

REFERENCE TITLE: TPT; prime contracting; exemptions; certificates

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2404

Introduced by
Representative Cobb

AN ACT

AMENDING SECTIONS 42-5008.01, 42-5009 AND 42-5075, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE AND USE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-5008.01, Arizona Revised Statutes, is amended
3 to read:

4 **42-5008.01. Liability for amounts equal to retail transaction**
5 **privilege tax due**

6 A. A person that is either a prime contractor subject to tax under
7 section 42-5075 or a subcontractor working under the control of such a
8 prime contractor, that purchases tangible personal property, the purchase
9 price of which was excluded from the tax base under the retail
10 classification under section 42-5061, subsection A, paragraph 27 or was
11 excluded from the use tax under section 42-5159, subsection A, paragraph
12 13, subdivision (g) at the time of purchase, and that incorporates or
13 fabricates the tangible personal property into a project described in
14 section 42-5075, subsection 0 is liable for an amount equal to any tax
15 that a seller would have been required to pay under section 42-5061 and
16 this article as follows:

17 1. The amount of liability shall be calculated and reported based
18 on the location of the project and the taxes imposed under this chapter
19 and chapter 6 of this title.

20 2. All deductions, exemptions and exclusions for the cost of
21 tangible personal property provided in section 42-5075 apply to the
22 tangible personal property incorporated or fabricated into the project.

23 3. This subsection does not apply to tangible personal property
24 that is incorporated or fabricated into any project under a contract that
25 would otherwise be excluded from the tax base under section 42-5075,
26 without regard to section 42-5075, subsection 0.

27 4. The amount of liability shall be reported within the reporting
28 period that includes the month in which the person incorporates or
29 fabricates the tangible personal property into the project.

30 5. The person is not liable for the amount if the contractor who
31 hired the person executes and provides to the person a certificate stating
32 that the contractor providing the certificate is liable for any amount due
33 under this subsection. The department shall prescribe the form of the
34 certificate. If the person has reason to believe that the information
35 contained on the certificate is erroneous or incomplete, the department
36 may disregard the certificate. The contractor providing the certificate
37 is liable for the amount that otherwise would be due from the person under
38 this subsection. **A CERTIFICATE PROVIDED TO A PERSON PURSUANT TO THIS**
PARAGRAPH IS VALID FOR A PERIOD OF NOT MORE THAN ONE YEAR. AFTER THE
CERTIFICATE EXPIRES, THE CONTRACTOR MAY EXECUTE AND PROVIDE TO THE PERSON
A NEW CERTIFICATE.

42 B. A person that purchased tangible personal property, the purchase
43 price of which was excluded from the tax base under section 42-5061,
44 subsection A, paragraph 27 or was excluded from the use tax under section
45 42-5159, subsection A, paragraph 13, subdivision (g) at the time of

1 purchase, that subsequently cancels its transaction privilege tax license
2 and that uses, consumes, sells or discards the tangible personal property
3 is liable for an amount of tax determined under this subsection. For the
4 purposes of this subsection:

5 1. If the tangible personal property is incorporated or fabricated
6 into a project described in section 42-5075, subsection 0, or otherwise
7 used or consumed by the person, the amount of liability shall be
8 calculated and reported based on the person's purchase price of the
9 tangible personal property, the location of the project, use or
10 consumption and the taxes imposed under this chapter and chapter 6 of this
11 title.

12 2. If the tangible personal property is sold in a manner that is
13 not subject to tax under this chapter or is discarded, the amount shall be
14 calculated and reported based on the payment received by the person, the
15 location of the person's principal place of business in this state and the
16 taxes imposed under this chapter and chapter 6 of this title.

17 3. The person is not liable under this subsection for any amount if
18 the person discards the tangible personal property and does not receive
19 payment of any kind.

20 4. The amount of liability shall be reported on or before the
21 business day preceding the last business day of the month following the
22 month in which the person uses the tangible personal property in a manner
23 described in paragraph 1 or 2 of this subsection. No amount is due under
24 this subsection at any time that the person stores the tangible personal
25 property without using it in a manner described in paragraph 1 or 2 of
26 this subsection.

27 5. All deductions, exemptions and exclusions for the cost of
28 tangible personal property provided in section 42-5075 apply to the
29 tangible personal property incorporated or fabricated into a project
30 described in section 42-5075, subsection 0.

