



Lake Havasu City

Lake Havasu City
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Legislation Details (With Text)

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On agenda: 4/13/2021 **Final action:**
Title: Adopt Ordinance No. 21-1252 Declaring the Document Entitled "The 2012-2014 Amendments to the Lake Havasu City Tax Code, March 23, 2021" a Public Record and Amending the City Code by Adopting by Reference Amendments to the Lake Havasu City Tax Code Relating to the Transaction Privilege Tax (Jill Olsen)

Sponsors:

Indexes:

Code sections: Chapter 3.01 - Tax Code

Attachments: 1. Ordinance No. 21-1252, 2. Lake Havasu City 2012-2014 City Tax Code Amendments from Legal

Date	Ver.	Action By	Action	Result
4/13/2021	1	City Council	Adopted	Pass

COUNCIL COMMUNICATION

TO: Honorable Mayor and Council

FROM: Jill Olsen, Administrative Services Director

SUBJECT:

Adopt Ordinance No. 21-1252 Declaring the Document Entitled "The 2012-2014 Amendments to the Lake Havasu City Tax Code, March 23, 2021" a Public Record and Amending the City Code by Adopting by Reference Amendments to the Lake Havasu City Tax Code Relating to the Transaction Privilege Tax (*Jill Olsen*)

FUNDING SOURCE:

N/A

PURPOSE:

Adopt ordinance to amend the Lake Havasu City Tax Code to incorporate the 2012 through 2014 amendments to the Model City Tax Code (MCTC).

BACKGROUND:

Many cities and towns have fallen behind in adopting changes made by the Municipal Tax Code Commission (MTCC) in recent years. Numerous changes occurred in the period from 2012 through 2014, and then there was a gap in commission activity until the MTCC began approving another large group of changes in 2018 through

2019. Since the cumulative effect of these amendments is quite large, the amendments will be made in two steps: one for the period from 2012-2014, and another for the more recent activity in 2018-2019. This is the first of the two proposed processes.

Attached is the set of amendments that include all the 2012-2014 MCTC changes necessary to bring the City's version of the tax code current through those years. A separate amendment will be coming later in 2021 to bring the local tax code up to date through the changes made in 2019. It is important to note that the City's local tax code is merely an informational document. The actual tax code being applied for Lake Havasu City is the official version maintained by the Arizona Department of Revenue on its MCTC website, which already reflects the changes included in these documents.

A summary of the amendment provisions is as follows:

- 1) Section 100 adds language to the existing definitions of "Business" and "Prosthetic". This change excludes the sale of electricity generated by consumer equipment from the definition of "Business". Adding this exclusion means persons that make such sales (e.g. residential solar energy sales) are not deemed to be in the business of providing Utilities, and thus are not required to have a Privilege Tax License to make such sales. The additional language that adds Orthodontics to the definition of "Prosthetic" is a change intended to conform the Code to State statute. These changes are effective retroactively from and after January 1, 2007 for "Business," and October 1, 2007 for "Prosthetic."
- 2) Section 120 is repealed, eliminating the definition of "Food for Home Consumption." The elements of this definition are incorporated in new Section 462, creating a separate "Food for Home Consumption" tax classification apart from the Retail classification. This section is effective from and after July 1, 2013.
- 3) Section 200 is amended to add conforming language under the determination of gross income that is related to nuclear fuel sales as found in State statute. This section is effective from and after July 1, 2013.
- 4) This section repeals and replaces all of Article III - Licensing and Recordkeeping. This is a critical step in TPT Simplification that has the effect of making licensing as uniform as possible across all cities and towns. Note that this section completely replaces the entirety of Article III in every city and town's tax code. This change also eliminates all Regulations numbered in the 300's, as well as eliminating all Green Sheet items related to tax licensing. This section also eliminates the use of the tax license as a means to regulate business for any purpose other than tax collection. From now on, all licensing and enforcement of a regulatory nature such as zoning, use permits, special events, inspections, etc., must be accomplished by a separate business license. This section is effective from and after January 1, 2015.
- 5) Section 422 is amended to remove an obsolete code reference related to Jet Fuel Sales. This section is effective retroactively from and after September 21, 2006.
- 6) Section 425 is amended to add an exemption from tax on Job Printing for sales of postage and freight in conformity with State statute. This element is effective retroactively from and after September 21, 2006. Also, Local Option #MM is eliminated effective July 1, 2012, also in conformity with State statute.
- 7) Section 445 is amended to adopt the final version of a new exemption for Real Property Leases between Affiliated Entities. This section is effective retroactively from and after July 1, 2013.

