

ORDINANCE NO. 1697

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, PERTAINING TO THE PRIVILEGE LICENSE TAX; CORRECTING CERTAIN CLERICAL ERRORS; GRANTING EXEMPTIONS FOR CERTAIN ACTIVITIES; AMENDING SECTIONS 5-10-1, 5-10-3, 5-10-9, 5-10-21, 5-10-25, 5-10-27, 5-10-29, 5-10-30, and 5-10-31 OF THE MESA CITY CODE; AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

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

Section 1: That Section 5-10-1 of the Mesa City Code is amended to read as follows:

5-10-1: DEFINITIONS: The following words and phrases, whenever used in this Chapter, shall have the meanings respectively ascribed to them in this Section, unless from the context a different meaning is clearly intended:

AUDITOR means any City employee or agent authorized by the Tax Collector to audit records of a person subject to the tax specified by this Ordinance and may include an employee of another city or town, or of the State.

BUSINESS includes 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. An occasional or a casual activity occurs when a person engaged in an isolated transaction that is not conducted with such frequency or is not one of a series of activities as to be sufficient to constitute the person as regularly conducting the activity.

However, for the purpose of Section 5-10-3(A) 11 and 12, any person receiving proceeds from rental or lease of property

shall be considered to be subject to taxation if any one, or more than one, of the following standards are met:

- (A) Such person advertises by any means, or offers directly or through an agent, the lease or rental of property;
- (B) Such person receives total proceeds from a single lease or rental transaction for a period of less than thirty (30) days in the amount of one thousand dollars (\$1,000.00) or more;
- (C) Such person directly, or through an agent, leases or rents property to another person for a period of thirty (30) days or more; and
- (D) Such person leases or rents property to another person with an option to end such lease or rental by purchases of property under specified conditions.

CITY means the City of Mesa, Maricopa County, Arizona.

CONTRACTING means engaging in business as a contractor.

CONTRACTOR is synonymous with the term "builder" and means a person, firm, partnership, corporation, association or other organization, or a combination of any of them, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or work in connection therewith, and includes subcontractors and specialty contractors. For the purposes of this Chapter, this definition shall govern without regard to whether or not the contractor is acting in fulfillment of a contract.

COUNCIL means the City Council of the City of Mesa.

ENGAGING when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

EXPENDITURES as the term relates to Owner-Builders, includes, but is not limited to, amounts paid to contractors or specialty contractors, amounts paid for installation of water lines, sewer lines, or other utility lines for direct service to the improvement, amounts paid for fill material or removal of material, amounts paid for paving of streets, sidewalks, or paths for direct service to the users of the completed improvements, amounts paid for general supervision or coordination of the improvements, amounts paid to those working on the improvements or to those supervising such workers, amounts paid for shop labor to prepare material or equipment for incorporation into the improvements, and amounts paid for material or equipment to be incorporated into the improvements.

Amounts not included as expenditures are amounts paid to architects or to engineers for design work, amounts paid for professional soil or material testing, amounts paid for material or equipment to be incorporated into the improvement on which a privilege license tax of at least one percent (1%) was paid to a city or town when the items were purchased, amounts paid for purchase, lease or rental of equipment or tools used in the construction work on which a privilege license tax of at least one percent (1%) was paid to a city or town, amounts paid to employees not working on the construction project, and any interest charges made by lending agencies. Such charges must be appropriately segregated in the records.

FINANCE DIRECTOR means the Finance Director of the City of Mesa.

GROSS INCOME means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and without any deduction on account of losses. With respect to prime contractors, however, deductions from gross income will be allowed for amounts paid to architects or to engineers for design work, amounts paid for professional soil and material testing, lease or rental of equipment or tools used in the construction work on which a privilege license tax of at least one percent (1%) was paid to a city or town and any interest charges made by lending agencies. Such charges must be appropriately segregated in the records.

GROSS PROCEEDS OF SALES means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sale shall not be included as gross income.

GROSS INCOME or GROSS PROCEEDS OF SALES shall not be construed to include goods, wares or merchandise, or 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 new article is included in the "gross proceeds of sales" as the case may be.

