

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

**CHAPTER 153**  
**HOUSE BILL 2535**

AN ACT

AMENDING SECTIONS 42-5075 AND 42-6004, 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 **EITHER**  
35 deducted from the tax base of the retail classification ~~pursuant to~~ **UNDER**  
36 section 42-5061, subsection B, ~~or that is exempt from use tax pursuant to~~  
37 **UNDER** section 42-5159, subsection B, ~~and that does not become a permanent~~  
38 ~~attachment to a building, highway, road, railroad, excavation or manufactured~~  
39 ~~building or other structure, project, development or improvement. If the~~  
40 ~~ownership of the realty is separate from the ownership of the machinery,~~  
41 ~~equipment or tangible personal property, the determination as to permanent~~  
42 ~~attachment shall be made as if the ownership were the same. The deduction~~  
43 ~~provided in this paragraph does not include gross proceeds of sales or gross~~  
44 ~~income from that portion of any contracting activity that consists of the~~  
45 ~~development of, or modification to, real property in order to facilitate the~~  
46 ~~installation, assembly, repair, maintenance or removal of machinery,~~

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

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

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

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

AND THAT HAS INDEPENDENT FUNCTIONAL UTILITY, PURSUANT TO THE FOLLOWING PROVISIONS:

(a) THE DEDUCTION PROVIDED IN THIS PARAGRAPH INCLUDES THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM ALL OF THE FOLLOWING:

(i) ANY ACTIVITY PERFORMED ON MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY.

(ii) ANY ACTIVITY PERFORMED ON ANY TANGIBLE PERSONAL PROPERTY RELATING TO MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY IN FURTHERANCE OF ANY OF THE PURPOSES PROVIDED FOR UNDER SUBDIVISION (d) OF THIS PARAGRAPH.

(iii) ANY ACTIVITY THAT IS RELATED TO THE ACTIVITIES DESCRIBED IN SUBDIVISION (a), ITEMS (i) AND (ii) OF THIS PARAGRAPH, INCLUDING, BUT NOT LIMITED TO, INSPECTING THE INSTALLATION OF, OR TESTING, THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(b) THE DEDUCTION PROVIDED IN THIS PARAGRAPH DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THE PORTION OF ANY CONTRACTING ACTIVITY THAT CONSISTS OF THE DEVELOPMENT OF, OR MODIFICATION TO, REAL PROPERTY IN ORDER TO FACILITATE THE INSTALLATION, ASSEMBLY, REPAIR, MAINTENANCE OR REMOVAL OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS EITHER DEDUCTED FROM THE TAX BASE OF THE RETAIL CLASSIFICATION UNDER SECTION 42-5061, SUBSECTION B OR EXEMPT FROM USE TAX UNDER SECTION 42-5159, SUBSECTION B.

(c) THE DEDUCTION PROVIDED IN THIS PARAGRAPH SHALL BE DETERMINED WITHOUT REGARD TO THE SIZE OR USEFUL LIFE OF THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(d) FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT FUNCTIONAL UTILITY" MEANS THAT THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY CAN INDEPENDENTLY PERFORM ITS FUNCTION WITHOUT ATTACHMENT TO REAL PROPERTY, OTHER THAN ATTACHMENT FOR ANY OF THE FOLLOWING PURPOSES:

(i) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

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

(iii) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY, WHETHER AS AN INDIVIDUAL ITEM OR AS A SYSTEM OF ITEMS, TO WATER, POWER, GAS, COMMUNICATION OR OTHER SERVICES.

1           (iv) STABILIZING OR PROTECTING THE MACHINERY, EQUIPMENT OR OTHER  
2 TANGIBLE PERSONAL PROPERTY DURING OPERATION BY BOLTING, BURYING OR PERFORMING  
3 OTHER SIMILAR NON-PERMANENT CONNECTIONS TO EITHER REAL PROPERTY OR REAL  
4 PROPERTY IMPROVEMENTS.

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

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

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

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

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

13           9. The gross proceeds of sales or gross income received from a  
14 contract for the construction of an environmentally controlled facility for  
15 the raising of poultry for the production of eggs and the sorting, cooling  
16 and packaging of eggs.