31 6. This subsection does not apply to tangible personal property
32 that is incorporated or fabricated into any project under a contract that
33 would otherwise be excluded from the tax base under section 42-5075,
34 without regard to section 42-5075, subsection 0.

35 7. The person is not liable for the amount if the contractor who
36 hired the person executes and provides to the person a certificate stating
37 that the contractor providing the certificate is liable for any amount due
38 under this subsection for tangible personal property incorporated or
39 fabricated into a project described in section 42-5075, subsection 0. The
40 department shall prescribe the form of the certificate. If the person has
41 reason to believe that the information contained on the certificate is
42 erroneous or incomplete, the department may disregard the certificate.
43 The contractor providing the certificate is liable for the amount that
44 otherwise would be due from the person under this subsection. **A**
45 **CERTIFICATE PROVIDED TO A PERSON PURSUANT TO THIS PARAGRAPH IS VALID FOR A**

1 PERIOD OF NOT MORE THAN ONE YEAR. AFTER THE CERTIFICATE EXPIRES, THE
2 CONTRACTOR MAY EXECUTE AND PROVIDE TO THE PERSON A NEW CERTIFICATE.

3 C. A person that fails to report or pay any amount due under
4 subsection A or B of this section is liable for interest in a manner
5 consistent with section 42-1123 and penalties in a manner consistent with
6 section 42-1125.

7 D. If a person has paid an amount described in this section on
8 tangible personal property that the person reasonably believed to be
9 described ~~IN~~ section 42-5075, subsection 0 and a final determination is
10 made that section 42-5075, subsection 0 does not apply, the person is
11 entitled to an offset for the amount paid under this section against the
12 amount of tax liability assessed under this chapter and chapter 6 of this
13 title.

14 Sec. 2. Section 42-5009, Arizona Revised Statutes, is amended to
15 read:

16 **42-5009. Certificates establishing deductions; liability for**
17 **making false certificate**

18 A. A person who conducts any business classified under article 2 of
19 this chapter may establish entitlement to the allowable deductions from
20 the tax base of that business by both:

21 1. Marking the invoice for the transaction to indicate that the
22 gross proceeds of sales or gross income derived from the transaction was
23 deducted from the tax base.

24 2. Obtaining a certificate executed by the purchaser indicating the
25 name and address of the purchaser, the precise nature of the business of
26 the purchaser, the purpose for which the purchase was made, the necessary
27 facts to establish the appropriate deduction and the tax license number of
28 the purchaser to the extent the deduction depends on the purchaser
29 conducting business classified under article 2 of this chapter and a
30 certification that the person executing the certificate is authorized to
31 do so on behalf of the purchaser. The certificate may be disregarded if
32 the seller has reason to believe that the information contained in the
33 certificate is not accurate or complete.

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

37 C. The department may prescribe a form for the certificate
38 described in subsection A of this section. Under such rules as it may
39 prescribe, the department may also describe transactions with respect to
40 which a person is not entitled to rely solely on the information contained
41 in the certificate provided for in subsection A of this section but must
42 instead obtain such additional information as required by the rules in
43 order to be entitled to the deduction.

1 D. If a seller is entitled to a deduction by complying with
2 subsection A of this section, the department may require the purchaser
3 that caused the execution of the certificate to establish the accuracy and
4 completeness of the information required to be contained in the
5 certificate that would entitle the seller to the deduction. If the
6 purchaser cannot establish the accuracy and completeness of the
7 information, the purchaser is liable in an amount equal to any tax,
8 penalty and interest that the seller would have been required to pay under
9 this article if the seller had not complied with subsection A of this
10 section. Payment of the amount under this subsection exempts the
11 purchaser from liability for any tax imposed under article 4 of this
12 chapter. The amount shall be treated as tax revenues collected from the
13 seller in order to designate the distribution base for purposes of section
14 42-5029.

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

27 F. The department may prescribe a form for a certificate used to
28 establish entitlement to the deductions described in section 42-5061,
29 subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3.
30 Under rules the department may prescribe, the department may also require
31 additional information for the seller to be entitled to the deduction. If
32 a seller is entitled to the deductions described in section 42-5061,
33 subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3,
34 the department may require the purchaser who executed the certificate to
35 establish the accuracy and completeness of the information contained in
36 the certificate that would entitle the seller to the deduction. If the
37 purchaser cannot establish the accuracy and completeness of the
38 information, the purchaser is liable in an amount equal to any tax,
39 penalty and interest that the seller would have been required to pay under
40 this article. Payment of the amount under this subsection exempts the
41 purchaser from liability for any tax imposed under article 4 of this
42 chapter. The amount shall be treated as tax revenues collected from the
43 seller in order to designate the distribution base for purposes of section
44 42-5029.

