

REFERENCE TITLE: municipal tax incentives; prohibition; penalty

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

HB 2508

Introduced by
Representatives Murphy: Pearce

AN ACT

AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6010; RELATING TO LOCAL EXCISE TAX REVENUES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5029, Arizona Revised Statutes, is amended to
3 read:

4 42-5029. Remission and distribution of monies; definition

5 A. The department shall deposit, pursuant to sections 35-146 and
6 35-147, all revenues collected under this article and articles 4, 5 and 8 of
7 this chapter pursuant to section 42-1116, separately accounting for:

8 1. Payments of estimated tax under section 42-5014, subsection D.

9 2. Revenues collected pursuant to section 42-5070.

10 3. Revenues collected under this article and article 5 of this chapter
11 from and after June 30, 2000 from sources located on Indian reservations in
12 this state.

13 4. Revenues collected pursuant to section 42-5010, subsection G and
14 section 42-5155, subsection D.

15 B. The department shall credit payments of estimated tax to an
16 estimated tax clearing account and each month shall transfer all monies in
17 the estimated tax clearing account to a fund designated as the transaction
18 privilege and severance tax clearing account. The department shall credit
19 all other payments to the transaction privilege and severance tax clearing
20 account, separately accounting for the monies designated as distribution base
21 under sections 42-5010, 42-5164, 42-5205 and 42-5353. Each month the
22 department shall report to the state treasurer the amount of monies collected
23 pursuant to this article and articles 4, 5 and 8 of this chapter.

24 C. On notification by the department, the state treasurer shall
25 distribute the monies deposited in the transaction privilege and severance
26 tax clearing account in the manner prescribed by this section and by sections
27 42-5164, 42-5205 and 42-5353, after deducting warrants drawn against the
28 account pursuant to sections 42-1118 and 42-1254.

29 D. Of the monies designated as distribution base the department shall:

30 1. Pay twenty-five per cent to the various incorporated municipalities
31 in this state in proportion to their population to be used by the
32 municipalities for any municipal purpose.

33 2. Pay 38.08 per cent to the counties in this state by averaging the
34 following proportions:

35 (a) The proportion that the population of each county bears to the
36 total state population.

37 (b) The proportion that the distribution base monies collected during
38 the calendar month in each county under this article, section 42-5164,
39 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
40 total distribution base monies collected under this article, section 42-5164,
41 subsection B, section 42-5205, subsection B and section 42-5353 throughout
42 the state for the calendar month.

43 3. Pay an additional 2.43 per cent to the counties in this state as
44 follows:

45 (a) Average the following proportions:

1 (i) The proportion that the assessed valuation used to determine
2 secondary property taxes of each county, after deducting that part of the
3 assessed valuation that is exempt from taxation at the beginning of the month
4 for which the amount is to be paid, bears to the total assessed valuations
5 used to determine secondary property taxes of all the counties after
6 deducting that portion of the assessed valuations that is exempt from
7 taxation at the beginning of the month for which the amount is to be paid.
8 Property of a city or town that is not within or contiguous to the municipal
9 corporate boundaries and from which water is or may be withdrawn or diverted
10 and transported for use on other property is considered to be taxable
11 property in the county for purposes of determining assessed valuation in the
12 county under this item.

13 (ii) The proportion that the distribution base monies collected during
14 the calendar month in each county under this article, section 42-5164,
15 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
16 total distribution base monies collected under this article, section 42-5164,
17 subsection B, section 42-5205, subsection B and section 42-5353 throughout
18 the state for the calendar month.

19 (b) If the proportion computed under subdivision (a) of this paragraph
20 for any county is greater than the proportion computed under paragraph 2 of
21 this subsection, the department shall compute the difference between the
22 amount distributed to that county under paragraph 2 of this subsection and
23 the amount that would have been distributed under paragraph 2 of this
24 subsection using the proportion computed under subdivision (a) of this
25 paragraph and shall pay that difference to the county from the amount
26 available for distribution under this paragraph. Any monies remaining after
27 all payments under this subdivision shall be distributed among the counties
28 according to the proportions computed under paragraph 2 of this subsection.

