

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2081

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 42-5069, Arizona Revised Statutes, is amended to  
3 read:

4 42-5069. Commercial lease classification: definitions

5 A. The commercial lease classification is comprised of the business of  
6 leasing for a consideration the use or occupancy of real property.

7 B. A person who, as a lessor, leases or rents for a consideration  
8 under one or more leases or rental agreements the use or occupancy of real  
9 property that is used by the lessee for commercial purposes is deemed to be  
10 engaged in business and subject to the tax imposed by article 1 of this  
11 chapter, but this subsection does not include leases or rentals of real  
12 property used for residential or agricultural purposes.

13 C. The commercial lease classification does not include:

14 1. Any business activities that are classified under the transient  
15 lodging classification.

16 2. Activities engaged in by the Arizona exposition and state fair  
17 board or county fair commissions in connection with events sponsored by those  
18 entities.

19 3. Leasing real property to a lessee who subleases the property if the  
20 lessee is engaged in business classified under the commercial lease  
21 classification or the transient lodging classification.

22 4. Leasing real property pursuant to a written lease agreement entered  
23 into before December 1, 1967. This exclusion does not apply to the  
24 businesses of hotels, guest houses, dude ranches and resorts, rooming houses,  
25 apartment houses, office buildings, automobile storage garages, parking lots  
26 or tourist camps, or to the extension or renewal of any such written lease  
27 agreement.

28 5. Leasing real property by ~~a corporation~~ AN ENTITY to an affiliated  
29 ~~corporation~~ ENTITY. For the purposes of this paragraph, ~~—~~:

1 (a) "Affiliated ~~corporation~~ ENTITY" means ~~a corporation~~ AN ENTITY that  
2 owns or controls at least eighty per cent of the lessor, that is at least  
3 eighty per cent owned or controlled by the lessor or that is at least eighty  
4 per cent owned or controlled by ~~a corporation~~ AN ENTITY that also owns or  
5 controls at least eighty per cent of the lessor. Ownership and control are  
6 determined by reference to the voting shares OR LEGAL OWNERSHIP of  
7 ~~a corporation~~ AN ENTITY.

8 (b) "ENTITY" MEANS A CORPORATION, LIMITED LIABILITY COMPANY,  
9 PARTNERSHIP OR REAL ESTATE INVESTMENT TRUST.

10 ~~6. Leasing real property for sublease if the tenant in possession of~~  
11 ~~the property is subject to the rental occupancy tax pursuant to article 9 of~~  
12 ~~this chapter.~~

13 ~~7.~~ 6. Leasing real property for boarding horses.

14 ~~8.~~ 7. Leasing or renting real property or the right to use real  
15 property at exhibition events in this state sponsored, operated or conducted  
16 by a nonprofit organization that is exempt from taxation under section  
17 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the  
18 organization is associated with major league baseball teams or a national  
19 touring professional golfing association and no part of the organization's  
20 net earnings inures to the benefit of any private shareholder or individual.

21 ~~9.~~ 8. Leasing or renting real property or the right to use real  
22 property for use as a rodeo featuring primarily farm and ranch animals in  
23 this state sponsored, operated or conducted by a nonprofit organization that  
24 is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),  
25 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the  
26 organization's net earnings inures to the benefit of any private shareholder  
27 or individual.

28 ~~10.~~ 9. Leasing or renting dwelling units, lodging facilities or  
29 trailer or mobile home spaces if the units, facilities or spaces are intended  
30 to serve as the principal or permanent place of residence for the lessee or  
31 renter or if the unit, facility or space is leased or rented to a single  
32 tenant thirty or more consecutive days.

33 ~~11.~~ 10. Leasing or renting real property and improvements for use  
34 primarily for religious worship by a nonprofit organization that is exempt  
35 from taxation under section 501(c)(3) of the internal revenue code and no

1 part of the organization's net earnings inures to the benefit of any private  
2 shareholder or individual.

3 ~~12.~~ 11. Leasing or renting real property used for agricultural  
4 purposes under either of the following circumstances:

5 (a) The lease or rental is between family members, trusts, estates,  
6 corporations, partnerships, joint venturers or similar entities, or any  
7 combination thereof, if the individuals or at least eighty per cent of the  
8 beneficiaries, shareholders, partners or joint venturers share a family  
9 relationship as parents or ancestors of parents, children or descendants of  
10 children, siblings, cousins of the first degree, aunts, uncles, nieces or  
11 nephews of the first degree, spouses of any of the listed relatives and  
12 listed relatives by the half-blood or by adoption.

