

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SENATE BILL 1442

AN ACT

AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5032.02; AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO THE PRIME CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5029, Arizona Revised Statutes, is amended to
3 read:

4 42-5029. Remission and distribution of monies; definition

5 A. The department shall deposit, pursuant to sections 35-146 and
6 35-147, all revenues collected under this article and articles 4, 5 and 8 of
7 this chapter pursuant to section 42-1116, separately accounting for:

8 1. Payments of estimated tax under section 42-5014, subsection D.

9 2. Revenues collected pursuant to section 42-5070.

10 3. Revenues collected under this article and article 5 of this chapter
11 from and after June 30, 2000 from sources located on Indian reservations in
12 this state.

13 4. Revenues collected pursuant to section 42-5010, subsection G and
14 section 42-5155, subsection D.

15 B. The department shall credit payments of estimated tax to an
16 estimated tax clearing account and each month shall transfer all monies in
17 the estimated tax clearing account to a fund designated as the transaction
18 privilege and severance tax clearing account. The department shall credit
19 all other payments to the transaction privilege and severance tax clearing
20 account, separately accounting for the monies designated as distribution base
21 under sections 42-5010, 42-5164, 42-5205 and 42-5353. Each month the
22 department shall report to the state treasurer the amount of monies collected
23 pursuant to this article and articles 4, 5 and 8 of this chapter.

24 C. On notification by the department, the state treasurer shall
25 distribute the monies deposited in the transaction privilege and severance
26 tax clearing account in the manner prescribed by this section and by sections
27 42-5164, 42-5205 and 42-5353, after deducting warrants drawn against the
28 account pursuant to sections 42-1118 and 42-1254.

29 D. Of the monies designated as distribution base the department shall:

30 1. Pay twenty-five per cent to the various incorporated municipalities
31 in this state in proportion to their population to be used by the
32 municipalities for any municipal purpose.

33 2. Pay 38.08 per cent to the counties in this state by averaging the
34 following proportions:

35 (a) The proportion that the population of each county bears to the
36 total state population.

37 (b) The proportion that the distribution base monies collected during
38 the calendar month in each county under this article, section 42-5164,
39 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
40 total distribution base monies collected under this article, section 42-5164,
41 subsection B, section 42-5205, subsection B and section 42-5353 throughout
42 the state for the calendar month.

1 3. Pay an additional 2.43 per cent to the counties in this state as
2 follows:

3 (a) Average the following proportions:

4 (i) The proportion that the assessed valuation used to determine
5 secondary property taxes of each county, after deducting that part of the
6 assessed valuation that is exempt from taxation at the beginning of the month
7 for which the amount is to be paid, bears to the total assessed valuations
8 used to determine secondary property taxes of all the counties after
9 deducting that portion of the assessed valuations that is exempt from
10 taxation at the beginning of the month for which the amount is to be paid.
11 Property of a city or town that is not within or contiguous to the municipal
12 corporate boundaries and from which water is or may be withdrawn or diverted
13 and transported for use on other property is considered to be taxable
14 property in the county for purposes of determining assessed valuation in the
15 county under this item.

16 (ii) The proportion that the distribution base monies collected during
17 the calendar month in each county under this article, section 42-5164,
18 subsection B, section 42-5205, subsection B and section 42-5353 bear to the
19 total distribution base monies collected under this article, section 42-5164,
20 subsection B, section 42-5205, subsection B and section 42-5353 throughout
21 the state for the calendar month.

22 (b) If the proportion computed under subdivision (a) of this paragraph
23 for any county is greater than the proportion computed under paragraph 2 of
24 this subsection, the department shall compute the difference between the
25 amount distributed to that county under paragraph 2 of this subsection and
26 the amount that would have been distributed under paragraph 2 of this
27 subsection using the proportion computed under subdivision (a) of this
28 paragraph and shall pay that difference to the county from the amount
29 available for distribution under this paragraph. Any monies remaining after
30 all payments under this subdivision shall be distributed among the counties
31 according to the proportions computed under paragraph 2 of this subsection.

32 4. After any distributions required by sections 42-5030, 42-5030.01,
33 42-5031, 42-5032, ~~and~~ 42-5032.01 AND 42-5032.02, and after making any
34 transfer to the water quality assurance revolving fund as required by section
35 49-282, subsection B, credit the remainder of the monies designated as
36 distribution base to the state general fund. From this amount:

37 (a) The legislature shall annually appropriate to:

38 (i) The department of revenue sufficient monies to administer and
39 enforce this article and articles 5 and 8 of this chapter.

40 (ii) The department of economic security monies to be used for the
41 purposes stated in title 46, chapter 1.

42 (iii) The firearms safety and ranges fund established by section
43 17-273, fifty thousand dollars derived from the taxes collected from the
44 retail classification pursuant to section 42-5061 for the current fiscal
45 year.

1 (b) Subject to separate initial legislative authorization, each year
2 the state treasurer shall transfer to the tourism fund an amount equal to the
3 sum of the following:

4 (i) Three and one-half per cent of the gross revenues derived from the
5 transient lodging classification pursuant to section 42-5070 during the
6 preceding fiscal year.

7 (ii) Three per cent of the gross revenues derived from the amusement
8 classification pursuant to section 42-5073 during the preceding fiscal year.

9 (iii) Two per cent of the gross revenues derived from the restaurant
10 classification pursuant to section 42-5074 during the preceding fiscal year.

11 E. If approved by the qualified electors voting at a statewide general
12 election, all monies collected pursuant to section 42-5010, subsection G and
13 section 42-5155, subsection D shall be distributed each fiscal year pursuant
14 to this subsection. The monies distributed pursuant to this subsection are
15 in addition to any other appropriation, transfer or other allocation of
16 public or private monies from any other source and shall not supplant,
17 replace or cause a reduction in other school district, charter school,
18 university or community college funding sources. The monies shall be
19 distributed as follows:

20 1. If there are outstanding state school facilities revenue bonds
21 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the
22 amount that is necessary to pay the fiscal year's debt service on outstanding
23 state school improvement revenue bonds for the current fiscal year shall be
24 transferred each month to the school improvement revenue bond debt service
25 fund established by section 15-2084. The total amount of bonds for which
26 these monies may be allocated for the payment of debt service shall not
27 exceed a principal amount of eight hundred million dollars exclusive of
28 refunding bonds and other refinancing obligations.