GROSS RECEIPTS means the total amount of the sale, 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 or 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 services performed, interest paid, losses or 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.

LICENSEE AGREEMENT means an agreement for the use of space within a building or other premises which does not give the licensee the exclusive right of occupancy of any specific area.

LOCAL ADVERTISING MEANS:

(A) Advertising any product, business or activity, including local political activity where the advertiser does business only within the State of Arizona, or

(B) Advertising which is placed with the media directly by the advertiser or his agent and the placement transaction occurs entirely within the state, or

(C) Where the advertising of any business or activity which, although not entirely local in nature, specifically mentions a business or activity within the State of Arizona by particular location or address.

NOTICE means a written instrument served by the City as follows, with time commencing from date of mailing, serving, or recording.

(A) By certified mail to the last known address of the person to whom it is required to be given; or

(B) By personal service upon the person or his lawful representative; or

(C) By recording with the County Recorder.

OWNER-BUILDER means a person who owns or leases real property

within the City acting as a contractor in constructing any improvement upon the real property which real property as improved is held by such person for his use of or for rental purposes. An owner-builder who sells such real property as improved at any time on or before the expiration of twenty-four (24) months after an occupancy permit for such improvement is issued, or if no permit is issued, within twenty-four (24) months after (final inspection of the improvement) (the improvement is completed, whichever is later) shall be treated as a "prime contractor" for purposes of this Chapter. For purposes of this definition, a "sale" of real property as improved includes any form of transaction whether characterized a "lease" or otherwise which in substance is a sale and includes any lease of the improvement for a term of thirty (30) years or more (with all options for renewal being included as a part of the term).

PERSON or COMPANY includes individual, firm, partnership, joint venture, association, corporation, Municipal corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number.

PRIME CONTRACTOR is a contractor which the owner or lessee of the real property being improved treats as being responsible for administration, construction and completion of the improvement. For purposes of this definition, a person who, for either a fixed sum, price, fee, percentage, bonus or other compensation other than actual wages, undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, supervise the construction of the improvement, or coordinate the construction of the improvement, or both, is a "prime contractor", unless such supervisor or coordinator

demonstrates, to the City's satisfaction, that another contractor is, in fact, the "prime contractor" for the improvement; provided, a person acting on behalf of the owner-builder rendering consulting services shall not be regarded as a "prime contractor" if (a) such person does not guarantee a maximum price for the improvement to the owner-builder, (b) such person does not contract with contractors constructing the improvement, and (c) such person is not responsible to the owner-builder for the administration, construction and completion of the improvement.

PROSTHETIC DEVICE means any device which replaces, assists or supports any portion of the human body.

RETAILER includes every person engaged in the business of making sales at retail, and when in the opinion of the Tax Collector it is necessary for the efficient administration of this Chapter, includes dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

SALE means 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 personal property, for a consideration, and includes:

- (A) Any transaction whereby the possession of property is transferred but the seller retains a security interest to secure payment of the purchase price.
- (B) The fabrication of tangible personal property for consumers who furnish either directly or indirectly the

materials used in the fabrication work and the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.

SALES AT RETAIL OR RETAIL SALES shall mean sales of tangible personal property for any purpose, even though the tangible personal property sold is not normally held for sale.

TANGIBLE PERSONAL PROPERTY means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses.

TAX COLLECTOR means the Finance Director of the City of Mesa or his authorized agent.

TAXPAYER means any person liable for any tax imposed by this Chapter.

WHOLESALE or JOBBER means any person who sells tangible personal property for resale and not for consumption by the purchaser.

Section 2: That Section 5-10-3 of the Mesa City Code is amended to read as follows:

5-10-3: IMPOSITION OF THE TAX; TAX SCHEDULE: From and after the effective date of this Chapter, there is hereby levied and shall be collected by the Tax Collector for the purpose of raising revenue to be used in defraying the necessary expenses of the City to the extent hereinafter provided, the license taxes measured by the amount or volume of business done by the persons during the preceding calendar month on account of their business activities and in the amounts to be determined by the application of the rates against values, gross proceeds of sale, gross income, or expenditures as they relate to an owner-builder as the case

may be, and in accordance with the following schedules:

(A) Any amount equal to one percent (1%) of the gross proceeds of sale, gross income, or expenditures as they relate to an owner-builder as the case may be, from the business upon every person engaging or continuing within the City in the following businesses:

1. Mining, quarrying, smelting or producing for sale, profit or commercial use any oil, natural gas, limestone, sand, gravel, copper, gold, silver or other mineral products or felling, producing or preparing timber or any product of the forest for sale, profit or commercial use.