1 G. If a seller claims a deduction under section 42-5061,
2 subsection A, paragraph 25 and establishes entitlement to the deduction
3 with an exemption letter that the purchaser received from the department
4 and the exemption letter was based on a contingent event, the department
5 may require the purchaser that received the exemption letter to establish
6 the satisfaction of the contingent event within a reasonable time. If the
7 purchaser cannot establish the satisfaction of the event, the purchaser is
8 liable in an amount equal to any tax, penalty and interest that the seller
9 would have been required to pay under this article if the seller had not
10 been furnished the exemption letter. Payment of the amount under this
11 subsection exempts the purchaser from liability for any tax imposed under
12 article 4 of this chapter. The amount shall be treated as tax revenues
13 collected from the seller in order to designate the distribution base for
14 purposes of section 42-5029. For the purposes of this subsection,
15 "reasonable time" means a time limitation that the department determines
16 and that does not exceed the time limitations pursuant to section 42-1104.

17 H. The department shall prescribe forms for certificates used to
18 establish the satisfaction of the criteria necessary to qualify the sale
19 of a motor vehicle for the deductions described in section 42-5061,
20 subsection A, paragraph 14, paragraph 28, subdivision (a) and paragraph 44
21 and subsection U. Except as provided in subsection J of this section, to
22 establish entitlement to these deductions, a motor vehicle dealer shall
23 retain:

24 1. A valid certificate as prescribed by this subsection completed
25 by the purchaser and obtained prior to the issuance of the nonresident
26 registration permit authorized by section 28-2154.

27 2. A copy of the nonresident registration permit authorized by
28 section 28-2154.

29 3. A legible copy of a current valid driver license issued to the
30 purchaser by another state or foreign country that indicates an address
31 outside of this state. For the sale of a motor vehicle to a nonresident
32 entity, the entity's representative must have a current valid driver
33 license issued by the same jurisdiction as that in which the entity is
34 located.

35 4. For the purposes of the deduction provided by section 42-5061,
36 subsection A, paragraph 14, a certificate documenting the delivery of the
37 motor vehicle to an out-of-state location.

38 I. Notwithstanding subsection A, paragraph 2 of this section, if a
39 motor vehicle dealer has established entitlement to a deduction by
40 complying with subsection H of this section, the department may require
41 the purchaser who executed the certificate to establish the accuracy and
42 completeness of the information contained in the certificate that entitled
43 the motor vehicle dealer to the deduction. If the purchaser cannot
44 establish the accuracy and completeness of the information, the purchaser
45 is liable in an amount equal to any tax, penalty and interest that the

1 motor vehicle dealer would have been required to pay under this article
2 and under articles IV and V of the model city tax code as defined in
3 section 42-6051. Payment of the amount under this subsection exempts the
4 purchaser from liability for any tax imposed under article 4 of this
5 chapter and any tax imposed under article VI of the model city tax code as
6 defined in section 42-6051. The amount shall be treated as tax revenues
7 collected from the motor vehicle dealer in order to designate the
8 distribution base for purposes of section 42-5029.

9 J. To establish entitlement to the deduction described in section
10 42-5061, subsection A, paragraph 44, a public consignment auction dealer
11 as defined in section 28-4301 shall submit the valid certificate
12 prescribed by subsection H of this section to the department and retain a
13 copy for its records.

14 K. Notwithstanding any other law, compliance with subsection H of
15 this section by a motor vehicle dealer entitles the motor vehicle dealer
16 to the exemption provided in section 42-6004, subsection A, paragraph 4.

17 L. The department shall prescribe a form for a certificate to be
18 used by a person that is not subject to tax under section 42-5075 when the
19 person is engaged by a contractor that is subject to tax under section
20 42-5075 for a project that is taxable under section 42-5075. The
21 certificate permits the person purchasing tangible personal property to be
22 incorporated or fabricated by the person into any real property,
23 structure, project, development or improvement to provide documentation to
24 a retailer that the sale of tangible personal property qualifies for the
25 deduction under section 42-5061, subsection A, paragraph 27,
26 subdivision (b). A prime contractor shall obtain the certificate from the
27 department and shall provide a copy to any such person working on the
28 project. The prime contractor shall obtain a new certificate for each
29 project to which this subsection applies. For the purposes of this
30 subsection, the following apply:

31 1. The person that is not subject to tax under section 42-5075 may
32 use the certificate issued pursuant to this subsection only with respect
33 to tangible personal property that will be incorporated into a project for
34 which the gross receipts are subject to tax under section 42-5075.