29 2. After any transfer of monies pursuant to paragraph 1 of this
30 subsection, twelve per cent of the remaining monies collected during the
31 preceding month shall be transferred to the technology and research
32 initiative fund established by section 15-1648 to be distributed among the
33 universities for the purpose of investment in technology and research-based
34 initiatives.

35 3. After the transfer of monies pursuant to paragraph 1 of this
36 subsection, three per cent of the remaining monies collected during the
37 preceding month shall be transferred to the workforce development account
38 established in each community college district pursuant to section 15-1472
39 for the purpose of investment in workforce development programs.

40 4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
41 subsection, one-twelfth of the amount a community college that is owned,
42 operated or chartered by a qualifying Indian tribe on its own Indian
43 reservation would receive pursuant to section 15-1472, subsection D,
44 paragraph 2 if it were a community college district shall be distributed each
45 month to the treasurer or other designated depository of a qualifying Indian

1 tribe. Monies distributed pursuant to this paragraph are for the exclusive
2 purpose of providing support to one or more community colleges owned,
3 operated or chartered by a qualifying Indian tribe and shall be used in a
4 manner consistent with section 15-1472, subsection B. For the purposes of
5 this paragraph, "qualifying Indian tribe" has the same meaning as defined in
6 section 42-5031.01, subsection D.

7 5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
8 subsection, one-twelfth of the following amounts shall be transferred each
9 month to the department of education for the increased cost of basic state
10 aid under section 15-971 due to added school days and associated teacher
11 salary increases enacted in 2000:

12 (a) In fiscal year 2001-2002, \$15,305,900.

13 (b) In fiscal year 2002-2003, \$31,530,100.

14 (c) In fiscal year 2003-2004, \$48,727,700.

15 (d) In fiscal year 2004-2005, \$66,957,200.

16 (e) In fiscal year 2005-2006 and each fiscal year thereafter,
17 \$86,280,500.

18 6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
19 subsection, seven million eight hundred thousand dollars is appropriated each
20 fiscal year, to be paid in monthly installments, to the department of
21 education to be used for school safety as provided in section 15-154 and two
22 hundred thousand dollars is appropriated each fiscal year, to be paid in
23 monthly installments to the department of education to be used for the
24 character education matching grant program as provided in section 15-154.01.

25 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
26 subsection, no more than seven million dollars may be appropriated by the
27 legislature each fiscal year to the department of education to be used for
28 accountability purposes as described in section 15-241 and title 15, chapter
29 9, article 8.

30 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
31 subsection, one million five hundred thousand dollars is appropriated each
32 fiscal year, to be paid in monthly installments, to the failing schools
33 tutoring fund established by section 15-241.

34 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this
35 subsection, twenty-five million dollars shall be transferred each fiscal year
36 to the state general fund to reimburse the general fund for the cost of the
37 income tax credit allowed by section 43-1072.01.

38 10. After the payment of monies pursuant to paragraphs 1 through 9 of
39 this subsection, the remaining monies collected during the preceding month
40 shall be transferred to the classroom site fund established by section
41 15-977. The monies shall be allocated as follows in the manner prescribed by
42 section 15-977:

43 (a) Forty per cent shall be allocated for teacher compensation based
44 on performance.

1 (b) Twenty per cent shall be allocated for increases in teacher base
2 compensation and employee related expenses.

3 (c) Forty per cent shall be allocated for maintenance and operation
4 purposes.

5 F. The department shall credit the remainder of the monies in the
6 transaction privilege and severance tax clearing account to the state general
7 fund, subject to any distribution required by section 42-5030.01.

8 G. Notwithstanding subsection D of this section, if a court of
9 competent jurisdiction finally determines that tax monies distributed under
10 this section were illegally collected under this article or articles 5 and 8
11 of this chapter and orders the monies to be refunded to the taxpayer, the
12 department shall compute the amount of such monies that was distributed to
13 each city, town and county under this section. The department shall notify
14 the state treasurer of that amount plus the proportionate share of additional
15 allocated costs required to be paid to the taxpayer. Each city's, town's and
16 county's proportionate share of the costs shall be based on the amount of the
17 original tax payment each municipality and county received. Each month the
18 state treasurer shall reduce the amount otherwise distributable to the city,
19 town and county under this section by one thirty-sixth of the total amount to
20 be recovered from the city, town or county until the total amount has been
21 recovered, but the monthly reduction for any city, town or county shall not
22 exceed ten per cent of the full monthly distribution to that entity. The
23 reduction shall begin for the first calendar month after the final
24 disposition of the case and shall continue until the total amount, including
25 interest and costs, has been recovered.

26 H. On receiving a certificate of default from the greater Arizona
27 development authority pursuant to section 41-2257 or 41-2258 and to the
28 extent not otherwise expressly prohibited by law, the state treasurer shall
29 withhold from the next succeeding distribution of monies pursuant to this
30 section due to the defaulting political subdivision the amount specified in
31 the certificate of default and immediately deposit the amount withheld in the
32 greater Arizona development authority revolving fund. The state treasurer
33 shall continue to withhold and deposit the monies until the greater Arizona
34 development authority certifies to the state treasurer that the default has
35 been cured. In no event may the state treasurer withhold any amount that the
36 defaulting political subdivision certifies to the state treasurer and the
37 authority as being necessary to make any required deposits then due for the
38 payment of principal and interest on bonds of the political subdivision that
39 were issued before the date of the loan repayment agreement or bonds and that
40 have been secured by a pledge of distributions made pursuant to this section.

41 I. Except as provided by sections 42-5033 and 42-5033.01, the
42 population of a county, city or town as determined by the most recent United
43 States decennial census plus any revisions to the decennial census certified
44 by the United States bureau of the census shall be used as the basis for
45 apportioning monies pursuant to subsection D of this section.

1 J. Except as otherwise provided by this subsection, on notice from the
2 department of revenue pursuant to section 42-6010, subsection B, the state
3 treasurer shall withhold from the distribution of monies pursuant to this
4 section to the affected city or town the amount of the penalty for business
5 location municipal tax incentives provided by the city or town to a business
6 entity that locates a retail business facility in the city or town. The
7 state treasurer shall continue to withhold monies pursuant to this subsection
8 until the entire amount of the penalty has been withheld. The state
9 treasurer shall credit any monies withheld pursuant to this subsection to the
10 state general fund as provided by subsection D, paragraph 4 of this section.
11 The state treasurer shall not withhold any amount that the city or town
12 certifies to the department of revenue and the state treasurer as being
13 necessary to make any required deposits or payments for debt service on bonds
14 or other long-term obligations of the city or town that were issued or
15 incurred before the location incentives provided by the city or town.