2. Furnishing to consumers electricity, electric lights, current, power or gas, natural or artificial, and water.

3. Transmitting local or long distance messages or conversations by telephone or message by telephone from within the City to another point within the City or in this State, including gross income derived from tolls, subscriptions or by publication of a directory of the names of subscribers.

4. Operating a pipeline for transporting oil, or natural or artificial gas, through pipes or conduits from within the City to another point in the City or State.

5. Publication of newspapers, magazines or other periodicals or publications when published within this City, measured by the gross income derived from subscriptions, local advertising and notices subject to the following:

(a) For the purposes of this Section and Section

5-10-3(A)5(c), the following shall govern:

(1) Subscription income shall include all circulation revenue of the publisher except amounts retained by or credited to carriers and other vendors as compensation for delivery by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the privilege tax on such resale.

(2) Circulation for the purpose of measurement of gross income subject to tax hereunder shall be deemed to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher.

(3) Delivery by the United States mail shall be considered to have occurred at the point of the physical printing for the purposes of measurement of gross income subject to tax hereunder.

(b) The measurement of gross income subject to tax hereunder shall include:

(1) That portion of the gross income from publication, which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus

(2) That portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total cir-

culatation of all incorporated cities and towns in this State within which cities the publisher operates a publishing plant which actually prints a portion of the newspaper or other periodical.

- (c) Distributing and delivering within the City newspapers, magazines or other periodicals or publications, not published within the City, measured by the income from publication as defined in 5-10-3(A)5(a)(b) above.

6. Job printing, engraving, embossing and copying, local advertising by billboards, direct mail, by radio, by television or by any other means calculated to appeal to prospective purchasers.

7. (a) Contracting, but payments paid by the contractor for labor and subcontracting employed in construction, improvements and repairs shall not be subject to such tax except as hereafter provided, nor shall contracting performed for the City or any school district be subject to such tax.

(b) Except with respect to the gross income, gross proceeds of sale or gross receipts derived from any construction or new residential sales contract (or similar arrangement or undertaking), executed or committed for, or a binding bid submitted prior to January 1, 1978, or upon any sale of a structure for which a building permit has been issued prior to January 1, 1978, there is hereby levied upon a prime contractor or prime contractors, a privilege tax in an

amount equal to one percent (1%) of the gross income, gross proceeds of sale or gross receipts derived from the contracting business or acting as a prime contractor, or both, provided that contracting performed for the City or any school district shall not be subject to such tax. For purposes of this classification, there shall be subtracted from the gross income, gross proceeds of sale or gross receipts subject to the privilege tax:

(1) The amount of any State of Arizona or City privilege taxes collected from a customer as an amount added to the basic price shown separately on contracts or invoices provided to the customer and kept separate on all other business records, and

(2) The amount of thirty-five percent (35%) of said gross income, gross proceeds of sale or gross receipts, after subtracting the amount described in subparagraph (1) above, in lieu of any labor, shop or subcontractor deductions.

A prime contractor or prime contractors may deduct from the amount of any tax otherwise due the amount of privilege tax paid to the City by a previous developer or subdivider in connection with the improvement of the same land. Subcontractors or others who perform services in respect of the improvement, building, highway, road, railroad, excavation or other structure, project, development or improvement (hereinafter

"job") are exempt from the privilege tax on their gross income, gross proceeds of sale or gross receipts derived from the job if they can demonstrate to the City's satisfaction that the job was within the control of a prime contractor or prime contractors and that such prime contractor paid or should have paid the privilege tax upon the gross income, gross proceeds of sale or gross receipts attributable to the job and from which the subcontractors or others were paid.

