

## RESOLUTION NO. 2182

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF PAYSON", AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA:

Section 1. That certain document entitled "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF PAYSON", attached hereto marked Exhibit "A", three copies of which are on file in the Office of the Town Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

Section 2. Whereas, it is necessary for the preservation of the peace, health, and safety of the Town of Payson, Arizona, an emergency is declared to exist, and this Resolution shall become immediately operative and in full force and effect from and after the date of its enactment.

PASSED AND ADOPTED BY THE Mayor and Common Council of the Town of Payson, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Barbara G. Brewer, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Samuel I. Streichman, Town Attorney

**Prepared by Town of Payson Legal Department**

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# EXHIBIT "A"

to Resolution No. 2182

## 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF PAYSON

**Section 1. Section 8A-445 of the Tax Code of the Town of Payson is amended to read:**

**Sec. 8A-445. Rental, leasing, and licensing for use of real property.**

- (a) The tax rate shall be at an amount equal to two and twelve one-hundredths percent (2.12%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:
  - (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
  - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
  - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 8A-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed 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.
- (f) A person who has less than three (3) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State, is not deemed to be in the rental business, and is therefore exempt from the tax imposed by this Section on such income. However, a person who has one (1) or more units of commercial property is subject to the tax imposed by this Section on rental, lease and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than three (3) lodging spaces.
- (g) (Reserved)
- (h) The tax prescribed by this Section shall not include gross income from the rental, leasing, or licensing of lodging or lodging space to an individual who resides therein.

- (i) (Reserved)
- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 8A-444 of this code.
- (k) (Reserved)
- (l) (Reserved)
- (m) (Reserved)
- (n) Notwithstanding the provisions of Section 8A-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.
- (r) INCOME RECEIVED FROM THE RENTAL OF ANY "LOW-INCOME UNIT" AS ESTABLISHED UNDER SECTION 42 OF THE INTERNAL REVENUE CODE, INCLUDING THE LOW-INCOME HOUSING CREDIT PROVIDED BY IRC SECTION 42, TO THE EXTENT THAT THE COLLECTION OF TAX ON RENTAL INCOME CAUSES THE "GROSS RENT" DEFINED BY IRC SECTION 42 TO EXCEED THE INCOME LIMITATION FOR THE LOW-INCOME UNIT IS EXEMPT. THIS EXEMPTION ALSO APPLIES TO INCOME RECEIVED FROM THE RENTAL OF INDIVIDUAL RENTAL UNITS SUBJECT TO STATUTORY OR REGULATORY "LOW-INCOME UNIT" RENT RESTRICTIONS SIMILAR TO IRC SECTION 42 TO THE EXTENT THAT THE COLLECTION OF TAX FROM THE TENANT CAUSES THE RENTAL RECEIPTS TO EXCEED A RENT RESTRICTION FOR THE LOW-INCOME UNIT. THIS SUBSECTION ALSO APPLIES TO RENT RECEIVED BY A PERSON OTHER THAN THE OWNER OR LESSOR OF THE LOW -INCOME UNIT, INCLUDING A BROKER . THIS SUBSECTION DOES NOT APPLY UNLESS A TAXPAYER MAINTAINS THE DOCUMENTATION TO SUPPORT THE QUALIFICATION OF A UNIT AS A LOW-INCOME UNIT, THE "GROSS RENT" LIMITATION FOR THE UNIT AND THE RENT RECEIVED FROM THAT UNIT.

**Section 2. Section 8A-542 of the Tax Code of the Town of Payson is amended to read:**

**Section 8A-542. Prospective application of new law or interpretation or application of law.**

- (a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.

- (b) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:
  - (1) The change in interpretation or application applies prospectively only unless it is favorable to taxpayers.
  - (2) The Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
- (c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter.
- (d) ~~Tax liabilities, penalties and interest paid before a new interpretation or application of a provision of this Chapter shall not be refunded unless the taxpayer requesting the refund provides evidence satisfactory to the Tax Collector that all such amounts will be refunded to the person who paid an added charge to cover the tax.~~ (RESERVED)

