

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SENATE BILL 1409

AN ACT

AMENDING SECTIONS 42-5075 AND 42-6004, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE CLASSIFICATIONS.

(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
7 business of prime contracting and the business of manufactured building
8 dealer. Sales for resale to another manufactured building dealer are not
9 subject to tax. Sales for resale do not include sales to a lessor of
10 manufactured buildings. The sale of a used manufactured building is not
11 taxable under this chapter. **THE PRIME CONTRACTING CLASSIFICATION DOES NOT**
12 **INCLUDE ANY WORK OR OPERATION PERFORMED BY A PERSON THAT IS NOT REQUIRED**
13 **TO BE LICENSED BY THE REGISTRAR OF CONTRACTORS PURSUANT TO SECTION**
14 **32-1121.**

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

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

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

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

30 4. The gross proceeds of sales or gross income received from a
31 contract entered into for the modification of any building, highway, road,
32 railroad, excavation, manufactured building or other structure, project,
33 development or improvement located in a military reuse zone for providing
34 aviation or aerospace services or for a manufacturer, assembler or
35 fabricator of aviation or aerospace products within an active military
36 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
39 for a letter of qualification from the department of revenue.

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

1 must obtain a letter of qualification from the department of revenue.
2 This paragraph shall apply for ten full consecutive calendar or fiscal
3 years after the start of initial 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
7 or other tangible personal property, including structures necessary to
8 protect exempt incorporated materials or installed machinery or equipment,
9 and tangible personal property incorporated into the project, to perform
10 one or more of the following actions in response to a release or suspected
11 release of a hazardous substance, pollutant or contaminant from a facility
12 to the environment, unless the release was authorized by a permit issued
13 by a 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,
25 to contain contaminants present in groundwater or soil and prevent them
26 from reaching a location where they could threaten human health or welfare
27 or the environment.

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

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

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

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

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

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

3 (iii) Any activity that is related to the activities described in
4 items (i) and (ii) of this subdivision, including inspecting the
5 installation of or testing the machinery, equipment or other tangible
6 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
27 personal property, whether as an individual item or as a system of items,
28 to water, 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
31 performing other similar nonpermanent connections to either real property
32 or real 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
35 is exempt from or deductible from transaction privilege and use tax under:

36 (a) Section 42-5061, subsection A, paragraph 25, 29, 57 or 59.

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

38 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a),
39 (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 54 or 56.

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
43 for the raising of poultry for the production of eggs and the sorting,
44 cooling and packaging of eggs.

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

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

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

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

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

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

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

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

44 18. The gross proceeds of sales or gross income received from a
45 contract for the construction of any building, or other structure,

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

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

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

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

21 (c) "Development fees" means fees imposed to offset capital costs
22 of providing public infrastructure, public safety or other public services
23 to a development and authorized pursuant to section 9-463.05, section
24 11-1102 or title 48 regardless of the jurisdiction to which the fees are
25 paid.

26 20. The gross proceeds of sales or gross income derived from a
27 contract entered into for the construction of a mixed waste processing
28 facility that is located on a municipal solid waste landfill and that is
29 constructed for the purpose of recycling solid waste or producing
30 renewable energy from landfill waste. For the purposes of this paragraph:

31 (a) "Mixed waste processing facility" means a solid waste facility
32 that is owned, operated or used for the treatment, processing or disposal
33 of solid waste, recyclable solid waste, conditionally exempt small
34 quantity generator waste or household hazardous waste. For the purposes
35 of this subdivision, "conditionally exempt small quantity generator
36 waste", "household hazardous waste" and "solid waste facility" have the
37 same meanings prescribed in section 49-701, except that solid waste
38 facility does include a site that stores, treats or processes paper,
39 glass, wood, cardboard, household textiles, scrap metal, plastic,
40 vegetative waste, aluminum, steel or other recyclable material.

41 (b) "Municipal solid waste landfill" has the same meaning
42 prescribed in section 49-701.

43 (c) "Recycling" means collecting, separating, cleansing, treating
44 and reconstituting recyclable solid waste that would otherwise become
45 solid waste, but does not include incineration or other similar processes.

1 (d) "Renewable energy" has the same meaning prescribed in section
2 41-1511.

