

PROPOSED
SENATE AMENDMENTS TO S.B. 1236
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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

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

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

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

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

6 4. The gross proceeds of sales or gross income received from a
7 contract entered into for the modification of any building, highway, road,
8 railroad, excavation, manufactured building or other structure, project,
9 development or improvement located in a military reuse zone for providing
10 aviation or aerospace services or for a manufacturer, assembler or
11 fabricator of aviation or aerospace products within an active military
12 reuse zone after the zone is initially established or renewed under section
13 41-1531. To be eligible to qualify for this deduction, before beginning
14 work under the contract, the prime contractor must have applied for a
15 letter of qualification from the department of revenue.

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

25 6. The gross proceeds of sales or gross income from a contract to
26 provide for one or more of the following actions, or a contract for site
27 preparation, constructing, furnishing or installing machinery, equipment or
28 other tangible personal property, including structures necessary to protect
29 exempt incorporated materials or installed machinery or equipment, and
30 tangible personal property incorporated into the project, to perform one or
31 more of the following actions in response to a release or suspected release
32 of a hazardous substance, pollutant or contaminant from a facility to the

1 environment, unless the release was authorized by a permit issued by a
2 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, to
14 contain contaminants present in groundwater or soil and prevent them from
15 reaching a location where they could threaten human health or welfare or
16 the environment.

17 This paragraph does not include asbestos removal or the construction or use
18 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 42-5159,
27 subsection B and that has independent functional utility, pursuant to the
28 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 tangible
32 personal property with independent functional utility.

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

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

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

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

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

24 (i) Assembling the machinery, equipment or other tangible personal
25 property.

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

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

31 (iv) Stabilizing or protecting the machinery, equipment or other
32 tangible personal property during operation by bolting, burying or

1 performing other similar nonpermanent connections to either real property
2 or real property improvements.

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

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

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

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

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

11 9. The gross proceeds of sales or gross income received from a
12 contract for the construction of an environmentally controlled facility for
13 the raising of poultry for the production of eggs and the sorting, cooling
14 and packaging of eggs.

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

23 11. The gross proceeds of sales or gross income that is derived from
24 the installation, assembly, repair or maintenance of clean rooms that are
25 deducted from the tax base of the retail classification pursuant to section
26 42-5061, subsection B, paragraph 17.

27 12. For taxable periods beginning from and after June 30, 2001, the
28 gross proceeds of sales or gross income derived from a contract entered
29 into for the construction of a residential apartment housing facility that
30 qualifies for a federal housing subsidy for ~~low-income~~ LOW-INCOME persons
31 over sixty-two years of age and that is owned by a nonprofit charitable

1 organization that has qualified under section 501(c)(3) of the internal
2 revenue code.

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

10 14. The gross proceeds of sales or gross income derived from a
11 contract entered into for the construction of a launch site, as defined in
12 14 Code of Federal Regulations section 401.5.

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

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

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

27 18. The gross proceeds of sales or gross income received from a
28 contract for the construction of any building, or other structure, project,
29 development or improvement owned by a qualified business under section
30 41-1516 for harvesting or processing qualifying forest products removed
31 from qualifying projects as defined in section 41-1516 if actual
32 construction begins before January 1, 2024. To qualify for this deduction,

1 the prime contractor must obtain a letter of qualification from the Arizona
2 commerce authority before beginning work under the contract.

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

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

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

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

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

26 (a) "Mixed waste processing facility" means a solid waste facility
27 that is owned, operated or used for the treatment, processing or disposal
28 of solid waste, recyclable solid waste, conditionally exempt small quantity
29 generator waste or household hazardous waste. For the purposes of this
30 subdivision, "conditionally exempt small quantity generator waste",
31 "household hazardous waste" and "solid waste facility" have the same
32 meanings prescribed in section 49-701, except that solid waste facility

1 does include a site that stores, treats or processes paper, glass, wood,
2 cardboard, household textiles, scrap metal, plastic, vegetative waste,
3 aluminum, steel or other recyclable material.

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

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

9 (d) "Renewable energy" has the same meaning prescribed in section
10 41-1511.

11 C. Entitlement to the deduction pursuant to subsection B, paragraph
12 7 of this section is subject to the following provisions:

13 1. A prime contractor may establish entitlement to the deduction by
14 both:

15 (a) Marking the invoice for the transaction to indicate that the
16 gross proceeds of sales or gross income derived from the transaction was
17 deducted from the base.

