

REFERENCE TITLE: independent functional utility

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2535

Introduced by
Representative Olson

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO PRIME CONTRACTING CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5075, Arizona Revised Statutes, is amended to
3 read:

4 42-5075. Prime contracting classification; exemptions;
5 definitions

6 A. The prime contracting classification is comprised of the business
7 of prime contracting and dealership of manufactured buildings. Sales for
8 resale to another dealership of manufactured buildings are not subject to
9 tax. Sales for resale do not include sales to a lessor of manufactured
10 buildings. The sale of a used manufactured building is not taxable under
11 this chapter. The proceeds from alteration and repairs to a used
12 manufactured building are taxable under this section.

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

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

19 2. Sales and installation of groundwater measuring devices required
20 under section 45-604 and groundwater monitoring wells required by law,
21 including monitoring wells installed for acquiring information for a permit
22 required by law.

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

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

39 5. The gross proceeds of sales or gross income derived from a contract
40 to construct a qualified environmental technology manufacturing, producing or
41 processing facility, as described in section 41-1514.02, and from subsequent
42 construction and installation contracts that begin within ten years after the
43 start of initial construction. To qualify for this deduction, before
44 beginning work under the contract, the prime contractor must obtain a letter
45 of qualification from the department of revenue. This paragraph shall apply

1 for ten full consecutive calendar or fiscal years after the start of initial
2 construction.

3 6. The gross proceeds of sales or gross income from a contract to
4 provide for one or more of the following actions, or a contract for site
5 preparation, constructing, furnishing or installing machinery, equipment or
6 other tangible personal property, including structures necessary to protect
7 exempt incorporated materials or installed machinery or equipment, and
8 tangible personal property incorporated into the project, to perform one or
9 more of the following actions in response to a release or suspected release
10 of a hazardous substance, pollutant or contaminant from a facility to the
11 environment, unless the release was authorized by a permit issued by a
12 governmental authority:

13 (a) Actions to monitor, assess and evaluate such a release or a
14 suspected release.

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

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

20 (d) Pumping and treatment or in situ treatment of contaminated
21 groundwater or surface water to reduce the concentration or toxicity of a
22 contaminant.

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

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

32 7. The gross proceeds of sales or gross income that is derived from a
33 contract entered into for the installation, assembly, repair or maintenance
34 of machinery, equipment or other tangible personal property that is deducted
35 from the tax base of the retail classification pursuant to section 42-5061,
36 subsection B, or that is exempt from use tax pursuant to section 42-5159,
37 subsection B, ~~and that does not become a permanent attachment to a building,
38 highway, road, railroad, excavation or manufactured building or other
39 structure, project, development or improvement. If the ownership of the
40 realty is separate from the ownership of the machinery, equipment or tangible
41 personal property, the determination as to permanent attachment shall be made
42 as if the ownership were the same~~ AND THAT HAS INDEPENDENT FUNCTIONAL UTILITY
43 AFTER INSTALLATION. The deduction provided in this paragraph does not
44 include gross proceeds of sales or gross income from that portion of any
45 contracting activity that consists of the development of, or modification to,
46 real property in order to facilitate the installation, assembly, repair,

1 maintenance or removal of machinery, equipment or other tangible personal
2 property that is deducted from the tax base of the retail classification
3 pursuant to section 42-5061, subsection B or that is exempt from use tax
4 pursuant to section 42-5159, subsection B. For the purposes of this
5 paragraph, ~~"permanent attachment" means at least one of the following:~~

6 ~~(a) To be incorporated into real property.~~

7 ~~(b) To become so affixed to real property that it becomes a part of~~
8 ~~the real property.~~

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

11 "INDEPENDENT FUNCTIONAL UTILITY" MEANS THAT THE MACHINERY, EQUIPMENT OR OTHER
12 TANGIBLE PERSONAL PROPERTY CAN SUBSTANTIALLY PERFORM ITS FUNCTION WITHOUT
13 ATTACHMENT TO REAL PROPERTY, WHICH MUST INCLUDE MORE THAN:

14 (a) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL
15 PROPERTY.

16 (b) CONNECTING ITEMS OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE
17 PERSONAL PROPERTY TO EACH OTHER.

18 (c) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL
19 PROPERTY, WHETHER AS INDIVIDUAL ITEMS OR AS A SYSTEM OF ITEMS, TO WATER,
20 POWER, GAS, COMMUNICATION OR OTHER SERVICE.