(c) Except for construction work for which a permit is issued by the City on or after October 1, 1980, an owner-builder who is not a prime contractor shall pay the privilege tax or use tax, as the case may be, upon the sales to him or to his account of all tangible personal property incorporated or fabricated into any structure, project development or improvement undertaken by him; provided, if the owner-builder is treated as a prime contractor for privilege tax purposes, he shall deduct from the gross income, gross proceeds of sale or gross receipts derived from the sale (as defined under "owner-builder" of Section 5-10-1 of this Chapter) of the real property as improved by him:

(1) An amount equal to thirty-five percent (35%) of said gross income, gross proceeds of sale or gross receipts in lieu of any labor, shop or subcontractor deductions,

(2) Either a tax credit equal to the amount of

the privilege or use tax, or the equivalent tax, paid to the City or another city or town with respect to the tangible personal property incorporated or fabricated into the said structure, project, development or improvement undertaken by him, and

(3) A tax credit equal to the amount of privilege taxes paid by the contractor or subcontractor to the City on the gross income, gross proceeds of sale or gross receipts derived by the contractor or subcontractor from the construction of the improvement upon the real property owned or leased by the owner-builder and sold by him.

- (d) With respect to construction work for which a building permit is issued to an owner-builder on or after October 1, 1980, an owner-builder who is not a prime contractor shall pay the privilege tax, or use tax as the case may be, upon expenditures made by him, as defined in Section 5-10-1 of this Chapter, provided that he shall deduct from the expenditures an amount equal to thirty-five percent (35%) of such expenditures. If the improved property is sold within twenty-four (24) months, as defined in the definition of owner-builder in Section 5-10-1 hereof, the owner-builder shall compute the tax on the gross proceeds of the sale as a prime contractor and may deduct from the amount thereof the total amount of privilege taxes previously paid to the City in connection with such improvements and the difference shall be paid to the City.

- (e) Reporting by Contractors: Contractors shall report on a progressive billing basis or cash receipts basis, but home builders, speculative or otherwise, and owner-builders shall report as gross income, gross proceeds of sale or gross receipts, the total selling price at the time of closing of escrow or transfer of title.
- (f) Deductions allowable and pertaining to the gross income, gross proceeds of sale or gross receipts, or expenditures as they relate to an owner-builder, may not be taken prior to the time that said proceeds or receipts are reported.
- (g) A person acting on behalf of an owner-builder, rendering consulting services, or an owner-builder, acting on his own behalf, shall be required to submit to the City a monthly list of all contractors, and the amounts paid to each, for work done on the job.
- (h) Any person who purchases, or who acquires by foreclosure, sale under a trust deed, or warranty deed in lieu of foreclosure, or by any other method, a project or portion of a project for which transaction privilege tax has not yet been paid shall be responsible for payment of such tax as a prime contractor.
- (i) Gross receipts from the sale of land by a contractor or developer are subject to the tax under this Section if the contractor or developer has constructed physical improvements either on site or off site in connection therewith.

(j) The sale and installation of all floor covering which is affixed to real property is subject to tax under the contracting activity and shall be deemed to have occurred at the place where labor and services are performed. The sale and installation of floor covering attached to tangible personal property such as mobile homes, motor homes, boats and travel trailers is taxable as a retail transaction.

8. Selling any tangible personal property whatsoever at retail, except bonds and stocks, and except the sale of drugs on the prescription of a member of the medical, dental, or veterinary profession who is licensed by law to administer or prescribe such drugs.

When any person is engaged in the business of selling such 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 his books are kept so as to show separately the gross proceeds of sale of each class, and when the books are not so kept the retail rate shall be applied to the gross proceeds of every sale made.

Merchandise or repair parts carried in any vehicle for possible sale and/or possible use in repair shall be taxable only if such sale or repair is made within the City of Mesa.

The sale to hotels, restaurants, dining cars, lunch-rooms, boarding houses, or similar establishments of

articles used by persons for food, drink or condiment, whether simple, mixed or compounded, where such articles are customarily prepared and served to patrons for consumption on the premises or on such dining cars, shall be deemed wholesale sales as to such commodities and the person who then resells such commodities in a cooked, or prepared form shall be deemed to be engaged in the business classified in subsection (A)9 of this Section, providing that the person reselling has a valid privilege license for such purpose.

9. Restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains or similar establishments where articles of food or drink are sold for consumption on the premises or on such dining cars.
10. Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard and pool parlors, and bowling alleys, public dances, dance halls, boxing matches and wrestling matches, and any business charging admission fees for exhibition amusement or instruction, other than projects of bona fide religious or educational institutions.
11. A business whereby proceeds are received from the lease or rental of tangible personal property by a lessor within the City. Proceeds from the lease or rental of tangible personal property by a lessor without the City, which property is located on a semi-permanent basis or installed within the City on a permanent basis, is subject to the tax. Construc-

tion equipment together with an operator shall be considered a rental transaction subject to taxation only by the city in which such operator or equipment is based. If the equipment is not based in any city imposing a privilege license tax, the activity shall be considered a rental transaction subject to tax by the city in which the construction project is located.

12. Leasing or renting for a consideration the use or occupancy of real property, including any improvements, rights or interest in such property. For purposes of this subsection, a licensee agreement is deemed to be the same as leasing or rental and is subject to the tax.
13. Conducting or operating an electronic visual communication system to the extent of gross income received from subscribers or participants in such system where the receiving equipment is located within the City.

Where the subscriber or participant is charged an amount for the use of any equipment, whether designated as lease, rental, or otherwise, such amount shall be included in gross income receipts subject to the tax herein, and should not be included as receipts under Section 5-10-3(A)11.

Where the subscriber or participant is charged an amount for installation charges and security deposits, such amounts shall be included in gross income receipts subject to the tax herein, except that when

deposit amounts are refunded to subscribers or participants, such amounts may be included in adjustment calculations.

The tax imposed herein shall be in addition to and separate from any tax imposed on gross advertising revenue which is taxable under Section 5-10-3(A)6 herein.

14. Gross receipts by any hospital from the sales of drugs and other medical supplies and appliances to doctors, dentists, or veterinarians, and from the sale of tangible personal property, including photocopies, gift shop and cafeteria sales.

(B) The taxpayer may elect to file returns and pay his tax either on a cash receipts or accrual basis, but the taxpayer shall not change from one basis to the other without the prior written consent of the Tax Collector. As a condition of granting such approval, the Tax Collector may require an audit of the taxpayer's records.

Section 3: That Section 5-10-9 of the Mesa City Code is amended to read as follows:

5-10-9: DEDUCTION OF FREIGHT IN COMPUTING TAX: In computing the amount of tax levied by this Chapter upon the business activities classified in Section 5-10-3(A)1 through 8, such selling price shall not include the amount of actual freight or delivery to the retail customer or retail consumer, and paid by the retail customer or retail consumer, if the charge for freight and the sales price are separately shown on the books and records of the taxpayer.

Section 4: That Section 5-10-21 of the Mesa City Code is amended to read as follows:

5-10-21:       PROCEDURE WHEN TAXPAYER IS AGGRIEVED BY ASSESS-  
MENT: If any person feels aggrieved by a tax assessment made  
pursuant to Section 5-10-19, or pursuant to Section 5-10-15 of  
this Chapter, or believes that any or all of his activities  
are not subject to the license tax imposed by this Chapter, he  
shall request a hearing in writing. If the hearing is to re-  
view a tax assessment, the hearing shall be requested within  
thirty (30) days after receipt of notice by the taxpayer of  
the assessment. The request for hearing shall set forth all  
objections to the assessment, and the basis for each objection  
and the hearing shall be held within thirty (30) days after  
filing the request. If a request for a hearing relating to a  
tax assessment is not filed within the thirty (30) day period  
above specified, or within the time specified in any extension  
granted, the amount determined shall be final and the taxpayer  
shall be deemed to have waived the right to a hearing. If the  
Tax Collector believes that the assessment or collection of  
the license tax or any additional license tax will be jeopar-  
dized by the delay, he shall give notice that before the hear-  
ing requested can be pursued, the taxpayer shall post bond or  
collateral in the amount of tax alleged to be due, or such  
lesser amount as the Tax Collector may determine.

