

**Proposed Change to the Model City Tax Code:
"2019 Rental of Real Property Amendment"**

**Section I. Model City Tax Code Section 445 is amended as follows, retroactively effective
from and after January 1, 2012.**

Sec. ___-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to _____ percent (___%) 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 City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City 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 ___-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.

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1 (d) Charges for joint pole usage by a person engaged in the business of providing or
2 furnishing utility or telecommunication services or that is a cable operator, or
3 charges for joint pole usage to a person engaged in the business of providing or
4 furnishing utility or telecommunication services or that is a cable operator are
5 exempt from the tax imposed by this section. "cable operator" has the same
6 meaning as prescribed by A.R.S. Section 9-505.

7 (e) Exempt from the tax imposed by this Section is gross income derived from the
8 rental, leasing, or licensing for use of real property to a qualifying hospital,
9 qualifying community health center or a qualifying health care organization, except
10 when the property so rented, leased, or licensed is for use in activities resulting in
11 gross income from unrelated business income as that term is defined in 26 U.S.C.
12 Section 512.

13 **** (Model Option #4:**

14 (e) (Reserved)**

Deleted: (Also See Peoria City Page)

15 (f) A person who has less than three (3) apartments, houses, trailer spaces, or other
16 lodging spaces rented, leased or licensed or available for rent, lease, or license
17 within the State and no units of commercial property for rent, lease, or license
18 within the State, is not deemed to be in the rental business, and is therefore exempt
19 from the tax imposed by this Section on such income. However, a person who has
20 one (1) or more units of commercial property is subject to the tax imposed by this
21 Section on rental, lease and license income from all such lodging spaces and
22 commercial units of real estate even though said person may have fewer than
23 three (3) lodging spaces.

24 **** (Model Option #5A:**

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1 (f) A person who has less than two (2) apartments, houses, trailer spaces, or other
2 lodging spaces rented, leased or licensed or available for rent, lease, or license
3 within the State and no units of commercial property for rent, lease, or license
4 within the State, is not deemed to be in the rental business, and is therefore exempt
5 from the tax imposed by this Section on such income. However, a person who has
6 one (1) or more units of commercial property is subject to the tax imposed by this
7 Section on rental, lease and license income from all such lodging spaces and
8 commercial units of real estate even though said person may have fewer than two
9 (2) lodging spaces.)**

10 **** (Model Option #5B:**

11 (f) (Reserved)**

12 (g) (Reserved)

13 **++ (Local Option #R:**

14 (g) Single-unit/single-tenant rental, leasing, or licensing. A person who has only one
15 unit of commercial property rented or available for rent, lease, or license shall be
16 deemed not to be in the business of rental, leasing, or licensing of real property,
17 as provided by Regulation, and further provided that both of the following
18 conditions exist:

19 (1) such lessor has income from any other source; and

20 (2) the scope and degree of rental activity clearly indicates that it is an
21 investment rather than a business activity of the lessor.)**

22 (h) (Reserved)

23 **++ (Local Option #S:**

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1 (h) Except as may be provided in another Section of this Chapter, the tax prescribed
2 by this Section shall not include gross income from the rental, leasing, or licensing
3 of lodging or lodging space to an individual who resides therein.

4 OR

5 (h) The tax prescribed by this Section shall not include gross income from the rental,
6 leasing, or licensing of lodging or lodging space to an individual who resides
7 therein.)++

8 (i) ~~Exempt from the tax imposed by this Section is the gross income derived from~~
9 ~~payments made pursuant to a life care contract by a resident to a provider that~~
10 ~~holds a permit to enter into life care contracts issued by the Arizona Department~~
11 ~~of Insurance. For the purposes of this paragraph, "life care contract", "provider"~~
12 ~~and "resident" have the same meanings prescribed in section 20-1801.~~

Deleted: (Reserved)

13 ~~(j) Exempt from the tax imposed by this Section is gross income derived from the~~
14 ~~activities taxable under Section ____-444 of this code.~~

Deleted: ++(Local Option #T:¶
(i) . Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing of real property to a corporation; provided that the lessor's aggregate holdings in the lessee corporation amount to at least eighty percent (80%) of the voting stock of the lessee corporation.)++¶

15 ~~(k) Leasing or renting real property or the right to use real property at exhibition events~~
16 ~~in this state sponsored, operated or conducted by a nonprofit organization that is~~
17 ~~exempt from taxation under Section 501(c)(3), 501(c)(4) or 501(c)(6) of the Internal~~
18 ~~Revenue Code if the organization is associated with major league baseball teams~~
19 ~~or a national touring professional golfing association and no part of the~~
20 ~~organization's net earnings inures to the benefit of any private shareholder or~~
21 ~~individual. This paragraph does not apply to an organization that is owned,~~
22 ~~managed or controlled, in whole or in part, by a major league baseball team, or its~~
23 ~~owners, officers, employees or agents, or by a major league baseball association~~
24 ~~or professional golfing association, or its owners, officers, employees or agents,~~

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(j) . (Reserved) (See Glendale city page)¶

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1 unless the organization conducted or operated exhibition events in this state before
2 January 1, 2018 that were exempt from taxation under A.R.S. Section 42-5073.