21 (d) BOLTING DOWN OR BURYING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE
22 PERSONAL PROPERTY OR OTHERWISE AFFIXING THE MACHINERY, EQUIPMENT OR OTHER
23 TANGIBLE PERSONAL PROPERTY TO REAL PROPERTY OR REAL PROPERTY IMPROVEMENTS TO
24 STABILIZE OR PROTECT THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL
25 PROPERTY DURING OPERATION.

26 8. The gross proceeds of sales or gross income attributable to the
27 purchase of machinery, equipment or other tangible personal property that is
28 exempt from or deductible from transaction privilege and use tax under:

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

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

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

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

34 9. The gross proceeds of sales or gross income received from a
35 contract for the construction of an environmentally controlled facility for
36 the raising of poultry for the production of eggs and the sorting, cooling
37 and packaging of eggs.

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

1 11. The gross proceeds of sales or gross income that is derived from
2 the installation, assembly, repair or maintenance of clean rooms that are
3 deducted from the tax base of the retail classification pursuant to section
4 42-5061, subsection B, paragraph 16.

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

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

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

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

25 16. The gross proceeds of sales or gross income derived from contracts
26 to perform postconstruction treatment of real property for termite and
27 general pest control, including wood destroying organisms.

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

34 18. The gross proceeds of sales or gross income received from a
35 contract for the construction of any building, or other structure, project,
36 development or improvement owned by a qualified business under section
37 41-1516 for harvesting or processing qualifying forest products removed from
38 qualifying projects as defined in section 41-1516 if actual construction
39 begins before January 1, 2024. To qualify for this deduction, the prime
40 contractor must obtain a letter of qualification from the Arizona commerce
41 authority before beginning work under the contract.

42 19. Any amount of the gross proceeds of sales or gross income
43 attributable to development fees that are incurred in relation to a contract
44 for construction, development or improvement of real property and that are
45 paid by a prime contractor or subcontractor. For the purposes of this
46 paragraph:

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

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

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

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

15 1. A prime contractor may establish entitlement to the deduction by
16 both:

17 (a) Marking the invoice for the transaction to indicate that the gross
18 proceeds of sales or gross income derived from the transaction was deducted
19 from the base.

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

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

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

38 4. If a prime contractor is entitled to a deduction by complying with
39 paragraph 1 of this subsection, the department may require the purchaser who
40 caused the execution of the certificate to establish the accuracy and
41 completeness of the information required to be contained in the certificate
42 that would entitle the prime contractor to the deduction. If the purchaser
43 cannot establish the accuracy and completeness of the information, the
44 purchaser is liable in an amount equal to any tax, penalty and interest that
45 the prime contractor would have been required to pay under article 1 of this
46 chapter if the prime contractor had not complied with paragraph 1 of this

1 subsection. Payment of the amount under this paragraph exempts the purchaser
2 from liability for any tax imposed under article 4 of this chapter. The
3 amount shall be treated as a transaction privilege tax to the purchaser and
4 as tax revenues collected from the prime contractor in order to designate the
5 distribution base for purposes of section 42-5029.

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

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

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

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

38 H. For the purposes of section 42-5032.02, from and after September
39 30, 2013, the department shall separately account for revenues reported and
40 collected under the prime contracting classification from any prime
41 contractor engaged in the construction of any buildings and associated
42 improvements that are for the benefit of a manufacturing facility. For the
43 purposes of this subsection, "associated improvements" and "manufacturing
44 facility" have the same meanings prescribed in section 42-5032.02.

45 I. The gross proceeds of sales or gross income derived from a contract
46 for lawn maintenance services are not subject to tax under this section if

1 the contract does not include landscaping activities. Lawn maintenance
2 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
3 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
4 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
5 lawn de-thatching, seeding winter lawns, leaf and debris collection and
6 removal, tree or shrub pruning or clipping, garden and gravel raking and
7 applying pesticides, as defined in section 3-361, and fertilizer materials,
8 as defined in section 3-262.

9 J. The gross proceeds of sales or gross income derived from
10 landscaping activities are subject to tax under this section. Landscaping
11 includes installing lawns, grading or leveling ground, installing gravel or
12 boulders, planting trees and other plants, felling trees, removing or
13 mulching tree stumps, removing other imbedded plants, building or modifying
14 irrigation berms, repairing sprinkler or watering systems, installing
15 railroad ties and installing underground sprinkler or watering systems.

16 K. The portion of gross proceeds of sales or gross income attributable
17 to the actual direct costs of providing architectural or engineering services
18 that are incorporated in a contract is not subject to tax under this section.
19 For the purposes of this subsection, "direct costs" means the portion of the
20 actual costs that are directly expended in providing architectural or
21 engineering services.

