

REFERENCE TITLE: TPT; prime contracting; exemption; alterations

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

## **HB 2749**

Introduced by  
Representatives Cobb: Biasiucci

AN ACT

AMENDING SECTION 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 42-5075, Arizona Revised Statutes, is amended to  
3 read:

4 42-5075. Prime contracting classification; exemptions;  
5 definitions

6 A. The prime contracting classification is comprised of the  
7 business of prime contracting and the business of manufactured building  
8 dealer. Sales for resale to another manufactured building dealer are not  
9 subject to tax. Sales for resale do not include sales to a lessor of  
10 manufactured buildings. The sale of a used manufactured building is not  
11 taxable under this chapter. The prime contracting classification does not  
12 include any work or operation performed by a person that is not required  
13 to be licensed by the registrar of contractors pursuant to section  
14 32-1121.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40           (i) Master schedule updates.

41           (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (vi) Any bond and insurance premiums.

1 (vii) Any applicable taxes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 R. For the purposes of this section:

2 1. "Alteration"

3 (a) Means an activity or action that causes a direct physical  
4 change to existing property AND THAT DOES NOT INCREASE THE SQUARE FOOTAGE  
5 OF THE EXISTING RESIDENTIAL PROPERTY. ~~For the purposes of this paragraph:~~

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

14 ~~(b) For all existing property other than existing RESIDENTIAL~~  
15 ~~property described in subdivision (a) of this paragraph, this paragraph~~  
16 ~~does not apply if the contract amount is more than \$750,000.~~

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

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

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

32 ~~(f) Alteration~~

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

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

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

- 1           4. "Manufactured building" means a manufactured home, mobile home  
2 or factory-built building, as defined in section 41-4001.
- 3           5. "Manufactured building dealer" means a dealer who either:  
4           (a) Is licensed pursuant to title 41, chapter 37, article 4 and who  
5 sells manufactured buildings to the final consumer.  
6           (b) Supervises, performs or coordinates the excavation and  
7 completion of site improvements or the setup of a manufactured building,  
8 including the contracting, if any, with any subcontractor or specialty  
9 contractor for the completion of the contract.
- 10          6. "Modification" means construction, grading and leveling ground,  
11 wreckage, ~~or~~ demolition OR OTHER ACTIVITIES OR ACTIONS THAT INCREASE THE  
12 SQUARE FOOTAGE OF THE EXISTING PROPERTY. Modification does not include:  
13          (a) Any project described in subsection 0 of this section.  
14          (b) Any wreckage or demolition of existing property, or any other  
15 activity that is a necessary component of a project described in  
16 subsection 0 of this section.  
17          (c) Any mobilization or demobilization related to a project  
18 described in subsection 0 of this section, such as the erection or removal  
19 of temporary facilities to be used by those persons working on the  
20 project.
- 21          7. "Modify" means to make a modification or cause a modification to  
22 be made.
- 23          8. "Owner" means the person that holds title to the real property  
24 or improvements to real property that is the subject of the work, as well  
25 as an agent of the title holder and any person with the authority to  
26 perform or authorize work on the real property or improvements, including  
27 a tenant and a property manager. For the purposes of subsection 0 of this  
28 section, a person who is hired by a general contractor that is hired by an  
29 owner, or a subcontractor of a general contractor that is hired by an  
30 owner, is considered to be hired by the owner.
- 31          9. "Prime contracting" means engaging in business as a prime  
32 contractor.
- 33          10. "Prime contractor" means a contractor who supervises, performs  
34 or coordinates the modification of any building, highway, road, railroad,  
35 excavation, manufactured building or other structure, project, development  
36 or improvement, including the contracting, if any, with any subcontractors  
37 or specialty contractors and who is responsible for the completion of the  
38 contract. Except as provided in subsections E and Q of this section, a  
39 person who owns real property, who engages one or more contractors to  
40 modify that real property and who does not itself modify that real  
41 property is not a prime contractor within the meaning of this paragraph  
42 regardless of the existence of a contract for sale or the subsequent sale  
43 of that real property.

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

9           12. "Sale of a used manufactured building" does not include a lease  
10 of a used manufactured building.

11           Sec. 2. Effective date

12           This act is effective from and after December 31, 2022.