

REFERENCE TITLE: TPT; prime contracting; senior housing

State of Arizona  
House of Representatives  
Fifty-seventh Legislature  
First Regular Session  
2025

# HB 2075

Introduced by  
Representative Gress

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-5075, Arizona Revised Statutes, is amended to  
3 read:

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

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

15 B. The tax base for the prime contracting classification is  
16 sixty-five percent of the gross proceeds of sales or gross income derived  
17 from the business. 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 42-1301. 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  
2 revenue. This paragraph shall apply for ten full consecutive calendar or  
3 fiscal 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 WHO~~  
17 ~~ARE AT LEAST~~ sixty-two years of age and that is owned by ~~a nonprofit~~  
18 ~~charitable organization that has qualified under section 501(c)(3) of the~~  
19 ~~internal revenue code~~, OR IS A WHOLLY OWNED SUBSIDIARY OF, A NONPROFIT  
20 CORPORATION THAT IS RECOGNIZED AS TAX EXEMPT PURSUANT TO SECTION 501(c)(3)  
21 OR 501(c)(4) OF THE INTERNAL REVENUE CODE, OR A LIMITED PARTNERSHIP OR  
22 LIMITED LIABILITY COMPANY IN WHICH THE GENERAL PARTNER OR THE MANAGING  
23 MEMBER, AS APPLICABLE, IS A NONPROFIT CORPORATION THAT IS RECOGNIZED AS  
24 TAX EXEMPT PURSUANT TO SECTION 501(c)(3) OR 501(c)(4) OF THE INTERNAL  
25 REVENUE CODE, OR A SINGLE-PURPOSE ENTITY THAT IS WHOLLY OWNED BY ONE OR  
26 MORE NONPROFIT CORPORATIONS RECOGNIZED AS TAX EXEMPT PURSUANT TO SECTION  
27 501(c)(3) OR 501(c)(4) OF THE INTERNAL REVENUE CODE. FOR THE PURPOSES OF  
28 THIS PARAGRAPH, "FEDERAL HOUSING SUBSIDY" INCLUDES THE UNITED STATES  
29 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 202 SUPPORTIVE HOUSING  
30 FOR THE ELDERLY PROGRAM AUTHORIZED BY THE HOUSING ACT OF 1959 (P.L.  
31 86-372; 73 STAT. 654; 12 UNITED STATES CODE SECTION 1701q, AS AMENDED) AND  
32 THE LOW-INCOME HOUSING TAX CREDIT PROGRAM AS DEFINED IN SECTION 42-13601.

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

40           14. The gross proceeds of sales or gross income derived from a  
41 contract entered into for the construction of a launch site, as defined in  
42 14 Code of Federal Regulations section 401.5.

43           15. The gross proceeds of sales or gross income derived from a  
44 contract entered into for the construction of a domestic violence shelter

1 that is owned and operated by a nonprofit charitable organization that has  
2 qualified under section 501(c)(3) of the internal revenue code.

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

6 17. The gross proceeds of sales or gross income received from  
7 contracts entered into before July 1, 2006 for constructing a state  
8 university research infrastructure project if the project has been  
9 reviewed by the joint committee on capital review before the university  
10 enters into the construction contract for the project. For the purposes  
11 of this paragraph, "research infrastructure" has the same meaning  
12 prescribed in section 15-1670.

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

21 19. Any amount of the gross proceeds of sales or gross income  
22 attributable to development fees that are incurred in relation to a  
23 contract for construction, development or improvement of real property and  
24 that are paid by a prime contractor or subcontractor. For the purposes of  
25 this 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 prime contractor or subcontractor, and the  
30 total development fees credited in exchange for the construction of,  
31 contribution to or dedication of real property for providing public  
32 infrastructure, public safety or other public services necessary to the  
33 development. The real property must be the subject of the development  
34 fees.

