

REFERENCE TITLE: TPT; prime contracting; tax base

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2701

Introduced by
Representative Biasiucci

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO
TRANSACTION PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5075, 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 FOR CONTRACTS ENTERED INTO THROUGH JUNE 30, 2023, SIXTY
18 PERCENT OF THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE
19 BUSINESS FOR CONTRACTS ENTERED INTO FROM AND AFTER JUNE 30, 2023 THROUGH
20 JUNE 30, 2024 AND FIFTY-FIVE PERCENT OF THE GROSS PROCEEDS OF SALES OR
21 GROSS INCOME DERIVED FROM THE BUSINESS FOR CONTRACTS ENTERED INTO FROM AND
22 AFTER JUNE 30, 2024. The following amounts shall be deducted from the
23 gross proceeds of sales or gross income before computing the tax base:

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

26 2. Sales and installation of groundwater measuring devices required
27 under section 45-604 and groundwater monitoring wells required by law,
28 including monitoring wells installed for acquiring information for a
29 permit required by law.

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

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

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

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

20 (a) Actions to monitor, assess and evaluate such a release or a
21 suspected release.

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

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

27 (d) Pumping and treatment or in situ treatment of contaminated
28 groundwater or surface water to reduce the concentration or toxicity of a
29 contaminant.

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

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

39 7. The gross proceeds of sales or gross income that is derived from
40 a contract for the installation, assembly, repair or maintenance of
41 machinery, equipment or other tangible personal property that is either
42 deducted from the tax base of the retail classification under section
43 42-5061, subsection B or that is exempt from use tax under section
44 42-5159, subsection B and that has independent functional utility,
45 pursuant to the following provisions:

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

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

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

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

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

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

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

28 (i) Assembling the machinery, equipment or other tangible personal
29 property.

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

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

35 (iv) Stabilizing or protecting the machinery, equipment or other
36 tangible personal property during operation by bolting, burying or
37 performing other similar nonpermanent connections to either real property
38 or real property improvements.

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

42 (a) Section 42-5061, subsection A, paragraph 25, 29 or 58.

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

44 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a),
45 (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 55.

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

2 9. The gross proceeds of sales or gross income received from a
3 contract for the construction of an environmentally controlled facility
4 for the raising of poultry for the production of eggs and the sorting,
5 cooling and packaging of eggs.

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

14 11. The gross proceeds of sales or gross income that is derived
15 from the installation, assembly, repair or maintenance of clean rooms that
16 are deducted from the tax base of the retail classification pursuant to
17 section 42-5061, subsection B, paragraph 17.

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

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

32 14. The gross proceeds of sales or gross income derived from a
33 contract entered into for the construction of a launch site, as defined in
34 14 Code of Federal Regulations section 401.5.

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

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

42 17. The gross proceeds of sales or gross income received from
43 contracts entered into before July 1, 2006 for constructing a state
44 university research infrastructure project if the project has been
45 reviewed by the joint committee on capital review before the university

1 enters into the construction contract for the project. For the purposes
2 of this paragraph, "research infrastructure" has the same meaning
3 prescribed in section 15-1670.

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

12 19. Any amount of the gross proceeds of sales or gross income
13 attributable to development fees that are incurred in relation to a
14 contract for construction, development or improvement of real property and
15 that are paid by a prime contractor or subcontractor. For the purposes of
16 this paragraph:

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

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

26 (c) "Development fees" means fees imposed to offset capital costs
27 of providing public infrastructure, public safety or other public services
28 to a development and authorized pursuant to section 9-463.05, section
29 11-1102 or title 48 regardless of the jurisdiction to which the fees are
30 paid.

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

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

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

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

6 (d) "Renewable energy" has the same meaning prescribed in section
7 41-1511.

8 C. Entitlement to the deduction pursuant to subsection B, paragraph
9 7 of this section is subject to the following provisions:

10 1. A prime contractor may establish entitlement to the deduction by
11 both:

12 (a) Marking the invoice for the transaction to indicate that the
13 gross proceeds of sales or gross income derived from the transaction was
14 deducted from the base.

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

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

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

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

1 transaction privilege tax to the purchaser and as tax revenues collected
2 from the prime contractor in order to designate the distribution base for
3 purposes of section 42-5029.

4 D. Subcontractors or others who perform modification activities are
5 not subject to tax if they can demonstrate that the job was within the
6 control of a prime contractor or contractors or a dealership of
7 manufactured buildings and that the prime contractor or dealership is
8 liable for the tax on the gross income, gross proceeds of sales or gross
9 receipts attributable to the job and from which the subcontractors or
10 others were paid.

