

2012 Amendments to the Model City Tax Code
Adopted by the Municipal Tax Code Commission on May 25, 2012

1 **Section I. Model City Tax Code Section 422, Local Option #LL is amended as follows to**
2 **correct an obsolete reference, with an effective date of July 20, 2011.**

3
4 **Sec. ____-422. (Reserved)**

5 **++(Local Option #LL:**

6 **Sec. ____-422. Jet fuel sales.**

7 (a) The tax rate shall be at an amount of _____ cents per gallon sold from the
8 business activity upon every person engaging or continuing in the business of selling jet
9 fuel.

10 (1) Gallons sold includes all gallons sold, bartered, exchanged, included as part
11 or whole of a trade-out, or similar transactions regardless of the type or form of
12 payment.

13 (2) For purposes of this section the following terms are substitutable in Articles III
14 and V of this chapter, and corresponding regulations:

15 (A) "gallons" for "gross income"

16 (B) "gallon(s)" for "amount(s)".

17 (b) The burden of proving that a sale of jet fuel is not a taxable sale shall be upon the
18 person who made the sale.

19 (c) ~~Except as provided in Section ____-567, w~~hen this city and another Arizona city or
20 town with an equivalent excise tax could claim nexus for taxing a jet fuel sale, the city or
21 town where the permanent business location of the seller at which the order was
22 received shall be deemed to have precedence, and for the purposes of this chapter such
23 city or town has sole and exclusive right to such tax.

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1 (d) The appropriate tax liability for any jet fuel sale where the order is received at a
2 permanent business location of the seller located in this city or in an Arizona city or town
3 that levies an equivalent excise tax shall be at the rate of the city or town of such seller's
4 location.

5 (e) Exemptions. Notwithstanding Section ___-400(d), the exemptions in Section ___-
6 465(a), (b) and (d) through (z) will apply to sales of jet fuel taxed under this Section.)++

7
8 **Section II. Model City Tax Code Section 425 is amended as follows to eliminate Local**
9 **Option #MM, which will no longer be used by any city or town, effective July 1, 2012.**

10
11 **Sec. ___-425. Job printing.**

12 (a) The tax rate shall be at an amount equal to _____ percent (___%) of the gross
13 income from the business activity upon every person engaging or continuing in the
14 business of job printing, which includes engraving of printing plates, embossing, copying,
15 micrographics, and photo reproduction.

16 (b) The tax imposed by this Section shall not apply to:

17 (1) job printing purchased for the purpose of resale by the purchaser in the form
18 supplied by the job printer.

19 (2) out-of-City sales.

20 (3) out-of-State sales.

21 ~~**~~((4) job printing of newspapers, magazines, or other periodicals or publications
22 for a person who is subject to the tax imposed by subsection ___-435(a) or an
23 equivalent excise tax; provided further that said person is properly licensed by
24 the taxing jurisdiction at the location of publication.

25 **Model Option #3:**

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1 (4) (Reserved)**

2 (5) sales of job printing to a qualifying hospital, qualifying community health
3 center or a qualifying health care organization, except when the property sold is
4 for use in activities resulting in gross income from unrelated business income as
5 that term is defined in 26 U.S.C. Section 512.

6 (6) (Reserved)

7 ~~++(Local Option #MM:~~

8 ~~(6) sales of job printing, engraving, embossing and copying for use outside this State if the~~
9 ~~materials are shipped or delivered out of this State regardless of where title to the materials~~
10 ~~passes or their free on board point.)++~~

11
12 **Section III. Model City Tax Code Section 445 is amended as follows to incorporate the**
13 **addition of new A.R.S. Section 42-6004(A)(12), with an effective date of July 20, 2011.**

14
15 **Sec. ____-445. Rental, leasing, and licensing for use of real property.**

16 (a) The tax rate shall be at an amount equal to _____ percent (____%) of the gross
17 income from the business activity upon every person engaging or continuing in the
18 business of leasing or renting real property located within the City for a consideration, to
19 the tenant in actual possession, or the licensing for use of real property to the final
20 licensee located within the City for a consideration including any improvements, rights,
21 or interest in such property; provided further that:

22 (1) Payments made by the lessee to, or on behalf of, the lessor for property
23 taxes, repairs, or improvements are considered to be part of the taxable gross
24 income.

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1 (2) Charges for such items as telecommunications, utilities, pet fees, or
2 maintenance are considered to be part of the taxable gross income.