The hearing shall be conducted by a Hearing Officer designated  
by the City Manager. The decision of the Hearing Officer  
shall be rendered within twenty (20) days, shall become final  
upon receipt of notice thereof by the taxpayer, and any addi-  
tional tax shall be paid within fifteen (15) days thereafter.  
If the Hearing Officer determines that there is refund due to  
the taxpayer, then the City shall forthwith pay to the tax-  
payer the amount thereof, plus interest thereon at the rate of

ten percent (10%) per annum from the date of overpayment. Interest is to be computed by considering each day to be 1/365th of a year.

If the taxpayer is dissatisfied with the decision of the Hearing Officer, he may take appropriate action in the Superior Court of Maricopa County to recover payments made under protest. Such court action shall be filed within thirty (30) days after receipt of notice of the decision of the Hearing Officer. Failure to file a court action within the required thirty (30) day period shall make the decision of the Hearing Officer final and binding on the taxpayer. If court action has been filed by the taxpayer, all subsequent payments shall be paid on or before the due date. However, if each return is plainly marked "paid under protest", all subsequent payments shall be subject to the decision of the court in which such action is pending.

If the City is dissatisfied with the decision of the Hearing Officer, the City may bring an action in the Superior Court of Maricopa County within thirty (30) days after receipt by the Tax Collector of the Hearing Officer's decision, or if the taxpayer brings an action in the Superior Court of Maricopa County, the City may file a counterclaim pursuant to provisions of the Rules of Civil Procedure, to determine the validity of any aspect of the assessment, of the Hearing Officer's ruling, or of a determination that there is a refund due to the taxpayer.

Section 5: That Section 5-10-25 of the Mesa City Code is amended to read as follows:

5-10-25: FAILURE OR REFUSAL TO MAKE RETURN; FALSE OR

FRAUDULENT RETURN OR STATEMENT; REFUSAL TO PERMIT EXAMINATION OF RECORDS: It shall be unlawful for any person to fail or refuse to make the returns provided to be made by the provisions of this Chapter, or to make any false or fraudulent return or false settlement in any return, with intent to defraud the City or to evade the payment of the tax, or any part thereof, imposed by this Chapter; or for any reason to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this Chapter; or for the president or other officer or agent of any company to make or permit to be made for any company or association any false return or false statement in any return required by this Chapter with the intent to evade the payment of any tax imposed by this Chapter, or for any person to fail or refuse to permit the examination of any book, paper, account, record or other data by the Tax Collector or his duly appointed agent, as required by this Chapter, and any such person shall be guilty of a misdemeanor and shall be fined in an amount not to exceed One Thousand Dollars (\$1,000.00), imprisonment not to exceed six (6) months, or both, for each individual offense. Any company for which a false return shall be made, or a return containing a false statement as aforesaid, shall be guilty of a misdemeanor.

Section 6: That Section 5-10-27 of the Mesa City Code is amended to read as follows:

5-10-27: TAX COLLECTOR MAY EXAMINE BOOKS, PAPERS, ETC.; EXAMINATION OF WITNESSES; FEES FOR OFFICERS AND WITNESSES: The Tax Collector or his authorized agents may examine any 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 the provisions of this Chapter,

and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person. If any person summoned as a witness shall fail to obey any summons to appear before the Tax Collector, or his authorized agent, or shall refuse to testify or answer any material question or to produce any books, records, papers or other data when required to do so, such failure or refusal shall be reported to the City Attorney, who shall thereupon institute proceedings in the superior court of the county where such witness resides to compel obedience to any summons of the Tax Collector or his authorized agent. Officers who serve summons' and subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the justice of the peace courts.

Section 7: That Section 5-10-29 of the Mesa City Code is amended to read as follows:

5-10-29:     ACTIVITIES EXEMPTED:   The following activities are exempted from taxation:

- (A) Sales of gasoline upon which a tax has been imposed under the provisions of Title 28, Chapter 9, Article 9, Arizona Revised Statutes.
- (B) Sales of tangible personal property to a contractor engaging in or continuing in the business of contracting when the property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement in fulfillment of a contract therefor, except as provided in Section 5-10-3(A)7 where the contractor is constructing for his own use.
- (C) Sales of tangible personal property made directly to the United States government, its departments or agencies by the manufacturer, modifier, assembler or repairer. A

deduction of fifty percent (50%) shall be permitted where such deals are made by persons other than those specified in the previous sentence.