17           10. The gross proceeds of sales or gross income that is derived from a  
18 contract entered into with a person who is engaged in the commercial  
19 production of livestock, livestock products or agricultural, horticultural,  
20 viticultural or floricultural crops or products in this state for the  
21 construction, alteration, repair, improvement, movement, wrecking or  
22 demolition or addition to or subtraction from any building, highway, road,  
23 excavation, manufactured building or other structure, project, development or  
24 improvement used directly and primarily to prevent, monitor, control or  
25 reduce air, water or land pollution.

26           11. The gross proceeds of sales or gross income that is derived from  
27 the installation, assembly, repair or maintenance of clean rooms that are  
28 deducted from the tax base of the retail classification pursuant to section  
29 42-5061, subsection B, paragraph 16.

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

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

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

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

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

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

14        18. The gross proceeds of sales or gross income received from a  
15 contract for the construction of any building, or other structure, project,  
16 development or improvement owned by a qualified business under section  
17 41-1516 for harvesting or processing qualifying forest products removed from  
18 qualifying projects as defined in section 41-1516 if actual construction  
19 begins before January 1, 2024. To qualify for this deduction, the prime  
20 contractor must obtain a letter of qualification from the Arizona commerce  
21 authority before beginning work under the contract.

22        19. Any amount of the gross proceeds of sales or gross income  
23 attributable to development fees that are incurred in relation to a contract  
24 for construction, development or improvement of real property and that are  
25 paid by a prime contractor or subcontractor. For the purposes of this  
26 paragraph:

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

29        (b) The attributable amount is equal to the total amount of  
30 development fees paid by the prime contractor or subcontractor, and the total  
31 development fees credited in exchange for the construction of, contribution  
32 to or dedication of real property for providing public infrastructure, public  
33 safety or other public services necessary to the development. The real  
34 property must be the subject of the development fees.

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

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

41        1. A prime contractor may establish entitlement to the deduction by  
42 both:

43        (a) Marking the invoice for the transaction to indicate that the gross  
44 proceeds of sales or gross income derived from the transaction was deducted  
45 from the base.

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

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

12 3. The department may prescribe a form for the certificate described  
13 in paragraph 1, subdivision (b) of this subsection. The department may also  
14 adopt rules that describe the transactions with respect to which a person is  
15 not entitled to rely solely on the information contained in the certificate  
16 provided in paragraph 1, subdivision (b) of this subsection but must instead  
17 obtain such additional information as required in order to be entitled to the  
18 deduction.

19 4. If a prime contractor is entitled to a deduction by complying with  
20 paragraph 1 of this subsection, the department may require the purchaser who  
21 caused the execution of the certificate to establish the accuracy and  
22 completeness of the information required to be contained in the certificate  
23 that would entitle the prime contractor to the deduction. If the purchaser  
24 cannot establish the accuracy and completeness of the information, the  
25 purchaser is liable in an amount equal to any tax, penalty and interest that  
26 the prime contractor would have been required to pay under article 1 of this  
27 chapter if the prime contractor had not complied with paragraph 1 of this  
28 subsection. Payment of the amount under this paragraph exempts the purchaser  
29 from liability for any tax imposed under article 4 of this chapter. The  
30 amount shall be treated as a transaction privilege tax to the purchaser and  
31 as tax revenues collected from the prime contractor in order to designate the  
32 distribution base for purposes of section 42-5029.

33 D. Subcontractors or others who perform services in respect to any  
34 improvement, building, highway, road, railroad, excavation, manufactured  
35 building or other structure, project, development or improvement are not  
36 subject to tax if they can demonstrate that the job was within the control of  
37 a prime contractor or contractors or a dealership of manufactured buildings  
38 and that the prime contractor or dealership is liable for the tax on the  
39 gross income, gross proceeds of sales or gross receipts attributable to the  
40 job and from which the subcontractors or others were paid.

41 E. Amounts received by a contractor for a project are excluded from  
42 the contractor's gross proceeds of sales or gross income derived from the  
43 business if the person who hired the contractor executes and provides a  
44 certificate to the contractor stating that the person providing the  
45 certificate is a prime contractor and is liable for the tax under article 1  
46 of this chapter. The department shall prescribe the form of the certificate.