29 4. After any distributions required by sections 42-5030, 42-5030.01,
30 42-5031, 42-5032 and 42-5032.01, and after making any transfer to the water
31 quality assurance revolving fund as required by section 49-282, subsection B,
32 credit the remainder of the monies designated as distribution base to the
33 state general fund. From this amount:

34 (a) The legislature shall annually appropriate to:

35 (i) The department of revenue sufficient monies to administer and
36 enforce this article and articles 5 and 8 of this chapter.

37 (ii) The department of economic security monies to be used for the
38 purposes stated in title 46, chapter 1.

39 (iii) The firearms safety and ranges fund established by section
40 17-273, fifty thousand dollars derived from the taxes collected from the
41 retail classification pursuant to section 42-5061 for the current fiscal
42 year.

43 (b) The state treasurer shall transfer to the tourism fund an amount
44 equal to the sum of the following:

1 (i) Three and one-half per cent of the gross revenues derived from the
2 transient lodging classification pursuant to section 42-5070 during the
3 preceding fiscal year.

4 (ii) Three per cent of the gross revenues derived from the amusement
5 classification pursuant to section 42-5073 during the preceding fiscal year.

6 (iii) Two per cent of the gross revenues derived from the restaurant
7 classification pursuant to section 42-5074 during the preceding fiscal year.

8 E. If approved by the qualified electors voting at a statewide general
9 election, all monies collected pursuant to section 42-5010, subsection G and
10 section 42-5155, subsection D shall be distributed each fiscal year pursuant
11 to this subsection. The monies distributed pursuant to this subsection are
12 in addition to any other appropriation, transfer or other allocation of
13 public or private monies from any other source and shall not supplant,
14 replace or cause a reduction in other school district, charter school,
15 university or community college funding sources. The monies shall be
16 distributed as follows:

17 1. If there are outstanding state school facilities revenue bonds
18 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the
19 amount that is necessary to pay the fiscal year's debt service on outstanding
20 state school improvement revenue bonds for the current fiscal year shall be
21 transferred each month to the school improvement revenue bond debt service
22 fund established by section 15-2084. The total amount of bonds for which
23 these monies may be allocated for the payment of debt service shall not
24 exceed a principal amount of eight hundred million dollars exclusive of
25 refunding bonds and other refinancing obligations.

26 2. After any transfer of monies pursuant to paragraph 1 of this
27 subsection, twelve per cent of the remaining monies collected during the
28 preceding month shall be transferred to the technology and research
29 initiative fund established by section 15-1648 to be distributed among the
30 universities for the purpose of investment in technology and research-based
31 initiatives.

32 3. After the transfer of monies pursuant to paragraph 1 of this
33 subsection, three per cent of the remaining monies collected during the
34 preceding month shall be transferred to the workforce development account
35 established in each community college district pursuant to section 15-1472
36 for the purpose of investment in workforce development programs.

37 4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
38 subsection, one-twelfth of the amount a community college that is owned,
39 operated or chartered by a qualifying Indian tribe on its own Indian
40 reservation would receive pursuant to section 15-1472, subsection D,
41 paragraph 2 if it were a community college district shall be distributed each
42 month to the treasurer or other designated depository of a qualifying Indian
43 tribe. Monies distributed pursuant to this paragraph are for the exclusive
44 purpose of providing support to one or more community colleges owned,
45 operated or chartered by a qualifying Indian tribe and shall be used in a

1 manner consistent with section 15-1472, subsection B. For purposes of this
2 paragraph, "qualifying Indian tribe" has the same meaning as defined in
3 section 42-5031.01, subsection D.

4 5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
5 subsection, one-twelfth of the following amounts shall be transferred each
6 month to the department of education for the increased cost of basic state
7 aid under section 15-971 due to added school days and associated teacher
8 salary increases enacted in 2000:

- 9 (a) In fiscal year 2001-2002, \$15,305,900.
- 10 (b) In fiscal year 2002-2003, \$31,530,100.
- 11 (c) In fiscal year 2003-2004, \$48,727,700.
- 12 (d) In fiscal year 2004-2005, \$66,957,200.
- 13 (e) In fiscal year 2005-2006 and each fiscal year thereafter,
14 \$86,280,500.

15 6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
16 subsection, seven million eight hundred thousand dollars is appropriated each
17 fiscal year, to be paid in monthly installments, to the department of
18 education to be used for school safety as provided in section 15-154 and two
19 hundred thousand dollars is appropriated each fiscal year, to be paid in
20 monthly installments to the department of education to be used for the
21 character education matching grant program as provided in section 15-154.01.