- 8) Section 450 is amended to conform to the new State exemption and city preemption that makes the leasing of certified ignition interlock devices required under DUI laws exempt from tax under Tangible Personal Property Rental. This section is effective retroactively from and after September 1, 2004.
- 9) Section 460 is amended in conformity with a new clarifying State exemption and matching city preemption that makes the retail sale of gift cards and other cash equivalents exempt from the tax under the Retail classification. This section is effective retroactively from and after October 1, 2007.
- 10) Section 462, Retail Sales: Food for Home Consumption is added to the standard Model Code language. This section incorporates all of the definitions and Regulations related to grocery sales that were previously included only in those communities that selected Model Option #2. With this change and standardization, Model Option #2 is eliminated from the Code. Cities and towns are now free to set a distinct tax rate for grocery sales, which can be higher, lower, or zero, as the community sees fit. This section is effective from and after July 1, 2013.
- 11) Section 465, Retail Sales: Exemptions has undergone significant changes, largely in name of conformity with State statute. A major goal of TPT Simplification was making conforming changes to the Retail classification of the MCTC that aligned with State statute wherever possible, with the intention of preparing for passage of the Marketplace Fairness Act. On the State tax side, the only change enacted was elimination of an exemption for in-store sales to non-residents that are shipped out of State (excluding vehicles). On the municipal side, this movement resulted in the elimination of Model Option #2, related to food for home consumption creating a separate classification; eliminating Local Option #AA, allowing tax exempt employee drinks and meals; and adding charter schools to the list that qualify for a food sale exemption. Also, wholly new conforming exemptions were adopted, including one for the sale of “renewable energy credits”; sale of periodicals to encourage tourism; sale of paper machine clothing to a paper manufacturer; sales of overhead materials used in performing government contracts; and the sale of fuels and sale of equipment to qualified environmental technology manufacturers. All of these changes are effective July 1, 2013, with the exception of the sale of “renewable energy credits” which is effective retroactively from and after January 1, 2007.
- 12) Changes to this section include adding in a specific exemption from the Utilities classification for sales of excess energy produced by a consumer’s photovoltaic system to a utility distributor, along with language that removes the sale of renewable energy credits (REC) from the Utilities classification. This provides the exemption under the Utilities classification to clarify that when the meter spins backward, the taxable measure is the net charge to the consumer, and that REC sales are not part of the gross receipts under Utilities. This section shall be effective from and after January 1, 2007.
- 13) Section 485 is added to the standard Code language, creating a new classification that imposes tax on Wastewater Removal Services. This section was formerly a Green Page in several cities. This conversion to standard Code language is part of the ongoing effort to eliminate the Green Pages by either eliminating or adopting exception items. This section shall be effective from and after July 1, 2013. Fountain Hills has chosen to maintain its previous exemption in this area through the application of a zero percent tax rate for this classification.
- 14) Section 570 is amended to grant the Tax Collector greater latitude in allowing extensions to taxpayers that are making a good faith effort to produce additional information during the audit protest process. Previously the Code technically allowed only one 45-day extension to taxpayers protesting audit results, so actual practice resulted in many “unofficial” extensions. This change allows the Tax Collector to grant additional extension at their discretion. This section is deemed effective from and after July 1,

2008.

- 15) Section 660, Use Tax: Exemptions has undergone significant changes which mirror the changes to the Retail Exemptions noted above in Code Section 465. Again, these are being done in the name of conformity with State statute. This movement resulted in the elimination of the food for home consumption exemption; adding an exemption for employee drinks and meals; and adding charter schools to the list that qualify for a food exemption. Also, wholly new conforming exemptions were adopted, including one for the purchase of "Renewable Energy Credits" or RECs; periodicals to encourage tourism; paper machine clothing to a paper manufacturer; overhead materials used in performing government contracts; and the purchase of fuels and sale of equipment to qualified environmental technology manufacturers. All of these changes are effective July 1, 2013, with the exception of "Renewable Energy Credits" which is effective retroactively from and after January 1, 2007.
- 16) This section repeals Regulation 120.1 related to the definition of Food for Home Consumption, which has been incorporated in the text of new Section 462 noted above. This section shall be effective from and after July 1, 2013.
- 17) This section amends Regulation 270.1, adding the provision of wastewater removal services to the list of activities that are considered proprietary and therefore taxable when engaged in by a city or town. This section shall be effective from and after July 1, 2013.
- 18) This section amends Regulation 460.1, adding the distinction from Retail for activities that fall under the two new classifications: Food for Home Consumption in Section 462, and Wastewater Removal Services in Section 485. This means that an exchange of tangible personal property that occurs under the activity described in Sections 462 or 485, is specifically NOT considered a Retail transaction. This section shall be effective from and after July 1, 2013.

COMMUNITY IMPACT:

A clear and consistent tax code among jurisdictions will provide uniformity and clarity to the business community.

FISCAL IMPACT:

The changes are administrative in nature to provide uniformity and clarification. The City follows the Model City Tax Code so there is no financial effect to the City.

ATTACHMENTS:

Ordinance No. 21-1252

2012-2014 Amendments to the Lake Havasu City Tax Code, March 23, 2021

SUGGESTED MOTION:

I move to adopt Ordinance No. 21-1252 declaring the document entitled "The 2012-2014 Amendments to the Lake Havasu City Tax Code, March 23, 2021" a Public Record and amending the City Code by adopting by reference amendments to the Lake Havasu City Tax Code relating to the Transaction Privilege Tax.