1 If the contractor has reason to believe that the information contained on the  
2 certificate is erroneous or incomplete, the department may disregard the  
3 certificate. If the person who provides the certificate is not liable for  
4 the tax as a prime contractor, that person is nevertheless deemed to be the  
5 prime contractor in lieu of the contractor and is subject to the tax under  
6 this section on the gross receipts or gross proceeds received by the  
7 contractor.

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

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

19 H. For the purposes of section 42-5032.02, from and after September  
20 30, 2013, the department shall separately account for revenues reported and  
21 collected under the prime contracting classification from any prime  
22 contractor engaged in the construction of any buildings and associated  
23 improvements that are for the benefit of a manufacturing facility. For the  
24 purposes of this subsection, "associated improvements" and "manufacturing  
25 facility" have the same meanings prescribed in section 42-5032.02.

26 I. The gross proceeds of sales or gross income derived from a contract  
27 for lawn maintenance services are not subject to tax under this section if  
28 the contract does not include landscaping activities. Lawn maintenance  
29 service is a service pursuant to section 42-5061, subsection A, paragraph 1,  
30 and includes lawn mowing and edging, weeding, repairing sprinkler heads or  
31 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,  
32 lawn de-thatching, seeding winter lawns, leaf and debris collection and  
33 removal, tree or shrub pruning or clipping, garden and gravel raking and  
34 applying pesticides, as defined in section 3-361, and fertilizer materials,  
35 as defined in section 3-262.

36 J. The gross proceeds of sales or gross income derived from  
37 landscaping activities are subject to tax under this section. Landscaping  
38 includes installing lawns, grading or leveling ground, installing gravel or  
39 boulders, planting trees and other plants, felling trees, removing or  
40 mulching tree stumps, removing other imbedded plants, building or modifying  
41 irrigation berms, repairing sprinkler or watering systems, installing  
42 railroad ties and installing underground sprinkler or watering systems.

43 K. The portion of gross proceeds of sales or gross income attributable  
44 to the actual direct costs of providing architectural or engineering services  
45 that are incorporated in a contract is not subject to tax under this section.  
46 For the purposes of this subsection, "direct costs" means the portion of the



1 actual costs that are directly expended in providing architectural or  
2 engineering services.

3 L. Operating a landfill or a solid waste disposal facility is not  
4 subject to taxation under this section, including filling, compacting and  
5 creating vehicle access to and from cell sites within the landfill.  
6 Constructing roads to a landfill or solid waste disposal facility and  
7 constructing cells within a landfill or solid waste disposal facility may be  
8 deemed prime contracting under this section.

9 M. The following apply to manufactured buildings:

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

13 2. For sales in this state where the dealership of manufactured  
14 buildings does not contract to deliver the building to a setup site or does  
15 not perform the setup, the taxable situs is the location of the dealership  
16 where the building is delivered to the buyer.

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

21 N. The gross proceeds of sales or gross income attributable to a  
22 separate, written design phase services contract or professional services  
23 contract, executed before modification begins, is not subject to tax under  
24 this section, regardless of whether the services are provided sequential to  
25 or concurrent with prime contracting activities that are subject to tax under  
26 this section. This subsection does not include the gross proceeds of sales  
27 or gross income attributable to construction phase services. For the  
28 purposes of this subsection:

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

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

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

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

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

45 (ii) The amount of an adjustment, if any, to the guaranteed maximum  
46 price as set in the contract for modification work. For the purposes of this

1 item, "guaranteed maximum price" means the amount guaranteed to be the  
2 maximum amount due to a prime contractor for the performance of all  
3 modification work for the project.

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

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

11 (e) Inspection to determine the dates of substantial completion or  
12 final completion.

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

19 (g) Preparation of status reports after modification work has begun  
20 detailing the progress of work performed, including preparation of any of the  
21 following:

22 (i) Master schedule updates.

23 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

36 2. "Design phase services" means services for developing and  
37 completing a design for a project that are not construction phase services,  
38 including the following:

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

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

45 (c) Preparing drawings and specifications for architectural program  
46 documents, schematic design documents, design development documents,

1 modification work documents or documents that identify the scope of or  
2 materials for the project.

