

REFERENCE TITLE: prime contracting deduction; waste facility

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2304

Introduced by
Representative Pratt

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, FIRST REGULAR SESSION, CHAPTER 153, SECTION 1 AND LAWS 2013, FIRST SPECIAL SESSION, CHAPTER 9, SECTION 6; REPEALING SECTION 42-5075, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 255, SECTION 15; RELATING TO PRIME CONTRACTING.

(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, as amended by
3 Laws 2013, first regular session, chapter 153, section 1 and Laws 2013, first
4 special session, chapter 9, section 6, is amended to read:

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

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

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

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

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

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

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

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

1 of qualification from the department of revenue. This paragraph shall apply
2 for ten full consecutive calendar or fiscal years after the start of initial
3 construction.

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

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

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

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

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

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

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

33 7. The gross proceeds of sales or gross income that is derived from a
34 contract for the installation, assembly, repair or maintenance of machinery,
35 equipment or other tangible personal property that is either deducted from
36 the tax base of the retail classification under section 42-5061, subsection B
37 or that is exempt from use tax under section 42-5159, subsection B and that
38 has independent functional utility, pursuant to the following provisions:

39 (a) The deduction provided in this paragraph includes the gross
40 proceeds of sales or gross income derived from all of the following:

41 (i) Any activity performed on machinery, equipment or other tangible
42 personal property with independent functional utility.

43 (ii) Any activity performed on any tangible personal property relating
44 to machinery, equipment or other tangible personal property with independent

1 functional utility in furtherance of any of the purposes provided for under
2 subdivision (d) of this paragraph.

3 (iii) Any activity that is related to the activities described in
4 subdivision (a), items (i) and (ii) of this paragraph, including, but not
5 limited to, inspecting the installation of, or testing, the machinery,
6 equipment or other tangible personal property.

7 (b) The deduction provided in this paragraph does not include gross
8 proceeds of sales or gross income from the portion of any contracting
9 activity that consists of the development of, or modification to, real
10 property in order to facilitate the installation, assembly, repair,
11 maintenance or removal of machinery, equipment or other tangible personal
12 property that is either deducted from the tax base of the retail
13 classification under section 42-5061, subsection B or exempt from use tax
14 under section 42-5159, subsection B.

15 (c) The deduction provided in this paragraph shall be determined
16 without regard to the size or useful life of the machinery, equipment or
17 other tangible personal property.

18 (d) For the purposes of this paragraph, "independent functional
19 utility" means that the machinery, equipment or other tangible personal
20 property can independently perform its function without attachment to real
21 property, other than attachment for any of the following purposes:

22 (i) Assembling the machinery, equipment or other tangible personal
23 property.

24 (ii) Connecting items of machinery, equipment or other tangible
25 personal property to each other.

26 (iii) Connecting the machinery, equipment or other tangible personal
27 property, whether as an individual item or as a system of items, to water,
28 power, gas, communication or other services.

29 (iv) Stabilizing or protecting the machinery, equipment or other
30 tangible personal property during operation by bolting, burying or performing
31 other similar nonpermanent connections to either real property or real
32 property improvements.

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

36 (a) Section 42-5061, subsection A, paragraph 25, 29 or 59.

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

38 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
39 (c), (d), (e), (f), (i), (j) or (l) or paragraph 54.

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

41 9. The gross proceeds of sales or gross income received from a
42 contract for the construction of an environmentally controlled facility for
43 the raising of poultry for the production of eggs and the sorting, cooling
44 and packaging of eggs.

1 10. The gross proceeds of sales or gross income that is derived from a
2 contract entered into with a person who is engaged in the commercial
3 production of livestock, livestock products or agricultural, horticultural,
4 viticultural or floricultural crops or products in this state for the
5 construction, alteration, repair, improvement, movement, wrecking or
6 demolition or addition to or subtraction from any building, highway, road,
7 excavation, manufactured building or other structure, project, development or
8 improvement used directly and primarily to prevent, monitor, control or
9 reduce air, water or land pollution.