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

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

29 3. The department may prescribe a form for the certificate described
30 in paragraph 1, subdivision (b) of this subsection. The department may
31 also adopt rules that describe the transactions with respect to which a
32 person is not entitled to rely solely on the information contained in the

1 certificate provided in paragraph 1, subdivision (b) of this subsection but
2 must instead obtain such additional information as required in order to be
3 entitled to the deduction.

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

19 D. Subcontractors or others who perform modification activities are
20 not subject to tax if they can demonstrate that the job was within the
21 control of a prime contractor or contractors or a dealership of
22 manufactured buildings and that the prime contractor or dealership is
23 liable for the tax on the gross income, gross proceeds of sales or gross
24 receipts attributable to the job and from which the subcontractors or
25 others were paid.

26 E. Amounts received by a contractor for a project are excluded from
27 the contractor's gross proceeds of sales or gross income derived from the
28 business if the person who hired the contractor executes and provides a
29 certificate to the contractor stating that the person providing the
30 certificate is a prime contractor and is liable for the tax under article 1
31 of this chapter. The department shall prescribe the form of the
32 certificate. If the contractor has reason to believe that the information

1 contained on the certificate is erroneous or incomplete, the department may
2 disregard the certificate. If the person who provides the certificate is
3 not liable for the tax as a prime contractor, that person is nevertheless
4 deemed to be the prime contractor in lieu of the contractor and is subject
5 to the tax under this section on the gross receipts or gross proceeds
6 received by the contractor.

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

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

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

27 I. The gross proceeds of sales or gross income derived from a
28 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 A,
31 paragraph 1, and includes lawn mowing and edging, weeding, repairing
32 sprinkler heads or drip irrigation heads, seasonal replacement of flowers,

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

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

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

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

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

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

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

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

5 N. The gross proceeds of sales or gross income attributable to a
6 written contract for design phase services or professional services,
7 executed before modification begins and with terms, conditions and pricing
8 of all of these services separately stated in the contract from those for
9 construction phase services, is not subject to tax under this section,
10 regardless of whether the services are provided sequential to or concurrent
11 with prime contracting activities that are subject to tax under this
12 section. This subsection does not include the gross proceeds of sales or
13 gross income attributable to construction phase services. For the purposes
14 of this subsection:

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

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

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

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

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

31 (ii) The amount of an adjustment, if any, to the guaranteed maximum
32 price as set in the contract for modification work. For the purposes of

1 this item, "guaranteed maximum price" means the amount guaranteed to be the
2 maximum amount due to a prime contractor for the performance of all
3 modification work for the project.

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

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

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

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

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

22 (i) Master schedule updates.

23 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

5 2. "Design phase services" means services for developing and
6 completing a design for a project that are not construction phase services,
7 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 estimate
23 or schedule of values for any of the following:

24 (i) Labor, materials, machinery and equipment, tools, water, heat,
25 utilities, transportation and other facilities and services used in the
26 execution and completion of modification work, regardless of whether they
27 are temporary or permanent or whether they are incorporated in the
28 modifications.

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

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

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

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

7 (vi) Any bond and insurance premiums.

8 (vii) Any applicable taxes.

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

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

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

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

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

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

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

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

21 1. Community facilities districts, fire districts, county television
22 improvement districts, community park maintenance districts, cotton pest
23 control districts, hospital districts, pest abatement districts, health
24 service districts, agricultural improvement districts, county free library
25 districts, county jail districts, county stadium districts, special health
26 care districts, public health services districts, ~~theme park districts~~ or
27 revitalization districts.

28 2. Any special taxing district not specified in paragraph 1 of this
29 subsection if the district does not substantially engage in the
30 modification, maintenance, repair, replacement or alteration of surface or
31 subsurface improvements to land.

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

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

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

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

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

3 R. For the purposes of this section:

4 1. "Alteration" means an activity or action that causes a direct
5 physical change to existing 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 than
11 twenty-five percent of the most recent full cash value established under
12 chapter 13, article 2 of this title as of the date of any bid for the work
13 or the date of the contract, whichever value is higher.