3 C. Entitlement to the deduction pursuant to subsection B, paragraph
4 7 of this section is subject to the following provisions:

5 1. A prime contractor may establish entitlement to the deduction by
6 both:

7 (a) Marking the invoice for the transaction to indicate that the
8 gross proceeds of sales or gross income derived from the transaction was
9 deducted from the base.

10 (b) Obtaining a certificate executed by the purchaser indicating
11 the name and address of the purchaser, the precise nature of the business
12 of the purchaser, the purpose for which the purchase was made, the
13 necessary facts to establish the deductibility of the property under
14 section 42-5061, subsection B, and a certification that the person
15 executing the certificate is authorized to do so on behalf of the
16 purchaser. The certificate may be disregarded if the prime contractor has
17 reason to believe that the information contained in the certificate is not
18 accurate or complete.

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

22 3. The department may prescribe a form for the certificate
23 described in paragraph 1, subdivision (b) of this subsection. The
24 department may also adopt rules that describe the transactions with
25 respect to which a person is not entitled to rely solely on the
26 information contained in the certificate provided in paragraph 1,
27 subdivision (b) of this subsection but must instead obtain such additional
28 information as required in order to be entitled to the deduction.

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

44 D. Subcontractors or others who perform modification activities are
45 not subject to tax if they can demonstrate that the job was within the

1 control of a prime contractor or contractors or a dealership of
2 manufactured buildings and that the prime contractor or dealership is
3 liable for the tax on the gross income, gross proceeds of sales or gross
4 receipts attributable to the job and from which the subcontractors or
5 others were paid.

6 E. Amounts received by a contractor for a project are excluded from
7 the contractor's gross proceeds of sales or gross income derived from the
8 business if the person who hired the contractor executes and provides a
9 certificate to the contractor stating that the person providing the
10 certificate is a prime contractor and is liable for the tax under article
11 1 of this chapter. The department shall prescribe the form of the
12 certificate. If the contractor has reason to believe that the information
13 contained on the certificate is erroneous or incomplete, the department
14 may disregard the certificate. If the person who provides the certificate
15 is not liable for the tax as a prime contractor, that person is
16 nevertheless deemed to be the prime contractor in lieu of the contractor
17 and is subject to the tax under this section on the gross receipts or
18 gross proceeds received by the contractor.

19 F. Every person engaging or continuing in this state in the
20 business of prime contracting or dealership of manufactured buildings
21 shall present to the purchaser of such prime contracting or manufactured
22 building a written receipt of the gross income or gross proceeds of sales
23 from such activity and shall separately state the taxes to be paid
24 pursuant to this section.

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

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

39 I. The gross proceeds of sales or gross income derived from a
40 contract for lawn maintenance services ~~are~~ IS not subject to tax under
41 this section if the contract does not include landscaping activities.
42 Lawn maintenance service is a service pursuant to section 42-5061,
43 subsection A, paragraph 1, and includes lawn mowing and edging, weeding,
44 repairing sprinkler heads or drip irrigation heads, seasonal replacement
45 of flowers, refreshing gravel, lawn dethatching, seeding winter lawns,

1 leaf and debris collection and removal, tree or shrub pruning or clipping,
2 garden and gravel raking and applying pesticides, as defined in section
3 3-361, and fertilizer materials, as defined in section 3-262.

4 J. Except as provided in subsection 0 of this section, the gross
5 proceeds of sales or gross income derived from landscaping activities ~~are~~
6 IS subject to tax under this section. Landscaping includes installing
7 lawns, grading or leveling ground, installing gravel or boulders, planting
8 trees and other plants, felling trees, removing or mulching tree stumps,
9 removing other imbedded plants, building irrigation berms, installing
10 railroad ties and installing underground sprinkler or watering systems.

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

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

23 M. The following apply in determining the taxable situs of sales of
24 manufactured buildings:

25 1. For sales in this state where the manufactured building dealer
26 contracts to deliver the building to a setup site or to perform the setup
27 in this state, the taxable situs is the setup site.

28 2. For sales in this state where the manufactured building dealer
29 does not contract to deliver the building to a setup site or does not
30 perform the setup, the taxable situs is the location of the dealership
31 where the building is delivered to the buyer.