35 (c) "Development fees" means fees imposed to offset capital costs  
36 of providing public infrastructure, public safety or other public services  
37 to a development and authorized pursuant to section 9-463.05, section  
38 11-1102 or title 48 regardless of the jurisdiction to which the fees are  
39 paid.

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

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

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

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

(d) "Renewable energy" means usable energy, including electricity, fuels, gas and heat, produced through the conversion of energy provided by sunlight, water, wind, geothermal, heat, biomass, biogas, landfill gas or another nonfossil renewable resource.

21. The gross proceeds of sales or gross income derived from a contract to install containment structures. For the purposes of this paragraph, "containment structure" means a structure that prevents, monitors, controls or reduces noxious or harmful discharge into the environment.

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

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

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

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

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

3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The

1 department may also adopt rules that describe the transactions with  
2 respect to which a person is not entitled to rely solely on the  
3 information contained in the certificate provided in paragraph 1,  
4 subdivision (b) of this subsection but must instead obtain such additional  
5 information as required in order to be entitled to the deduction.

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

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

28 E. Amounts received by a contractor for a project are excluded from  
29 the contractor's gross proceeds of sales or gross income derived from the  
30 business if the person who hired the contractor executes and provides a  
31 certificate to the contractor stating that the person providing the  
32 certificate is a prime contractor and is liable for the tax under article  
33 1 of this chapter. The department shall prescribe the form of the  
34 certificate. If the contractor has reason to believe that the information  
35 contained on the certificate is erroneous or incomplete, the department  
36 may disregard the certificate. If the person who provides the certificate  
37 is not liable for the tax as a prime contractor, that person is  
38 nevertheless deemed to be the prime contractor in lieu of the contractor  
39 and is subject to the tax under this section on the gross receipts or  
40 gross proceeds received by the contractor.

41 F. Every person engaging or continuing in this state in the  
42 business of prime contracting or dealership of manufactured buildings  
43 shall present to the purchaser of such prime contracting or manufactured  
44 building a written receipt of the gross income or gross proceeds of sales



1 from such activity and shall separately state the taxes to be paid  
2 pursuant to this section.

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

9 H. For the purposes of section 42-5032.02, from and after  
10 September 30, 2013, the department shall separately account for revenues  
11 reported and collected under the prime contracting classification from any  
12 prime contractor engaged in the construction of any buildings and  
13 associated improvements that are for the benefit of a manufacturing  
14 facility. For the purposes of this subsection, "associated improvements"  
15 and "manufacturing facility" have the same meanings prescribed in section  
16 42-5032.02.

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

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

34 K. The portion of gross proceeds of sales or gross income  
35 attributable to the actual direct costs of providing architectural or  
36 engineering services that are incorporated in a contract is not subject to  
37 tax under this section. For the purposes of this subsection, "direct  
38 costs" means the portion of the actual costs that are directly expended in  
39 providing architectural or engineering services.

40 L. Operating a landfill or a solid waste disposal facility is not  
41 subject to taxation under this section, including filling, compacting and  
42 creating vehicle access to and from cell sites within the landfill.  
43 Constructing roads to a landfill or solid waste disposal facility and  
44 constructing cells within a landfill or solid waste disposal facility may  
45 be deemed prime contracting under this section.

1 M. The following apply in determining the taxable situs of sales of  
2 manufactured buildings:

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

6 2. For sales in this state where the manufactured building dealer  
7 does not contract to deliver the building to a setup site or does not  
8 perform the setup, the taxable situs is the location of the dealership  
9 where the building is delivered to the buyer.

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

14 N. The gross proceeds of sales or gross income attributable to a  
15 written contract for design phase services or professional services,  
16 executed before modification begins and with terms, conditions and pricing  
17 of all of these services separately stated in the contract from those for  
18 construction phase services, is not subject to tax under this section,  
19 regardless of whether the services are provided sequential to or  
20 concurrent with prime contracting activities that are subject to tax under  
21 this section. This subsection does not include the gross proceeds of  
22 sales or gross income attributable to construction phase services. For  
23 the purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

19 (i) Master schedule updates.