14 (b) For all existing property other than existing property described
15 in subdivision (a) of this paragraph, this paragraph does not apply if the
16 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~~ NOT 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 the
29 original contract shall be treated as part of the original contract, and
30 the contract amount shall include any amount attributable to a change order
31 that directly relates to the scope of work of the original contract.

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

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

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

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

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

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

18 (b) Supervises, performs or coordinates the excavation and
19 completion of site improvements or the setup of a manufactured building,
20 including the contracting, if any, with any subcontractor or specialty
21 contractor for the completion of the contract.

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

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

25 (b) Any wreckage or demolition of existing property, or any other
26 activity that is a necessary component of a project described in subsection
27 0 of this section.

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

31 7. "Modify" means to make a modification or cause a modification to
32 be made.

1 8. "Owner" means the person that holds title to the real property or
2 improvements to real property that is the subject of the work, as well as
3 an agent of the title holder and any person with the authority to perform
4 or authorize work on the real property or improvements, including a tenant
5 and a property manager. For the purposes of subsection O of this section,
6 a person who is hired by a general contractor that is hired by an owner, or
7 a subcontractor of a general contractor that is hired by an owner, is
8 considered to be hired by the owner.

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

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

22 11. "Replacement" means the removal from service of one component or
23 system of existing property or tangible personal property installed in
24 existing property, including machinery or equipment, and the installation
25 of a new component or system or new tangible personal property, including
26 machinery or equipment, that provides the same, a similar or an upgraded
27 design or functionality, regardless of the contract amount and regardless
28 of whether the existing component or system or existing tangible personal
29 property is physically removed from the existing property.

30 12. "Sale of a used manufactured building" does not include a lease
31 of a used manufactured building.

1 Sec. 2. Section 42-6004, Arizona Revised Statutes, as amended by
2 Laws 2021, chapter 417, section 10, is amended to read:

3 42-6004. Exemption from municipal tax; definitions

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

6 1. Exhibition events in this state sponsored, conducted or operated
7 by a nonprofit organization that is exempt from taxation under section
8 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
9 organization is associated with a major league baseball team or a national
10 touring professional golfing association and no part of the organization's
11 net earnings inures to the benefit of any private shareholder or
12 individual. This paragraph does not apply to an organization that is
13 owned, managed or controlled, in whole or in part, by a major league
14 baseball team, or its owners, officers, employees or agents, or by a major
15 league baseball association or professional golfing association, or its
16 owners, officers, employees or agents, unless the organization conducted or
17 operated exhibition events in this state before January 1, 2018 that were
18 exempt from state transaction privilege tax under section 42-5073.

19 2. Interstate telecommunications services, which include that
20 portion of telecommunications services, such as subscriber line service,
21 allocable by federal law to interstate telecommunications service.

22 3. Sales of warranty or service contracts.

23 4. Sales of motor vehicles to nonresidents of this state for use
24 outside this state if the motor vehicle dealer ships or delivers the motor
25 vehicle to a destination outside this state.

26 5. Interest on finance contracts.

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

28 7. Orthodontic devices dispensed by a dental professional who is
29 licensed under title 32, chapter 11 to a patient as part of the practice of
30 dentistry.

31 8. Sales of internet access services to the person's subscribers and
32 customers. For the purposes of this paragraph:

1 (a) "Internet" means the computer and telecommunications facilities
2 that comprise the interconnected worldwide network of networks that employ
3 the transmission control protocol or internet protocol, or any predecessor
4 or successor protocol, to communicate information of all kinds by wire or
5 radio.

6 (b) "Internet access" means a service that enables users to access
7 content, information, electronic mail or other services over the internet.
8 Internet access does not include telecommunication services provided by a
9 common carrier.

10 9. The gross proceeds of sales or gross income retained by the
11 Arizona exposition and state fair board from ride ticket sales at the
12 annual Arizona state fair.

13 10. Leasing real property between affiliated companies, businesses,
14 persons or reciprocal insurers. For the purposes of this paragraph:

15 (a) "Affiliated companies, businesses, persons or reciprocal
16 insurers" means the lessor holds a controlling interest in the lessee, the
17 lessee holds a controlling interest in the lessor, affiliated persons hold
18 a controlling interest in both the lessor and the lessee, or an unrelated
19 person holds a controlling interest in both the lessor and lessee.

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

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

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

28 (e) "Reciprocal insurer" has the same meaning prescribed in section
29 20-762.