16 K. On notice from the auditor general pursuant to section 9-626,
17 subsection D, the state treasurer shall withhold from the distribution of
18 monies pursuant to this section to the affected city the amount computed
19 pursuant to section 9-626, subsection D. The state treasurer shall continue
20 to withhold monies pursuant to this subsection until the entire amount
21 specified in the notice has been withheld. The state treasurer shall credit
22 any monies withheld pursuant to this subsection to the state general fund as
23 provided by subsection D, paragraph 4 of this section.

24 L. For the purposes of this section, "community college district"
25 means a community college district that is established pursuant to sections
26 15-1402 and 15-1403 and that is a political subdivision of this state and,
27 subject to the distribution procedures specified in section 15-1472,
28 subsection D, paragraph 2, subdivision (b), includes a community college
29 district established pursuant to section 15-1402.01 and, subject to the
30 distribution procedures specified in section 15-1472, subsection D, paragraph
31 2, subdivision (b), includes a provisional community college district
32 established pursuant to section 15-1409.

33 Sec. 2. Title 42, chapter 5, article 1, Arizona Revised Statutes, is
34 amended by adding section 42-5032.02, to read:

35 42-5032.02. Distribution of revenues for city, town or county
36 infrastructure improvements related to
37 manufacturing facilities; definitions

38 A. BEGINNING JULY 1, 2013, EACH MONTH THE STATE TREASURER SHALL PAY A
39 CITY, TOWN OR COUNTY, FROM THE AMOUNT DESIGNATED AS THE DISTRIBUTION BASE
40 PURSUANT TO SECTION 42-5029, SUBSECTION D, PARAGRAPH 4, THE AMOUNT DETERMINED
41 UNDER SUBSECTION B OF THIS SECTION FOR THE PURPOSE OF FUNDING UP TO EIGHTY
42 PER CENT OF THE COST OF PUBLIC INFRASTRUCTURE IMPROVEMENTS FOR THE BENEFIT OF
43 A MANUFACTURING FACILITY.

44 B. THE AMOUNT TO BE PAID TO A CITY, TOWN OR COUNTY UNDER SUBSECTION A
45 OF THIS SECTION IS THE TOTAL AMOUNT OF STATE TRANSACTION PRIVILEGE TAX

1 REVENUES COLLECTED UNDER SECTION 42-5010, SUBSECTION A FROM PERSONS
2 CONDUCTING BUSINESS UNDER SECTION 42-5075 DERIVED FROM CONTRACTS TO CONSTRUCT
3 BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A MANUFACTURING
4 FACILITY.

5 C. BEFORE THE COMMENCEMENT OF THE CONSTRUCTION OF BUILDINGS AND
6 ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A MANUFACTURING FACILITY THAT WILL
7 REQUIRE A CITY, TOWN OR COUNTY TO MAKE INFRASTRUCTURE IMPROVEMENTS, THE
8 MANUFACTURING FACILITY SHALL FILE A SWORN CERTIFICATION WITH THE ARIZONA
9 COMMERCE AUTHORITY, AND SUBMIT A COPY OF THIS SWORN CERTIFICATION TO THE
10 APPLICABLE CITY, TOWN OR COUNTY, THAT THE MANUFACTURING FACILITY AGREES TO
11 EITHER:

12 1. MAKE AT LEAST ONE HUNDRED MILLION DOLLARS IN CAPITAL INVESTMENT IF
13 THE MANUFACTURING FACILITY IS LOCATED IN A COUNTY THAT HAS A POPULATION OF
14 EIGHT HUNDRED THOUSAND PERSONS OR MORE.

15 2. MAKE AT LEAST TEN MILLION DOLLARS IN CAPITAL INVESTMENT IF THE
16 MANUFACTURING FACILITY IS LOCATED IN A COUNTY THAT HAS A POPULATION OF LESS
17 THAN EIGHT HUNDRED THOUSAND PERSONS.

18 D. THE CERTIFICATION UNDER SUBSECTION C OF THIS SECTION SHALL CONTAIN
19 A SWORN STATEMENT OR CERTIFICATION, SIGNED BY AN OFFICER OF THE MANUFACTURING
20 FACILITY UNDER PENALTY OF PERJURY, THAT THE INFORMATION CONTAINED IS TRUE AND
21 CORRECT ACCORDING TO THE BEST BELIEF AND KNOWLEDGE OF THE PERSON SUBMITTING
22 THE INFORMATION TO THE DEPARTMENT AFTER A REASONABLE INVESTIGATION OF THE
23 FACTS.

24 E. ON RECEIPT OF A SWORN CERTIFICATION FROM A MANUFACTURING FACILITY
25 PURSUANT TO SUBSECTION C OF THIS SECTION AND BEFORE THE COMMENCEMENT OF THE
26 CONSTRUCTION OF BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A
27 MANUFACTURING FACILITY THAT WILL REQUIRE A CITY, TOWN OR COUNTY TO MAKE
28 INFRASTRUCTURE IMPROVEMENTS, THE CITY, TOWN OR COUNTY SHALL ENTER INTO A
29 WRITTEN AGREEMENT WITH THE DEPARTMENT. THIS AGREEMENT AND ANY AMENDMENTS OR
30 CHANGES TO THE AGREEMENT SHALL:

31 1. STATE THE COST OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS AND
32 SEPARATELY IDENTIFY THE PARTICULAR IMPROVEMENTS THAT WILL BE MADE.

33 2. STATE THAT THE MONIES RECEIVED UNDER THIS SECTION WILL BE USED
34 EXCLUSIVELY TO PAY FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT ARE NECESSARY
35 TO SUPPORT THE ACTIVITIES OF THE MANUFACTURING FACILITY.

36 3. STATE THAT THE CITY, TOWN OR COUNTY WILL PAY A MINIMUM OF TWENTY
37 PER CENT OF THE COST OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS WITH ITS OWN
38 MONIES OR WITH MONIES FROM THE MANUFACTURING FACILITY.