35 2. The department shall issue the certificate to the prime
36 contractor on receiving sufficient documentation to establish that the
37 prime contractor meets the requirements of this subsection.

38 3. If any person uses the certificate provided under this
39 subsection to purchase tangible personal property to be used in a project
40 that is not subject to tax under section 42-5075, the person is liable in
41 an amount equal to any tax, penalty and interest that the seller would
42 have been required to pay under this article if the seller had not
43 complied with subsection A of this section. Payment of the amount under
44 this section exempts the person from liability for any tax imposed under

1 article 4 of this chapter. The amount shall be sourced under section
2 42-5040, subsection A, paragraph 2.

3 M. Notwithstanding any other law, compliance with subsection L of
4 this section by a person that is not subject to tax under section 42-5075
5 entitles the person to the exemption allowed by section 465,
6 subsection (k) of the model city tax code when purchasing tangible
7 personal property to be incorporated or fabricated by the person into any
8 real property, structure, project, development or improvement.

9 N. The requirements of subsections A and B of this section do not
10 apply to owners, proprietors or tenants of agricultural lands or farms who
11 sell livestock or poultry feed that is grown or raised on their lands to
12 any of the following:

- 13 1. Persons who feed their own livestock or poultry.
- 14 2. Persons who are engaged in the business of producing livestock
15 or poultry commercially.

16 3. Persons who are engaged in the business of feeding livestock or
17 poultry commercially or who board livestock noncommercially.

18 O. A vendor who has reason to believe that a certificate prescribed
19 by this section is not accurate or complete will not be relieved of the
20 burden of proving entitlement to the exemption. A vendor that accepts a
21 certificate in good faith will be relieved of the burden of proof and the
22 purchaser may be required to establish the accuracy of the claimed
23 exemption. If the purchaser cannot establish the accuracy and
24 completeness of the information provided in the certificate, the purchaser
25 is liable for an amount equal to the transaction privilege tax, penalty
26 and interest that the vendor would have been required to pay if the vendor
27 had not accepted the certificate.

28 P. Notwithstanding any other law, an online lodging operator, as
29 defined in section 42-5076, shall be entitled to an exclusion from any
30 applicable taxes for any online lodging transaction, as defined in section
31 42-5076, facilitated by an online lodging marketplace, as defined in
32 section 42-5076, for which the online lodging operator has obtained from
33 the online lodging marketplace written notice that the online lodging
34 marketplace is registered with the department to collect applicable taxes
35 for all online lodging transactions facilitated by the online lodging
36 marketplace, and transaction history documenting tax collected by the
37 online lodging marketplace, pursuant to section 42-5005, subsection L.

38 Q. The department shall prescribe the form of a certificate to be
39 used by a person purchasing an aircraft to document eligibility for a
40 deduction pursuant to section 42-5061, subsection B, paragraph 7,
41 subdivision (a), item (v) or an exemption pursuant to section 42-5159,
42 subsection B, paragraph 7, subdivision (a), item (v), relating to
43 aircraft. The person must provide this certificate and documentation
44 confirming that the operational control of the aircraft has been
45 transferred or will be transferred immediately after the purchase to one

1 or more persons described in section 42-5061, subsection B, paragraph 7,
2 subdivision (a), item (i), (ii), (iii) or (iv) or section 42-5159,
3 subsection B, paragraph 7, subdivision (a), item (i), (ii), (iii) or (iv).
4 Operational control of the aircraft must be transferred for at least fifty
5 percent of the aircraft's flight hours. If such operational control is
6 not transferred for at least fifty percent of the aircraft's flight hours
7 during the recapture period, the owner of the aircraft is liable for an
8 amount equal to any tax that the seller or purchaser would have been
9 required to pay under this chapter at the time of the sale, plus penalty
10 and interest. The recapture period begins on the date that operational
11 control of the aircraft is first transferred and ends on the later of the
12 date the aircraft is fully depreciated for federal income tax purposes or
13 five years after operational control was first transferred. For the
14 purposes of this subsection, operational control of the aircraft must be
15 within the meaning of federal aviation administration operations
16 specification A008, or its successor, except that:

17 1. If it is determined that operational control has been
18 transferred for less than fifty percent but more than forty percent of the
19 aircraft's flight hours, the owner of the aircraft is liable for an amount
20 equal to any tax that the seller or purchaser would have been required to
21 pay under this chapter at the time of the sale, plus interest.