30 11. The gross proceeds of sales or gross income derived from a
31 contract for the installation, assembly, repair or maintenance of
32 machinery, equipment or other tangible personal property that is described

1 in section 42-5061, subsection B and that has independent functional
2 utility, pursuant to the following provisions:

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

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

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

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

15 (b) The deduction provided in this paragraph does not include gross
16 proceeds of sales or gross income from the portion of any contracting
17 activity that consists of the development of, or modification to, real
18 property in order to facilitate the installation, assembly, repair,
19 maintenance or removal of machinery, equipment or other tangible personal
20 property described in section 42-5061, 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.

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

4 (iv) Stabilizing or protecting the machinery, equipment or other
5 tangible personal property during operation by bolting, burying or
6 performing other dissimilar nonpermanent connections to either real
7 property or real property improvements.

8 12. The leasing or renting of certified ignition interlock devices
9 installed pursuant to the requirements prescribed by section 28-1461. For
10 the purposes of this paragraph, "certified ignition interlock device" has
11 the same meaning prescribed in section 28-1301.

12 13. Computer data center equipment sold to the owner, operator or
13 qualified colocation tenant of a computer data center that is certified by
14 the Arizona commerce authority under section 41-1519 or an authorized agent
15 of the owner, operator or qualified colocation tenant during the
16 qualification period for use in the qualified computer data center. For
17 the purposes of this paragraph, "computer data center", "computer data
18 center equipment", "qualification period" and "qualified colocation tenant"
19 have the same meanings prescribed in section 41-1519.

20 14. The gross proceeds of sales or gross income derived from a
21 contract with the owner of real property or improvements to real property
22 for the maintenance, repair, replacement or alteration of existing
23 property, except as specified in this paragraph. The gross proceeds of
24 sales or gross income derived from a de minimis amount of modification
25 activity does not subject the contract or any part of the contract to tax.
26 For the purposes of this paragraph:

27 (a) Each contract is independent of another contract, except that
28 any change order that directly relates to the scope of work of the original
29 contract shall be treated the same as the original contract under this
30 paragraph, regardless of the amount of modification activities included in
31 the change order. If a change order does not directly relate to the scope
32 of work of the original contract, the change order shall be treated as a

1 new contract, with the tax treatment of any subsequent change order to
2 follow the tax treatment of the contract to which the scope of work of the
3 subsequent change order directly relates.

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

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

14 (i) Community facilities districts, fire districts, county
15 television improvement districts, community park maintenance districts,
16 cotton pest control districts, hospital districts, pest abatement
17 districts, health service districts, agricultural improvement districts,
18 county free library districts, county jail districts, county stadium
19 districts, special health care districts, public health services
20 districts, ~~theme park districts~~ or revitalization districts.

21 (ii) Any special taxing district not specified in item (i) of this
22 subdivision if the district does not substantially engage in the
23 modification, maintenance, repair, replacement or alteration of surface or
24 subsurface improvements to land.

25 15. Monitoring services relating to an alarm system as defined in
26 section 32-101.

27 16. Tangible personal property, job printing or publications sold to
28 or purchased by, or tangible personal property leased, rented or licensed
29 for use to or by, a qualifying health sciences educational institution as
30 defined in section 42-5001.

1 17. The transfer of title or possession of coal back and forth
2 between an owner or operator of a power plant and a person who is
3 responsible for refining coal if both of the following apply:

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

6 (b) The title or possession of the coal is transferred back to the
7 owner or operator of the power plant after completion of the coal refining
8 process. For the purposes of this subdivision, "coal refining process"
9 means the application of a coal additive system that aids the reduction of
10 power plant emissions during the combustion of coal and the treatment of
11 flue gas.

12 18. Tangible personal property incorporated or fabricated into a
13 project described in paragraph 14 of this subsection, that is located
14 within the exterior boundaries of an Indian reservation for which the
15 owner, as defined in section 42-5075, of the project is an Indian tribe or
16 an affiliated Indian. For the purposes of this paragraph:

17 (a) "Affiliated Indian" means an individual Native American Indian
18 who is duly registered on the tribal rolls of the Indian tribe for whose
19 benefit the Indian reservation was established.

20 (b) "Indian reservation" means all lands that are within the limits
21 of areas set aside by the United States for the exclusive use and occupancy
22 of an Indian tribe by treaty, law or executive order and that are
23 recognized as Indian reservations by the United States department of the
24 interior.