22 L. Operating a landfill or a solid waste disposal facility is not
23 subject to taxation under this section, including filling, compacting and
24 creating vehicle access to and from cell sites within the landfill.
25 Constructing roads to a landfill or solid waste disposal facility and
26 constructing cells within a landfill or solid waste disposal facility may be
27 deemed prime contracting under this section.

28 M. The following apply to manufactured buildings:

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

32 2. For sales in this state where the dealership of manufactured
33 buildings does not contract to deliver the building to a setup site or does
34 not perform the setup, the taxable situs is the location of the dealership
35 where the building is delivered to the buyer.

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

40 N. The gross proceeds of sales or gross income attributable to a
41 separate, written design phase services contract or professional services
42 contract, executed before modification begins, is not subject to tax under
43 this section, regardless of whether the services are provided sequential to
44 or concurrent with prime contracting activities that are subject to tax under
45 this section. This subsection does not include the gross proceeds of sales

1 or gross income attributable to construction phase services. For the
2 purposes of this subsection:

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

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

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

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

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

19 (ii) The amount of an adjustment, if any, to the guaranteed maximum
20 price as set in the contract for modification work. For the purposes of this
21 item, "guaranteed maximum price" means the amount guaranteed to be the
22 maximum amount due to a prime contractor for the performance of all
23 modification work for the project.

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

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

31 (e) Inspection to determine the dates of substantial completion or
32 final completion.

33 (f) Preparation of any manuals, warranties, as-built drawings, spares
34 or other items the prime contractor must furnish pursuant to the contract for
35 modification work. For the purposes of this subdivision, "as-built drawing"
36 means a drawing that indicates field changes made to adapt to field
37 conditions, field changes resulting from change orders or buried and
38 concealed installation of piping, conduit and utility services.

39 (g) Preparation of status reports after modification work has begun
40 detailing the progress of work performed, including preparation of any of the
41 following:

42 (i) Master schedule updates.

43 (ii) Modification work cash flow projection updates.

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

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

- 1 (v) Identification of any health and safety issues that have arisen in
2 connection with the modification work.
- 3 (h) Preparation of daily logs of modification work, including
4 documentation of personnel, weather conditions and on-site occurrences.
- 5 (i) Preparation of any submittals or shop drawings used by the prime
6 contractor to illustrate details of the modification work performed.
- 7 (j) Administration or supervision of any other activities for which a
8 prime contractor receives a certificate for payment or certificate for final
9 payment based on the progress of modification work performed on the project.
- 10 2. "Design phase services" means services for developing and
11 completing a design for a project that are not construction phase services,
12 including the following:
- 13 (a) Evaluating surveys, reports, test results or any other information
14 on-site conditions for the project, including physical characteristics, legal
15 limitations and utility locations for the site.
- 16 (b) Evaluating any criteria or programming objectives for the project
17 to ascertain requirements for the project, such as physical requirements
18 affecting cost or projected utilization of the project.
- 19 (c) Preparing drawings and specifications for architectural program
20 documents, schematic design documents, design development documents,
21 modification work documents or documents that identify the scope of or
22 materials for the project.
- 23 (d) Preparing an initial schedule for the project, excluding the
24 preparation of updates to the master schedule after modification work has
25 begun.
- 26 (e) Preparing preliminary estimates of costs of modification work
27 before completion of the final design of the project, including an estimate
28 or schedule of values for any of the following:
- 29 (i) Labor, materials, machinery and equipment, tools, water, heat,
30 utilities, transportation and other facilities and services used in the
31 execution and completion of modification work, regardless of whether they are
32 temporary or permanent or whether they are incorporated in the
33 modifications.
- 34 (ii) The cost of labor and materials to be furnished by the owner of
35 the real property.
- 36 (iii) The cost of any equipment of the owner of the real property to
37 be assigned by the owner to the prime contractor.
- 38 (iv) The cost of any labor for installation of equipment separately
39 provided by the owner of the real property that has been designed, specified,
40 selected or specifically provided for in any design document for the project.
- 41 (v) Any fee paid by the owner of the real property to the prime
42 contractor pursuant to the contract for modification work.
- 43 (vi) Any bond and insurance premiums.
- 44 (vii) Any applicable taxes.
- 45 (viii) Any contingency fees for the prime contractor that may be used
46 before final completion of the project.

1 (f) Reviewing and evaluating cost estimates and project documents to
2 prepare recommendations on site use, site improvements, selection of
3 materials, building systems and equipment, modification feasibility,
4 availability of materials and labor, local modification activity as related
5 to schedules and time requirements for modification work.

