
**ORDINANCE NO. 14-04**

**AN ORDINANCE OF THE CITY OF SOUTH TUCSON, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; APPLICATION FEE; AMENDING THE FEE SCHEDULE FOR RENTAL OF COMMERCIAL AND RESIDENTIAL PROPERTY; AMENDING AND ADDING NEW LANGUAGE AND DEFINITIONS, "FOOD FOR HOME CONSUMPTION" AND "UNIT"; AND ADDING NEW SECTION, 11-205, RETAIL SALES, FOOD FOR HOME CONSUMPTION TO CHAPTER 11 OF THE SOUTH TUCSON CITY CODE, ADOPTING "THE AUGUST 2014 AMENDMENTS TO CHAPTER 11 OF THE SOUTH TUCSON CITY CODE" AND REPEALING ALL RESOLUTIONS, ORDINANCES, RULES OF THE CITY OF SOUTH TUCSON IN CONFLICT THEREWITH AND DESIGNATING AN EFFECTIVE DATE;**

**WHEREAS**, the South Tucson City Code has been adopted by the City Council, amended from time to time; and

**WHEREAS**, Chapter 11 of the South Tucson City Code contains the Privilege Tax, Application Fee, Fee Schedule, which contains most of the City's fees; and

**WHEREAS**, the schedule undergoes review relative to the fees and the costs of providing services; and

**WHEREAS**, pursuant to A.R.S. § 9-499.15, on June 27, 2014, the Notice of City's Consideration to Assess New Fees, Increase Existing Fees, or Make Other Fee Changes was posted on the City's website notifying the public of possible fee increases; and

**WHEREAS**, on SEPTEMBER 4, 2014, the City Council discussed and considered said fee increases, giving opportunity for public comment on the proposed changes; and

**WHEREAS**, the City Council has determined that adoption of "THE AUGUST 2014 AMENDMENTS TO CHAPTER 11 OF THE SOUTH TUCSON CITY CODE" is in the best interests of the City and its residents; and

**BE IT ORDAINED** by the Mayor and Council of the City of South Tucson, Arizona, as follows:

**Section 1.** That certain document known as "THE AUGUST 2014 AMENDMENTS TO CHAPTER 11 OF THE SOUTH TUCSON CITY CODE," three copies of which are on file in the office of the City Clerk of the City of South Tucson, Arizona, which document was made a public record by South Tucson Resolution No. 14-24 of the City of South Tucson, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

**Section 2.** Chapter 11 of the South Tucson City Code is hereby amended as indicated in "THE AUGUST 2014 AMENDMENTS TO CHAPTER 11 OF THE SOUTH TUCSON CITY CODE;" with deleted language shown by ~~strikeout~~, and with added language shown in **underlined bold text and numbers**.

**Section 3.** Any portions of Chapter 11 of the South Tucson City Code not specifically amended by this Ordinance shall remain unchanged.

**Section 4.** All tables of contents shall be modified to reflect the changes set forth in this Ordinance.

**Section 5.** The various city officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance and sections of the City Code.

**Section 6.** All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Ordinance are hereby repealed, effective as of the date of this Ordinance. All internal reference within the city code to any affected provision are hereby updated.

**Section 7.** The provisions of this ordinance and the increase in tax rate provided herein shall become effective as follows:

| | |
|---|---|
| Application Fee: | September 1, 2014. |
| Rental of Commercial and Residential Property: | September 1, 2014 |
| Tax Rate changes | December 1, 2014 |

**Section 8.** Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor.

**Section 9.** If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the City of South Tucson, Arizona, this 28th day of August 4th September 2014.

Paul Diaz, Mayor

ATTEST:

Veronica B. Moreno, City Clerk

APPROVED AS TO FORM:

n/a

City Attorney

CERTIFICATION

I HEREBY CERTIFY THAT THE above and foregoing Ordinance No. 14-04 was duly passed by the Mayor and Council of the City of South Tucson, Arizona, at a special meeting held on September 4, 2014 and that a quorum was present there at.