39 4. STATE THAT THE CITY, TOWN OR COUNTY WILL IMMEDIATELY NOTIFY THE
40 DEPARTMENT WHEN MONIES RECEIVED UNDER THIS SECTION EXCEED EIGHTY PER CENT OF
41 THE COST OF THE INFRASTRUCTURE IMPROVEMENTS AND WILL RETURN THE AMOUNT OF THE
42 EXCESS TO THE STATE TREASURER FOR DEPOSIT TO THE STATE GENERAL FUND.

43 5. STIPULATE THE ACTUAL AMOUNT OF THE CONSTRUCTION FUNDING THAT WILL
44 BE DERIVED FROM SOURCES OTHER THAN THE STATE.

1 6. IDENTIFY THE PERSONS WHO WILL BE PRIME CONTRACTORS ON THE
2 CONSTRUCTION OF BUILDINGS AND ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A
3 MANUFACTURING FACILITY AND STATE THAT EACH PRIME CONTRACTOR HAS BEEN NOTIFIED
4 AS TO WHICH PORTION OF THE CONTRACTOR'S INCOME SHALL BE SEPARATELY IDENTIFIED
5 TO THE DEPARTMENT PURSUANT TO SECTION 42-5075, SUBSECTION H.

6 7. PROVIDE ANY OTHER INFORMATION DEEMED NECESSARY BY THE DEPARTMENT.

7 F. ONCE A CITY, TOWN OR COUNTY HAS RECEIVED MONIES THAT MEET OR EXCEED
8 EIGHTY PER CENT OF THE COST OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT
9 ARE NECESSARY TO SUPPORT THE ACTIVITIES RELATED TO THE MANUFACTURING FACILITY
10 AS DESCRIBED IN THE WRITTEN AGREEMENT PURSUANT TO SUBSECTION E OF THIS
11 SECTION, THE DEPARTMENT SHALL CEASE PAYMENTS UNDER SUBSECTION A OF THIS
12 SECTION.

13 G. FOR THE PURPOSES OF THIS SECTION:

14 1. "ASSOCIATED IMPROVEMENT" INCLUDES ANY PUBLIC INFRASTRUCTURE
15 IMPROVEMENT THAT IS MADE FOR THE BENEFIT OF THE MANUFACTURING FACILITY
16 OUTSIDE OF THE PARCEL OR PARCELS OF REAL PROPERTY WHERE THE MANUFACTURING
17 FACILITY IS LOCATED.

18 2. "MANUFACTURING FACILITY" MEANS AN ESTABLISHMENT ENGAGED IN THE
19 MECHANICAL, PHYSICAL OR CHEMICAL TRANSFORMATION OR FABRICATION OF MATERIALS,
20 SUBSTANCES OR COMPONENTS INTO NEW PRODUCTS AND THAT IS CLASSIFIED WITHIN
21 SECTIONS 31 THROUGH 33 INCLUSIVE OF THE 2007 EDITION OF THE NORTH AMERICAN
22 INDUSTRY CLASSIFICATION SYSTEM AS PUBLISHED BY THE NATIONAL TECHNICAL
23 INFORMATION SERVICE OF THE UNITED STATES DEPARTMENT OF COMMERCE AND THE
24 ESTABLISHMENT AGREES TO EITHER:

25 (a) MAKE AT LEAST ONE HUNDRED MILLION DOLLARS IN CAPITAL INVESTMENT IF
26 THE MANUFACTURING FACILITY IS LOCATED IN A COUNTY THAT HAS A POPULATION OF
27 EIGHT HUNDRED THOUSAND PERSONS OR MORE.

28 (b) MAKE AT LEAST TEN MILLION DOLLARS IN CAPITAL INVESTMENT IF THE
29 MANUFACTURING FACILITY IS LOCATED IN A COUNTY THAT HAS A POPULATION OF LESS
30 THAN EIGHT HUNDRED THOUSAND PERSONS.

31 3. "POPULATION" MEANS THE POPULATION DETERMINED IN THE MOST RECENT
32 UNITED STATES DECENNIAL CENSUS OR THE MOST RECENT SPECIAL CENSUS AS PROVIDED
33 IN SECTION 28-6532.

34 4. "PUBLIC INFRASTRUCTURE" MEANS WATER FACILITIES, WASTEWATER
35 FACILITIES AND ROADS THAT ARE NECESSARY TO SUPPORT THE ACTIVITIES OF THE
36 MANUFACTURING FACILITY.

37 Sec. 3. Section 42-5075, Arizona Revised Statutes, is amended to read:
38 42-5075. Prime contracting classification; exemptions;
39 definitions

40 A. The prime contracting classification is comprised of the business
41 of prime contracting and dealership of manufactured buildings. Sales for
42 resale to another dealership of manufactured buildings are not subject to
43 tax. Sales for resale do not include sales to a lessor of manufactured
44 buildings. The sale of a used manufactured building is not taxable under

1 this chapter. The proceeds from alteration and repairs to a used
2 manufactured building are taxable under this section.

3 B. The tax base for the prime contracting classification is sixty-five
4 per cent of the gross proceeds of sales or gross income derived from the
5 business. The following amounts shall be deducted from the gross proceeds of
6 sales or gross income before computing the tax base:

7 1. The sales price of land, which shall not exceed the fair market
8 value.

9 2. Sales and installation of groundwater measuring devices required
10 under section 45-604 and groundwater monitoring wells required by law,
11 including monitoring wells installed for acquiring information for a permit
12 required by law.

13 3. The sales price of furniture, furnishings, fixtures, appliances and
14 attachments that are not incorporated as component parts of or attached to a
15 manufactured building or the setup site. The sale of such items may be
16 subject to the taxes imposed by article 1 of this chapter separately and
17 distinctly from the sale of the manufactured building.

18 4. The gross proceeds of sales or gross income received from a
19 contract entered into for the construction, alteration, repair, addition,
20 subtraction, improvement, movement, wrecking or demolition of any building,
21 highway, road, railroad, excavation, manufactured building or other
22 structure, project, development or improvement located in a military reuse
23 zone for providing aviation or aerospace services or for a manufacturer,
24 assembler or fabricator of aviation or aerospace products within an active
25 military reuse zone after the zone is initially established or renewed under
26 section 41-1531. To be eligible to qualify for this deduction, before
27 beginning work under the contract, the prime contractor must have applied for
28 a letter of qualification from the department of revenue.