32 3. For sales in this state where the manufactured building dealer
33 contracts to deliver the building to a setup site that is outside this
34 state, the situs is outside this state and the transaction is excluded
35 from tax.

36 N. The gross proceeds of sales or gross income attributable to a
37 written contract for design phase services or professional services,
38 executed before modification begins and with terms, conditions and pricing
39 of all of these services separately stated in the contract from those for
40 construction phase services, is not subject to tax under this section,
41 regardless of whether the services are provided sequential to or
42 concurrent with prime contracting activities that are subject to tax under
43 this section. This subsection does not include the gross proceeds of
44 sales or gross income attributable to construction phase services. For
45 the purposes of this subsection:

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

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

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

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

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

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

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

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

29 (e) Inspection to determine the dates of substantial completion or
30 final completion.

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

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

40 (i) Master schedule updates.

41 (ii) Modification work cash flow projection updates.

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

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

1 (v) Identification of any health and safety issues that have arisen
2 in 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
6 prime contractor to illustrate details of the modification work performed.

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

11 2. "Design phase services" means services for developing and
12 completing a design for a project that are not construction phase
13 services, including the following:

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

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

20 (c) Preparing drawings and specifications for architectural program
21 documents, schematic design documents, design development documents,
22 modification work documents or documents that identify the scope of or
23 materials for the project.

24 (d) Preparing an initial schedule for the project, excluding the
25 preparation of updates to the master schedule after modification work has
26 begun.

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

30 (i) Labor, materials, machinery and equipment, tools, water, heat,
31 utilities, transportation and other facilities and services used in the
32 execution and completion of modification work, regardless of whether they
33 are temporary or permanent or whether they are incorporated in the
34 modifications.

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

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

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

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

45 (vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

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

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

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

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

0. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, OR replacement ~~or alteration~~ of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this subsection. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section. For the purposes of this subsection:

1. Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in section 42-5008.01.

2. Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

P. Notwithstanding subsection 0 of this section, a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is taxable under this section, even if the contract also includes vertical improvements. Agencies that are subject to procurement processes under those provisions shall include in the request for proposals a notice to bidders when those projects are subject to this section. This subsection does not apply to contracts with:

1 1. Community facilities districts, fire districts, county
2 television improvement districts, community park maintenance districts,
3 cotton pest control districts, hospital districts, pest abatement
4 districts, health service districts, agricultural improvement districts,
5 county free library districts, county jail districts, county stadium
6 districts, special health care districts, public health services
7 districts, theme park districts or revitalization districts.

8 2. Any special taxing district not specified in paragraph 1 of this
9 subsection if the district does not substantially engage in the
10 modification, maintenance, repair, **OR** replacement ~~or alteration~~ of
11 surface or subsurface improvements to land.

12 Q. Notwithstanding subsection R, paragraph 10 of this section, a
13 person owning real property who enters into a contract for sale of the
14 real property, who is responsible to the new owner of the property for
15 modifications made to the property in the period subsequent to the
16 transfer of title and who receives a consideration for the modifications
17 is considered a prime contractor solely for purposes of taxing the gross
18 proceeds of sale or gross income received for the modifications made
19 subsequent to the transfer of title. The original owner's gross proceeds
20 of sale or gross income received for the modifications shall be determined
21 according to the following methodology:

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

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

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

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

1 R. For the purposes of this section:

2 1. ~~"Alteration" means an activity or action that causes a direct~~
3 ~~physical change to existing property. For the purposes of this paragraph:~~

4 (a) ~~For existing property that is properly classified as class two~~
5 ~~property under section 42-12002, paragraph 1, subdivision (c) or paragraph~~
6 ~~2, subdivision (c) and that is used for residential purposes, class three~~
7 ~~property under section 42-12003 or class four property under section~~
8 ~~42-12004, this paragraph does not apply if the contract amount is more~~
9 ~~than twenty-five percent of the most recent full cash value established~~
10 ~~under chapter 13, article 2 of this title as of the date of any bid for~~
11 ~~the work or the date of the contract, whichever value is higher.~~

12 (b) ~~For all existing property other than existing property~~
13 ~~described in subdivision (a) of this paragraph, this paragraph does not~~
14 ~~apply if any of the following is true:~~