3 (d) Preparing an initial schedule for the project, excluding the  
4 preparation of updates to the master schedule after modification work has  
5 begun.

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

9 (i) Labor, materials, machinery and equipment, tools, water, heat,  
10 utilities, transportation and other facilities and services used in the  
11 execution and completion of modification work, regardless of whether they are  
12 temporary or permanent or whether they are incorporated in the  
13 modifications.

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

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

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

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

23 (vi) Any bond and insurance premiums.

24 (vii) Any applicable taxes.

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

27 (f) Reviewing and evaluating cost estimates and project documents to  
28 prepare recommendations on site use, site improvements, selection of  
29 materials, building systems and equipment, modification feasibility,  
30 availability of materials and labor, local modification activity as related  
31 to schedules and time requirements for modification work.

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

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

39 0. Notwithstanding subsection P, paragraph 8 of this section, a person  
40 owning real property who enters into a contract for sale of the real  
41 property, who is responsible to the new owner of the property for  
42 modifications made to the property in the period subsequent to the transfer  
43 of title and who receives a consideration for the modifications is considered  
44 a prime contractor solely for purposes of taxing the gross proceeds of sale  
45 or gross income received for the modifications made subsequent to the  
46 transfer of title. The original owner's gross proceeds of sale or gross

1 income received for the modifications shall be determined according to the  
2 following methodology:

3 1. If any part of the contract for sale of the property specifies  
4 amounts to be paid to the original owner for the modifications to be made in  
5 the period subsequent to the transfer of title, the amounts are included in  
6 the original owner's gross proceeds of sale or gross income under this  
7 section. Proceeds from the sale of the property that are received after  
8 transfer of title and that are unrelated to the modifications made subsequent  
9 to the transfer of title are not considered gross proceeds of sale or gross  
10 income from the modifications.

11 2. If the original owner enters into an agreement separate from the  
12 contract for sale of the real property providing for amounts to be paid to  
13 the original owner for the modifications to be made in the period subsequent  
14 to the transfer of title to the property, the amounts are included in the  
15 original owner's gross proceeds of sale or gross income received for the  
16 modifications made subsequent to the transfer of title.

17 3. If the original owner is responsible to the new owner for  
18 modifications made to the property in the period subsequent to the transfer  
19 of title and derives any gross proceeds of sale or gross income from the  
20 project subsequent to the transfer of title other than a delayed disbursement  
21 from escrow unrelated to the modifications, it is presumed that the amounts  
22 are received for the modifications made subsequent to the transfer of title  
23 unless the contrary is established by the owner through its books, records  
24 and papers kept in the regular course of business.

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

27 P. For the purposes of this section:

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

29 2. "Contractor" is synonymous with the term "builder" and means any  
30 person or organization that undertakes to or offers to undertake to, or  
31 purports to have the capacity to undertake to, or submits a bid to, or does  
32 personally or by or through others, modify any building, highway, road,  
33 railroad, excavation, manufactured building or other structure, project,  
34 development or improvement, or to do any part of such a project, including  
35 the erection of scaffolding or other structure or works in connection with  
36 such a project, and includes subcontractors and specialty contractors. For  
37 all purposes of taxation or deduction, this definition shall govern without  
38 regard to whether or not such contractor is acting in fulfillment of a  
39 contract.

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

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

43 (b) Supervises, performs or coordinates the excavation and completion  
44 of site improvements, setup or moving of a manufactured building including  
45 the contracting, if any, with any subcontractor or specialty contractor for  
46 the completion of the contract.

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

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

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

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

9           8. "Prime contractor" means a contractor who supervises, performs or  
10 coordinates the modification of any building, highway, road, railroad,  
11 excavation, manufactured building or other structure, project, development or  
12 improvement including the contracting, if any, with any subcontractors or  
13 specialty contractors and who is responsible for the completion of the  
14 contract. Except as provided in subsections E and O of this section, a  
15 person who owns real property, who engages one or more contractors to modify  
16 that real property and who does not itself modify that real property is not a  
17 prime contractor within the meaning of this paragraph regardless of the  
18 existence of a contract for sale or the subsequent sale of that real  
19 property.

20           9. "Sale of a used manufactured building" does not include a lease of  
21 a used manufactured building.