Veronica B. Moreno
City Clerk

# AUGUST 2014 AMENDMENTS CHAPTER 11 OF THE SOUTH TUCSON CITY CODE

## 1. City Tax Code Amendments *(see attachment 1 for full revisions)*

The tax rate in each of the following sections of the tax code is hereby set at one and one-half percent (1.5%):

| | |
|---|---|
| Section 11-205 | Retail Sales; Food for Home Consumption |

The tax rate in each of the following sections of the tax code is hereby set at four percent (4.0%):

| | |
|---|---|
| Section 11-77 | Occupancy |
| Section 11-197 | Transient Lodging |

The tax rate in each of the following sections of the tax code is hereby set at four and one-half percent (4.5%):

| | |
|---|---|
| Section 11-187 | Advertising |
| Section 11-188 | Amusements, exhibitions and similar activities |
| Section 11-189 | Construction contracting: construction contractors |
| Section 11-190 | Construction contracting: speculative builders |
| Section 11-191 | Construction contracting: owner-builders who are non-speculative builders |
| Section 11-193 | Job Printing |
| Section 11-194 | Timbering and other extraction |
| Section 11-195 | Publishing and Periodicals distribution |
| | Property |
| Section 11-196 | Rental, leasing and licensing for use of real property |
| Section 11-200 | Retail sales: measure of tax; burden of proof; exclusions |
| Section 11-202 | Telecommunications for hire |
| Section 11-203 | Transporting for hire |
| Section 11-204 | Utility service |

The tax rate in each of the following sections of the tax code is hereby set at five and one-half percent (5.5%):

| | |
|---|---|
| Section 11-199 | Restaurants and bars |

2. **Insert new language and definition in Section 11-16, "unit"**

***Unit*- any building or apportion thereof that is designed, occupied, or intended for commercial business use or occupancy as living quarters.**

***Food for Home Consumption*- "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. Under no circumstances shall "food" include an edible product, beverage, or ingredient infused, mixed, or in anyway combined with medical marijuana or an active ingredient of medical marijuana.** *(please refer to new section 11-205 for full definitions)*

3. **Amend Application Fee**

**Sec. 11-22.1. Application fee.**

Any person making application for the issuance or renewal of a license required by this article shall pay a fee of ~~twelve dollars ($12.00)~~ **Twenty-five dollars ($25.00)** to the city. (Ord. No. 14-04, 09-04-2014)

4. **Amend Fee Schedule, Section 11-36,**

**Sec. 11-36. Fee schedule.**

Rental of commercial and residential property . . . . . ~~20.00~~ **25.00 per unit**

5. **Insert new section, Sec. 11-205. Food for Home Consumption**
*(see attachment 1 for full text)*

## ATTACHMENT 1

**AMENDED SECTIONS** *(Tax Rate Increases)*

**ARTICLE III.**

**RENTAL OCCUPANCY TAX***

**Sec. 11-77. Tax imposed; amount.**

Every person who operates or causes to be operated a hotel within the city shall pay an occupational license tax in an amount equal to four (4) percent of the rent charged by the operator to a transient. The tax, when due, constitutes a debt owed by the operator to the city which is extinguished only by payment thereof to the city. If the rent is charged by the operator to the transient in installments, the tax thereon shall be due as provided herein for the calendar month in which the installment was charged. Upon the transient ceasing to occupy space in the hotel, the tax on any uncharged rent shall then be due for that calendar month.
(Code 1976, § 9.128(2))

**ARTICLE IV.**

**PRIVILEGE TAX**

**DIVISION 5.**

**PRIVILEGE TAX**

**Sec. 11-187. Advertising.**

The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of local advertising by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from local advertising.

(1) The advertising of a product or service which is sold or provided both within and without the state by more than one (1) commonly designated business entity within the state, and in which the advertisement names either no commonly designated business entity within the state or more than one (1) commonly designated business entity. In this paragraph "commonly designated business entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be

more than one (1) legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

(2) The advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the state.

(3) The advertising of a product which may only be purchased from an out-of-state supplier.

(4) Political advertising for United States presidential and vice presidential candidates only.

(5) Advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.

(6) Advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(Ord. No. 87-02, § 1(9A-405), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 009-04-2014)

**Sec. 11-188. Amusements, exhibitions, and similar activities.**

The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, entertainment or instruction.