22 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
23 subsection, no more than seven million dollars may be appropriated by the
24 legislature each fiscal year to the department of education to be used for
25 accountability purposes as described in section 15-241 and title 15, chapter
26 9, article 8.

27 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
28 subsection, one million five hundred thousand dollars is appropriated each
29 fiscal year, to be paid in monthly installments, to the failing schools
30 tutoring fund established by section 15-241.

31 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
32 subsection, twenty-five million dollars shall be transferred each fiscal year
33 to the state general fund to reimburse the general fund for the cost of the
34 income tax credit allowed by section 43-1072.01.

35 10. After the payment of monies pursuant to paragraphs 1 through 9 of
36 this subsection, the remaining monies collected during the preceding month
37 shall be transferred to the classroom site fund established by section
38 15-977. The monies shall be allocated as follows in the manner prescribed by
39 section 15-977:

- 40 (a) Forty per cent shall be allocated for teacher compensation based
41 on performance.
- 42 (b) Twenty per cent shall be allocated for increases in teacher base
43 compensation and employee related expenses.
- 44 (c) Forty per cent shall be allocated for maintenance and operation
45 purposes.

1 F. The department shall credit the remainder of the monies in the
2 transaction privilege and severance tax clearing account to the state general
3 fund, subject to any distribution required by section 42-5030.01.

4 G. Notwithstanding subsection D of this section, if a court of
5 competent jurisdiction finally determines that tax monies distributed under
6 this section were illegally collected under this article or articles 5 and 8
7 of this chapter and orders the monies to be refunded to the taxpayer, the
8 department shall compute the amount of such monies that was distributed to
9 each city, town and county under this section. The department shall notify
10 the state treasurer of that amount plus the proportionate share of additional
11 allocated costs required to be paid to the taxpayer. Each city's, town's and
12 county's proportionate share of the costs shall be based on the amount of the
13 original tax payment each municipality and county received. Each month the
14 state treasurer shall reduce the amount otherwise distributable to the city,
15 town and county under this section by one thirty-sixth of the total amount to
16 be recovered from the city, town or county until the total amount has been
17 recovered, but the monthly reduction for any city, town or county shall not
18 exceed ten per cent of the full monthly distribution to that entity. The
19 reduction shall begin for the first calendar month after the final
20 disposition of the case and shall continue until the total amount, including
21 interest and costs, has been recovered.

22 H. On receiving a certificate of default from the greater Arizona
23 development authority pursuant to section 41-1554.06 or 41-1554.07 and to the
24 extent not otherwise expressly prohibited by law, the state treasurer shall
25 withhold from the next succeeding distribution of monies pursuant to this
26 section due to the defaulting political subdivision the amount specified in
27 the certificate of default and immediately deposit the amount withheld in the
28 greater Arizona development authority revolving fund. The state treasurer
29 shall continue to withhold and deposit the monies until the greater Arizona
30 development authority certifies to the state treasurer that the default has
31 been cured. In no event may the state treasurer withhold any amount that the
32 defaulting political subdivision certifies to the state treasurer and the
33 authority as being necessary to make any required deposits then due for the
34 payment of principal and interest on bonds of the political subdivision that
35 were issued before the date of the loan repayment agreement or bonds and that
36 have been secured by a pledge of distributions made pursuant to this section.

37 I. Except as provided by sections 42-5033 and 42-5033.01, the
38 population of a county, city or town as determined by the most recent United
39 States decennial census plus any revisions to the decennial census certified
40 by the United States bureau of the census shall be used as the basis for
41 apportioning monies pursuant to subsection D of this section.

42 J. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION, ON NOTICE FROM THE
43 DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-6010, SUBSECTION B, THE STATE
44 TREASURER SHALL WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO THIS
45 SECTION TO THE AFFECTED CITY OR TOWN THE AMOUNT OF PENALTY FOR BUSINESS