22           Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to read:  
23 42-6004. Exemption from municipal tax

24           A. A city, town or special taxing district shall not levy a  
25 transaction privilege, sales, use or other similar tax on:

26           1. Exhibition events in this state sponsored, conducted or operated by  
27 a nonprofit organization that is exempt from taxation under section  
28 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the  
29 organization is associated with a major league baseball team or a national  
30 touring professional golfing association and no part of the organization's  
31 net earnings inures to the benefit of any private shareholder or individual.

32           2. Interstate telecommunications services, which include that portion  
33 of telecommunications services, such as subscriber line service, allocable by  
34 federal law to interstate telecommunications service.

35           3. Sales of warranty or service contracts.

36           4. Sales of motor vehicles to nonresidents of this state for use  
37 outside this state if the vendor ships or delivers the motor vehicle to a  
38 destination outside this state.

39           5. Interest on finance contracts.

40           6. Dealer documentation fees on the sales of motor vehicles.

41           7. Sales of food or other items purchased with United States  
42 department of agriculture food stamp coupons issued under the food stamp act  
43 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section  
44 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,  
45 section 4302; 42 United States Code section 1786) but may impose such a tax  
46 on other sales of food. If a city, town or special taxing district exempts

1 sales of food from its tax or imposes a different transaction privilege rate  
2 on the gross proceeds of sales or gross income from sales of food and nonfood  
3 items, it shall use the definition of food prescribed by rule adopted by the  
4 department pursuant to section 42-5106.

5 8. Sales of internet access services to the person's subscribers and  
6 customers. For the purposes of this paragraph:

7 (a) "Internet" means the computer and telecommunications facilities  
8 that comprise the interconnected worldwide network of networks that employ  
9 the transmission control protocol or internet protocol, or any predecessor or  
10 successor protocol, to communicate information of all kinds by wire or radio.

11 (b) "Internet access" means a service that enables users to access  
12 content, information, electronic mail or other services over the internet.  
13 Internet access does not include telecommunication services provided by a  
14 common carrier.

15 9. The gross proceeds of sales or gross income retained by the Arizona  
16 exposition and state fair board from ride ticket sales at the annual Arizona  
17 state fair.

18 10. Through August 31, 2014, sales of Arizona centennial medallions by  
19 the historical advisory commission.

20 11. The gross proceeds of sales or gross income derived from a  
21 commercial lease in which a reciprocal insurer or a corporation leases real  
22 property to an affiliated corporation. For the purposes of this paragraph:

23 (a) "Affiliated corporation" means a corporation that meets one of the  
24 following conditions:

25 (i) The corporation owns or controls at least eighty per cent of the  
26 lessor.

27 (ii) The corporation is at least eighty per cent owned or controlled  
28 by the lessor.

29 (iii) The corporation is at least eighty per cent owned or controlled  
30 by a corporation that also owns or controls at least eighty per cent of the  
31 lessor.

32 (iv) The corporation is at least eighty per cent owned or controlled  
33 by a corporation that is at least eighty per cent owned or controlled by a  
34 reciprocal insurer.

35 (b) For the purposes of subdivision (a) of this paragraph, ownership  
36 and control are determined by reference to the voting shares of a  
37 corporation.

38 (c) "Reciprocal insurer" has the same meaning prescribed in section  
39 20-762.

40 12. The gross proceeds of sales or gross income derived from a  
41 commercial lease in which a corporation leases real property to a corporation  
42 of which at least eighty per cent of the voting shares of each corporation  
43 are owned by the same shareholders.

44 13. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT  
45 FOR THE INSTALLATION, ASSEMBLY, REPAIR OR MAINTENANCE OF MACHINERY, EQUIPMENT  
46 OR OTHER TANGIBLE PERSONAL PROPERTY DESCRIBED IN SECTION 42-5061, SUBSECTION

1 B AND THAT HAS INDEPENDENT FUNCTIONAL UTILITY, PURSUANT TO THE FOLLOWING  
2 PROVISIONS:

3 (a) THE DEDUCTION PROVIDED IN THIS PARAGRAPH INCLUDES THE GROSS  
4 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM ALL OF THE FOLLOWING:

5 (i) ANY ACTIVITY PERFORMED ON MACHINERY, EQUIPMENT OR OTHER TANGIBLE  
6 PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY.