3 (3) However, if the lessor engages in telecommunication activity, as evidenced
4 by installing individual metering equipment and by billing each tenant based upon
5 actual usage, such activity is taxable under Section ____-470.

6 (b) If individual utility meters have been installed for each tenant and the lessor
7 separately charges each single tenant for the exact billing from the utility company, such
8 charges are exempt.

9 (c) Charges by a qualifying hospital, qualifying community health center or a qualifying
10 health care organization to patients of such facilities for use of rooms or other real
11 property during the course of their treatment by such facilities are exempt.

12 (d) Charges for joint pole usage by a person engaged in the business of providing or
13 furnishing utility or telecommunication services to another person engaged in the
14 business of providing or furnishing utility or telecommunication services are exempt from
15 the tax imposed by this Section.

16 **(e) Exempt from the tax imposed by this Section is gross income derived from the
17 rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying
18 community health center or a qualifying health care organization, except when the
19 property so rented, leased, or licensed is for use in activities resulting in gross income
20 from unrelated business income as that term is defined in 26 U.S.C. Section 512.

21 **Model Option #4:**

22 (e) (Reserved) (Also See Peoria City Page)**

23 (f) A person who has less than three (3) apartments, houses, trailer spaces, or other
24 lodging spaces rented, leased or licensed or available for rent, lease, or license within
25 the State and no units of commercial property for rent, lease, or license within the State,

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1 is not deemed to be in the rental business, and is therefore exempt from the tax imposed
2 by this Section on such income. However, a person who has one (1) or more units of
3 commercial property is subject to the tax imposed by this Section on rental, lease and
4 license income from all such lodging spaces and commercial units of real estate even
5 though said person may have fewer than three (3) lodging spaces.

6 **** (Model Option #5A:**

7 (f) A person who has less than two (2) apartments, houses, trailer spaces, or other
8 lodging spaces rented, leased or licensed or available for rent, lease, or license within
9 the State and no units of commercial property for rent, lease, or license within the State,
10 is not deemed to be in the rental business, and is therefore exempt from the tax imposed
11 by this Section on such income. However, a person who has one (1) or more units of
12 commercial property is subject to the tax imposed by this Section on rental, lease and
13 license income from all such lodging spaces and commercial units of real estate even
14 though said person may have fewer than two (2) lodging spaces.)**

15 **OR**

16 **** (Model Option #5B:**

17 (f) (Reserved)**

18 (g) (Reserved)

19 **++ (Local Option #R:**

20 (g) Single-unit/single-tenant rental, leasing, or licensing. A person who has only one unit
21 of commercial property rented or available for rent, lease, or license shall be deemed not
22 to be in the business of rental, leasing, or licensing of real property, as provided by
23 Regulation, and further provided that both of the following conditions exist:

24 (1) such lessor has income from any other source; and

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1 (2) the scope and degree of rental activity clearly indicates that it is an
2 investment rather than a business activity of the lessor.)++

3 (h) (Reserved)

4 **++(Local Option #S:**

5 (h) Except as may be provided in another Section of this Chapter, the tax prescribed by
6 this Section shall not include gross income from the rental, leasing, or licensing of
7 lodging or lodging space to an individual who resides therein.

8 **OR**

9 (h) The tax prescribed by this Section shall not include gross income from the rental,
10 leasing, or licensing of lodging or lodging space to an individual who resides therein.)++

11 (i) (Reserved)

12 **++(Local Option #T:**

13 (i) Exempt from the tax imposed by this Section is gross income derived from the rental,
14 leasing, or licensing of real property to a corporation; provided that the lessor's
15 aggregate holdings in the lessee corporation amount to at least eighty percent (80%) of
16 the voting stock of the lessee corporation.)++

17 (j) Exempt from the tax imposed by this Section is gross income derived from the
18 activities taxable under Section ____-444 of this code.

19 **or**

20 (j) (Reserved) (See Glendale city page)

21 (k) (Reserved)

22 (l) (Reserved) ~~(See Chandler city page)~~

23 (m) (Reserved)

24 **++(Local Option #OO:**

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1 (m) Notwithstanding the other provisions of this section, the tax imposed by this section
2 does not apply to the rental, leasing or licensing for use of commercial property.)++

3 (n) Notwithstanding the provisions of Section ___-200(b), the fair market value of one (1)
4 apartment, in an apartment complex provided rent free to an employee of the apartment
5 complex is not subject to the tax imposed by this Section. For an apartment complex
6 with more than fifty (50) units, an additional apartment provided rent free to an employee
7 for every additional fifty (50) units is not subject to the tax imposed by this Section.

