

CHAPTER 9

SALES TAX

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ARTICLE 9-1 SALES TAX

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Section 9-1-1 Definitions

In this chapter, unless the context otherwise requires:

“Business” – The term “Business” shall include all activities or acts personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.

“Gross Income” – The terms “Gross Income” shall mean the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding from or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses. Cash discounts allowed and taken on sales shall not be included as gross income. Gross income shall not include goods, wares or merchandise or the value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the article is included in the gross income.

“Gross Receipts” – The term “Gross Receipts” shall mean the total amount of the sales, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or

otherwise, including all receipts, cash credits and property of every kind and nature and any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense, but does not include cash discounts allowed and taken nor the sale price of property, returned by customers when the full sale price thereof is refunded either in cash or by credit.

“Person or Company” – The term “Person or Company” shall mean individual, firm, partnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit.

“Retailer” – The term “Retailer” includes every person engaged in the business of making sales at retail, and when in the opinion of the council it is necessary for the efficient administration of this chapter, include dealers, distributors, supervisors, employees and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

“Sale” – The word “Sale” shall mean any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible property, for a consideration, and includes:

A. Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

B. The fabrication of tangible personal property for consumers who furnish either directly or indirectly the material used in the fabrication work and the furnishing, preparing or serving for the consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.

“Tangible Personal Property” – The term “Tangible Personal Property” shall mean personal property which may be seen, weighed, felt, touched or is in any other manner perceptible to the senses.

“Taxpayer” – The word “Taxpayer” shall mean any person liable for any tax imposed by this chapter.

“Sale at Retail” – The term “Sale at Retail” shall mean a sale for any purpose other than for resale in the form of tangible personal property.

“Wholesaler or Jobber” – The term “Wholesaler or Jobber” shall mean any person who sells tangible personal property for resale and not for consumption by the purchaser.

Section 9-1-2 Exclusion of Tax From Gross Income, Receipts or Proceeds

For the purpose of this chapter the total amount of gross income, gross receipts, or gross proceeds of sales shall be deemed to be the amount received, exclusive of the tax imposed by this chapter, if the person upon whom the tax is imposed established to the satisfaction of the council that the tax has been added to the sale price and not absorbed by him, but in no event shall the person upon whom the tax is imposed, when an added charge is made to cover the tax levied by this chapter, remit less than the amount so collected to the town clerk.

Section 9-1-3 Records

Records and account shall be kept by the town clerk showing separately the taxes collected under and pursuant to this chapter. The town clerk shall keep full and accurate records of all moneys received and shall show how such moneys were disbursed, and shall preserve all returns filed for a period of four (4) years.

Section 9-1-4 Rules and Regulations

The council is authorized and directed to formulate rules and regulations and prescribe forms and procedure necessary to the efficient enforcement of this chapter.

Section 9-1-5 Examination Powers

The council or its authorized agents may examine books, papers, records or other data bearing upon the correctness of any return or for the purpose of making a return where none has been made as required by this chapter and may require the attendance of any person and take his testimony under oath with respect to such matters. Any person summoned as a witness who fails to obey a summons to appear or answer any material question, or to produce any book, record, paper or other data when required to do so, may be compelled to do so by the Council in any manner prescribed by the laws of the State of Arizona relating to compelling the attendance of witness and the production of documents and records before and administrative agency or governing body.

Section 9-1-6 Confidential Nature of Reports

The council, its authorized agents, or the town clerk, shall not divulge the gross income, gross proceeds of sales or the amount of tax paid by any person as shown by the reports filed as required by this chapter, except to members and employees of the council for the purpose of checking, comparing and correcting returns, or to the authorized representative of the town in any action pertaining to the tax due under this chapter.

Section 9-1-7 Privilege Licenses; Violations; Penalty

Every person who receives gross proceeds of sales or gross income from and which a privilege tax is imposed upon this chapter, desiring to engage or continue to engage in business, shall make application to the town clerk for a privilege license accompanied by a fee of one dollar (\$1.00). Such a person shall not engage or continue in business in the town until he has obtained a privilege license.

If the applicant is not in arrears in payment of any tax imposed by this chapter, the town clerk shall issue a license authorizing the person to engage and continue in such business, upon a condition that he complies with this chapter. The license shall be continuous, but shall not be transferable upon a change of ownership or change of location of a business. A person engaging in or conducting a business in two (2) or more locations shall procure a license for each location.

A person who violates any provision of this section is guilty of a misdemeanor, punishable by a fine for each offense of not less than ten dollars (\$10.00) or by imprisonment for not less than ten (10) days.

Section 9-1-8 Levy of Tax; Purposes

There is levied and there shall be collected by the town clerk for the purpose of raising public money to be used in liquidating the outstanding obligations of the Municipal Government of the town and to aid in defraying the necessary and ordinary expenses thereof, annual privilege taxes measured by the amount of volume of business transacted by persons on account of their business activities and in the amounts to be determined by the application of rates against values, gross proceeds of sales or gross income as the case may be in accordance with the following schedule.