22 2. If the aircraft is sold during the recapture period, the seller
23 is not liable for the amount determined pursuant to this subsection unless
24 the operational control of the aircraft had not been transferred for at
25 least fifty percent of the aircraft's flight hours at the time of the
26 sale.

27 R. THE DEPARTMENT SHALL PRESCRIBE A FORM FOR A CERTIFICATE TO BE
28 USED BY A PRIME CONTRACTOR THAT IS SUBJECT TO TAX UNDER SECTION 42-5075
29 FOR PURCHASING TANGIBLE PERSONAL PROPERTY, THE PURCHASE PRICE OF WHICH WAS
30 EXCLUDED FROM THE TAX BASE UNDER THE RETAIL CLASSIFICATION UNDER SECTION
31 42-5061, SUBSECTION A, PARAGRAPH 27. THE PRIME CONTRACTOR SHALL OBTAIN
32 THE CERTIFICATE FROM THE DEPARTMENT. A CERTIFICATE OBTAINED PURSUANT TO
33 THIS SUBSECTION IS VALID FOR A PERIOD OF NOT MORE THAN ONE YEAR. AFTER
34 THE CERTIFICATE EXPIRES, THE PRIME CONTRACTOR MAY OBTAIN A NEW
35 CERTIFICATE.

36 Sec. 3. Section 42-5075, Arizona Revised Statutes, is amended to
37 read:

38 42-5075. Prime contracting classification; exemptions;
39 definitions

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

1 include any work or operation performed by a person that is not required
2 to be licensed by the registrar of contractors pursuant to section
3 32-1121.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 7. The gross proceeds of sales or gross income that is derived from
23 a contract for the installation, assembly, repair or maintenance of
24 machinery, equipment or other tangible personal property that is either
25 deducted from the tax base of the retail classification under section
26 42-5061, subsection B or that is exempt from use tax under section
27 42-5159, subsection B and that has independent functional utility,
28 pursuant to the following provisions:

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

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

33 (ii) Any activity performed on any tangible personal property
34 relating to machinery, equipment or other tangible personal property with
35 independent functional utility in furtherance of any of the purposes
36 provided for under subdivision (d) of this paragraph.

37 (iii) Any activity that is related to the activities described in
38 items (i) and (ii) of this subdivision, including inspecting the
39 installation of or testing the machinery, equipment or other tangible
40 personal property.

41 (b) The deduction provided in this paragraph does not include gross
42 proceeds of sales or gross income from the portion of any contracting
43 activity that consists of the development of, or modification to, real
44 property in order to facilitate the installation, assembly, repair,
45 maintenance or removal of machinery, equipment or other tangible personal

1 property that is either deducted from the tax base of the retail
2 classification under section 42-5061, subsection B or exempt from use tax
3 under section 42-5159, subsection B.

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

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

11 (i) Assembling the machinery, equipment or other tangible personal
12 property.

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

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

18 (iv) Stabilizing or protecting the machinery, equipment or other
19 tangible personal property during operation by bolting, burying or
20 performing other similar nonpermanent connections to either real property
21 or real property improvements.

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

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

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

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

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

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

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

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

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

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

15 14. The gross proceeds of sales or gross income derived from a
16 contract entered into for the construction of a launch site, as defined in
17 14 Code of Federal Regulations section 401.5.

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

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

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

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

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

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

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

10 (c) "Development fees" means fees imposed to offset capital costs
11 of providing public infrastructure, public safety or other public services
12 to a development and authorized pursuant to section 9-463.05, section
13 11-1102 or title 48 regardless of the jurisdiction to which the fees are
14 paid.

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

20 (a) "Mixed waste processing facility" means a solid waste facility
21 that is owned, operated or used for the treatment, processing or disposal
22 of solid waste, recyclable solid waste, conditionally exempt small
23 quantity generator waste or household hazardous waste. For the purposes
24 of this subdivision, "conditionally exempt small quantity generator
25 waste", "household hazardous waste" and "solid waste facility" have the
26 same meanings prescribed in section 49-701, except that solid waste
27 facility does include a site that stores, treats or processes paper,
28 glass, wood, cardboard, household textiles, scrap metal, plastic,
29 vegetative waste, aluminum, steel or other recyclable material.