10 11. The gross proceeds of sales or gross income that is derived from
11 the installation, assembly, repair or maintenance of clean rooms that are
12 deducted from the tax base of the retail classification pursuant to section
13 42-5061, subsection B, paragraph 16.

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

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

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

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

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

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

43 18. The gross proceeds of sales or gross income received from a
44 contract for the construction of any building, or other structure, project,
45 development or improvement owned by a qualified business under section

1 41-1516 for harvesting or processing qualifying forest products removed from
2 qualifying projects as defined in section 41-1516 if actual construction
3 begins before January 1, 2024. To qualify for this deduction, the prime
4 contractor must obtain a letter of qualification from the Arizona commerce
5 authority before beginning work under the contract.

6 19. Any amount of the gross proceeds of sales or gross income
7 attributable to development fees that are incurred in relation to a contract
8 for construction, development or improvement of real property and that are
9 paid by a prime contractor or subcontractor. For the purposes of this
10 paragraph:

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

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

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

23 20. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT
24 WITH THE OWNER OF REAL PROPERTY FOR THE MAINTENANCE, REPAIR OR REPLACEMENT OF
25 EXISTING PROPERTY IF THE CONTRACT DOES NOT INCLUDE MODIFICATION ACTIVITIES.
26 FOR THE PURPOSES OF THIS PARAGRAPH, EACH CONTRACT OR PROJECT IS INDEPENDENT
27 OF ANOTHER CONTRACT. A CONTRACTOR THAT HAS GROSS PROCEEDS OF SALES OR GROSS
28 INCOME DERIVED FROM A CONTRACT THAT IS NOT SUBJECT TO TAX UNDER THIS
29 PARAGRAPH IS SUBJECT TO TAX ON A CONTRACT THAT INCLUDES MODIFICATION
30 ACTIVITIES.

31 21. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT
32 ENTERED INTO FOR THE CONSTRUCTION OF A MIXED WASTE PROCESSING FACILITY THAT
33 IS LOCATED ON A MUNICIPAL LANDFILL AND THAT IS CONSTRUCTED FOR THE PURPOSE OF
34 RECYCLING SOLID WASTE OR PRODUCING RENEWABLE ENERGY.

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

37 1. A prime contractor may establish entitlement to the deduction by
38 both:

39 (a) Marking the invoice for the transaction to indicate that the gross
40 proceeds of sales or gross income derived from the transaction was deducted
41 from the base.

42 (b) Obtaining a certificate executed by the purchaser indicating the
43 name and address of the purchaser, the precise nature of the business of the
44 purchaser, the purpose for which the purchase was made, the necessary facts
45 to establish the deductibility of the property under section 42-5061,

1 subsection B, and a certification that the person executing the certificate
2 is authorized to do so on behalf of the purchaser. The certificate may be
3 disregarded if the prime contractor has reason to believe that the
4 information contained in the certificate is not accurate or complete.

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

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

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

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

37 E. Amounts received by a contractor for a project are excluded from
38 the contractor's gross proceeds of sales or gross income derived from the
39 business if the person who hired the contractor executes and provides a
40 certificate to the contractor stating that the person providing the
41 certificate is a prime contractor and is liable for the tax under article 1
42 of this chapter. The department shall prescribe the form of the certificate.
43 If the contractor has reason to believe that the information contained on the
44 certificate is erroneous or incomplete, the department may disregard the
45 certificate. If the person who provides the certificate is not liable for

1 the tax as a prime contractor, that person is nevertheless deemed to be the
2 prime contractor in lieu of the contractor and is subject to the tax under
3 this section on the gross receipts or gross proceeds received by the
4 contractor.

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

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

16 H. For the purposes of section 42-5032.02, from and after September
17 30, 2013, the department shall separately account for revenues reported and
18 collected under the prime contracting classification from any prime
19 contractor engaged in the construction of any buildings and associated
20 improvements that are for the benefit of a manufacturing facility. For the
21 purposes of this subsection, "associated improvements" and "manufacturing
22 facility" have the same meanings prescribed in section 42-5032.02.