**Section 3. Section 8A-560 of the Tax Code of the Town of Payson is amended to read:**

**Sec. 8A-560. Erroneous payment of tax; credits and refunds; limitations.**

- (a) Except as provided in Section 8A-565, the period within which a claim, ~~MEETING THE REQUIREMENTS OF SUBSECTION (c) OF THIS SECTION,~~ for credit may be filed, or refund allowed or made if no claim is filed, shall be as provided in A.R.S. Sections 42-1106 and 42-1118. ~~F OR PURPOSES OF THIS SECTION, "CLAIMANT" MEANS A TAXPAYER THAT HAS PAID A TAX IMPOSED UNDER THIS ARTICLE AND HAS SUBMITTED A CREDIT OR REFUND CLAIM UNDER THIS SECTION. EXCEPT WHERE THE TAXPAYER HAS GRANTED A CUSTOMER A POWER OF ATTORNEY TO PURSUE A CREDIT OR REFUND CLAIM ON THE TAXPAYER'S BEHALF, CLAIMANT DOES NOT INCLUDE ANY CUSTOMER OF SUCH TAXPAYER , WHETHER OR NOT THE CLAIMANT COLLECTED THE TAX FROM CUSTOMERS BY SEPARATELY STATED ITEMIZATION.~~
- (b) (Reserved)
- (c) ~~(Reserved)~~ A CREDIT OR REFUND CLAIM SUBMITTED BY A CLAIMANT FOR CREDIT OR REFUND OF ANY TAXES, PENALTIES, OR INTEREST PAID MUST BE IN WRITING AND:
  - (1) IDENTIFY THE NAME, ADDRESS AND CITY TAX IDENTIFICATION NUMBER OF THE TAXPAYER; AND
  - (2) IDENTIFY THE DOLLAR AMOUNT OF THE CREDIT OR REFUND REQUESTED; AND
  - (3) IDENTIFY THE SPECIFIC TAX PERIOD INVOLVED; AND
  - (4) IDENTIFY THE SPECIFIC GROUNDS UPON WHICH THE CLAIM IS BASED.
- (d) ~~Interest shall be allowed at the rate set forth in Section 8A-540(a) on any credit or refund authorized pursuant to the provisions of this Chapter. Interest shall be calculated from the time of the claim made to the City by the taxpayer. Interest shall be allowed at the rate set forth in Section 540(a) on any credit or refund authorized pursuant to the provisions of this Chapter. Interest shall be calculated from the time of the claim made to the City by the taxpayer.~~ (RESERVED)
- (e) (Reserved)
- (f) ~~The denial of a refund by the Tax Collector is subject to the provisions of A.R.S. Section 42-1119.~~ INTEREST SHALL BE ALLOWED ON THE OVERPAYMENT OF TAX FOR ANY CREDIT OR REFUND AUTHORIZED PURSUANT TO THIS SECTION AT THE RATE AND IN THE MANNER SET FORTH IN SECTION 8A-540(a). INTEREST SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM MEETING THE REQUIREMENTS OF SUBSECTION (c) OF THIS SECTION.

- (g) ~~Any refund paid under the provisions of this Section shall be paid from the Privilege Tax revenue accounts.~~ THE DENIAL OF A REFUND BY THE TAX COLLECTOR IS SUBJECT TO THE PROVISIONS OF A.R.S. SECTION 42-1119.
- (h) CLAIMANTS SHALL BE SUBJECT TO THE STATE TAXPAYER BILL OF RIGHTS (A.R.S. SECTION 42-2051 ET. SEQ.), EXCEPT THAT REASONABLE FEES AND OTHER COSTS MAY BE AWARDED AND ARE NOT SUBJECT TO THE MONETARY LIMITATIONS OF A.R.S. SECTION 42-2064 IF THE TAX COLLECTOR'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED OR WAS BROUGHT FOR THE PURPOSE OF HARASSING THE CLAIMANT , FRUSTRATING THE CREDIT OR REFUND PROCESS OR DELAYING THE CREDIT OR REFUND . FOR THE PURPOSES OF THIS SECTION, "REASONABLE FEES AND OTHER COSTS" MEANS FEES AND OTHER COSTS THAT ARE BASED ON PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF THE FURNISHED SERVICES, NOT TO EXCEED THE AMOUNTS ACTUALLY PAID FOR EXPERT WITNESSES, THE COST OF ANY STUDY, ANALYSIS, REPORT, TEST, PROJECT OR COMPUTER PROGRAM THAT IS FOUND TO BE NECESSARY TO PREPARE THE CLAIMANT'S CASE AND NECESSARY FEES FOR ATTORNEYS OR OTHER REPRESENTATIVES.
- (i) (RESERVED)
- (j) ANY REFUND PAID UNDER THE PROVISIONS OF THIS SECTION SHALL BE PAID FROM THE PRIVILEGE TAX REVENUE ACCOUNTS.