13 (b) The lessor leases or rents real property used for agricultural  
14 purposes under no more than three leases or rental agreements.

15 ~~13.~~ 12. Leasing, renting or granting the right to use real property to  
16 vendors or exhibitors by a trade or industry association that is a qualifying  
17 organization pursuant to section 513(d)(3)(C) of the internal revenue code  
18 for a period not to exceed twenty-one days in connection with an event that  
19 meets all of the following conditions:

20 (a) The majority of such vending or exhibition activities relate to  
21 the nature of the trade or business sponsoring the event.

22 (b) The event is held in conjunction with a formal business meeting of  
23 the trade or industry association.

24 (c) The event is organized by the persons engaged in the particular  
25 trade or industry.

26 ~~14.~~ 13. Leasing, renting or granting the right to use real property  
27 for a period not to exceed twenty-one days by a coliseum, civic center, civic  
28 plaza, convention center, auditorium or arena owned by this state or any of  
29 its political subdivisions.

30 ~~15.~~ 14. Leasing or subleasing real property used by a nursing care  
31 institution as defined in section 36-401 that is licensed pursuant to title  
32 36, chapter 4.

33 ~~16.~~ 15. Leasing or renting a transportation facility as provided in  
34 section 28-7705, subsections A and B.

1           ~~17-~~ 16. Granting or providing rights to real property that constitute  
2 a profit à prendre for the severance of minerals, including all rights to use  
3 the surface or subsurface of the property as is necessary or convenient to  
4 the right to sever the minerals. This paragraph does not exclude from the  
5 commercial lease classification leasehold rights to the real property that  
6 are granted in addition to and not included within the right of profit à  
7 prendre, but the tax base for the grant of such a leasehold right, if the  
8 gross income derived from the grant is not separately stated from the gross  
9 income derived from the grant of the profit à prendre, shall not exceed the  
10 fair market value of the leasehold rights computed after excluding the value  
11 of all rights under the profit à prendre. For the purposes of this  
12 paragraph, "profit à prendre" means a right to use the land of another to  
13 mine minerals, and carries with it the right of entry and the right to remove  
14 and take the minerals from the land and also includes the right to use the  
15 surface of the land as is necessary and convenient for exercise of the  
16 profit.

17           D. The tax base for the commercial lease classification is the gross  
18 proceeds of sales or gross income derived from the business, but  
19 reimbursements to the lessor for utility service shall be deducted from the  
20 tax base.

21           E. Notwithstanding section 42-1104, subsection B, paragraph 1,  
22 subdivision (b) and paragraph 2, the failure to file tax returns for the  
23 commercial lease classification that report gross income derived from any  
24 agreement that constitutes, in whole or in part, a grant of a right of profit  
25 à prendre for the severance of minerals does not constitute an exception to  
26 the general rule for the statute of limitations.

27           F. For the purposes of this section:

28           1. "Leasing" includes renting.

29           2. "Real property" includes any improvements, rights or interest in  
30 such property.

31           Sec. 2. Section 42-5071, Arizona Revised Statutes, is amended to read:

32           42-5071. Personal property rental classification

33           A. The personal property rental classification is comprised of the  
34 business of leasing or renting tangible personal property for a  
35 consideration. The tax does not apply to:

1           1. Leasing or renting films, tapes or slides used by theaters or  
2 movies, which are engaged in business under the amusement classification, or  
3 used by television stations or radio stations.

4           2. Activities engaged in by the Arizona exposition and state fair  
5 board or county fair commissions in connection with events sponsored by such  
6 entities.

7           3. Leasing or renting tangible personal property by AN ENTITY TO AN  
8 AFFILIATED ENTITY ~~a parent corporation to a subsidiary corporation or by a~~  
9 ~~subsidiary corporation to another subsidiary of the same parent corporation~~  
10 if taxes were paid under this chapter on the gross proceeds or gross income  
11 accruing from the initial sale of the tangible personal property. For the  
12 purposes of this paragraph: ~~,"subsidiary"~~

13           (a) "AFFILIATED ENTITY" means ~~a corporation of which at least AN~~  
14 ~~ENTITY THAT OWNS OR CONTROLS AT LEAST~~ eighty per cent of the ~~voting shares~~  
15 ~~are owned by the parent corporation~~ LESSOR, THAT IS AT LEAST EIGHTY PER CENT  
16 OWNED OR CONTROLLED BY THE LESSOR OR THAT IS AT LEAST EIGHTY PER CENT OWNED  
17 OR CONTROLLED BY AN ENTITY THAT ALSO OWNS OR CONTROLS AT LEAST EIGHTY PER  
18 CENT OF THE LESSOR. OWNERSHIP AND CONTROL ARE DETERMINED BY REFERENCE TO THE  
19 VOTING SHARES OR LEGAL OWNERSHIP OF AN ENTITY.