7 (ii) ANY ACTIVITY PERFORMED ON ANY TANGIBLE PERSONAL PROPERTY RELATING  
8 TO MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT  
9 FUNCTIONAL UTILITY IN FURTHERANCE OF ANY OF THE PURPOSES PROVIDED FOR UNDER  
10 SUBDIVISION (d) OF THIS PARAGRAPH.

11 (iii) ANY ACTIVITY THAT IS RELATED TO THE ACTIVITIES DESCRIBED IN  
12 SUBDIVISION (a), ITEMS (i) AND (ii) OF THIS PARAGRAPH, INCLUDING, BUT NOT  
13 LIMITED TO, INSPECTING THE INSTALLATION OF, OR TESTING, THE MACHINERY,  
14 EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

15 (b) THE DEDUCTION PROVIDED IN THIS PARAGRAPH DOES NOT INCLUDE GROSS  
16 PROCEEDS OF SALES OR GROSS INCOME FROM THE PORTION OF ANY CONTRACTING  
17 ACTIVITY THAT CONSISTS OF THE DEVELOPMENT OF, OR MODIFICATION TO, REAL  
18 PROPERTY IN ORDER TO FACILITATE THE INSTALLATION, ASSEMBLY, REPAIR,  
19 MAINTENANCE OR REMOVAL OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL  
20 PROPERTY DESCRIBED IN SECTION 42-5061, SUBSECTION B.

21 (c) THE DEDUCTION PROVIDED IN THIS PARAGRAPH SHALL BE DETERMINED  
22 WITHOUT REGARD TO THE SIZE OR USEFUL LIFE OF THE MACHINERY, EQUIPMENT OR  
23 OTHER TANGIBLE PERSONAL PROPERTY.

24 (d) FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT FUNCTIONAL  
25 UTILITY" MEANS THAT THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL  
26 PROPERTY CAN INDEPENDENTLY PERFORM ITS FUNCTION WITHOUT ATTACHMENT TO REAL  
27 PROPERTY, OTHER THAN ATTACHMENT FOR ANY OF THE FOLLOWING PURPOSES:

28 (i) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL  
29 PROPERTY.

30 (ii) CONNECTING ITEMS OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE  
31 PERSONAL PROPERTY TO EACH OTHER.

32 (iii) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL  
33 PROPERTY, WHETHER AS AN INDIVIDUAL ITEM OR AS A SYSTEM OF ITEMS, TO WATER,  
34 POWER, GAS, COMMUNICATION OR OTHER SERVICES.

35 (iv) STABILIZING OR PROTECTING THE MACHINERY, EQUIPMENT OR OTHER  
36 TANGIBLE PERSONAL PROPERTY DURING OPERATION BY BOLTING, BURYING OR PERFORMING  
37 OTHER DISSIMILAR NONPERMANENT CONNECTIONS TO EITHER REAL PROPERTY OR REAL  
38 PROPERTY IMPROVEMENTS.

39 B. A city, town or other taxing jurisdiction shall not levy a  
40 transaction privilege, sales, use, franchise or other similar tax or fee,  
41 however denominated, on natural gas or liquefied petroleum gas used to propel  
42 a motor vehicle.

43 C. A city, town or other taxing jurisdiction shall not levy a  
44 transaction privilege, sales, gross receipts, use, franchise or other similar  
45 tax or fee, however denominated, on gross proceeds of sales or gross income  
46 derived from any of the following:

1           1. A motor carrier's use on the public highways in this state if the  
2 motor carrier is subject to a fee prescribed in title 28, chapter 16,  
3 article 4.

4           2. Leasing, renting or licensing a motor vehicle subject to and upon  
5 which the fee has been paid under title 28, chapter 16, article 4.

6           3. The sale of a motor vehicle and any repair and replacement parts  
7 and tangible personal property becoming a part of such motor vehicle to a  
8 motor carrier who is subject to a fee prescribed in title 28, chapter 16,  
9 article 4 and who is engaged in the business of leasing, renting or licensing  
10 such property.