1 LOCATION MUNICIPAL TAX INCENTIVES PROVIDED BY THE CITY OR TOWN TO A BUSINESS
2 ENTITY THAT LOCATES A RETAIL BUSINESS FACILITY IN THE CITY OR TOWN. THE
3 STATE TREASURER SHALL CONTINUE TO WITHHOLD MONIES PURSUANT TO THIS SUBSECTION
4 UNTIL THE ENTIRE AMOUNT OF THE PENALTY HAS BEEN WITHHELD. MONIES WITHHELD
5 PURSUANT TO THIS SUBSECTION ARE CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT
6 OF COMMERCE EXCLUSIVELY TO SUPPLEMENT AND NOT SUPPLANT OTHER MONIES AVAILABLE
7 FOR ECONOMIC DEVELOPMENT PROGRAMS AUTHORIZED BY TITLE 41, CHAPTER 10. THE
8 STATE TREASURER SHALL NOT WITHHOLD ANY AMOUNT THAT THE CITY OR TOWN CERTIFIES
9 TO THE DEPARTMENT OF REVENUE AND THE STATE TREASURER AS BEING NECESSARY TO
10 MAKE ANY REQUIRED DEPOSITS OR PAYMENTS FOR DEBT SERVICE ON BONDS OR OTHER
11 LONG-TERM OBLIGATIONS OF THE CITY OR TOWN THAT WERE ISSUED OR INCURRED BEFORE
12 THE LOCATION INCENTIVES PROVIDED BY THE CITY OR TOWN.

13 ~~J.~~ K. For the purposes of this section, "community college district"
14 means a community college district that is established pursuant to sections
15 15-1402 and 15-1403 and that is a political subdivision of this state.

16 Sec. 2. Title 42, chapter 6, article 1, Arizona Revised Statutes, is
17 amended by adding section 42-6010, to read:

18 42-6010. Business location municipal tax incentives;
19 prohibition; penalty; exceptions; definition

20 A. A CITY OR TOWN SHALL NOT OFFER OR PROVIDE A TAX INCENTIVE TO A
21 BUSINESS ENTITY AS AN INDUCEMENT OR IN EXCHANGE FOR LOCATING OR RELOCATING A
22 RETAIL BUSINESS FACILITY IN THE CITY OR TOWN.

23 B. A CITY OR TOWN THAT VIOLATES THIS SECTION IS SUBJECT TO A PENALTY
24 EQUAL TO THE AMOUNT OF THE INCENTIVE REALIZED BY THE TAXPAYER, EXTENDED OVER
25 A PERIOD OF FIVE YEARS. THE DEPARTMENT OF REVENUE SHALL NOTIFY THE STATE
26 TREASURER TO WITHHOLD THE AMOUNT OF THE PENALTY FOR PAYMENT TO THE DEPARTMENT
27 OF COMMERCE FROM MONIES OTHERWISE PAYABLE TO THE CITY OR TOWN AS PROVIDED BY
28 SECTION 42-5029, SUBSECTION J.

29 C. THIS SECTION DOES NOT APPLY WITH RESPECT TO:

30 1. MUNICIPAL SERVICES AND BENEFITS GENERALLY AFFORDED BY ORDINANCE TO
31 ALL NEW BUSINESSES IN THE CITY OR TOWN, HAVING NO DIRECT AFFECT ON MUNICIPAL
32 TAX LEVIES.

33 2. TAX INCENTIVES THAT ARE AFFORDED TO ALL EXISTING RETAIL BUSINESS
34 FACILITIES IN THE CITY OR TOWN WITHIN FIVE MILES OF THE LOCATION OF THE NEW
35 RETAIL BUSINESS FACILITY.

36 3. TAX INCENTIVES FOR LOCATING RETAIL BUSINESS FACILITIES IN AN AREA
37 DESIGNATED AS A REDEVELOPMENT PROJECT PURSUANT TO TITLE 36, CHAPTER 12,
38 ARTICLE 3.

39 D. FOR THE PURPOSES OF THIS SECTION, "TAX INCENTIVE" MEANS ANY WAIVER,
40 EXEMPTION, DEDUCTION, CREDIT, REBATE, DISCOUNT, DEFERRAL OR OTHER ABATEMENT
41 OR REDUCTION OF THE NORMAL MUNICIPAL TAX LIABILITY OF AN INDIVIDUAL TAXPAYER
42 THAT OTHERWISE APPLIES TO SIMILAR EXISTING TAXPAYERS AND PROPERTIES IN THE
43 CITY OR TOWN, HOWEVER DENOMINATED, COMPUTED OR APPLIED, AND GENERALLY
44 UNDERSTOOD AS AN INDUCEMENT FOR THE TAXPAYER TO LOCATE A BUSINESS FACILITY OR
45 OTHER OPERATION IN THE CITY OR TOWN.