

REFERENCE TITLE: use tax; consumption of fuel

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## **HB 2395**

Introduced by  
Representatives Yarbrough: Biggs

AN ACT

AMENDING SECTION 42-5151, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5155.01; RELATING TO USE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5151, Arizona Revised Statutes, is amended to  
3 read:

4 ~~42-5151.~~ Definitions

5 In this article, unless the context otherwise requires:

6 1. "Ancillary services" means those services so designated in federal  
7 energy regulatory commission order 888 adopted in 1996 that include the  
8 services necessary to support the transmission of electricity from resources  
9 to loads while maintaining reliable operation of the transmission system  
10 according to good utility practice.

11 2. "Electric distribution service" means distributing electricity to  
12 retail electric customers through the use of electric distribution  
13 facilities.

14 3. "Electric generation service" means providing electricity for sale  
15 to retail electric customers but excluding electric distribution or  
16 transmission services.

17 4. "Electric transmission service" means transmitting electricity to  
18 retail electric customers or to electric distribution facilities so  
19 classified by the federal energy regulatory commission or, to the extent  
20 permitted by law, so classified by the Arizona corporation commission.

21 5. "Electric utility services" means the business of providing  
22 electric ancillary services, electric distribution services, electric  
23 generation services, electric transmission services and other services  
24 related to providing electricity.

25 6. "Electricity" means electric energy, electric capacity or electric  
26 capacity and energy.

27 7. "Electricity supplier" means a person, whether acting in a  
28 principal, agent or other capacity, that offers to sell electricity to a  
29 retail electric customer in this state.

30 8. "FUEL" MEANS NATURAL GAS, ARTIFICIAL GAS, METHANE AND PROPANE GAS,  
31 OIL, COAL OR ANY HYDROCARBON THAT IS CAPABLE OF RELEASING ENERGY WHEN ITS  
32 CHEMICAL OR PHYSICAL STRUCTURE IS CHANGED OR CONVERTED.

33 ~~8-~~ 9. "Natural gas" means natural or artificial gas, and includes  
34 methane and propane gas, the natural gas commodity, natural gas pipeline  
35 capacity or natural gas commodity and pipeline capacity.

36 ~~9-~~ 10. "Natural gas utility services" means the business of selling  
37 natural gas or providing natural gas transportation services or other  
38 services related to providing natural gas.

39 ~~10-~~ 11. "Notice" means written notice served personally or by  
40 certified mail and addressed to the last known address of the person to whom  
41 such notice is given.

42 ~~11-~~ 12. "Other services" includes metering, meter reading services,  
43 billing and collecting services.

44 ~~12-~~ 13. "Person" means an individual, firm, partnership, joint  
45 venture, association, corporation, estate, trust, receiver or syndicate, this

1 state or a county, city, municipality, district or other political  
2 subdivision or agency thereof.

3 ~~13.~~ 14. "Purchase" means any transfer, exchange or barter, conditional  
4 or otherwise, in any manner or by any means, of tangible personal property  
5 for a consideration, including transactions by which the possession of  
6 property is transferred but the seller retains the title as security for  
7 payment.

8 ~~14.~~ 15. "Purchase price" or "sales price" means the total amount for  
9 which tangible personal property is sold, including any services that are a  
10 part of the sale, valued in money, whether paid in money or otherwise, and  
11 any amount for which credit is given to the purchaser by the seller without  
12 any deduction on account of the cost of the property sold, materials used,  
13 labor or services performed, interest charged, losses or other expenses, but  
14 does not include:

15 (a) Discounts allowed and taken.

16 (b) Charges for labor or services in installing, remodeling or  
17 repairing.

18 (c) Freight costs billed to and collected from a purchaser by a  
19 retailer for tangible personal property which, on the order of the retailer,  
20 is shipped directly from a manufacturer or wholesaler to the purchaser.

21 (d) Amounts attributable to federal excise taxes imposed by 26 United  
22 States Code section 4001, 4051 or 4091 on sales of heavy trucks and trailers  
23 and automobiles or on sales of use fuel, as defined in section 28-5601.

24 (e) The value of merchandise that is traded in on the purchase of new  
25 or pre-owned merchandise when the trade-in allowance is deducted from the  
26 sales price of the new or pre-owned merchandise before the completion of the  
27 sale.