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

29 19. The charges for the leasing or renting of space to make
30 attachments to utility poles as follows:

1 (a) By a person that is engaged in the business of providing or
2 furnishing electrical services or telecommunication services or that is a
3 cable operator.

4 (b) To a person that is engaged in the business of providing or
5 furnishing electrical services or telecommunication services or that is a
6 cable operator.

7 20. Until March 1, 2017, the gross proceeds of sales or gross income
8 derived from entry fees paid by participants for events that consist of a
9 run, walk, swim or bicycle ride or a similar event, or any combination of
10 these events.

11 21. The gross proceeds of sales or gross income derived from entry
12 fees paid by participants for events that are operated or conducted by
13 nonprofit organizations that are exempt from taxation under section
14 501(c)(3) of the internal revenue code and of which no part of the
15 organization's net earnings inures to the benefit of any private
16 shareholder or individual, if the event consists of a run, walk, swim or
17 bicycle ride or a similar event, or any combination of these events.

18 22. The gross proceeds of sales or gross income derived from sales
19 of machinery and equipment used directly for energy storage for later
20 electrical use. For the purposes of this paragraph:

21 (a) "Electric utility scale" means a person that is engaged in a
22 business activity described in section 42-5063, subsection A or such
23 person's equipment or wholesale electricity suppliers.

24 (b) "Energy storage" means commercially available technology for
25 electric utility scale that is capable of absorbing energy, storing energy
26 for a period of time and thereafter dispatching the energy and that uses
27 mechanical, chemical or thermal processes to store energy.

28 (c) "Machinery and equipment used directly" means all machinery and
29 equipment that are used for electric energy storage from the point of
30 receipt of such energy in order to facilitate storage of the electric
31 energy to the point where the electric energy is released.

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

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

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

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

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

19 4. Incarcerating or detaining in a privately operated prison, jail
20 or detention facility prisoners who are under the jurisdiction of the
21 United States, this state or any other state or a political subdivision of
22 this state or of any other state.

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

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

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

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

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

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

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

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

19 10. Transporting for hire persons by vehicle for hire drivers on
20 transactions involving vehicle for hire services as defined in section
21 28-9501.

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

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

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

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

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

8 G. A city, town or taxing jurisdiction shall not levy a transaction
9 privilege, sales, gross receipts, use, franchise or other similar tax or
10 fee, however denominated, on gross proceeds of sales or gross income
11 derived from over-the-top services. For the purposes of this subsection,
12 "over-the-top services" means audio or video programming services that are
13 received by the purchaser by means of an internet connection, regardless of
14 the technology used, that include linear or live programming and that are
15 generally considered comparable to programming provided by a radio or
16 television broadcast station and includes related on-demand programming
17 that is provided at no additional charge, regardless of whether the
18 services are provided independently or packaged with other audio or video
19 programming.

20 H. For the purposes of this section:

21 1. "Cable operator" has the same meaning prescribed in section 9-505
22 and includes a video service provider.

23 2. "Electrical services" means transmitting or distributing
24 electricity, electric lights, current or power over lines, wires or cables.

25 3. "Telecommunication services" means transmitting or relaying
26 sound, visual image, data, information, images or material over lines,
27 wires or cables by radio signal, light beam, telephone, telegraph or other
28 electromagnetic means.

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

1 Sec. 3. Section 42-6004, Arizona Revised Statutes, as amended by
2 Laws 2021, chapter 417, section 11, is amended to read:

3 42-6004. Exemption from municipal tax; definitions

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

6 1. Exhibition events in this state sponsored, conducted or operated
7 by a nonprofit organization that is exempt from taxation under section
8 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
9 organization is associated with a major league baseball team or a national
10 touring professional golfing association and no part of the organization's
11 net earnings inures to the benefit of any private shareholder or
12 individual. This paragraph does not apply to an organization that is
13 owned, managed or controlled, in whole or in part, by a major league
14 baseball team, or its owners, officers, employees or agents, or by a major
15 league baseball association or professional golfing association, or its
16 owners, officers, employees or agents, unless the organization conducted or
17 operated exhibition events in this state before January 1, 2018 that were
18 exempt from state transaction privilege tax under section 42-5073.