15 (i) ~~The contract amount is more than seven hundred fifty thousand~~
16 ~~dollars.~~

17 (ii) ~~The scope of work directly relates to more than forty percent~~
18 ~~of the existing square footage of the existing property.~~

19 (iii) ~~The scope of work involves expanding the square footage of~~
20 ~~more than ten percent of the existing property.~~

21 (c) ~~Project elements may not be artificially separated from a~~
22 ~~contract to cause a project to qualify as an alteration. The department~~
23 ~~has the burden of proof that project elements have been artificially~~
24 ~~separated from a contract.~~

25 (d) ~~If a project for which the owner and the person performing the~~
26 ~~work reasonably believed, at the inception of the contract, would be~~
27 ~~treated as an alteration under this paragraph and, on completion of the~~
28 ~~project, the project exceeded the applicable threshold described in either~~
29 ~~subdivision (a) or (b) of this paragraph by no more than twenty-five~~
30 ~~percent of the applicable threshold for any reason, the work performed~~
31 ~~under the contract qualifies as an alteration.~~

32 (e) ~~A change order that directly relates to the scope of work of~~
33 ~~the original contract shall be treated as part of the original contract,~~
34 ~~and the contract amount shall include any amount attributable to a change~~
35 ~~order that directly relates to the scope of work of the original contract.~~

36 (f) ~~Alteration does not include maintenance, repair or replacement.~~

37 2. 1. ~~"Contracting" means engaging in business as a contractor.~~

38 3. 2. ~~"Contractor" is synonymous with the term "builder" and means~~

39 any person or organization that undertakes to or offers to undertake to,
40 or purports to have the capacity to undertake to, or submits a bid to, or
41 does personally or by or through others, modify any building, highway,
42 road, railroad, excavation, manufactured building or other structure,
43 project, development or improvement, or to do any part of such a project,
44 including the erection of scaffolding or other structure or works in
45 connection with such a project, and includes subcontractors and specialty

1 contractors. For all purposes of taxation or deduction, this definition
2 shall govern without regard to whether or not such a contractor is acting
3 in fulfillment of a contract.

4 ~~4.~~ 3. "Manufactured building" means a manufactured home, mobile
5 home or factory-built building, as defined in section 41-4001.

6 ~~5.~~ 4. "Manufactured building dealer" means a dealer who either:

7 (a) Is licensed pursuant to title 41, chapter 37, article 4 and who
8 sells manufactured buildings to the final consumer.

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

13 ~~6.~~ 5. "Modification" means **ALTERATION**, construction, grading and
14 leveling ground, wreckage or demolition. Modification does not include:

15 (a) Any project described in subsection 0 of this section.

16 (b) Any wreckage or demolition of existing property, or any other
17 activity that is a necessary component of a project described in
18 subsection 0 of this section.

19 (c) Any mobilization or demobilization related to a project
20 described in subsection 0 of this section, such as the erection or removal
21 of temporary facilities to be used by those persons working on the
22 project.

23 ~~7.~~ 6. "Modify" means to make a modification or cause a
24 modification to be made.

25 ~~8.~~ 7. "Owner" means the person that holds title to the real
26 property or improvements to real property that is the subject of the work,
27 as well as an agent of the title holder and any person with the authority
28 to perform or authorize work on the real property or improvements,
29 including a tenant and a property manager. For the purposes of subsection
30 0 of this section, a person who is hired by a general contractor that is
31 hired by an owner, or a subcontractor of a general contractor that is
32 hired by an owner, is considered to be hired by the owner.

33 ~~9.~~ 8. "Prime contracting" means engaging in business as a prime
34 contractor.

35 ~~10.~~ 9. "Prime contractor" means a contractor who supervises,
36 performs or coordinates the modification of any building, highway, road,
37 railroad, excavation, manufactured building or other structure, project,
38 development or improvement, including the contracting, if any, with any
39 subcontractors or specialty contractors and who is responsible for the
40 completion of the contract. Except as provided in subsections E and Q of
41 this section, a person who owns real property, who engages one or more
42 contractors to modify that real property and who does not itself modify
43 that real property is not a prime contractor within the meaning of this
44 paragraph regardless of the existence of a contract for sale or the
45 subsequent sale of that real property.