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

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

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

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

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

11 J. Except as provided in subsection 0 of this section, the gross
12 proceeds of sales or gross income derived from landscaping activities is
13 subject to tax under this section. Landscaping includes installing lawns,
14 grading or leveling ground, installing gravel or boulders, planting trees
15 and other plants, felling trees, removing or mulching tree stumps,
16 removing other imbedded plants, building irrigation berms, installing
17 railroad ties and installing underground sprinkler or watering systems.

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

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

30 M. The following apply in determining the taxable situs of sales of
31 manufactured buildings:

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

35 2. For sales in this state where the manufactured building dealer
36 does not contract to deliver the building to a setup site or does not
37 perform the setup, the taxable situs is the location of the dealership
38 where the building is delivered to the buyer.

39 3. For sales in this state where the manufactured building dealer
40 contracts to deliver the building to a setup site that is outside this
41 state, the situs is outside this state and the transaction is excluded
42 from tax.

43 N. The gross proceeds of sales or gross income attributable to a
44 written contract for design phase services or professional services,
45 executed before modification begins and with terms, conditions and pricing

1 of all of these services separately stated in the contract from those for
2 construction phase services, is not subject to tax under this section,
3 regardless of whether the services are provided sequential to or
4 concurrent with prime contracting activities that are subject to tax under
5 this section. This subsection does not include the gross proceeds of
6 sales or gross income attributable to construction phase services. For
7 the purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

4 (i) Master schedule updates.

5 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

19 2. "Design phase services" means services for developing and
20 completing a design for a project that are not construction phase
21 services, including the following:

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

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

28 (c) Preparing drawings and specifications for architectural program
29 documents, schematic design documents, design development documents,
30 modification work documents or documents that identify the scope of or
31 materials for the project.

32 (d) Preparing an initial schedule for the project, excluding the
33 preparation of updates to the master schedule after modification work has
34 begun.

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

38 (i) Labor, materials, machinery and equipment, tools, water, heat,
39 utilities, transportation and other facilities and services used in the
40 execution and completion of modification work, regardless of whether they
41 are temporary or permanent or whether they are incorporated in the
42 modifications.

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

- 1 (iii) The cost of any equipment of the owner of the real property
2 to be assigned by the owner to the prime contractor.
- 3 (iv) The cost of any labor for installation of equipment separately
4 provided by the owner of the real property that has been designed,
5 specified, selected or specifically provided for in any design document
6 for the project.
- 7 (v) Any fee paid by the owner of the real property to the prime
8 contractor pursuant to the contract for modification work.
- 9 (vi) Any bond and insurance premiums.
- 10 (vii) Any applicable taxes.
- 11 (viii) Any contingency fees for the prime contractor that may be
12 used before final completion of the project.
- 13 (f) Reviewing and evaluating cost estimates and project documents
14 to prepare recommendations on site use, site improvements, selection of
15 materials, building systems and equipment, modification feasibility,
16 availability of materials and labor, local modification activity as
17 related to schedules and time requirements for modification work.
- 18 (g) Preparing the plan and procedures for selection of
19 subcontractors, including any prequalification of subcontractor
20 candidates.
- 21 3. "Professional services" means architect services, engineer
22 services, geologist services, land surveying services or landscape
23 architect services that are within the scope of those services as provided
24 in title 32, chapter 1 and for which gross proceeds of sales or gross
25 income has not otherwise been deducted under subsection K of this section.
- 26 0. The gross proceeds of sales or gross income derived from a
27 contract with the owner of real property or improvements to real property
28 for the maintenance, repair, replacement or alteration of existing
29 property is not subject to tax under this section if the contract does not
30 include modification activities, except as specified in this subsection.
31 The gross proceeds of sales or gross income derived from a de minimis
32 amount of modification activity does not subject the contract or any part
33 of the contract to tax under this section. For the purposes of this
34 subsection:
- 35 1. Tangible personal property that is incorporated or fabricated
36 into a project described in this subsection may be subject to the amount
37 prescribed in section 42-5008.01.
- 38 2. Each contract is independent of any other contract, except that
39 any change order that directly relates to the scope of work of the
40 original contract shall be treated the same as the original contract under
41 this chapter, regardless of the amount of modification activities included
42 in the change order. If a change order does not directly relate to the
43 scope of work of the original contract, the change order shall be treated
44 as a new contract, with the tax treatment of any subsequent change order

1 to follow the tax treatment of the contract to which the scope of work of
2 the subsequent change order directly relates.

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

11 1. Community facilities districts, fire districts, county
12 television improvement districts, community park maintenance districts,
13 cotton pest control districts, hospital districts, pest abatement
14 districts, health service districts, agricultural improvement districts,
15 county free library districts, county jail districts, county stadium
16 districts, special health care districts, public health services
17 districts, theme park districts or revitalization districts.

18 2. Any special taxing district not specified in paragraph 1 of this
19 subsection if the district does not substantially engage in the
20 modification, maintenance, repair, replacement or alteration of surface or
21 subsurface improvements to land.