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

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

35 (d) "Renewable energy" has the same meaning prescribed in section
36 41-1511.

37 C. Entitlement to the deduction pursuant to subsection B, paragraph
38 7 of this section is subject to the following provisions:

39 1. A prime contractor may establish entitlement to the deduction by
40 both:

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

44 (b) Obtaining a certificate executed by the purchaser indicating
45 the name and address of the purchaser, the precise nature of the business

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

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

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

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

33 D. Subcontractors or others who perform modification activities are
34 not subject to tax if they can demonstrate that the job was within the
35 control of a prime contractor or contractors or a dealership of
36 manufactured buildings and that the prime contractor or dealership is
37 liable for the tax on the gross income, gross proceeds of sales or gross
38 receipts attributable to the job and from which the subcontractors or
39 others were paid.

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

1 certificate. If the contractor has reason to believe that the information
2 contained on the certificate is erroneous or incomplete, the department
3 may disregard the certificate. If the person who provides the certificate
4 is not liable for the tax as a prime contractor, that person is
5 nevertheless deemed to be the prime contractor in lieu of the contractor
6 and is subject to the tax under this section on the gross receipts or
7 gross proceeds received by the contractor. **A CERTIFICATE PROVIDED TO A**
CONTRACTOR PURSUANT TO THIS SUBSECTION IS VALID FOR A PERIOD OF NOT MORE
THAN ONE YEAR. AFTER THE CERTIFICATE EXPIRES, THE PERSON MAY EXECUTE AND
PROVIDE TO THE CONTRACTOR A NEW CERTIFICATE.

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

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

21 H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues
22 reported and collected under the prime contracting classification from any
23 prime contractor engaged in the construction of any buildings and
24 associated improvements that are for the benefit of a manufacturing
25 facility. For the purposes of this subsection, "associated improvements"
26 and "manufacturing facility" have the same meanings prescribed in section
27 42-5032.02.

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

37 J. Except as provided in subsection 0 of this section, the gross
38 proceeds of sales or gross income derived from landscaping activities is
39 subject to tax under this section. Landscaping includes installing lawns,
40 grading or leveling ground, installing gravel or boulders, planting trees
41 and other plants, felling trees, removing or mulching tree stumps,

1 removing other imbedded plants, building irrigation berms, installing
2 railroad ties and installing underground sprinkler or watering systems.

3 K. The portion of gross proceeds of sales or gross income
4 attributable to the actual direct costs of providing architectural or
5 engineering services that are incorporated in a contract is not subject to
6 tax under this section. For the purposes of this subsection, "direct
7 costs" means the portion of the actual costs that are directly expended in
8 providing architectural or engineering services.

9 L. Operating a landfill or a solid waste disposal facility is not
10 subject to taxation under this section, including filling, compacting and
11 creating vehicle access to and from cell sites within the landfill.
12 Constructing roads to a landfill or solid waste disposal facility and
13 constructing cells within a landfill or solid waste disposal facility may
14 be deemed prime contracting under this section.

15 M. The following apply in determining the taxable situs of sales of
16 manufactured buildings:

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

20 2. For sales in this state where the manufactured building dealer
21 does not contract to deliver the building to a setup site or does not
22 perform the setup, the taxable situs is the location of the dealership
23 where the building is delivered to the buyer.

24 3. For sales in this state where the manufactured building dealer
25 contracts to deliver the building to a setup site that is outside this
26 state, the situs is outside this state and the transaction is excluded
27 from tax.

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

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

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

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

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

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

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

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

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

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

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

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

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

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

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

(b) Preparation of daily logs of modification work, including

- (ii) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.
- (i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.

5 2. "Design phase services" means services for developing and
6 completing a design for a project that are not construction phase
7 services, including the following:

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

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

14 (c) Preparing drawings and specifications for architectural program
15 documents, schematic design documents, design development documents,
16 modification work documents or documents that identify the scope of or
17 materials for the project.

18 (d) Preparing an initial schedule for the project, excluding the
19 preparation of updates to the master schedule after modification work has
20 begun.

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

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

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

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

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

39 (vi) Any bond and insurance premiums.