1 ~~11.~~ 10. "Replacement" means the removal from service of one
2 component ~~or system~~, A SINGLE SYSTEM OR MULTIPLE SYSTEMS OF LIKE FUNCTION
3 of existing property or tangible personal property installed in existing
4 property, including machinery or equipment, and the installation of a new
5 component ~~or system~~, A SINGLE SYSTEM OR MULTIPLE SYSTEMS OF LIKE FUNCTION
6 or new tangible personal property, including machinery or equipment, that
7 provides the same, a similar or an upgraded design or functionality,
8 regardless of the contract amount and regardless of whether the existing
9 component or ~~system~~ SYSTEMS or existing tangible personal property is
10 physically removed from the existing property.

11 ~~12.~~ 11. "Sale of a used manufactured building" does not include a
12 lease of a used manufactured building.

13 Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to
14 read:

15 **42-6004. Exemption from municipal tax: definitions**

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

18 1. Exhibition events in this state sponsored, conducted or operated
19 by a nonprofit organization that is exempt from taxation under section
20 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
21 organization is associated with a major league baseball team or a national
22 touring professional golfing association and no part of the organization's
23 net earnings inures to the benefit of any private shareholder or
24 individual.

25 2. Interstate telecommunications services, which include that
26 portion of telecommunications services, such as subscriber line service,
27 allocable by federal law to interstate telecommunications service.

28 3. Sales of warranty or service contracts.

29 4. Sales of motor vehicles to nonresidents of this state for use
30 outside this state if the motor vehicle dealer ships or delivers the motor
31 vehicle to a destination outside this state.

32 5. Interest on finance contracts.

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

34 7. Sales of food or other items purchased with United States
35 department of agriculture food stamp coupons issued under the food stamp
36 act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under
37 section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603;
38 P.L. 99-661, section 4302; 42 United States Code section 1786) but may
39 impose such a tax on other sales of food. If a city, town or special
40 taxing district exempts sales of food from its tax or imposes a different
41 transaction privilege rate on the gross proceeds of sales or gross income
42 from sales of food and nonfood items, it shall use the definition of food
43 prescribed by rule adopted by the department pursuant to section 42-5106.

1 8. Orthodontic devices dispensed by a dental professional who is
2 licensed under title 32, chapter 11 to a patient as part of the practice
3 of dentistry.

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

6 (a) "Internet" means the computer and telecommunications facilities
7 that comprise the interconnected worldwide network of networks that employ
8 the transmission control protocol or internet protocol, or any predecessor
9 or successor protocol, to communicate information of all kinds by wire or
10 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 10. The gross proceeds of sales or gross income retained by the
16 Arizona exposition and state fair board from ride ticket sales at the
17 annual Arizona state fair.

18 11. Leasing real property between affiliated companies, businesses,
19 persons or reciprocal insurers. For the purposes of this paragraph:

20 (a) "Affiliated companies, businesses, persons or reciprocal
21 insurers" means the lessor holds a controlling interest in the lessee, the
22 lessee holds a controlling interest in the lessor, affiliated persons hold
23 a controlling interest in both the lessor and the lessee, or an unrelated
24 person holds a controlling interest in both the lessor and lessee.

25 (b) "Affiliated persons" means members of the individual's family
26 or persons who have ownership or control of a business entity.

27 (c) "Controlling interest" means direct or indirect ownership of at
28 least eighty percent of the voting shares of a corporation or of the
29 interests in a company, business or person other than a corporation.

30 (d) "Members of the individual's family" means the individual's
31 spouse and brothers and sisters, whether by whole or half blood, including
32 adopted persons, ancestors and lineal descendants.

33 (e) "Reciprocal insurer" has the same meaning prescribed in section
34 20-762.

35 12. The gross proceeds of sales or gross income derived from a
36 contract for the installation, assembly, repair or maintenance of
37 machinery, equipment or other tangible personal property that is described
38 in section 42-5061, subsection B and that has independent functional
39 utility, pursuant to the following provisions:

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

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

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

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

3 (iii) Any activity that is related to the activities described in
4 items (i) and (ii) of this subdivision, including inspecting the
5 installation of or testing the machinery, equipment or other tangible
6 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 described in section 42-5061, subsection B.