8 (o) Income derived from incarcerating or detaining prisoners who are under the
9 jurisdiction of the United States, this State or any other state or a political subdivision of
10 this State or of any other state in a privately operated prison, jail or detention facility is
11 exempt from the tax imposed by this Section.

12 (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis
13 facility to patients of such facilities for the use of rooms or other real property during the
14 course of their treatment by such facilities are exempt.

15 (q) Charges to patients receiving "personal care" or "directed care", by any licensed
16 assisted living facility, licensed assisted living center or licensed assisted living home as
17 defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9
18 of the Arizona Administrative Code are exempt.

19 (r) Income received from the rental of any "low-income unit" as established under
20 Section 42 of the Internal Revenue Code, including the low-income housing credit
21 provided by IRC Section 42, to the extent that the collection of tax on rental income
22 causes the "gross rent" defined by IRC Section 42 to exceed the income limitation for
23 the low-income unit is exempt. This exemption also applies to income received from the
24 rental of individual rental units subject to statutory or regulatory "low-income unit" rent
25 restrictions similar to IRC Section 42 to the extent that the collection of tax from the

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1 tenant causes the rental receipts to exceed a rent restriction for the low-income unit.

2 This subsection also applies to rent received by a person other than the owner or lessor
3 of the low-income unit, including a broker. This subsection does not apply unless a
4 taxpayer maintains the documentation to support the qualification of a unit as a low-
5 income unit, the "gross rent" limitation for the unit and the rent received from that unit.

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

9 (1) "Affiliated corporation" means a corporation that meets one of the following
10 conditions:

11 (A) The corporation owns or controls at least eighty per cent of the lessor.

12 (B) The corporation is at least eighty per cent owned or controlled by the
13 lessor.

14 (C) The corporation is at least eighty per cent owned or controlled by a
15 corporation that also owns or controls at least eighty per cent of the
16 lessor.

17 (D) The corporation is at least eighty per cent owned or controlled by a
18 corporation that is at least eighty per cent owned or controlled by a
19 reciprocal insurer.

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

22 (3) "Reciprocal insurer" has the same meaning as prescribed in A.R.S. Section
23 20-762.

24 (t) THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A
25 COMMERCIAL LEASE IN WHICH A CORPORATION LEASES REAL PROPERTY TO

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1 A CORPORATION OF WHICH AT LEAST EIGHTY PER CENT OF THE VOTING
2 SHARES OF EACH CORPORATION ARE OWNED BY THE SAME SHAREHOLDERS
3 IS EXEMPT.

4
5 **Section IV. Model City Tax Code, Appendix IV, Section 570 is amended as follows to**
6 **conform the Appendix language with prior changes made to Section 570 of the Model**
7 **language, with an effective date of July 1, 2008.**

8
9 **Sec. __-570. Administrative review; petition for hearing or for redetermination; finality of**
10 **order. (State Administration and Audits)**

11 (a) Closing agreements between the Tax Collector and a taxpayer have no force of law
12 unless made in accordance with the provisions of A.R.S. Section 42-1113.

13 (b) Administrative review.

14 (1) Petitions of appeal shall be made to, and hearings shall be conducted by, the
15 Arizona Department of Revenue, in accordance with the provisions of A.R.S.
16 Section 42-1251, as modified by Section __-571.

17 (2) (Reserved)

18 (3) (Reserved)

19 (4) (Reserved)

20 (5) Hearings shall be held by the Arizona Department of Revenue in accordance
21 with the provisions of A.R.S. Section 42-1251. The Department's decision may
22 be appealed to the State Board of Tax Appeals, in accordance with the
23 provisions of A.R.S. Section 42-1253.

24 (6) (Reserved)

25 (7) (Reserved)

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1 (8) (Reserved)

2 (c) (Reserved)

3 (d) (Reserved)

4 (e) Taxpayers shall be subject to the state taxpayer bill of rights (A.R.S. § 42-2051 et.
5 seq.).

6
7 **Sec. ____-570. Administrative review; petition for hearing or for redetermination; finality of**
8 **order. (Local Audits)**

9 For the purposes of this section, "Municipal Tax Hearing Office" means the administrative
10 offices of the ~~Municipal~~ MUNICIPAL Tax Hearing Officer.