29 5. The gross proceeds of sales or gross income derived from a contract
30 to construct a qualified environmental technology manufacturing, producing or
31 processing facility, as described in section 41-1514.02, and from subsequent
32 construction and installation contracts that begin within ten years after the
33 start of initial construction. To qualify for this deduction, before
34 beginning work under the contract, the prime contractor must obtain a letter
35 of qualification from the department of revenue. This paragraph shall apply
36 for ten full consecutive calendar or fiscal years after the start of initial
37 construction.

38 6. The gross proceeds of sales or gross income from a contract to
39 provide for one or more of the following actions, or a contract for site
40 preparation, constructing, furnishing or installing machinery, equipment or
41 other tangible personal property, including structures necessary to protect
42 exempt incorporated materials or installed machinery or equipment, and
43 tangible personal property incorporated into the project, to perform one or
44 more of the following actions in response to a release or suspected release
45 of a hazardous substance, pollutant or contaminant from a facility to the

1 environment, unless the release was authorized by a permit issued by a
2 governmental authority:

3 (a) Actions to monitor, assess and evaluate such a release or a
4 suspected release.

5 (b) Excavation, removal and transportation of contaminated soil and
6 its treatment or disposal.

7 (c) Treatment of contaminated soil by vapor extraction, chemical or
8 physical stabilization, soil washing or biological treatment to reduce the
9 concentration, toxicity or mobility of a contaminant.

10 (d) Pumping and treatment or in situ treatment of contaminated
11 groundwater or surface water to reduce the concentration or toxicity of a
12 contaminant.

13 (e) The installation of structures, such as cutoff walls or caps, to
14 contain contaminants present in groundwater or soil and prevent them from
15 reaching a location where they could threaten human health or welfare or the
16 environment.

17 This paragraph does not include asbestos removal or the construction or use
18 of ancillary structures such as maintenance sheds, offices or storage
19 facilities for unattached equipment, pollution control equipment, facilities
20 or other control items required or to be used by a person to prevent or
21 control contamination before it reaches the environment.

22 7. The gross proceeds of sales or gross income that is derived from a
23 contract entered into for the installation, assembly, repair or maintenance
24 of machinery, equipment or other tangible personal property that is deducted
25 from the tax base of the retail classification pursuant to section 42-5061,
26 subsection B, or that is exempt from use tax pursuant to section 42-5159,
27 subsection B, and that does not become a permanent attachment to a building,
28 highway, road, railroad, excavation or manufactured building or other
29 structure, project, development or improvement. If the ownership of the
30 realty is separate from the ownership of the machinery, equipment or tangible
31 personal property, the determination as to permanent attachment shall be made
32 as if the ownership were the same. The deduction provided in this paragraph
33 does not include gross proceeds of sales or gross income from that portion of
34 any contracting activity ~~which~~ THAT consists of the development of, or
35 modification to, real property in order to facilitate the installation,
36 assembly, repair, maintenance or removal of machinery, equipment or other
37 tangible personal property that is deducted from the tax base of the retail
38 classification pursuant to section 42-5061, subsection B or that is exempt
39 from use tax pursuant to section 42-5159, subsection B. For the purposes of
40 this paragraph, "permanent attachment" means at least one of the following:

1 (a) To be incorporated into real property.

2 (b) To become so affixed to real property that it becomes a part of
3 the real property.

4 (c) To be so attached to real property that removal would cause
5 substantial damage to the real property from which it is removed.

6 8. Through December 31, 2009, the gross proceeds of sales or gross
7 income received from a contract for constructing any lake facility
8 development in a commercial enhancement reuse district ~~that is designated~~
9 ~~pursuant to section 9-499.08~~ if the prime contractor maintains the following
10 records in a form satisfactory to the department and to the city or town in
11 which the property is located:

12 (a) The certificate of qualification of the lake facility development
13 issued by the city or town ~~pursuant to section 9-499.08, subsection D.~~

14 (b) All state and local transaction privilege tax returns for the
15 period of time during which the prime contractor received gross proceeds of
16 sales or gross income from a contract to construct a lake facility
17 development in a designated commercial enhancement reuse district, showing
18 the amount exempted from state and local taxation.

19 (c) Any other information that the department considers to be
20 necessary.

21 9. The gross proceeds of sales or gross income attributable to the
22 purchase of machinery, equipment or other tangible personal property that is
23 exempt from or deductible from transaction privilege and use tax under:

24 (a) Section 42-5061, subsection A, paragraph 25 or 29.

25 (b) Section 42-5061, subsection B.

26 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
27 (c), (d), (e), (f), (i), (j) or (l).

28 (d) Section 42-5159, subsection B.

29 10. The gross proceeds of sales or gross income received from a
30 contract for the construction of an environmentally controlled facility for
31 the raising of poultry for the production of eggs and the sorting, cooling
32 and packaging of eggs.

33 11. The gross proceeds of sales or gross income that is derived from a
34 contract entered into with a person who is engaged in the commercial
35 production of livestock, livestock products or agricultural, horticultural,
36 viticultural or floricultural crops or products in this state for the
37 construction, alteration, repair, improvement, movement, wrecking or
38 demolition or addition to or subtraction from any building, highway, road,
39 excavation, manufactured building or other structure, project, development or
40 improvement used directly and primarily to prevent, monitor, control or
41 reduce air, water or land pollution.

42 12. The gross proceeds of sales or gross income that is derived from
43 the installation, assembly, repair or maintenance of clean rooms that are
44 deducted from the tax base of the retail classification pursuant to section
45 42-5061, subsection B, paragraph 17.

1 13. For taxable periods beginning from and after June 30, 2001, the
2 gross proceeds of sales or gross income derived from a contract entered into
3 for the construction of a residential apartment housing facility that
4 qualifies for a federal housing subsidy for low income persons over sixty-two
5 years of age and that is owned by a nonprofit charitable organization that
6 has qualified under section 501(c)(3) of the internal revenue code.

7 14. For taxable periods beginning from and after December 31, 1996 and
8 ending before January 1, 2017, the gross proceeds of sales or gross income
9 derived from a contract to provide and install a solar energy device. The
10 contractor shall register with the department as a solar energy contractor.
11 By registering, the contractor acknowledges that it will make its books and
12 records relating to sales of solar energy devices available to the department
13 for examination.

14 15. The gross proceeds of sales or gross income derived from a contract
15 entered into for the construction of a launch site, as defined in 14 Code of
16 Federal Regulations section 401.5.