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

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

20 (i) Assembling the machinery, equipment or other tangible personal
21 property.

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

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

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

31 13. The leasing or renting of certified ignition interlock devices
32 installed pursuant to the requirements prescribed by section 28-1461. For
33 the purposes of this paragraph, "certified ignition interlock device" has
34 the same meaning prescribed in section 28-1301.

35 14. Computer data center equipment sold to the owner, operator or
36 qualified colocation tenant of a computer data center that is certified by
37 the Arizona commerce authority under section 41-1519 or an authorized
38 agent of the owner, operator or qualified colocation tenant during the
39 qualification period for use in the qualified computer data center. For
40 the purposes of this paragraph, "computer data center", "computer data
41 center equipment", "qualification period" and "qualified colocation
42 tenant" have the same meanings prescribed in section 41-1519.

43 15. The gross proceeds of sales or gross income derived from a
44 contract with the owner of real property or improvements to real property
45 for the maintenance, repair, ~~OR~~ replacement or alteration of existing

1 property, except as specified in this paragraph. The gross proceeds of
2 sales or gross income derived from a de minimis amount of modification
3 activity does not subject the contract or any part of the contract to tax.
4 For the purposes of this paragraph:

5 (a) Each contract is independent of another contract, except that
6 any change order that directly relates to the scope of work of the
7 original contract shall be treated the same as the original contract under
8 this paragraph, regardless of the amount of modification activities
9 included in the change order. If a change order does not directly relate
10 to the scope of work of the original contract, the change order shall be
11 treated as a new contract, with the tax treatment of any subsequent change
12 order to follow the tax treatment of the contract to which the scope of
13 work of the subsequent change order directly relates.

14 (b) Any term not defined in this paragraph that is defined in
15 section 42-5075 has the same meaning prescribed in section 42-5075.

16 (c) This paragraph does not apply to a contract that primarily
17 involves surface or subsurface improvements to land and that is subject to
18 title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 even if the
19 contract also includes vertical improvements. If a city or town imposes a
20 tax on contracts that are subject to procurement processes under those
21 provisions, the city or town shall include in the request for proposals a
22 notice to bidders when those projects are subject to the tax. This
23 subdivision does not apply to contracts with:

24 (i) Community facilities districts, fire districts, county
25 television improvement districts, community park maintenance districts,
26 cotton pest control districts, hospital districts, pest abatement
27 districts, health service districts, agricultural improvement districts,
28 county free library districts, county jail districts, county stadium
29 districts, special health care districts, public health services
30 districts, theme park districts or revitalization districts.

31 (ii) Any special taxing district not specified in item (i) of this
32 subdivision if the district does not substantially engage in the
33 modification, maintenance, repair, ~~OR~~ replacement ~~or alteration~~ of
34 surface or subsurface improvements to land.

35 16. Monitoring services relating to an alarm system as defined in
36 section 32-101.

37 17. Tangible personal property, job printing or publications sold
38 to or purchased by, or tangible personal property leased, rented or
39 licensed for use to or by, a qualifying health sciences educational
40 institution as defined in section 42-5001.

41 18. The transfer of title or possession of coal back and forth
42 between an owner or operator of a power plant and a person who is
43 responsible for refining coal if both of the following apply:

44 (a) The transfer of title or possession of the coal is for the
45 purpose of refining the coal.

7 19. The gross proceeds of sales or gross income from sales of low
8 or reduced cost articles of food or drink to eligible elderly or homeless
9 persons or persons with a disability by a business subject to tax under
10 section 42-5074 that contracts with the department of economic security
11 and that is approved by the food and nutrition service of the United
12 States department of agriculture pursuant to the supplemental nutrition
13 assistance program established by the food and nutrition act of 2008
14 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through
15 2036a), if the purchases are made with the benefits issued pursuant to the
16 supplemental nutrition assistance program.