A. At an amount equal to two percent (2%) of the gross proceeds of sales or gross income from the business upon every person engaging or conducting or continuing within the town in the following businesses:

1. Producing and furnishing, or furnishing to consumers, electricity, electric lights, current, power or gas, natural or artificial, and water.
2. Contracting, however payments paid by the contractor for labor employed in construction, improvements or repairs shall not be subject to such tax.
3. The sale of sand, gravel, cinders, aggregate, or premixed cement or concrete, exclusive of payments paid for labor employed in digging, loading, mixing, hauling, spreading or pouring and finishing said materials.
4. Conducting restaurants, dining rooms, lunchrooms, soda fountains, or similar establishments where articles of food or drink are sold for consumption on the premises.

5. Hotels, guest houses, rooming houses, apartment houses office buildings, motels, automobile storage garages, trailer parks or any other business or occupation charging storage fees or rents.
6. Operating or conducting theaters, movies, shows of any type or nature, exhibitions, concerts, carnivals, circuses, fairs, races, games, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches and nay business charging admission fees for exhibitions, amusement or instruction, other than projects of bona fide religious, service or educational institutions.
7. Slaughtering animals for food, packaging, processing or compounding meat or meat products.
8. Selling poultry or stock feed to poultrymen or producers of poultry and poultry products, or to stockmen or feeders of stock at wholesale prices for their own use and not for resale.
9. Conducting or operating the business of selling any tangible personal property whatever at retail, but the tax shall not apply to the gross proceeds of sales or gross income from:
 - a. professional or personal service occupations, or businesses which involve sales or transfers of tangible personal property only as inconsequential elements thereof.
 - b. services rendered in connection with or in addition to the sale of tangible personal property at retail other than those to which the subsections of this section apply.

B. When any person is engaged in an occupation or business to which subsection A of this section is applicable, such person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from services; provided, however, that in the event such person holds a valid transaction privilege license from the State of Arizona, and reports to the State of Arizona for the purposes of determining the tax to be imposed by the State of Arizona, pursuant to the provisions of Title 42, Chapter 8, Arizona Revised Statutes, the amount of gross proceeds of sales of tangible personal property and gross income from services contained or set forth in said report shall be conclusive for the purposes of this chapter.

C. When a person is engaged in the business of selling tangible personal property at both wholesale and retail, the retail rate shall be applied only to the gross proceeds of the sales made other than at wholesale when such person's books are so kept as to show separately the gross proceeds of sales of each class, and when such books are not so kept the retail rate shall be applied to the gross proceeds of every sale so made, subject to the qualifications set forth in subsection B of this section.

Section 9-1-9 Deductions

This chapter shall not apply to:

- A. Sales of gasoline.
- B. Common or contract motor carriers.
- C. Sales of tangible personal property to a person licensed as a contractor under the laws of the State of Arizona who holds a valid privilege license for engaging or continuing in the business of contracting under this chapter when tangible personal property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement in fulfillment of a contract thereof.
- D. Sales to the United States Government, the State of Arizona or the Town of Duncan, or any agencies, departments or political subdivisions thereof.

Section 9-1-10 Monthly Return; Time for Payment; Extension of Time

- A. The taxes levied under this chapter shall be due and payable monthly on or before the fifteenth (15th) day of the month in which the tax accrues, and shall be delinquent five (5) days thereafter.
- B. The taxpayer shall on or before the fifteenth (15th) day of the month prepare a return upon the form provided therefor by the council showing the amount of the tax for which he is liable for the preceding month, and shall mail or deliver the return together with remittance for the amount of the tax to the office of the town clerk. The return shall be verified by the oath of the taxpayer or an authorized agent. No remittance other than cash shall be final discharge of liability for the tax levied by this chapter until it has been paid in cash to the town clerk.
- C. Any taxpayer who fails to pay such tax within five days from the date upon which the payment becomes due shall be subject to and shall pay a penalty of ten percent (10%) of the amount of the tax, plus interest at the rate of one half of one percent (1/2 of 1%) per month or fraction of month from the time the tax was due and payable until paid.
- D. The council, for good cause shown, may extend the time for making any return required by the chapter, and may grant such reasonable additional time within which to make return as it deems proper but the time for filing shall not be extended beyond the fifteenth (15th) day of the second month next succeeding the regular due date.

Section 9-1-11 Deficiencies; Penalty; Notice; Payment

A. If a taxpayer fails to file a return, or if the council is not satisfied with the return and payment of the amount of the tax required by this chapter to be paid by any person, it may examine the return and re-compute and re-examine the amount required to be paid, based upon the facts contained in the return and upon any information which may be within its possession. All additional amounts determined to be due under the provisions of this section shall bear interest at the rate of one-half of one percent ($1/2$ of 1%) per month or fraction of a month from the time the additional tax was due and payable until paid.

