "RECIPROCAL INSURER" HAS THE SAME MEANING PRESCRIBED IN A.R.S. SECTION 20-762.**

SECTION 5. The Mesa City Code Section 5-10-485 is amended to read as follows:

5-10-485: WASTEWATER REMOVAL SERVICES

(A) The tax rate shall be an amount equal to one and three-fourths percent (1.75%) of the gross income from the business activity upon every person engaging or continuing in the business of providing wastewater removal services ~~from premises, locations or facilities located within the city limits of Mesa~~ by means of sewer lines or similar pipelines. ~~TO:~~

- 1. CONSUMERS OR RATEPAYERS WHO RESIDE WITHIN THE CITY.**
- 2. CONSUMERS OR RATEPAYERS OF THIS CITY, WHETHER WITHIN THE CITY OR WITHOUT, TO THE EXTENT THAT THIS CITY PROVIDES SUCH PERSONS WASTEWATER REMOVAL SERVICES, EXCLUDING CONSUMERS OR RATEPAYERS WHO ARE RESIDENTS OF ANOTHER CITY OR TOWN WHICH LEVIES AN EQUIVALENT EXCISE TAX UPON THIS CITY FOR PROVIDING SUCH WASTEWATER REMOVAL SERVICES TO SUCH PERSONS.**

SECTION 6. Section 1 of this Ordinance shall be effective from and after July 1, 2013.

SECTION 7. Retroactive Effect. Section 2 of this Ordinance shall be effective from and after January 1, 2007.

SECTION 8. Retroactive Effect. Section 3 of this Ordinance shall be effective from and after October 1, 2007.

SECTION 9. Section 4 of this Ordinance shall be effective from and after July 1, 2013.

SECTION 10. Section 5 of this Ordinance shall be effective from and after July 1, 2013.

SECTION 11. That Title 10, Chapter 5 of the Mesa City Code, will remain in full force and effect, save and except as amended by this Ordinance.

SECTION 12. That the terms and provisions of this Ordinance are severable and if any section, subsection, sentence, clause, phrase or portion of this Ordinance, or any part of the Mesa City Code adopted herein by reference, is for any reason held to be invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in effect.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, This 28th day of October, 2013.

APPROVED:



Mayor

ATTEST:



City Clerk