11           4. Incarcerating or detaining in a privately operated prison, jail or  
12 detention facility prisoners who are under the jurisdiction of the United  
13 States, this state or any other state or a political subdivision of this  
14 state or of any other state.

15           5. Transporting for hire persons, freight or property by light motor  
16 vehicles subject to a fee under title 28, chapter 15, article 4.

17           6. Any amount attributable to development fees that are incurred in  
18 relation to the construction, development or improvement of real property and  
19 paid by the taxpayer as defined in the model city tax code or by a contractor  
20 providing services to the taxpayer. For the purposes of this paragraph:

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

23           (b) The attributable amount is equal to the total amount of  
24 development fees paid by the taxpayer or by a contractor providing services  
25 to the taxpayer and the total development fees credited in exchange for the  
26 construction of, contribution to or dedication of real property for providing  
27 public infrastructure, public safety or other public services necessary to  
28 the development. The real property must be the subject of the development  
29 fees.

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

34           D. A city, town or other taxing jurisdiction shall not levy a  
35 transaction privilege, sales, use, franchise or other similar tax or fee,  
36 however denominated, in excess of one-tenth of one per cent of the value of  
37 the entire product mined, smelted, extracted, refined, produced or prepared  
38 for sale, profit or commercial use, on persons engaged in the business of  
39 mineral processing, except to the extent that the tax is computed on the  
40 gross proceeds or gross income from sales at retail.

41           E. In computing the tax base, any city, town or other taxing  
42 jurisdiction shall not include in the gross proceeds of sales or gross  
43 income:

44           1. A manufacturer's cash rebate on the sales price of a motor vehicle  
45 if the buyer assigns the buyer's right in the rebate to the retailer.

46           2. The waste tire disposal fee imposed pursuant to section 44-1302.



1 F. A city or town shall not levy a use tax on the storage, use or  
2 consumption of tangible personal property in the city or town by a school  
3 district or charter school.

4 Sec. 3. Declaration of intent

5 It is the intent of the legislature in amending the provisions of  
6 section 42-5075, subsection B, paragraph 7 and section 42-6004, subsection A,  
7 paragraph 13, Arizona Revised Statutes, as specified in this act, that the  
8 benefit of the retail transaction privilege tax deductions provided under  
9 section 42-5061, subsection B, Arizona Revised Statutes, and the use tax  
10 exemptions under section 42-5159, subsection B, Arizona Revised Statutes,  
11 should not be diminished through the activity of contracting. To the extent  
12 that such intent was not achieved by Laws 1996, chapter 319, this act  
13 effectuates the intent and redresses or cures any resulting unintended  
14 consequences, beginning from and after June 30, 1997.

15 Sec. 4. Retroactivity; refund

16 A. This act applies retroactively to taxable periods beginning from  
17 and after June 30, 1997.

18 B. Any claim for refund of tax based on the retroactive application of  
19 this act shall be considered timely filed under section 42-1106, Arizona  
20 Revised Statutes, if the claim is filed with the department of revenue or the  
21 appropriate city or town on or before December 31, 2013 pursuant to section  
22 42-1118, Arizona Revised Statutes. A failure to file a claim on or before  
23 December 31, 2013 constitutes a waiver of the claim for refund under this  
24 section.

25 C. The aggregate amount of the refund under this section is ten  
26 thousand dollars. If the aggregate amount of claims that are determined to  
27 be valid equals more than ten thousand dollars, the department shall reduce  
28 each claim proportionately so the aggregate amount of the refund is not more  
29 than ten thousand dollars.

30 D. Any claim for refund not based on the retroactive application of  
31 this act is not subject to subsections B and C of this section.

32 E. This section does not extend the statute of limitations for  
33 assessment or refund beyond that which is open under sections 42-1104 and  
34 42-1106, Arizona Revised Statutes.

35 Sec. 5. Savings clause; prospective validity

36 If section 4 of this act, relating to retroactivity and refund, is  
37 finally adjudicated to be invalid by an appellate court, the retroactive  
38 application of section 3 of this act, relating to declaration of intent, is  
39 void, such that section 3 of this act will only be applied prospectively  
40 beginning from and after the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 29, 2013.

H.B. 2535

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2013.