20           (b) "ENTITY" MEANS A CORPORATION, LIMITED LIABILITY COMPANY,  
21 PARTNERSHIP OR REAL ESTATE INVESTMENT TRUST.

22           4. Operating coin operated washing, drying and dry cleaning machines  
23 or coin operated car washing machines at establishments for the use of such  
24 machines.

25           5. Leasing or renting tangible personal property for incorporation  
26 into or comprising any part of a qualified environmental technology facility  
27 as described in section 41-1514.02. This paragraph shall apply for ten full  
28 consecutive calendar or fiscal years following the initial lease or rental by  
29 each qualified environmental technology manufacturer, producer or processor.

30           6. Leasing or renting aircraft, flight simulators or similar training  
31 equipment to students or staff by nonprofit, accredited educational  
32 institutions that offer associate or baccalaureate degrees in aviation or  
33 aerospace related fields.

1           7. Leasing or renting photographs, transparencies or other creative  
2 works used by this state on internet web sites, in magazines or in other  
3 publications that encourage tourism.

4           B. The tax base for the personal property rental classification is the  
5 gross proceeds of sales or gross income derived from the business, but the  
6 gross proceeds of sales or gross income derived from the following shall be  
7 deducted from the tax base:

8           1. Reimbursements by the lessee to the lessor of a motor vehicle for  
9 payments by the lessor of the applicable fees and taxes imposed by sections  
10 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15,  
11 article 2 and article IX, section 11, Constitution of Arizona, to the extent  
12 such amounts are separately identified as such fees and taxes and are billed  
13 to the lessee.

14           2. Leases or rentals of tangible personal property which, if it had  
15 been purchased instead of leased or rented by the lessee, would have been  
16 exempt under:

17           (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29 or  
18 50.

19           (b) Section 42-5061, subsection B, except that a lease or rental of  
20 new machinery or equipment is not exempt pursuant to:

21           (i) Section 42-5061, subsection B, paragraph 13 if the lease is for  
22 less than two years.

23           (ii) Section 42-5061, subsection B, paragraph 22 if the lease is for  
24 less than five years.

25           (c) Section 42-5061, subsection J, paragraph 1.

26           (d) Section 42-5061, subsection N.

27           3. Motor vehicle fuel and use fuel that are subject to a tax imposed  
28 under title 28, chapter 16, article 1, sales of use fuel to a holder of a  
29 valid single trip use fuel tax permit issued under section 28-5739 and sales  
30 of aviation fuel that are subject to the tax imposed under section 28-8344.

31           4. Leasing or renting a motor vehicle subject to and upon which the  
32 fee has been paid under title 28, chapter 16, article 4.

33           5. Amounts received by a motor vehicle dealer for the first month of a  
34 lease payment if the lease and the lease payment for the first month of the  
35 lease are transferred to a third party leasing company.

1           C. Sales of tangible personal property to be leased or rented to a  
2 person engaged in a business classified under the personal property rental  
3 classification are deemed to be resale sales.

4           D. In computing the tax base, the gross proceeds of sales or gross  
5 income from the lease or rental of a motor vehicle does not include any  
6 amount attributable to the car rental surcharge under section 28-5810 or  
7 48-4234.

8           E. Until December 31, 1988, leasing or renting animals for  
9 recreational purposes is exempt from the tax imposed by this section.  
10 Beginning January 1, 1989, the gross proceeds or gross income from leasing or  
11 renting animals for recreational purposes is subject to taxation under this  
12 section. Tax liabilities, penalties and interest paid for taxable periods  
13 before January 1, 1989 shall not be refunded unless the taxpayer requesting  
14 the refund provides proof satisfactory to the department that the monies paid  
15 as taxes will be returned to the customer."

16 Amend title to conform

and, as so amended, it do pass

STEVE YARBROUGH  
Chairman

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H:dph

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02/07/2007  
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