22 Q. Notwithstanding subsection R, paragraph 10 of this section, a
23 person owning real property who enters into a contract for sale of the
24 real property, who is responsible to the new owner of the property for
25 modifications made to the property in the period subsequent to the
26 transfer of title and who receives a consideration for the modifications
27 is considered a prime contractor solely for purposes of taxing the gross
28 proceeds of sale or gross income received for the modifications made
29 subsequent to the transfer of title. The original owner's gross proceeds
30 of sale or gross income received for the modifications shall be determined
31 according to the following methodology:

32 1. If any part of the contract for sale of the property specifies
33 amounts to be paid to the original owner for the modifications to be made
34 in the period subsequent to the transfer of title, the amounts are
35 included in the original owner's gross proceeds of sale or gross income
36 under this section. Proceeds from the sale of the property that are
37 received after transfer of title and that are unrelated to the
38 modifications made subsequent to the transfer of title are not considered
39 gross proceeds of sale or gross income from the modifications.

40 2. If the original owner enters into an agreement separate from the
41 contract for sale of the real property providing for amounts to be paid to
42 the original owner for the modifications to be made in the period
43 subsequent to the transfer of title to the property, the amounts are
44 included in the original owner's gross proceeds of sale or gross income
45 received for the modifications made subsequent to the transfer of title.

1 3. If the original owner is responsible to the new owner for
2 modifications made to the property in the period subsequent to the
3 transfer of title and derives any gross proceeds of sale or gross income
4 from the project subsequent to the transfer of title other than a delayed
5 disbursement from escrow unrelated to the modifications, it is presumed
6 that the amounts are received for the modifications made subsequent to the
7 transfer of title unless the contrary is established by the owner through
8 its books, records and papers kept in the regular course of business.

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

11 R. For the purposes of this section:

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

14 (a) For existing property that is properly classified as class two
15 property under section 42-12002, paragraph 1, subdivision (c) or paragraph
16 2, subdivision (c) and that is used for residential purposes, class three
17 property under section 42-12003 or class four property under section
18 42-12004, this paragraph does not apply if the contract amount is more
19 than twenty-five percent of the most recent full cash value established
20 under chapter 13, article 2 of this title as of the date of any bid for
21 the work or the date of the contract, whichever value is higher.

22 (b) For all existing property other than existing property
23 described in subdivision (a) of this paragraph, this paragraph does not
24 apply if the contract amount is more than \$750,000.

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

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

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

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

41 2. "Contracting" means engaging in business as a contractor.

42 3. "Contractor" is synonymous with the term "builder" and means any
43 person or organization that undertakes to or offers to undertake to, or
44 purports to have the capacity to undertake to, or submits a bid to, or
45 does personally or by or through others, modify any building, highway,

1 road, railroad, excavation, manufactured building or other structure,
2 project, development or improvement, or to do any part of such a project,
3 including the erection of scaffolding or other structure or works in
4 connection with such a project, and includes subcontractors and specialty
5 contractors. For all purposes of taxation or deduction, this definition
6 shall govern without regard to whether or not such a contractor is acting
7 in fulfillment of a contract.

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

10 5. "Manufactured building dealer" means a dealer who either:

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

13 (b) Supervises, performs or coordinates the excavation and
14 completion of site improvements or the setup of a manufactured building,
15 including the contracting, if any, with any subcontractor or specialty
16 contractor for the completion of the contract.

17 6. "Modification" means construction, grading and leveling ground,
18 wreckage or demolition. Modification does not include:

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

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

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

27 7. "Modify" means to make a modification or cause a modification to
28 be made.

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

37 9. "Prime contracting" means engaging in business as a prime
38 contractor.

39 10. "Prime contractor" means a contractor who supervises, performs
40 or coordinates the modification of any building, highway, road, railroad,
41 excavation, manufactured building or other structure, project, development
42 or improvement, including the contracting, if any, with any subcontractors
43 or specialty contractors and who is responsible for the completion of the
44 contract. Except as provided in subsections E and Q of this section, a
45 person who owns real property, who engages one or more contractors to

1 modify that real property and who does not itself modify that real
2 property is not a prime contractor within the meaning of this paragraph
3 regardless of the existence of a contract for sale or the subsequent sale
4 of that real property.

5 11. "Replacement" means the removal from service of one component
6 or system of existing property or tangible personal property installed in
7 existing property, including machinery or equipment, and the installation
8 of a new component or system or new tangible personal property, including
9 machinery or equipment, that provides the same, a similar or an upgraded
10 design or functionality, regardless of the contract amount and regardless
11 of whether the existing component or system or existing tangible personal
12 property is physically removed from the existing property.

13 12. "Sale of a used manufactured building" does not include a lease
14 of a used manufactured building.