**Section 4. Regulation 8A-250.1 of the Tax Code of the Town of Payson is amended to read:**

**Reg. 8A-250.1. Excess tax collected.**

If a taxpayer collects taxes in excess of the combined tax RATE from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. TAX PAID ON AN ACTIVITY THAT IS NOT SUBJECT TO TAX OR THAT QUALIFIES FOR AN EXEMPTION, DEDUCTION, EXCLUSION OR CREDIT IS NOT EXCESS TAX COLLECTED.

## 2006 Model City Tax Code Changes

1. Refunds of Excess Tax Collected. Makes numerous changes to the process of refunding excess sales tax collected by a city/town. Attached is a more detailed explanation of these changes.
2. Low-income Housing. The new language to be placed in the Model City Tax Code makes income from housing units rented to low-income tenants exempt from sales tax (including Public Housing tenants) when:
  - the housing is restricted to tenants based on a maximum tenant income, and
  - a maximum rent that can be paid by the tenant has been established under federal law or regulations, and
  - the federal law or regulations do not provide for collection of rental tax from the tenant over and above the maximum rent, and
  - the amount actually collected from the tenant is at the maximum rent level.

All rental income from the units meeting these four qualifications is exempt, including any related subsidy or income tax credit. Gross income from other units, even at the same complex or project, is taxable.

**SUMMARY OF CHANGES TO MODEL CITY TAX CODE (MCTC)  
DUE TO LAWS 2005, CHAPTER 116 (HB 2055)**

- **Added definition of “excess tax” to Sec. 100, excluding tax collected on exempt income.** This term is used in Reg. 250.1 and in the revised Sec. 560. The standard in the MCTC is that terms used in more than one section are defined in Sec. 100.
- **Changed interest rate in Sec. 540 to match the floating interest rate in A.R.S. 42-1123(A) for interest charged after September 2005, compounding only the interest charged after September 2005.**
- **Deleted the requirement in subsection 542(d) to remit any tax collected from customers as a condition of a refund due to a change in interpretation or application of the code.**
- **Sec. 560 restructured for each subsection to deal with separate subjects in the approximate order of occurrence.**
- **Removed former subsection (c) requiring taxpayers to remit any tax collected from customers as a condition of the refund.**
- **New subsection (c) lists the minimum requirements for a claim (formerly in subsection (b)(4)).**
- **New subsection (d) establishes the statute of limitations for a claim meeting the minimum requirements (formerly in subsection (b)(4)).**
- **New subsection (e) establishes requirements and time limitations for the Tax Collector and taxpayer related to establishing that a claim meets the requirements of subsection (c), requests for documentation needed to support the claim (reasonably related and required by the Code, written requests, extensions, appeals related to requests), when a taxpayer may treat the claim as denied and establishes the burden of proof to show receipt of written communications.**
- **New subsection (f) sets the interest rate on credits or refunds to taxpayers to match the interest rate charged in 540(a) and sets the date from which to calculate interest as the date the valid claim is filed. The interest is to be paid on refunded tax as done by the state.**
- **New subsection (g) requires a written determination from the Tax Collector on the claim, which must include the taxpayer’s rights of appeal.**
- **New subsection (h) establishes when determination becomes final, unless appealed (formerly in subsection (e)), and provides for the award of fees and other costs to a taxpayer if they prevail.**
- **New subsection (i) clarifies that all claims received by a city prior to October 1, 2005 are subject to provisions of Section 560 as they existed prior to October 1, 2005. Additionally, the claim, interest or appeal provision changes to Section 560 cannot be cited or considered for claims received by a city prior to October 1, 2005. All claims received by a city after September 2005 are subject to the new provisions of Section 560.**
- **Effective date provision that must be a part of each city’s adopting ordinance makes the ordinance effective October 1, 2005.**