

ORDINANCE NO. 5059

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO TRANSACTION PRIVILEGE TAXES; AMENDING MESA PRIVILEGE AND EXCISE TAX CODE SECTIONS 5-10-100, 5-10-415, 5-10-416, 5-10-417, 5-10-445, AND 5-10-660; PROVIDING FOR EFFECTIVE DATES THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

**SECTION 1.** Mesa Privilege and Excise Tax Code Section 5-10-100 is amended by modifying the definition of "Food" and "Prosthetic and by adding the definition of "Medical Marijuana":

**5-10-100: GENERAL DEFINITIONS:**

For the purposes of this Chapter, the following definitions apply:

**FOOD:** Any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. §42-1387. Under no circumstances shall "food" include alcoholic beverages or tobacco or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. UNDER NO CIRCUMSTANCES SHALL "FOOD" INCLUDE AN EDIBLE PRODUCT, BEVERAGE, OR INGREDIENT INFUSED, MIXED, OR IN ANY WAY COMBINED WITH MEDICAL MARIJUANA OR AN ACTIVE INGREDIENT OF MEDICAL MARIJUANA.

MEDICAL MARIJUANA: MEANS "MARIJUANA" USED FOR A "MEDICAL USE" AS THOSE TERMS ARE DEFINED IN A.R.S. SECTION 36-2801.

**PROSTHETIC:** Any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician's assistant, nurse practitioner, or veterinarian:

1. Any man-made device for support or replacement of a part of the body or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
2. Insulin, insulin syringes, and glucose test strips sold with or without a prescription.
3. Hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
4. Drugs or medicine, including oxygen.
5. Equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.
6. Durable medical equipment which has a federal Health Care Financing Administration Common Procedure Code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home.

7. UNDER NO CIRCUMSTANCES SHALL "PROSTHETIC" INCLUDE MEDICAL MARIJUANA REGARDLESS OF WHETHER IT IS SOLD OR DISPENSED PURSUANT TO A PRESCRIPTION, RECOMMENDATION, OR WRITTEN CERTIFICATION BY ANY AUTHORIZED PERSON.

**Section 2. Mesa Privilege and Excise Tax Code Sections 5-10-415 subsections (B)10 and (B)11, 5-10-416 subsections (C)1(e) and (C)2(c), and 5-10-417 subsections (C)1(e) and (C)2(c), are amended to read:**

**5-10-415: CONSTRUCTION CONTRACTING; CONSTRUCTION CONTRACTORS:**

(B) 10. Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

- (a) The attributable amount shall not exceed the value of the development fees actually imposed.
- (b) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
- (c) "Development Fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(B) 11. For taxable periods beginning from and after July 1, 2008 and ending before January 1, ~~2011~~2017, the gross proceeds of sale or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination.

**5-10-416: CONSTRUCTION CONTRACTING; SPECULATIVE BUILDERS:**

(C) 1 (e) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph:

- (i) The attributable amount shall not exceed the value of the development fees actually imposed.
- (ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
- (iii) "Development Fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(C) 2 (c) For taxable periods beginning from and after July 1, 2008 and ending before January 1, ~~2014~~2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records available to the Department of Revenue and the City, as applicable, for examination.

**5-10-417: CONSTRUCTION CONTRACTING; OWNER-BUILDERS WHO ARE NOT SPECULATIVE BUILDERS:**

(C) 1 (e) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph:

- (i) The attributable amount shall not exceed the value of the development fees actually imposed.
- (ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
- (iii) "Development Fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid.

(C) 2 (c) For taxable periods beginning from and after July 1, 2008 and ending before January 1, ~~2014~~2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination.

**Section 3. Mesa Privilege and Excise Tax Code Section 5-10-445, is amended by adding subsection (S):**

**5-10-445: RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:**

(S) THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A COMMERCIAL LEASE IN WHICH A RECIPROCAL INSURER OR A CORPORATION LEASES REAL PROPERTY TO AN AFFILIATED CORPORATION. FOR THE PURPOSES OF THIS PARAGRAPH:

(1) "AFFILIATED CORPORATION" MEANS A CORPORATION THAT MEETS ONE OF THE FOLLOWING CONDITIONS:

(A) THE CORPORATION OWNS OR CONTROLS AT LEAST EIGHTY PER CENT OF THE LESSOR.

(B) THE CORPORATION IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY THE LESSOR.

(C) THE CORPORATION IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY A CORPORATION THAT ALSO OWNS OR CONTROLS AT LEAST EIGHTY PER CENT OF THE LESSOR.

(D) THE CORPORATION IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY A CORPORATION THAT IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY A RECIPROCAL INSURER.

(2) FOR THE PURPOSES OF SUBSECTION (1), OWNERSHIP AND CONTROL ARE DETERMINED BY REFERENCE TO THE VOTING SHARES OF A CORPORATION.

(3) "RECIPROCAL INSURER" HAS THE SAME MEANING AS PRESCRIBED IN A.R.S. SECTION 20-762.

**Section 4. Mesa Privilege and Excise Tax Code Section 5-10-660, is amended by adding subsection (LL):**

**5-10-660: USE TAX; EXEMPTIONS:**

The storage or use in this City of the following tangible personal property is from the use tax imposed by this Article:

(LL) THE STORAGE, USE OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY IN THE CITY OR TOWN BY A SCHOOL DISTRICT OR CHARTER SCHOOL.

SECTION 1. Retroactive Effect. Section 1 of this ordinance shall be effective from and after June 1, 2011.

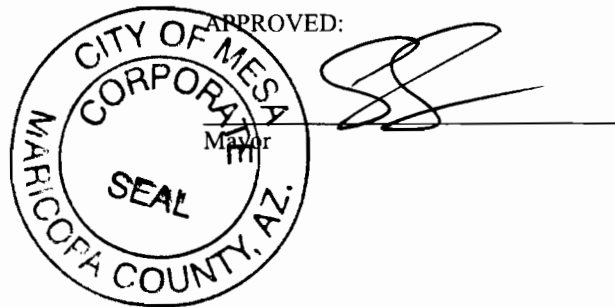
SECTION 2. Retroactive Effect. Section 2 of this ordinance shall be effective from and after July 29, 2010.

SECTION 3. Retroactive Effect. Section 3 of this ordinance shall be effective from and after July 29, 2010.

SECTION 4. Retroactive Effect. Section 4 of this ordinance shall be effective from and after September 30, 2009.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona,

This 22<sup>nd</sup> day of August, 2011.



ATTEST:

  
City Clerk