19 2. Interstate telecommunications services, which include that
20 portion of telecommunications services, such as subscriber line service,
21 allocable by federal law to interstate telecommunications service.

22 3. Sales of warranty or service contracts.

23 4. Sales of motor vehicles to nonresidents of this state for use
24 outside this state if the motor vehicle dealer ships or delivers the motor
25 vehicle to a destination outside this state.

26 5. Interest on finance contracts.

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

28 7. Orthodontic devices dispensed by a dental professional who is
29 licensed under title 32, chapter 11 to a patient as part of the practice of
30 dentistry.

1 8. Sales of internet access services to the person's subscribers and
2 customers. For the purposes of this paragraph:

3 (a) "Internet" means the computer and telecommunications facilities
4 that comprise the interconnected worldwide network of networks that employ
5 the transmission control protocol or internet protocol, or any predecessor
6 or successor protocol, to communicate information of all kinds by wire or
7 radio.

8 (b) "Internet access" means a service that enables users to access
9 content, information, electronic mail or other services over the internet.
10 Internet access does not include telecommunication services provided by a
11 common carrier.

12 9. The gross proceeds of sales or gross income retained by the
13 Arizona exposition and state fair board from ride ticket sales at the
14 annual Arizona state fair.

15 10. Leasing real property between affiliated companies, businesses,
16 persons or reciprocal insurers. For the purposes of this paragraph:

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

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

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

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

30 (e) "Reciprocal insurer" has the same meaning prescribed in section
31 20-762.

1 11. The gross proceeds of sales or gross income derived from a
2 contract for the installation, assembly, repair or maintenance of
3 machinery, equipment or other tangible personal property that is described
4 in section 42-5061, subsection B and that has independent functional
5 utility, pursuant to the following provisions:

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

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

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

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

18 (b) The deduction provided in this paragraph does not include gross
19 proceeds of sales or gross income from the portion of any contracting
20 activity that consists of the development of, or modification to, real
21 property in order to facilitate the installation, assembly, repair,
22 maintenance or removal of machinery, equipment or other tangible personal
23 property described in section 42-5061, subsection B.

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

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

1 (i) Assembling the machinery, equipment or other tangible personal
2 property.

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

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

8 (iv) Stabilizing or protecting the machinery, equipment or other
9 tangible personal property during operation by bolting, burying or
10 performing other dissimilar nonpermanent connections to either real
11 property or real property improvements.

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

16 13. Computer data center equipment sold to the owner, operator or
17 qualified colocation tenant of a computer data center that is certified by
18 the Arizona commerce authority under section 41-1519 or an authorized agent
19 of the owner, operator or qualified colocation tenant during the
20 qualification period for use in the qualified computer data center. For
21 the purposes of this paragraph, "computer data center", "computer data
22 center equipment", "qualification period" and "qualified colocation tenant"
23 have the same meanings prescribed in section 41-1519.

24 14. The gross proceeds of sales or gross income derived from a
25 contract with the owner of real property or improvements to real property
26 for the maintenance, repair, replacement or alteration of existing
27 property, except as specified in this paragraph. The gross proceeds of
28 sales or gross income derived from a de minimis amount of modification
29 activity does not subject the contract or any part of the contract to tax.
30 For the purposes of this paragraph:

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

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

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

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

27 (ii) Any special taxing district not specified in item (i) of this
28 subdivision if the district does not substantially engage in the
29 modification, maintenance, repair, replacement or alteration of surface or
30 subsurface improvements to land.

1 15. Monitoring services relating to an alarm system as defined in
2 section 32-101.

3 16. Tangible personal property, job printing or publications sold to
4 or purchased by, or tangible personal property leased, rented or licensed
5 for use to or by, a qualifying health sciences educational institution as
6 defined in section 42-5001.

7 17. The sale of coal.

8 18. Tangible personal property incorporated or fabricated into a
9 project described in paragraph 14 of this subsection, that is located
10 within the exterior boundaries of an Indian reservation for which the
11 owner, as defined in section 42-5075, of the project is an Indian tribe or
12 an affiliated Indian. For the purposes of this paragraph:

13 (a) "Affiliated Indian" means an individual Native American Indian
14 who is duly registered on the tribal rolls of the Indian tribe for whose
15 benefit the Indian reservation was established.