40 (vii) Any applicable taxes.

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

43 (f) Reviewing and evaluating cost estimates and project documents
44 to prepare recommendations on site use, site improvements, selection of
45 materials, building systems and equipment, modification feasibility,

1 availability of materials and labor, local modification activity as
2 related to schedules and time requirements for modification work.

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

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

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

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

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

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

40 1. Community facilities districts, fire districts, county
41 television improvement districts, community park maintenance districts,
42 cotton pest control districts, hospital districts, pest abatement
43 districts, health service districts, agricultural improvement districts,
44 county free library districts, county jail districts, county stadium

1 districts, special health care districts, public health services
2 districts, theme park districts or revitalization districts.

3 2. Any special taxing district not specified in paragraph 1 of this
4 subsection if the district does not substantially engage in the
5 modification, maintenance, repair, replacement or alteration of surface or
6 subsurface improvements to land.

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

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

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

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

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

41 R. For the purposes of this section:

42 1. "Alteration":

43 (a) Means an activity or action that causes a direct physical
44 change to existing property **AND THAT DOES NOT INCREASE THE SQUARE FOOTAGE**
45 **OF THE EXISTING PROPERTY. For the purposes of this paragraph:**

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

(b) For all existing property other than existing property described in subdivision (a) of this paragraph, this paragraph does not apply if the contract amount is more than seven hundred fifty thousand dollars.

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

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

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

~~(f) Alteration~~

(b) Does not include maintenance, repair or replacement.

2 "Contracting" means engaging in business as a contractor

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

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

- 1 5. "Manufactured building dealer" means a dealer who either:
2 (a) Is licensed pursuant to title 41, chapter 37, article 4 and who
3 sells manufactured buildings to the final consumer.
4 (b) Supervises, performs or coordinates the excavation and
5 completion of site improvements or the setup of a manufactured building,
6 including the contracting, if any, with any subcontractor or specialty
7 contractor for the completion of the contract.
- 8 6. "Modification" means construction, grading and leveling ground,
9 wreckage, ~~or~~ demolition **OR OTHER ACTIVITIES OR ACTIONS THAT INCREASE THE**
10 **SQUARE FOOTAGE OF THE EXISTING PROPERTY.** Modification does not include:
11 (a) Any project described in subsection O of this section.
12 (b) Any wreckage or demolition of existing property, or any other
13 activity that is a necessary component of a project described in
14 subsection O of this section.
15 (c) Any mobilization or demobilization related to a project
16 described in subsection O of this section, such as the erection or removal
17 of temporary facilities to be used by those persons working on the
18 project.
- 19 7. "Modify" means to make a modification or cause a modification to
20 be made.
- 21 8. "Owner" means the person that holds title to the real property
22 or improvements to real property that is the subject of the work, as well
23 as an agent of the title holder and any person with the authority to
24 perform or authorize work on the real property or improvements, including
25 a tenant and a property manager. For the purposes of subsection O of this
26 section, a person who is hired by a general contractor that is hired by an
27 owner, or a subcontractor of a general contractor that is hired by an
28 owner, is considered to be hired by the owner.
- 29 9. "Prime contracting" means engaging in business as a prime
30 contractor.
- 31 10. "Prime contractor" means a contractor who supervises, performs
32 or coordinates the modification of any building, highway, road, railroad,
33 excavation, manufactured building or other structure, project, development
34 or improvement, including the contracting, if any, with any subcontractors
35 or specialty contractors and who is responsible for the completion of the
36 contract. Except as provided in subsections E and Q of this section, a
37 person who owns real property, who engages one or more contractors to
38 modify that real property and who does not itself modify that real
39 property is not a prime contractor within the meaning of this paragraph
40 regardless of the existence of a contract for sale or the subsequent sale
41 of that real property.
- 42 11. "Replacement" means the removal from service of one component
43 or system of existing property or tangible personal property installed in
44 existing property, including machinery or equipment, and the installation
45 of a new component or system or new tangible personal property, including

1 machinery or equipment, that provides the same, a similar or an upgraded
2 design or functionality, regardless of the contract amount and regardless
3 of whether the existing component or system or existing tangible personal
4 property is physically removed from the existing property.

5 12. "Sale of a used manufactured building" does not include a lease
6 of a used manufactured building.

7 Sec. 4. Applicability

8 This act applies to contracts entered into from and after
9 December 31, 2020.