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

8 3. "Professional services" means architect services, assayer services,
9 engineer services, geologist services, land surveying services or landscape
10 architect services that are within the scope of those services as provided in
11 title 32, chapter 1 and for which gross proceeds of sales or gross income has
12 not otherwise been deducted under subsection K of this section.

13 0. Notwithstanding subsection P, paragraph 8 of this section, a person
14 owning real property who enters into a contract for sale of the real
15 property, who is responsible to the new owner of the property for
16 modifications made to the property in the period subsequent to the transfer
17 of title and who receives a consideration for the modifications is considered
18 a prime contractor solely for purposes of taxing the gross proceeds of sale
19 or gross income received for the modifications made subsequent to the
20 transfer of title. The original owner's gross proceeds of sale or gross
21 income received for the modifications shall be determined according to the
22 following methodology:

23 1. If any part of the contract for sale of the property specifies
24 amounts to be paid to the original owner for the modifications to be made in
25 the period subsequent to the transfer of title, the amounts are included in
26 the original owner's gross proceeds of sale or gross income under this
27 section. Proceeds from the sale of the property that are received after
28 transfer of title and that are unrelated to the modifications made subsequent
29 to the transfer of title are not considered gross proceeds of sale or gross
30 income from the modifications.

31 2. If the original owner enters into an agreement separate from the
32 contract for sale of the real property providing for amounts to be paid to
33 the original owner for the modifications to be made in the period subsequent
34 to the transfer of title to the property, the amounts are included in the
35 original owner's gross proceeds of sale or gross income received for the
36 modifications made subsequent to the transfer of title.

37 3. If the original owner is responsible to the new owner for
38 modifications made to the property in the period subsequent to the transfer
39 of title and derives any gross proceeds of sale or gross income from the
40 project subsequent to the transfer of title other than a delayed disbursement
41 from escrow unrelated to the modifications, it is presumed that the amounts
42 are received for the modifications made subsequent to the transfer of title
43 unless the contrary is established by the owner through its books, records
44 and papers kept in the regular course of business.

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

- 1 P. For the purposes of this section:
- 2 1. "Contracting" means engaging in business as a contractor.
- 3 2. "Contractor" is synonymous with the term "builder" and means any
- 4 person or organization that undertakes to or offers to undertake to, or
- 5 purports to have the capacity to undertake to, or submits a bid to, or does
- 6 personally or by or through others, modify any building, highway, road,
- 7 railroad, excavation, manufactured building or other structure, project,
- 8 development or improvement, or to do any part of such a project, including
- 9 the erection of scaffolding or other structure or works in connection with
- 10 such a project, and includes subcontractors and specialty contractors. For
- 11 all purposes of taxation or deduction, this definition shall govern without
- 12 regard to whether or not such contractor is acting in fulfillment of a
- 13 contract.
- 14 3. "Dealership of manufactured buildings" means a dealer who either:
- 15 (a) Is licensed pursuant to title 41, chapter 16 and who sells
- 16 manufactured buildings to the final consumer.
- 17 (b) Supervises, performs or coordinates the excavation and completion
- 18 of site improvements, setup or moving of a manufactured building including
- 19 the contracting, if any, with any subcontractor or specialty contractor for
- 20 the completion of the contract.
- 21 4. "Manufactured building" means a manufactured home, mobile home or
- 22 factory-built building, as defined in section 41-2142.
- 23 5. "Modification" means construction, alteration, repair, addition,
- 24 subtraction, improvement, movement, wreckage or demolition.
- 25 6. "Modify" means to construct, alter, repair, add to, subtract from,
- 26 improve, move, wreck or demolish.
- 27 7. "Prime contracting" means engaging in business as a prime
- 28 contractor.
- 29 8. "Prime contractor" means a contractor who supervises, performs or
- 30 coordinates the modification of any building, highway, road, railroad,
- 31 excavation, manufactured building or other structure, project, development or
- 32 improvement including the contracting, if any, with any subcontractors or
- 33 specialty contractors and who is responsible for the completion of the
- 34 contract. Except as provided in subsections E and O of this section, a
- 35 person who owns real property, who engages one or more contractors to modify
- 36 that real property and who does not itself modify that real property is not a
- 37 prime contractor within the meaning of this paragraph regardless of the
- 38 existence of a contract for sale or the subsequent sale of that real
- 39 property.
- 40 9. "Sale of a used manufactured building" does not include a lease of
- 41 a used manufactured building.