(Ord. No. 87-02, § 1(9A-410), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014))

**Sec. 11-189. Construction contracting--Construction contractors.**

(a) *Generally.* The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one half (4.5)** percent of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the city; however, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. § 45-604.

(b) *Deductions.*

(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 (35) percent.

(c) *Definition.* "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.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.
(Ord. No. 87-02, § 1(9A-415), 7-13-87; Ord. No. 90-02, § 1, 8-13-90; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-05, 09-04-2014)

**Sec. 11-190. Speculative builders.**

(a) *Generally.* The tax levied under the provisions of this article shall be equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the city. 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.

(b) *Definitions.* In this section:

(1) 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.

(2) 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.

(3) *Partially improved residential real property* means any improved real property 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.

(c) *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 subsection (b)(3) above to another speculative builder only if all of the following conditions are satisfied:

a. The speculative builder purchasing the partially improved residential real property has a valid city privilege license for construction contracting as a speculative builder; and

b. At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the city at the time of sale of the partially improved residential real property; and

c. The seller also:

1. Maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and

2. Retains a copy of the written declaration provided by the buyer for the transaction; and

3. 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.

(d) *Miscellaneous provisions.* Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the provisions of section 11-192.
(Ord. No. 87-02, § 1(9A-416), 7-13-87; Ord. No. 88-02, § 1, 3-28-88; Ord. No. 90-02, § 1, 8-13-90; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014))

**Sec. 11-191. 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 under the provisions of this article for an owner-builder who is not a speculative builder shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent 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 section 11-189, paragraph (c)(2); and

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

(b) The tax liability in this section is subject to the provisions of section 11-192.

(c) The limitation period for the assessment of taxes imposed by this section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth month after the unit or project was substantially complete. Interest and penalties, as provided in section 11-120, will be based on reportable date.
(Ord. No. 87-02, § 1(9A-417), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-193. Job printing.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

(b) The tax imposed by this section shall not apply to:
(1) Job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.

(2) Out-of-city sales.

(3) Out-of-state sales.

(4) Sales of job printing to any nonprofit primary health care facility, 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. § 512.

(Ord. No. 87-02, § 1(9A-425), 7-13-87; Ord. No. 88-02, § 1, 3-28-88; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-194. Mining, timbering, and other extraction.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the following businesses:

(1) Mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.

(2) Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.

(3) Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

b) The rate specified in subsection (a) of this section shall be applied to the value of the entire product mined, smelted, extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the city, regardless of the place of sale of the product or the fact that delivery may be made to a point without the city or without the state.

(c) If any person engaging in any business classified in this section ships or transports products, or any part thereof, out of the state without making sale of such products, or ships his products outside of the state in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-state and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this section.

(Ord. No. 87-02, § 1(9A-430), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-195. Publishing and periodicals distribution.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business activity of:

(1) Publication of newspapers, magazines, or other periodicals when published within the city, measured by the gross income derived from notices, subscriptions, and

local advertising as defined in section 11-187. In cases where the location of publication is both within and without this state, gross income subject to the tax shall refer only to gross income derived from residents of this state or generated by permanent business locations within this state.

(2) Distribution or delivery within the city of newspapers magazines, or other periodicals not published within the city, measured by the gross income derived from subscriptions.

(b) The location of publication is determined by the:

(1) Location of the editorial offices of the publisher, when the physical printing is not performed by the publisher.

(2) Location of either the editorial offices or the printing facilities, if the publisher performs the physical printing.

(c) In this section:

(1) *Subscription income* includes all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the state by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the privilege tax on such resale.

(2) *Circulation* for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by United States mail shall be considered to have occurred at the location of publication.

(d) In cases where publication or distribution occurs in more than one (1) city or town, the measurement of gross income subject to tax by the city shall include:

(1) That portion of the gross income from publication which reflects the ratio of circulation within this city to circulation in all incorporated cities and towns in this state having substantially similar provisions; plus

(2) Only when publication occurs within the city, that portion of the remaining gross income from publication which reflects the ratio of circulation within this city to the total circulation of all incorporated cities or towns in this state within which cities the taxpayer maintains a location of publication.

(e) The tax imposed by this section shall not apply to sales of newspapers, magazines or other periodicals to any nonprofit primary health care facility, 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. § 512.