17 20. Tangible personal property incorporated or fabricated into a
18 project described in paragraph 15 of this subsection, that is located
19 within the exterior boundaries of an Indian reservation for which the
20 owner, as defined in section 42-5075, of the project is an Indian tribe or
21 an affiliated Indian. For the purposes of this paragraph:

22 (a) "Affiliated Indian" means an individual native American Indian
23 who is duly registered on the tribal rolls of the Indian tribe for whose
24 benefit the Indian reservation was established.

30 (c) "Indian tribe" means any organized nation, tribe, band or
31 community that is recognized as an Indian tribe by the United States
32 department of the interior and includes any entity formed under the laws
33 of that Indian tribe.

34 21. The charges for the leasing or renting of space to make
35 attachments to utility poles as follows:

36 (a) By a person that is engaged in the business of providing or
37 furnishing electrical services or telecommunication services or that is a
38 cable operator.

39 (b) To a person that is engaged in the business of providing or
40 furnishing electrical services or telecommunication services or that is a
41 cable operator.

42 22. Until March 1, 2017, the gross proceeds of sales or gross
43 income derived from entry fees paid by participants for events that
44 consist of a run, walk, swim or bicycle ride or a similar event, or any
45 combination of these events.

1 23. The gross proceeds of sales or gross income derived from entry
2 fees paid by participants for events that are operated or conducted by
3 nonprofit organizations that are exempt from taxation under section
4 501(c)(3) of the internal revenue code and of which no part of the
5 organization's net earnings inures to the benefit of any private
6 shareholder or individual, if the event consists of a run, walk, swim or
7 bicycle ride or a similar event, or any combination of these events.

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

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

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

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

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

26 4. Incarcerating or detaining in a privately operated prison, jail
27 or detention facility prisoners who are under the jurisdiction of the
28 United States, this state or any other state or a political subdivision of
29 this state or of any other state.

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

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

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

39 (b) The attributable amount is equal to the total amount of
40 development fees paid by the taxpayer or by a contractor providing
41 services to the taxpayer and the total development fees credited in
42 exchange for the construction of, contribution to or dedication of real
43 property for providing public infrastructure, public safety or other
44 public services necessary to the development. The real property must be
45 the subject of the development fees.

1 (c) "Development fees" means fees imposed to offset capital costs
2 of providing public infrastructure, public safety or other public services
3 to a development and authorized pursuant to section 9-463.05, section
4 11-1102 or title 48 regardless of the jurisdiction to which the fees are
5 paid.

6 7. Any amount attributable to fees collected by transportation
7 network companies issued a permit pursuant to section 28-9552.

8 8. Transporting for hire persons by transportation network company
9 drivers on transactions involving transportation network services as
10 defined in section 28-9551.

11 9. Transporting for hire persons by vehicle for hire companies that
12 are issued permits pursuant to section 28-9503.

13 10. Transporting for hire persons by vehicle for hire drivers on
14 transactions involving vehicle for hire services as defined in section
15 28-9501.

16 D. A city, town or other taxing jurisdiction shall not levy a
17 transaction privilege, sales, use, franchise or other similar tax or fee,
18 however denominated, in excess of one-tenth of one percent of the value of
19 the entire product mined, smelted, extracted, refined, produced or
20 prepared for sale, profit or commercial use, on persons engaged in the
21 business of mineral processing, except to the extent that the tax is
22 computed on the gross proceeds or gross income from sales at retail.

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

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

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

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

33 G. For the purposes of this section:

34 1. "Cable operator" has the same meaning prescribed in section
35 9-505.

36 2. "Electrical services" means transmitting or distributing
37 electricity, electric lights, current or power over lines, wires or
38 cables.

39 3. "Telecommunication services" means transmitting or relaying
40 sound, visual image, data, information, images or material over lines,
41 wires or cables by radio signal, light beam, telephone, telegraph or other
42 electromagnetic means.

43 4. "Utility pole" means any wooden, metal or other pole used for
44 utility purposes and the pole's appurtenances that are attached or
45 authorized for attachment by the person controlling the pole.

1 Sec. 3. Effective date

2 This act is effective from and after December 31, 2018. For bids
3 submitted or contracts entered into, or any other binding obligation
4 executed prior to December 31, 2018, the contractor shall treat such
5 contracts or obligations in a manner consistent with the tax requirements
6 prior to December 31, 2018.