- (D) Sales of tangible personal property to persons engaging in or continuing in the business of processing, manufacturing, modifying, assembling or repairing, when such sales are made for resale and not at retail or not to an ultimate consumer.
- (E) Sales of tangible personal property to manufacturers, modifiers or assemblers where such property directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.
- (F) Service provided in connection with retail sales, if invoice to the customer, sales ticket, cash register tapes, and all other business records show separate charges for such services, but this exemption shall apply only where such service is not customarily included in the retail sale itself and where such service is not an essential element in the retail sale itself, and no deduction shall be allowed for fabrication, labor or retail items sold.
- (G) The sale of drugs on the prescription of a member of the medical, dental, or veterinary profession who is licensed by law to administer or prescribe such drugs.
- (H) Tangible personal property purchased, leased or rented in Arizona for operation and maintenance by any hospital organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or

by any hospital operated by the State or any political subdivision of the State. The exemption provided in this subsection shall not apply to tangible personal property purchased, leased or rented for construction or reconstruction of any building or facilities.

- (I) The sale of stocks or bonds.
- (J) The sales or transfers of tangible personal property in connection with professional or personal services, occupational or business, such as those engaged in by doctors, dentists, lawyers, accountants, barbers, cosmeticians, or shoeshiners, which are only inconsequential elements of the service rendered.
- (K) Sales or rentals of prosthetic devices prescribed or recommended by a licensed physician, surgeon, podiatrist, dentist, osteopath, ophthalmologist, optometrist, or chiropractor.
- (L) Leasing or renting of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an excise tax on the transaction is exempt hereunder.
- (M) Sales of tangible personal property (other than expendable materials) to purchasers to the extent that the item sold is actually used by the purchaser for lease or rental to others. Such lease or rental is subject to the tax imposed under Section 5-10-3(A)11. The purchaser must be regularly engaged in the business of leasing or renting such property for a consideration, and must be properly licensed therefor.
- (N) Income received from any activity, except sales or rental of real property, carried on by any civic organization disposed to look after civic needs or interest

which is supported or sustained by subscriptions from the public or its members, whose members receive no share of the profits from its activities.

- (O) Income derived from food sales by churches, lodges, and other nonprofit organizations not regularly engaged in the restaurant business, for the purpose of fund-raising, is not taxable.
- (P) The sale of tangible personal property by a charitable qualified nonprofit organization is not taxable. To qualify for this exemption, a charitable organization must obtain a letter of determination that it is exempt from income tax under the Internal Revenue Code from the Internal Revenue Service. This exemption does not apply to the tax imposed by Section 5-10-3(A)14 of this Chapter.

Section 8: That Section 5-10-30 of the Mesa City Code is amended to read as follows:

5-10-30: GENERAL EXEMPTIONS: The following shall not be subject to taxation under this Chapter:

(A) Any business, calling, profession, or occupation where the general law of the State of Arizona or the general law of the United States preclude the levying of such a tax.

(B) Sales in interstate or foreign commerce when prohibited from being so taxed by the Constitution or general laws of the United States or by the Constitution of the State of Arizona. In order to qualify as an exempt sale the following conditions must be met:

1. The purchaser must be a non-resident of the State of Arizona. Non-resident in terms of this Ordinance, means an individual whose domicile is outside this state or a firm or corporation which has no business affiliation in Arizona.

2. Sales of tangible personal property to non-residents of this state, who are temporarily within the state, for their use outside this state, are exempt from the tax, provided such tangible personal property is shipped or delivered out-of-state. With respect to aircraft, the tax does not apply to the sale of and the storage, use, or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing, to a non-resident of this state who will not use the aircraft here otherwise than in the removal thereof from Arizona. If, prior to or after the sale and delivery of the aircraft to a purchaser, flights are made for the purpose of determining that the aircraft will fly in accordance with specifications, or that it is in proper operating condition in all its parts, this does not constitute a use or consumption of the aircraft or its component parts, nor does it result in accrual of tax liability measured by the price of the plane or its component parts. This conclusion is unaffected by the circumstance that personnel of the vendor or vendee, government officials, or other observers may be transported in the aircraft during test flights. If, prior to or after delivery, the aircraft is operated here for the purpose of training pilots or other personnel of a customer in the proper operation and maintenance thereof, and if the training period is no longer than is reasonably required for that purpose, the exemption from the tax will not be affected.