(Ord. No. 87-02, § 1(9A-435), 7-13-87; Ord. No. 88-02, § 1, 3-28-88; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-196. Rental, leasing, and licensing for use of real property--Generally.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting real property located within the city for a consideration, to the tenant in actual possession, including any improvements, rights, or interest in such property; provided further that:

(1) Payments taxes, repairs or improvements are considered to be part of the taxable gross income.

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

(3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under section 11-202.

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

(c) Charges by primary health care facilities to patients of such facilities for use or rooms or other real property during the course of their treatment by such facilities are exempt.

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

(e) A person who has less than three (3) apartments, houses, trailer spaces, or other lodging spaces available for rent within the state is not deemed to be in the rental business, and is therefore exempt for the tax imposed by this section of such income. However, a person who has one (1) or more units of commercial property plus one (1) or more lodging spaces rented or available for rent is subject to the tax imposed by this section on all rental income even though such person may have fewer than three (3) lodging spaces.

(f) Exempt from the tax imposed by this section is gross income derived from the activities taxable under section 11-195.1 of this Code.

(g) Reserved.

(Ord. No. 87-02, § 1(9A-445), 7-13-87; Ord. No. 90-02, § 1, 8-13-90; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-197. Additional tax upon transient lodging.**

In addition to the taxes levied as provided in section 11-195.3, there is hereby levied and shall be collected an additional tax in an amount equal to ~~two (2)~~ **one and one-half (1.5)** percent of the gross income from the business activity of any hotel engaging or continuing within the city in the business of charging for lodging and/or lodging space furnished to any transient. "Transient" means any person who, for any period of not more than thirty (30) consecutive days, either at his own expenses or at the expense of another, obtains lodging or the use of any lodging space in any hotel for which lodging or use of lodging space a charge is made.
(Ord. No. 87-02, § 1(9A-447), 7-13-87; Ord. No. 90-02, § 1, 8-13-90; Ord. No. 14-04, 09-04-2014)

**Sec. 11-198. Rental, leasing, and licensing for use of tangible personal property.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent 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) 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 is 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 or 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 11-188, 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.

(5) Rental, leasing, or licensing for use of tangible personal property to any nonprofit primary health care facility, 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.§ 512.

(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.

(Ord. No. 87-02, § 1(9A-450), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No.14-04, 09-04-2014)

**Sec. 11-199. Restaurants and bars.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~three and one-half (3.5)~~ **five and one-half (5.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

(b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises, shall also be allowed to exclude separately charged delivery, setup, and cleanup charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, the taxpayer's regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this section.

(c) The tax imposed by this section shall not apply to sales to any nonprofit primary health care facility, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. § 512.

(Ord. No. 87-02, § 1(9A-455), 7-13-87; Ord. No. 88-02, § 1, 3-28-88; Ord. No. 95-07, § 2, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-200. Retail sales--Measure of tax; burden of proof; exclusions.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)**percent of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

(b) The burden of proving that a sale of tangible personal property is not a taxable

retail sale shall be upon the person who made the sale.

(c) For the purposes of this article, sales of tangible personal property do not include:

(1) Sales of stocks, bonds, options, or other similar materials.

(2) Sales of lottery tickets or shares pursuant to A.R.S. tit. 5, ch. 5, art. 1 [§ 5-501 et seq.].

(3) Sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

(4) Gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another section of this division imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this section.

(5) Sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(d) Except as provided in section 11-126, when this city and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this article such city or town has sole and exclusive right to such tax.

(e) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this city or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location. (Ord. No. 87-02, § 1(9A-460), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-202. Telecommunication services.**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this city.

(b) In this section:

(1) Telecommunication services include:

a. Two-way voice, sound, and/or video communication over a

communications channel.

b. One-way voice, sound, and/or video transmission or relay over a communications channel.

c. Facsimile transmissions.

d. Providing relay or repeater service.

e. Providing computer interface services over a communications channel.

f. Time-sharing activities with a computer accomplished through the use of a communications channel.

(2) Gross income from the business activity of providing telecommunication services to consumers within this city includes:

a. All fees for connection to a telecommunication system.

b. Toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the city and terminating in this state.

c. Fees charged for access to or subscription to or membership in a telecommunication system or network.

d. Charges for monitoring services relating to a security or burglar alarm system located within the city where such system transmits or receives signals or data over a communications channel.