17 16. The gross proceeds of sales or gross income derived from a contract
18 entered into for the construction of a domestic violence shelter that is
19 owned and operated by a nonprofit charitable organization that has qualified
20 under section 501(c)(3) of the internal revenue code.

21 17. The gross proceeds of sales or gross income derived from contracts
22 to perform postconstruction treatment of real property for termite and
23 general pest control, including wood destroying organisms.

24 18. The gross proceeds of sales or gross income received from contracts
25 entered into before July 1, 2006 for constructing a state university research
26 infrastructure project if the project has been reviewed by the joint
27 committee on capital review before the university enters into the
28 construction contract for the project. For the purposes of this paragraph,
29 "research infrastructure" has the same meaning prescribed in section 15-1670.

30 19. The gross proceeds of sales or gross income received from a
31 contract for the construction of any building, or other structure, project,
32 development or improvement owned by a qualified business under section
33 41-1516 for harvesting or the initial processing of qualifying forest
34 products removed from qualifying projects as defined in section 41-1516 if
35 actual construction begins before January 1, 2010. To qualify for this
36 deduction, the prime contractor must obtain a letter of qualification from
37 the department of commerce before beginning work under the contract.

38 20. The gross proceeds of sales or gross income received from a
39 contract for the construction of any building or other structure associated
40 with motion picture production in this state. To qualify for the deduction,
41 at the time the contract is entered into the motion picture production
42 company must present to the prime contractor its certificate that is issued
43 pursuant to section 42-5009, subsection H and that establishes its
44 qualification for the deduction.

1 21. Any amount of the gross proceeds of sales or gross income
2 attributable to development fees that are incurred in relation to a contract
3 for construction, development or improvement of real property and that are
4 paid by a prime contractor or subcontractor. For the purposes of this
5 paragraph:

6 (a) The attributable amount shall not exceed the value of the
7 development fees actually imposed.

8 (b) The attributable amount is equal to the total amount of
9 development fees paid by the prime contractor or subcontractor, and the total
10 development fees credited in exchange for the construction of, contribution
11 to or dedication of real property for providing public infrastructure, public
12 safety or other public services necessary to the development. The real
13 property must be the subject of the development fees.

14 (c) "Development fees" means fees imposed to offset capital costs of
15 providing public infrastructure, public safety or other public services to a
16 development and authorized pursuant to section 9-463.05, section 11-1102 or
17 title 48 regardless of the jurisdiction to which the fees are paid.

18 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
19 of this section is subject to the following provisions:

20 1. A prime contractor may establish entitlement to the deduction by
21 both:

22 (a) Marking the invoice for the transaction to indicate that the gross
23 proceeds of sales or gross income derived from the transaction was deducted
24 from the base.

25 (b) Obtaining a certificate executed by the purchaser indicating the
26 name and address of the purchaser, the precise nature of the business of the
27 purchaser, the purpose for which the purchase was made, the necessary facts
28 to establish the deductibility of the property under section 42-5061,
29 subsection B, and a certification that the person executing the certificate
30 is authorized to do so on behalf of the purchaser. The certificate may be
31 disregarded if the prime contractor has reason to believe that the
32 information contained in the certificate is not accurate or complete.

33 2. A person who does not comply with paragraph 1 of this subsection
34 may establish entitlement to the deduction by presenting facts necessary to
35 support the entitlement, but the burden of proof is on that person.

36 3. The department may prescribe a form for the certificate described
37 in paragraph 1, subdivision (b) of this subsection. The department may also
38 adopt rules that describe the transactions with respect to which a person is
39 not entitled to rely solely on the information contained in the certificate
40 provided in paragraph 1, subdivision (b) of this subsection but must instead
41 obtain such additional information as required in order to be entitled to the
42 deduction.

43 4. If a prime contractor is entitled to a deduction by complying with
44 paragraph 1 of this subsection, the department may require the purchaser who
45 caused the execution of the certificate to establish the accuracy and

1 completeness of the information required to be contained in the certificate
2 which would entitle the prime contractor to the deduction. If the purchaser
3 cannot establish the accuracy and completeness of the information, the
4 purchaser is liable in an amount equal to any tax, penalty and interest which
5 the prime contractor would have been required to pay under article 1 of this
6 chapter if the prime contractor had not complied with paragraph 1 of this
7 subsection. Payment of the amount under this paragraph exempts the purchaser
8 from liability for any tax imposed under article 4 of this chapter. The
9 amount shall be treated as a transaction privilege tax to the purchaser and
10 as tax revenues collected from the prime contractor in order to designate the
11 distribution base for purposes of section 42-5029.

12 D. Subcontractors or others who perform services in respect to any
13 improvement, building, highway, road, railroad, excavation, manufactured
14 building or other structure, project, development or improvement are not
15 subject to tax if they can demonstrate that the job was within the control of
16 a prime contractor or contractors or a dealership of manufactured buildings
17 and that the prime contractor or dealership is liable for the tax on the
18 gross income, gross proceeds of sales or gross receipts attributable to the
19 job and from which the subcontractors or others were paid.

20 E. Amounts received by a contractor for a project are excluded from
21 the contractor's gross proceeds of sales or gross income derived from the
22 business if the person who hired the contractor executes and provides a
23 certificate to the contractor stating that the person providing the
24 certificate is a prime contractor and is liable for the tax under article 1
25 of this chapter. The department shall prescribe the form of the certificate.
26 If the contractor has reason to believe that the information contained on the
27 certificate is erroneous or incomplete, the department may disregard the
28 certificate. If the person who provides the certificate is not liable for
29 the tax as a prime contractor, that person is nevertheless deemed to be the
30 prime contractor in lieu of the contractor and is subject to the tax under
31 this section on the gross receipts or gross proceeds received by the
32 contractor.

33 F. Every person engaging or continuing in this state in the business
34 of prime contracting or dealership of manufactured buildings shall present to
35 the purchaser of such prime contracting or manufactured building a written
36 receipt of the gross income or gross proceeds of sales from such activity and
37 shall separately state the taxes to be paid pursuant to this section.

38 G. For the purposes of section 42-5032.01, the department shall
39 separately account for revenues collected under the prime contracting
40 classification from any prime contractor engaged in the preparation or
41 construction of a multipurpose facility, and related infrastructure, that is
42 owned, operated or leased by the tourism and sports authority pursuant to
43 title 5, chapter 8.