3. Out-of-state deliveries may be established by the following documentation; common carrier's receipt or bill of lading, parcel post receipt, export declaration, receipt of a licensed broker, proof of export or import signed by a customs' officer. With respect to aircraft, should an out-of-state resident choose to take delivery of the property within the state for removal thereof from Arizona, the buyer must furnish the seller with a signed and notarized affidavit from his place of residence without the state certifying that he is a resident of that state or country and that the property is purchased for use outside the State of Arizona. Such documentation is acceptable for allowing the exemption. The seller shall retain such documentation as part of his records which will be subject to future audit verification.

4. The fact that a purchaser is a citizen of a foreign country does not exempt such person from tax on sales made to such person unless the person meets the criteria for exempt interstate and foreign sales as listed above.

- (C) Professional services, instruction and other services not connected with the making of retail sales.
- (D) Contracting, retail sales, and any other taxable activity for the City of Mesa.
- (E) Sales of machinery or equipment to be used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations, including leaching, milling, precipitation, smelting and refining.
- (F) Sales of machinery or equipment to be used directly in

- the process of extracting ore or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and for the handling, loading or transportation of such extracted materials to the surface.
- (G) Sales to telephone or telegraph companies of central office switching equipment, switchboards, private branch exchange equipment, microwave radio and carrier equipment, and coaxial cable.
  - (H) Sales of machinery, equipment or transmission lines to be used directly in the production or transmission of electrical power, but not including distribution, and in addition, transformers and control equipment used at transmission substation sites.
  - (I) Sale of pipes or valves four inches (4") in diameter or larger to be used for transporting oil, natural gas, artificial gas, water or coal slurry.
  - (J) Sales of aircraft, navigational and communication instruments and other accessories and related equipment to be used in conjunction with or becoming part of aircraft to be used in transportation of persons, property or U.S. mail in intrastate, interstate or foreign air transportation for hire by airlines holding a Federal or State certificate of public convenience and necessity or holding a foreign air carrier permit.
  - (K) Sales of railroad rolling stock, rails, ties, and signal control equipment to be used directly in the transportation of persons or property in intrastate or interstate transportation for hire.
  - (L) Sales of machinery or equipment to be used directly in the drilling for oil or gas from the earth for commercial purposes.

- (M) To the gross proceeds of sale or gross income derived from that portion of the business of contracting where the job site is without the corporate limits of the City.
- (N) Sales of tangible personal property to the State and its departments and agencies and to any city, town or county.
- (O) Sales or rental by any hospital to its patients of tangible personal property, including x-rays, and rental of rooms by any hospital to its patients.

Section 9: That Subsection (B) of Section 5-10-31 of the Mesa City Code is amended to read as follows:

- (B) Services Relating to Retail Sale: The cost of services or labor performed in connection with or in addition to a retail sale of tangible personal property, whether included in the sales price or charged to the purchaser in addition to the sales price, and whether performed by the seller or his regularly employed agents or servants or by labor separately employed and paid by the seller is not subject to the tax and is deductible from the sale price if included in the sales price, providing such cost and the sales price are separately shown on the books and records of the seller. If not so shown, the seller shall be taxable on the gross proceeds or labor. Such services or labor include delivery of any merchandise, the installation of a sign, or equipment such as stove, coolers or heaters, the fitting and hanging of venetian blinds or curtains, and other similar services.

Section 10: PENALTY: That any person who shall violate any of the provisions of this ordinance or of the Mesa

City Code as amended herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not to exceed \$1,000.00 or by imprisonment in the City Jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 18th day of April, 1983.

APPROVED:

Don W. Strauch  
Mayor

ATTEST:

Farthe Lova  
City Clerk

EFFECTIVE DATE: May 18, 1983