(c) Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this section; provided, however, that such purchaser is properly licensed by the city to engage in such business.

(d) Charges by a provider of telecommunication services for transmissions originating in the city and terminating outside the state are exempt from the tax imposed by this section.
(Ord. No. 87-02, § 1(9A-470), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-203. Transporting for hire.**

The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this city to another point within the state:

(1) Transporting of persons or property by railroad.

(2) Transporting of oil or natural or artificial gas through pipe or conduit.

(3) Transporting of property by aircraft.

(4) Transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in A.R.S. tit. 42, ch. 4, art. 3 [§ 42-741 et seq.]; provided, however, that the tax imposed by this paragraph shall not apply to:

a. Gross income subject to the tax imposed by A.R.S. tit. 28, ch. 9, art. 6 [§ 28-1599 et seq.].

b. Gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.

(Ord. No. 87-02, § 1(9A-475), 7-13-87; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**Sec. 11-204. Utility services.**

(a) *Generally.* The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ **four and one-half (4.5)** percent of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers who reside within the city.

(b) *Exclusion of certain sales of natural gas to a public utility.* Notwithstanding the provisions of subsection (a) of this section, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to sections 11-200 and 11-201, and not considered gross income taxable under this section.

(c) *Resale utility services.* Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

(d) The tax imposed by this section shall not apply to sales of utility services to any nonprofit primary health care facility, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. § 512.

(Ord. No. 87-02, § 1(9A-480), 7-13-87; Ord. No. 88-02, § 1, 3-28-88; Ord. No. 95-07, § 1, 8-14-95; Ord. No. 14-04, 09-04-2014)

**NEW SECTION**

**Sec. 11-205. Retail Sales; Food for Home Consumption**

(a) The tax rate under the provisions of this article shall be at an amount equal to ~~two and one-half (2.5)~~ one and one half (1.5) percent of the gross income from the business activity upon every person engaging or continuing in the business of selling ~~tangible personal property~~ food for home consumption at retail.

(b) For the purposes of this section only, the following definitions shall be applicable:

(1) "Eligible grocery business" means an establishment whose sales of food are such that it is eligible to participate in 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.), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the food stamp program if it is authorized to participate in the program by the United States Department of Agriculture food and nutrition service field office on the effective date of this section, or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the tax collector that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the food stamp program established by the food stamp act of 1977 according to regulations in effect on January 1, 1979.

(2) "Facilities for the consumption of food" means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.

(3) "Food for consumption on the premises" means any of the following:

(a) "Hot prepared food" as defined below.

(b) Hot or cold sandwiches.

(c) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.

(d) Food served with trays, glasses, dishes, or other tableware.

(e) Beverages sold in cups, glasses, or open containers.

(f) Food sold by caterers.

(g) Food sold within the premises of theatres, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business

which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.

(h) Any items contained in subsections (a)(3)(a) through (g) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.

(4) "Hot prepared food" means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.

(5) "Premises" means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.

(6) "Food for Home Consumption" means all food, except food for consumption on the premises, if sold by any of the following:

(a) An eligible grocery business.

(b) A person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.

(c) A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.

(d) A person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.

(e) Vending machines and other types of automatic retailers.

(f) A person's sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

(c) Income derived from the following sources is exempt from the tax imposed by this section:

(1) Sales of food for home consumption to a person regularly engaged in the business of selling such property.

(2) Out-of-city sales or out-of-state sales.

(3) Charges for delivery or other "direct customer services" as prescribed by regulation.

(4) 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.

(5) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(6) Sales of 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.

(7) 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.

(d) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to section -520, report to the tax collector in a manner prescribed by the tax collector all sales of food for home consumption exempted from taxes imposed by this chapter.

(e) Recordkeeping.

(1) Retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this chapter. A retailer may use any method of reporting that properly reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this chapter, provided that such records are maintained in accordance with Article III, and regulations of the tax collector.

(2) Any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the tax collector, a person cannot demonstrate to the tax collector that such records and reports do properly

**reflect all sales of food for home consumption, the tax collector may recompute the amount of tax to be paid .**

(Ord. No. 14-04, 09-04-2014)