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

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

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

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

7 M. The following apply ~~to~~ IN DETERMINING THE TAXABLE SITUS OF SALES OF
8 manufactured buildings:

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

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

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

20 N. The gross proceeds of sales or gross income attributable to a
21 ~~separate,~~ written CONTRACT FOR design phase services ~~contract~~ or professional
22 services ~~contract~~, executed before modification begins AND WITH TERMS,
23 CONDITIONS AND PRICING OF ALL OF THESE SERVICES SEPARATELY STATED IN THE
24 CONTRACT FROM THOSE FOR CONSTRUCTION PHASE SERVICES, is not subject to tax
25 under this section, regardless of whether the services are provided
26 sequential to or concurrent with prime contracting activities that are
27 subject to tax under this section. This subsection does not include the
28 gross proceeds of sales or gross income attributable to construction phase
29 services. For the purposes of this subsection:

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

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

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

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

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

1 (ii) The amount of an adjustment, if any, to the guaranteed maximum
2 price as set in the contract for modification work. For the purposes of this
3 item, "guaranteed maximum price" means the amount guaranteed to be the
4 maximum amount due to a prime contractor for the performance of all
5 modification work for the project.

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

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

13 (e) Inspection to determine the dates of substantial completion or
14 final completion.

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

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

24 (i) Master schedule updates.

25 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

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

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

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

4 (c) Preparing drawings and specifications for architectural program
5 documents, schematic design documents, design development documents,
6 modification work documents or documents that identify the scope of or
7 materials for the project.

8 (d) Preparing an initial schedule for the project, excluding the
9 preparation of updates to the master schedule after modification work has
10 begun.

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

14 (i) Labor, materials, machinery and equipment, tools, water, heat,
15 utilities, transportation and other facilities and services used in the
16 execution and completion of modification work, regardless of whether they are
17 temporary or permanent or whether they are incorporated in the modifications.

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

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

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

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

27 (vi) Any bond and insurance premiums.

28 (vii) Any applicable taxes.

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

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

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

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

43 0. Notwithstanding subsection P, paragraph 8 of this section, a person
44 owning real property who enters into a contract for sale of the real
45 property, who is responsible to the new owner of the property for

1 modifications made to the property in the period subsequent to the transfer
2 of title and who receives a consideration for the modifications is considered
3 a prime contractor solely for purposes of taxing the gross proceeds of sale
4 or gross income received for the modifications made subsequent to the
5 transfer of title. The original owner's gross proceeds of sale or gross
6 income received for the modifications shall be determined according to the
7 following methodology:

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

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

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

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

32 P. For the purposes of this section:

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

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

1 ~~4.~~ 3. "Manufactured building" means a manufactured home, mobile home
2 or factory-built building, as defined in section 41-2142.

3 ~~3.~~ 4. "~~Dealership of~~ Manufactured ~~buildings~~ BUILDING DEALER" means a
4 dealer who either:

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

7 (b) Supervises, performs or coordinates the excavation and completion
8 of site improvements, ~~OR THE~~ setup or moving of a manufactured building
9 including the contracting, if any, with any subcontractor or specialty
10 contractor for the completion of the contract.

11 5. "Modification" means construction, ~~alteration, repair,~~ addition,
12 subtraction, improvement, movement, wreckage or demolition.

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

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

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

28 9. "Sale of a used manufactured building" does not include a lease of
29 a used manufactured building.

30 Sec. 2. Repeal

31 Section 42-5075, Arizona Revised Statutes, as amended by Laws 2013,
32 chapter 255, section 15, is repealed.

33 Sec. 3. Retroactivity

34 Section 42-5075, subsection B, paragraph 21, Arizona Revised Statutes,
35 as added by this act, applies retroactively to taxable years beginning from
36 and after December 31, 2012.

37 Sec. 4. Effective date

38 Section 42-5075, Arizona Revised Statutes, as amended by Laws 2013,
39 first regular session, chapter 153, section 1 and Laws 2013, first special
40 session, chapter 9, section 6 and this act, is effective from and after
41 December 31, 2014.