11 (a) Informal Conference. A taxpayer shall have the right to discuss any proposed
12 assessment with the auditor prior to the issuance of any assessment, but any such
13 informal conference is not required for the taxpayer to file a petition for administrative
14 review.

15 (b) Administrative Review.

16 (1) Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer
17 may contest the applicability or amount of tax, penalty, or interest imposed upon
18 or paid by him pursuant to this Chapter by filing a petition for a hearing or for
19 redetermination with the Tax Collector as set forth below:

20 (A) within forty-five (45) days of receipt by the taxpayer of notice of a
21 determination by the Tax Collector that a tax, penalty, or interest amount
22 is due, or that a request for refund or credit has been denied; or

23 (B) by voluntary payment of any contested amount when accompanied by
24 a timely filed return and a petition requesting a refund of the protested
25 portion of said payment; or

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(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 ___-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 ~~such~~ A FORTY-FIVE (45) DAY 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

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1 reasonable period of time for the Tax Collector to review and respond to
2 the petition and to any written amendments.

3 (B) The taxpayer, as part of the petition, may request a hearing which
4 shall be granted by the Hearing Officer. If no request for hearing is made
5 the petition shall be considered to be submitted for decision by the
6 Hearing Officer on the matters contained in the petition and in any reply
7 made by the Tax Collector.

8 (C) The provisions of this Section are exclusive, and no petition seeking
9 any correction, abatement, or refund shall be considered unless the
10 petition is timely and properly filed under the Section.

11 (4) Transmittal to Hearing Officer. The city/town shall designate a Hearing
12 Officer, who may be other than an employee of the (city/town). The Tax
13 Collector, if designated to receive petitions, shall forward any petition to the
14 Municipal Tax Hearing Officer within twenty (20) days after receipt, accompanied
15 by documentation as to timeliness. In cases where the Hearing Officer
16 determines that the petition is not timely or not in proper form, he shall notify both
17 the taxpayer and the Tax Collector; and in cases of petitions not in proper form
18 only, the Hearing Officer shall provide the taxpayer with an extension up to forty-
19 five (45) days to correct the petition.

20 (5) Hearings shall be conducted by a Hearing Officer and shall be continuous
21 until the Hearing Officer closes the record. The taxpayer may be heard in person
22 or by his authorized representative at such hearing. Hearings shall be conducted
23 informally as to the order of proceeding and presentation of evidence. The
24 Hearing Officer shall admit evidence over hearsay objections where the offered
25 evidence has substantial probative value and reliability. Further, copies of

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

8 (6) Redeterminations upon a "petition for redetermination" shall follow the same
9 conditions, except that no oral hearing shall be held.

10 (7) Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not
11 later than forty-five (45) days after the close of the record by the Hearing Officer.

12 (8) Notice of Refund or Adjusted Assessment. Within sixty (60) days of the
13 issuance of the Hearing Officer's decision, the Tax Collector shall issue to the
14 taxpayer either a notice of refund or an adjusted assessment recalculated to
15 conform to the Hearing Officer's decision.

16 (c) Stipulations that future tax is also protested. A taxpayer may enter into a stipulation
17 with the Tax Collector that future taxes of similar nature are also at issue in any protest
18 or appeal. However, unless such stipulation is made, it is presumed that the protest or
19 appeal deals solely and exclusively with the tax specifically protested and no other.
20 When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of
21 similar nature will be included in any redetermination, hearing, or court case, it is the
22 burden of that taxpayer to identify, segregate, and keep record of such income or
23 protested taxable amount in his books and records in the same manner as the taxpayer
24 is required to segregate exempt income.

25 (d) When an assessment is final.

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1 (1) If a request for administrative review and petition for hearing or
2 redetermination of an assessment made by the Tax Collector is not filed
3 within the period required by subsection (b) above, such person shall be
4 deemed to have waived and abandoned the right to question the amount
5 determined to be due and any tax, interest, or penalty determined to be
6 due shall be final as provided in subsections ___-545(a) and ___-555(f).

7 (2) The decision made by the Hearing Officer upon administrative review
8 by hearing or redetermination shall become final thirty (30) days after the
9 taxpayer receives the notice of refund or adjusted assessment required
10 by subsection (b)(8) above, unless the taxpayer appeals the order or
11 decision in the manner provided in Section ___-575.

12 (e) The provisions of the state taxpayer bill of rights (A.R.S. Section 42-2051 et. seq.)
13 shall not apply.

14