1 H. FOR THE PURPOSES OF SECTION 42-5032.02, BEGINNING JULY 1, 2013, THE
2 DEPARTMENT SHALL SEPARATELY ACCOUNT FOR REVENUES REPORTED AND COLLECTED UNDER
3 THE PRIME CONTRACTING CLASSIFICATION FROM ANY PRIME CONTRACTOR ENGAGED IN THE
4 CONSTRUCTION OF ANY BUILDINGS AND ASSOCIATED IMPROVEMENTS THAT ARE FOR THE
5 BENEFIT OF A MANUFACTURING FACILITY. FOR THE PURPOSES OF THIS SUBSECTION,
6 "ASSOCIATED IMPROVEMENTS" AND "MANUFACTURING FACILITY" HAVE THE SAME MEANINGS
7 PRESCRIBED IN SECTION 42-5032.02.

8 ~~H.~~ I. The gross proceeds of sales or gross income derived from a
9 contract for lawn maintenance services are not subject to tax under this
10 section if the contract does not include landscaping activities. Lawn
11 maintenance service is a service pursuant to section 42-5061, subsection A,
12 paragraph 1, and includes lawn mowing and edging, weeding, repairing
13 sprinkler heads or drip irrigation heads, seasonal replacement of flowers,
14 refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris
15 collection and removal, tree or shrub pruning or clipping, garden and gravel
16 raking and applying pesticides, as defined in section 3-361, and fertilizer
17 materials, as defined in section 3-262.

18 ~~I.~~ J. The gross proceeds of sales or gross income derived from
19 landscaping activities are subject to tax under this section. Landscaping
20 includes installing lawns, grading or leveling ground, installing gravel or
21 boulders, planting trees and other plants, felling trees, removing or
22 mulching tree stumps, removing other imbedded plants, building or modifying
23 irrigation berms, repairing sprinkler or watering systems, installing
24 railroad ties and installing underground sprinkler or watering systems.

25 ~~J.~~ K. The portion of gross proceeds of sales or gross income
26 attributable to the actual direct costs of providing architectural or
27 engineering services that are incorporated in a contract is not subject to
28 tax under this section. For the purposes of this subsection, "direct costs"
29 means the portion of the actual costs that are directly expended in providing
30 architectural or engineering services.

31 ~~K.~~ L. Operating a landfill or a solid waste disposal facility is not
32 subject to taxation under this section, including filling, compacting and
33 creating vehicle access to and from cell sites within the landfill.
34 Constructing roads to a landfill or solid waste disposal facility and
35 constructing cells within a landfill or solid waste disposal facility may be
36 deemed prime contracting under this section.

37 ~~L.~~ M. The following apply to manufactured buildings:

38 1. For sales in this state where the dealership of manufactured
39 buildings contracts to deliver the building to a setup site or to perform the
40 setup in this state, the taxable situs is the setup site.

41 2. For sales in this state where the dealership of manufactured
42 buildings does not contract to deliver the building to a setup site or does
43 not perform the setup, the taxable situs is the location of the dealership
44 where the building is delivered to the buyer.

1 3. For sales in this state where the dealership of manufactured
2 buildings contracts to deliver the building to a setup site that is outside
3 this state, the situs is outside this state and the transaction is excluded
4 from tax.

5 ~~M.~~ N. The gross proceeds of sales or gross income attributable to a
6 separate, written design phase services contract or professional services
7 contract, executed before modification begins, is not subject to tax under
8 this section, regardless of whether the services are provided sequential to
9 or concurrent with prime contracting activities that are subject to tax under
10 this section. This subsection does not include the gross proceeds of sales
11 or gross income attributable to construction phase services. For the
12 purposes of this subsection:

13 1. "Construction phase services" means services for the execution and
14 completion of any modification, including the following:

15 (a) Administration or supervision of any modification performed on the
16 project, including team management and coordination, scheduling, cost
17 controls, submittal process management, field management, safety program,
18 close-out process and warranty period services.

19 (b) Administration or supervision of any modification performed
20 pursuant to a punch list. For the purposes of this subdivision, "punch list"
21 means minor items of modification work performed after substantial completion
22 and before final completion of the project.

23 (c) Administration or supervision of any modification performed
24 pursuant to change orders. For the purposes of this subdivision, "change
25 order" means a written instrument issued after execution of a contract for
26 modification work, providing for all of the following:

27 (i) The scope of a change in the modification work, contract for
28 modification work or other contract documents.

29 (ii) The amount of an adjustment, if any, to the guaranteed maximum
30 price as set in the contract for modification work. For the purposes of this
31 item, "guaranteed maximum price" means the amount guaranteed to be the
32 maximum amount due to a prime contractor for the performance of all
33 modification work for the project.

34 (iii) The extent of an adjustment, if any, to the contract time of
35 performance set forth in the contract.

36 (d) Administration or supervision of any modification performed
37 pursuant to change directives. For the purposes of this subdivision, "change
38 directive" means a written order directing a change in modification work
39 before agreement on an adjustment of the guaranteed maximum price or contract
40 time.

41 (e) Inspection to determine the dates of substantial completion or
42 final completion.

43 (f) Preparation of any manuals, warranties, as-built drawings, spares
44 or other items the prime contractor must furnish pursuant to the contract for
45 modification work. For the purposes of this subdivision, "as-built drawing"

1 means a drawing that indicates field changes made to adapt to field
2 conditions, field changes resulting from change orders or buried and
3 concealed installation of piping, conduit and utility services.

4 (g) Preparation of status reports after modification work has begun
5 detailing the progress of work performed, including preparation of any of the
6 following:

7 (i) Master schedule updates.

8 (ii) Modification work cash flow projection updates.

9 (iii) Site reports made on a periodic basis.

10 (iv) Identification of discrepancies, conflicts or ambiguities in
11 modification work documents that require resolution.

12 (v) Identification of any health and safety issues that have arisen in
13 connection with the modification work.

14 (h) Preparation of daily logs of modification work, including
15 documentation of personnel, weather conditions and on-site occurrences.

16 (i) Preparation of any submittals or shop drawings used by the prime
17 contractor to illustrate details of the modification work performed.

18 (j) Administration or supervision of any other activities for which a
19 prime contractor receives a certificate for payment or certificate for final
20 payment based on the progress of modification work performed on the project.