3 (l) (Reserved)

4 (m) (Reserved)

5 **++(Local Option #00:**

6 (m) Notwithstanding the other provisions of this Section, the tax imposed by this
7 Section does not apply to the rental, leasing or licensing for use of commercial
8 property.)++

9 (n) Notwithstanding the provisions of Section ___-200(b), the fair market value of one
10 (1) apartment, in an apartment complex provided rent free to an employee of the
11 apartment complex is not subject to the tax imposed by this Section. For an
12 apartment complex with more than fifty (50) units, an additional apartment provided
13 rent free to an employee for every additional fifty (50) units is not subject to the tax
14 imposed by this Section.

15 (o) Income derived from incarcerating or detaining prisoners who are under the
16 jurisdiction of the United States, this State or any other state or a political
17 subdivision of this State or of any other state in a privately-operated prison, jail or
18 detention facility is exempt from the tax imposed by this Section.

Deleted: privately operated

19 (p) Charges by any hospital, any licensed nursing care institution, or any
20 kidney dialysis facility to patients of such facilities for the use of rooms or
21 other real property during the course of their treatment by such facilities are
22 exempt.

23 (q) Charges to patients receiving "personal care" or "directed care", by any licensed
24 assisted living facility, licensed assisted living center or licensed assisted living

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1 home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised
2 Statutes and Title 9 of the Arizona Administrative Code are exempt.

3 (r) Income received from the rental of any "low-income unit" as established under
4 Section 42 of the Internal Revenue Code, including the low-income housing credit
5 provided by IRC Section 42, to the extent that the collection of tax on rental income
6 causes the "gross rent" defined by IRC Section 42 to exceed the income limitation
7 for the low-income unit is exempt. This exemption also applies to income received
8 from the rental of individual rental units subject to statutory or regulatory "low-
9 income unit" rent restrictions similar to IRC Section 42 to the extent that the
10 collection of tax from the tenant causes the rental receipts to exceed a rent
11 restriction for the low-income unit. This subsection also applies to rent received by
12 a person other than the owner or lessor of the low-income unit, including a broker.
13 This subsection does not apply unless a taxpayer maintains the documentation to
14 support the qualification of a unit as a low-income unit, the "gross rent" limitation
15 for the unit and the rent received from that unit.

16 (s) The gross proceeds of a commercial lease of real property between affiliated
17 companies, businesses, persons or reciprocal insurers are exempt. For the
18 purposes of this paragraph:

19 (1) "affiliated companies, businesses, persons or reciprocal insurers" means
20 the lessor holds a controlling interest in the lessee, the lessee holds a
21 controlling interest in the lessor, an affiliated entity holds a controlling
22 interest in both the lessor and the lessee or an unrelated person holds a
23 controlling interest in both the lessor and lessee.

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1 (2) "controlling interest" means direct or indirect ownership of at least eighty
2 per cent of the voting shares of a corporation or of the interests in a
3 company, business or person other than a corporation.

4 (3) "reciprocal insurer" has the same meaning as prescribed in A.R.S. Section
5 20-762.
6

7 **Section II. Retroactivity; refunds; nonseverability.**

8 A. The transaction privilege tax exemption for gross income derived from payments made
9 pursuant to a life care contract by a resident to a provider as provided in Model City Tax
10 Code Section 445(i) applies retroactively to taxable periods beginning from and after
11 January 1, 2012.

12 B. Any claim for refund of transaction privilege tax based on the retroactive application of
13 Model City Tax Code Section 445(i) shall be submitted to the Department of Revenue on
14 or before December 31, 2019, pursuant to section 42-1118, Arizona Revised Statutes. A
15 failure to file a claim on or before December 31, 2019 constitutes a waiver of the claim for
16 refund under this section.

17 C. The burden is on the taxpayer to establish by competent evidence the amount of tax paid
18 for all taxable periods and the amount, if any, attributable to gross income derived from
19 payments made pursuant to a life care contract by a resident to a provider that qualify for
20 exemption under the amendment to Model City Tax Code Section 445, as provided by this
21 act. The Department of Revenue shall:

- 22 1. Review all timely filed claims.
- 23 2. Determine, on audit if necessary, the correct amount of each claim.
- 24 3. Notify the taxpayer of its determination. The notice is final unless a taxpayer
25 appeals in the manner provided in section 42-1251, Arizona Revised Statutes.

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- 1 D. Notwithstanding section 42-1119, Arizona Revised Statutes, the Department of Revenue
2 may not make a refund until after determination of the amount of all refund claims filed
3 pursuant to this section. If a taxpayer appeals the Department's determination, the
4 Department, pursuant to the rules protecting confidentiality under Title 42, Chapter 2,
5 Article 1, Arizona Revised Statutes, may notify other taxpayers who have filed claims as
6 to the nature of any delay and, if possible, estimate the possible extent of the delay.
- 7 E. The aggregate amount of refunds under this section may not exceed ten thousand dollars
8 (\$10,000). If the aggregate amount of claims under this section that are ultimately
9 determined to be correct exceeds ten thousand dollars, the Department of Revenue shall
10 reduce each claim proportionately so that the total refund amount equals ten thousand
11 dollars.
- 12 F. Interest may not be allowed or compounded on any refundable amount if paid before July
13 1, 2020, but if the amount cannot be determined or paid until after June 30, 2020, interest
14 accrues from and after July 1, 2020 under section 42-1123, Arizona Revised Statutes.
- 15 G. If any part of this section is finally adjudicated to be invalid, this entire section is void. The
16 provisions of this section are intended to be nonseverable.