16 (b) "Indian reservation" means all lands that are within the limits
17 of areas set aside by the United States for the exclusive use and occupancy
18 of an Indian tribe by treaty, law or executive order and that are
19 recognized as Indian reservations by the United States department of the
20 interior.

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

25 19. The charges for the leasing or renting of space to make
26 attachments to utility poles as follows:

27 (a) By a person that is engaged in the business of providing or
28 furnishing electrical services or telecommunication services or that is a
29 cable operator.

30 (b) To a person that is engaged in the business of providing or
31 furnishing electrical services or telecommunication services or that is a
32 cable operator.

1 20. Until March 1, 2017, the gross proceeds of sales or gross income
2 derived from entry fees paid by participants for events that consist of a
3 run, walk, swim or bicycle ride or a similar event, or any combination of
4 these events.

5 21. The gross proceeds of sales or gross income derived from entry
6 fees paid by participants for events that are operated or conducted by
7 nonprofit organizations that are exempt from taxation under section
8 501(c)(3) of the internal revenue code and of which no part of the
9 organization's net earnings inures to the benefit of any private
10 shareholder or individual, if the event consists of a run, walk, swim or
11 bicycle ride or a similar event, or any combination of these events.

12 22. The gross proceeds of sales or gross income derived from sales
13 of machinery and equipment used directly for energy storage for later
14 electrical use. For the purposes of this paragraph:

15 (a) "Electric utility scale" means a person that is engaged in a
16 business activity described in section 42-5063, subsection A or such
17 person's equipment or wholesale electricity suppliers.

18 (b) "Energy storage" means commercially available technology for
19 electric utility scale that is capable of absorbing energy, storing energy
20 for a period of time and thereafter dispatching the energy and that uses
21 mechanical, chemical or thermal processes to store energy.

22 (c) "Machinery and equipment used directly" means all machinery and
23 equipment that are used for electric energy storage from the point of
24 receipt of such energy in order to facilitate storage of the electric
25 energy to the point where the electric energy is released.

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

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

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

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

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

15 4. Incarcerating or detaining in a privately operated prison, jail
16 or detention facility prisoners who are under the jurisdiction of the
17 United States, this state or any other state or a political subdivision of
18 this state or of any other state.

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

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

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

28 (b) The attributable amount is equal to the total amount of
29 development fees paid by the taxpayer or by a contractor providing services
30 to the taxpayer and the total development fees credited in exchange for the
31 construction of, contribution to or dedication of real property for
32 providing public infrastructure, public safety or other public services

1 necessary to the development. The real property must be the subject of the
2 development fees.

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

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

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

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

14 10. Transporting for hire persons by vehicle for hire drivers on
15 transactions involving vehicle for hire services as defined in section
16 28-9501.

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

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

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

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

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

4 G. A city, town or taxing jurisdiction shall not levy a transaction
5 privilege, sales, gross receipts, use, franchise or other similar tax or
6 fee, however denominated, on gross proceeds of sales or gross income
7 derived from over-the-top services. For the purposes of this subsection,
8 "over-the-top services" means audio or video programming services that are
9 received by the purchaser by means of an internet connection, regardless of
10 the technology used, that include linear or live programming and that are
11 generally considered comparable to programming provided by a radio or
12 television broadcast station and includes related on-demand programming
13 that is provided at no additional charge, regardless of whether the
14 services are provided independently or packaged with other audio or video
15 programming.

16 H. For the purposes of this section:

17 1. "Cable operator" has the same meaning prescribed in section 9-505
18 and includes a video service provider.

19 2. "Electrical services" means transmitting or distributing
20 electricity, electric lights, current or power over lines, wires or cables.

21 3. "Telecommunication services" means transmitting or relaying
22 sound, visual image, data, information, images or material over lines,
23 wires or cables by radio signal, light beam, telephone, telegraph or other
24 electromagnetic means.

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

28 Sec. 4. Repeal

29 Title 48, chapter 36, Arizona Revised Statutes, is repealed.

1 Sec. 5. Conditional enactment

2 Section 42-6004, Arizona Revised Statutes, as amended by Laws 2021,
3 chapter 417, section 11 and this act, becomes effective on the date
4 prescribed by Laws 2018, chapter 263, section 5 but only on the occurrence
5 of the condition prescribed by Laws 2018, chapter 263, section 5."

6 Amend title to conform

DAVID LIVINGSTON

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