21 2. "Design phase services" means services for developing and
22 completing a design for a project that are not construction phase services,
23 including the following:

24 (a) Evaluating surveys, reports, test results or any other information
25 on-site conditions for the project, including physical characteristics, legal
26 limitations and utility locations for the site.

27 (b) Evaluating any criteria or programming objectives for the project
28 to ascertain requirements for the project, such as physical requirements
29 affecting cost or projected utilization of the project.

30 (c) Preparing drawings and specifications for architectural program
31 documents, schematic design documents, design development documents,
32 modification work documents or documents that identify the scope of or
33 materials for the project.

34 (d) Preparing an initial schedule for the project, excluding the
35 preparation of updates to the master schedule after modification work has
36 begun.

37 (e) Preparing preliminary estimates of costs of modification work
38 before completion of the final design of the project, including an estimate
39 or schedule of values for any of the following:

40 (i) Labor, materials, machinery and equipment, tools, water, heat,
41 utilities, transportation and other facilities and services used in the
42 execution and completion of modification work, regardless of whether they are
43 temporary or permanent or whether they are incorporated in the
44 modifications.

1 (ii) The cost of labor and materials to be furnished by the owner of
2 the real property.

3 (iii) The cost of any equipment of the owner of the real property to
4 be assigned by the owner to the prime contractor.

5 (iv) The cost of any labor for installation of equipment separately
6 provided by the owner of the real property that has been designed, specified,
7 selected or specifically provided for in any design document for the project.

8 (v) Any fee paid by the owner of the real property to the prime
9 contractor pursuant to the contract for modification work.

10 (vi) Any bond and insurance premiums.

11 (vii) Any applicable taxes.

12 (viii) Any contingency fees for the prime contractor that may be used
13 before final completion of the project.

14 (f) Reviewing and evaluating cost estimates and project documents to
15 prepare recommendations on site use, site improvements, selection of
16 materials, building systems and equipment, modification feasibility,
17 availability of materials and labor, local modification activity as related
18 to schedules and time requirements for modification work.

19 (g) Preparing the plan and procedures for selection of subcontractors,
20 including any prequalification of subcontractor candidates.

21 3. "Professional services" means architect services, assayer services,
22 engineer services, geologist services, land surveying services or landscape
23 architect services that are within the scope of those services as provided in
24 title 32, chapter 1 and for which gross proceeds of sales or gross income has
25 not otherwise been deducted under subsection ~~J~~ K of this section.

26 ~~N~~ 0. Notwithstanding subsection ~~O~~ P, paragraph 8 of this section, a
27 person owning real property who enters into a contract for sale of the real
28 property, who is responsible to the new owner of the property for
29 modifications made to the property in the period subsequent to the transfer
30 of title and who receives a consideration for the modifications is considered
31 a prime contractor solely for purposes of taxing the gross proceeds of sale
32 or gross income received for the modifications made subsequent to the
33 transfer of title. The original owner's gross proceeds of sale or gross
34 income received for the modifications shall be determined according to the
35 following methodology:

36 1. If any part of the contract for sale of the property specifies
37 amounts to be paid to the original owner for the modifications to be made in
38 the period subsequent to the transfer of title, the amounts are included in
39 the original owner's gross proceeds of sale or gross income under this
40 section. Proceeds from the sale of the property that are received after
41 transfer of title and that are unrelated to the modifications made subsequent
42 to the transfer of title are not considered gross proceeds of sale or gross
43 income from the modifications.

1 2. If the original owner enters into an agreement separate from the
2 contract for sale of the real property providing for amounts to be paid to
3 the original owner for the modifications to be made in the period subsequent
4 to the transfer of title to the property, the amounts are included in the
5 original owner's gross proceeds of sale or gross income received for the
6 modifications made subsequent to the transfer of title.

7 3. If the original owner is responsible to the new owner for
8 modifications made to the property in the period subsequent to the transfer
9 of title and derives any gross proceeds of sale or gross income from the
10 project subsequent to the transfer of title other than a delayed disbursement
11 from escrow unrelated to the modifications, it is presumed that the amounts
12 are received for the modifications made subsequent to the transfer of title
13 unless the contrary is established by the owner through its books, records
14 and papers kept in the regular course of business.

15 4. The tax base of the original owner is computed in the same manner
16 as a prime contractor under this section.

17 ~~0-~~ P. For the purposes of this section:

18 1. "Contracting" means engaging in business as a contractor.

19 2. "Contractor" is synonymous with the term "builder" and means any
20 person or organization that undertakes to or offers to undertake to, or
21 purports to have the capacity to undertake to, or submits a bid to, or does
22 personally or by or through others, modify any building, highway, road,
23 railroad, excavation, manufactured building or other structure, project,
24 development or improvement, or to do any part of such a project, including
25 the erection of scaffolding or other structure or works in connection with
26 such a project, and includes subcontractors and specialty contractors. For
27 all purposes of taxation or deduction, this definition shall govern without
28 regard to whether or not such contractor is acting in fulfillment of a
29 contract.

30 3. "Dealership of manufactured buildings" means a dealer who either:

31 (a) Is licensed pursuant to title 41, chapter 16 and who sells
32 manufactured buildings to the final consumer.

33 (b) Supervises, performs or coordinates the excavation and completion
34 of site improvements, setup or moving of a manufactured building including
35 the contracting, if any, with any subcontractor or specialty contractor for
36 the completion of the contract.

37 4. "Manufactured building" means a manufactured home, mobile home or
38 factory-built building, as defined in section 41-2142.

39 5. "Modification" means construction, alteration, repair, addition,
40 subtraction, improvement, movement, wreckage or demolition.

41 6. "Modify" means to construct, alter, repair, add to, subtract from,
42 improve, move, wreck or demolish.

43 7. "Prime contracting" means engaging in business as a prime
44 contractor.

1 8. "Prime contractor" means a contractor who supervises, performs or
2 coordinates the modification of any building, highway, road, railroad,
3 excavation, manufactured building or other structure, project, development or
4 improvement including the contracting, if any, with any subcontractors or
5 specialty contractors and who is responsible for the completion of the
6 contract. Except as provided in subsections E and ~~N~~ 0 of this section, a
7 person who owns real property, who engages one or more contractors to modify
8 that real property and who does not itself modify that real property is not a
9 prime contractor within the meaning of this paragraph regardless of the
10 existence of a contract for sale or the subsequent sale of that real
11 property.

12 9. "Sale of a used manufactured building" does not include a lease of
13 a used manufactured building.