28 ~~15.~~ 16. "Retail electric customer" means a person who purchases  
29 electricity for that person's own use, including use in that person's trade  
30 or business, and not for resale, redistribution or retransmission.

31 ~~16.~~ 17. "Retail natural gas customer" means a person who purchases  
32 natural gas for that person's own use, including use in that person's trade  
33 or business, and not for resale, redistribution or retransmission.

34 ~~17.~~ 18. "Retailer" includes:

35 (a) Every person engaged in the business of making sales of tangible  
36 personal property for storage, use or other consumption or in the business of  
37 making sales at auction of tangible personal property owned by that person or  
38 others for storage, use or other consumption. If in the opinion of the  
39 department it is necessary for the efficient administration of this article  
40 to regard any salesmen, representatives, peddlers or canvassers as the agents  
41 of the dealers, distributors, supervisors or employers under whom they  
42 operate or from whom they obtain the tangible personal property sold by them,  
43 regardless of whether they are making sales on their own behalf or on behalf  
44 of such dealers, distributors, supervisors or employers, the department may

1 so regard them and may regard the dealers, distributors, supervisors or  
2 employers as retailers for purposes of this article.

3 (b) A person who solicits orders for tangible personal property by  
4 mail if the solicitations are substantial and recurring or if the retailer  
5 benefits from any banking, financing, debt collection, telecommunication,  
6 television shopping system, cable, optic, microwave or other communication  
7 system or marketing activities occurring in this state or benefits from the  
8 location in this state of authorized installation, servicing or repair  
9 facilities.

10 ~~18.~~ 19. "Storage" means keeping or retaining tangible personal  
11 property purchased from a retailer for any purpose except sale in the regular  
12 course of business or subsequent use solely outside this state.

13 ~~19.~~ 20. "Taxpayer" means any retailer or person storing, using or  
14 consuming tangible personal property the storage, use or consumption of which  
15 is subject to the tax imposed by this article when such tax was not paid to a  
16 retailer.

17 ~~20.~~ 21. "Use or consumption" means the exercise of any right or power  
18 over tangible personal property incidental to owning the property except  
19 holding for sale or selling the property in the regular course of business.

20 ~~21.~~ 22. "Utility business" means a person that is engaged in the  
21 business of providing electric utility services to retail electric customers  
22 or natural gas utility services to retail natural gas customers.

23 Sec. 2. Title 42, chapter 5, article 4, Arizona Revised Statutes, is  
24 amended by adding section 42-5155.01, to read:

25 42-5155.01. Levy of tax; use or consumption of fuel; exemptions

26 A. THERE IS LEVIED AND IMPOSED AN EXCISE TAX ON THE STORAGE, USE OR  
27 CONSUMPTION IN THIS STATE OF FUEL BY ANY PERSON WHO IS ENGAGED IN PROVIDING  
28 ELECTRIC UTILITY SERVICES AND WHO USES THE FUEL TO PRODUCE ELECTRICITY FOR  
29 SALE.

30 B. THE TAX UNDER THIS SECTION SHALL BE LEVIED AT THE RATE PRESCRIBED  
31 IN SECTION 42-5155 ON THE VALUE OF THE FUEL WHEN THE FUEL IS CONSUMED.

32 C. THE TAX LEVIED UNDER THIS SECTION DOES NOT APPLY TO THE STORAGE,  
33 USE OR CONSUMPTION IN THIS STATE OF THE FOLLOWING:

34 1. FUEL THAT IS SOLD IN THIS STATE, THE GROSS RECEIPTS FROM THE SALE  
35 OF WHICH ARE INCLUDED IN THE MEASURE OF THE TAX IMPOSED BY ARTICLES 1 AND 2  
36 OF THIS CHAPTER.

37 2. FUEL THAT IS USED IN THIS STATE AND THAT IS SUBJECT TO TAX IMPOSED  
38 BY SECTION 42-5155.

39 Sec. 3. Requirements for enactment; two-thirds vote

40 Pursuant to article IX, section 22, Constitution of Arizona, this act  
41 is effective only on the affirmative vote of at least two-thirds of the  
42 members of each house of the legislature and is effective immediately on the  
43 signature of the governor or, if the governor vetoes this act, on the  
44 subsequent affirmative vote of at least three-fourths of the members of each  
45 house of the legislature.