B. If any part of the deficiency for which a determination of an additional amount due is made is found to be due to negligence or intentional disregard for this chapter but without intent to defraud, a penalty of ten percent (10%) of such amount shall be added, plus interest at the rate of one-half of one percent ($1/2$ of 1%) per month or fraction of month from the time the additional tax was due and payable until paid; provided, however, that if said deficiency is found to be fraud, or to have been done with an intent to evade this chapter, a penalty of twenty-five percent (25%) of such amount shall be due and added, plus interest as set forth above.

C. The council shall give the taxpayer written notice of the determination of a deficiency by mail and such deficiency plus interest and penalties shall be due and payable thirty (30) days after receipt of the notice and demand, or if an appeal is taken to the council, within ten (10) days after the order or decision of the council has become final.

Section 9-1-12 Appeal to Council

A. Any person from whom an amount is determined to be due and payable under this chapter, may apply to the council for hearing by a petition in writing within thirty (30) days after notice required by subsection C of section 9-1-11 is received by him. The petition shall set forth the reasons why such hearing should be granted and the amount of the tax reduced. The council shall promptly consider the petition and may grant or deny the hearing. Notice in writing of the council's decision to either grant or deny the petition for a hearing shall be given to the petitioner.

B. If the petition for hearing, correction or re-determination of the tax is not filed within such thirty (30) day period, or any due extension of time thereof, the amount determined to be due shall become final, and such person shall be deemed to have waived and abandoned the right to question the amount determined to be due.

Section 9-1-13 Tax Shall Be a Lien

The tax imposed by this chapter shall be a lien upon the property of any person subject to the provisions of this chapter who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under Section 9-1-10 of this chapter within thirty (30) days after the date he sold out his business or stock of goods, or quit business and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the town clerk showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided and the taxes shall be due and unpaid after the thirty (30) day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

Section 9-1-14 Tax Lien; Notice; Priority of Lien

A. Any tax, penalty or interest imposed under this chapter which has become final, or as provided in this chapter shall become a lien upon the person issuing a notice and claim of lien setting forth the same by giving the name of the taxpayer, the amount of the penalty and interest, the periods for which due, the date of accrual thereof and stating that the town claims a lien therefor.

B. The notice and claim of lien shall be issued under the official seal of the town and signed by its mayor and shall be recorded in the office of the county recorder of any county in which the taxpayer owns property. After the notice and claim of lien is filed, the taxes, penalties and interest in the amounts specified therein shall be a lien on all real and personal property of the taxpayer located in such county superior to all other liens and assessments placed of record subsequent to filing of the notice and claim of lien, except liens for ad valorem taxes.

Section 9-1-15 Collection of Delinquent Taxes

After notice and claim of lien as provided in Section 9-1-14 of this chapter has been recorded, or concurrently therewith, the town clerk may issue a warrant directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property of the delinquent taxpayer found within said county, for the payment of the amount of such tax with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the town clerk and pay to him the money collected by virtue thereof by a time to be therein specified, not more than ninety (90) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the county recorder a copy thereof and the county recorder shall thereupon file of record and index among recorded liens the name of the delinquent taxpayer mentioned in the warrant and the date when such copy is filed. Thereupon the

amount such warrant shall become, as of the date of filing, a lien upon the title to any interest in real and personal property of the delinquent taxpayer against whom it is issued in the same manner as an abstract of judgment duly recorded in the office of the county recorder, the said sheriff shall thereupon proceed upon the same manner prescribed by law in respect to execution issued against property on the judgment of a court of record, and shall be entitled to the same fee for his services in executing the warrant, to be collected in the same manner. If a warrant is returned not satisfied in full, the town clerk shall have the same remedies to enforce the claim for taxes against the delinquent taxpayer as if the town had recovered judgment against the delinquent taxpayer for the amount of the tax.

Section 9-1-16 Penalties

A. It is unlawful for any person to:

1. Fail or refuse to make any return required by this chapter.
2. Fail or refuse to furnish any supplemental return or other pertinent and available data required by the council.
3. Make or cause to be made a false or fraudulent return.
4. Fail or refuse to permit any lawful examination of any book, paper, account, record or other memoranda by the council or any of its authorized agents or employees.

B. A person violating any provision of subsection A of this section shall be punished by a fine of not more than three hundred dollars (\$300.00), by imprisonment for not more than three (3) months, or both.

Section 9-1-17 Personal Liability for Tax

Every tax imposed by this chapter and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the town, and may be collected by action in court instituted in the name of the town by the town attorney upon request of the council. Such remedies shall be in addition to existing remedies or those provided in this chapter.