

ORDINANCE 2003-06

AN ORDINANCE OF THE TOWN OF CAREFREE, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; REMOVING THE EXEMPTION FROM THE RETAIL CLASSIFICATION FOR THE SALE OF FINE ART; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR SEVERABILITY AND DESIGNATING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF CAREFREE, ARIZONA:

**Section 1.** Section 9-465 of the town tax code is amended to read:

**Sec. 9-465. Retail sales: exemptions.**

Income derived from the following sources is exempt from the tax imposed by Section 9-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-Town sales or out-of-State sales.
- (c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.
- (d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.
- (e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.
- (f) sales of prosthetics.
- (g) sales of income-producing capital equipment.
- (h) sales of rental equipment and rental supplies.
- (i) sales of mining and metallurgical supplies.
- (j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

- (k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) sales made directly to the Federal government to the extent of:
  - (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
  - (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.
- (o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 9-455 or the equivalent excise tax upon such income.
- (p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, 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. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (q) 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.
- (r) (Reserved)
  - (1) (Reserved)
  - (2) (Reserved)
  - (3) (Reserved)

- (4) (Reserved)
- (s) sales of groundwater measuring devices required by A.R.S. Section 45-604.
- (t) ~~sales of paintings, sculptures or similar works of fine art, provided that such works of fine art are sold by the original artist; and provided further that sales of "art creations", such as jewelry, macrame, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether sold by the artist or by another. (RESERVED)~~
- (u) sales of aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
- (w) (Reserved)
- (x) sales of food and drink to a properly licensed restaurant which provides such food and drink without monetary charge to its employees for their own consumption on the premises during such employees' hours of employment.
- (y) (Reserved)
- (z) (Reserved)
- (aa) the sale of tangible personal property used in remediation contracting as defined in Section 9-100 and Regulation 9-100.5.
- (bb) sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
  - (1) printed or photographic materials.
  - (2) electronic or digital media materials.
- (cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-5061(A)(50), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. 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.
- (dd) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 9-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the

telecommunications services.

- (ee) for the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 9-470 is considered to be a sale for resale in the regular course of business.
- (ff) sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.
- (gg) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes; 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.
- (hh) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 9-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) 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.
- (kk) (Reserved)
- (ll) sales of motor vehicles that use alternative fuel as defined in A.R.S. Section 43-1086 if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

**Section 2.** Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a

separate offense punishable as herein above described.

**Section 3.** If any section, subsection, sentence, clause, phrase or portion of this ordinance 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.

**Section 4.** The provisions of this ordinance shall become effective on August 1, 2003.

**Section 5.** The tax code change imposed pursuant to Section 1 of this ordinance shall not apply to contracts entered into prior to the effective date of this ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Carefree, Arizona, this sixth day of May, 2003.

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTAIN \_\_\_\_\_ ABSENT \_\_\_\_\_

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Edward C. Morgan, Mayor

ATTEST:

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Elizabeth L. Wise, Town Clerk

APPROVED AS TO FORM:

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Thomas K. Chenal, Town Attorney