20 (ii) Modification work cash flow projection updates.

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

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

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

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

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

30 (j) Administration or supervision of any other activities for which  
31 a prime contractor receives a certificate for payment or certificate for  
32 final payment based on the progress of modification work performed on the  
33 project.

34 2. "Design phase services" means services for developing and  
35 completing a design for a project that are not construction phase  
36 services, including the following:

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

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

43 (c) Preparing drawings and specifications for architectural program  
44 documents, schematic design documents, design development documents,

1 modification work documents or documents that identify the scope of or  
2 materials for the project.

3 (d) Preparing an initial schedule for the project, excluding the  
4 preparation of updates to the master schedule after modification work has  
5 begun.

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

9 (i) Labor, materials, machinery and equipment, tools, water, heat,  
10 utilities, transportation and other facilities and services used in the  
11 execution and completion of modification work, regardless of whether they  
12 are temporary or permanent or whether they are incorporated in the  
13 modifications.

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

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

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

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

24 (vi) Any bond and insurance premiums.

25 (vii) Any applicable taxes.

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

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

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

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

41 0. The gross proceeds of sales or gross income derived from a  
42 contract with the owner of real property or improvements to real property  
43 for the maintenance, repair, replacement or alteration of existing  
44 property is not subject to tax under this section if the contract does not  
45 include modification activities, except as specified in this subsection.

1 The gross proceeds of sales or gross income derived from a de minimis  
2 amount of modification activity does not subject the contract or any part  
3 of the contract to tax under this section. For the purposes of this  
4 subsection:

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

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

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

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

32 2. Any special taxing district not specified in paragraph 1 of this  
33 subsection if the district does not substantially engage in the  
34 modification, maintenance, repair, replacement or alteration of surface or  
35 subsurface improvements to land.

36 Q. Notwithstanding subsection R, paragraph 10 of this section, a  
37 person owning real property who enters into a contract for sale of the  
38 real property, who is responsible to the new owner of the property for  
39 modifications made to the property in the period subsequent to the  
40 transfer of title and who receives a consideration for the modifications  
41 is considered a prime contractor solely for purposes of taxing the gross  
42 proceeds of sale or gross income received for the modifications made  
43 subsequent to the transfer of title. The original owner's gross proceeds  
44 of sale or gross income received for the modifications shall be determined  
45 according to the following methodology:

1           1. If any part of the contract for sale of the property specifies  
2 amounts to be paid to the original owner for the modifications to be made  
3 in the period subsequent to the transfer of title, the amounts are  
4 included in the original owner's gross proceeds of sale or gross income  
5 under this section. Proceeds from the sale of the property that are  
6 received after transfer of title and that are unrelated to the  
7 modifications made subsequent to the transfer of title are not considered  
8 gross proceeds of sale or gross income from the modifications.

9           2. If the original owner enters into an agreement separate from the  
10 contract for sale of the real property providing for amounts to be paid to  
11 the original owner for the modifications to be made in the period  
12 subsequent to the transfer of title to the property, the amounts are  
13 included in the original owner's gross proceeds of sale or gross income  
14 received for the modifications made subsequent to the transfer of title.

15           3. If the original owner is responsible to the new owner for  
16 modifications made to the property in the period subsequent to the  
17 transfer of title and derives any gross proceeds of sale or gross income  
18 from the project subsequent to the transfer of title other than a delayed  
19 disbursement from escrow unrelated to the modifications, it is presumed  
20 that the amounts are received for the modifications made subsequent to the  
21 transfer of title unless the contrary is established by the owner through  
22 its books, records and papers kept in the regular course of business.

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

25           R. For the purposes of this section:

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

28           (a) For existing property that is properly classified as class two  
29 property under section 42-12002, paragraph 1, subdivision (c) or paragraph  
30 2, subdivision (c) and that is used for residential purposes, class three  
31 property under section 42-12003 or class four property under section  
32 42-12004, this paragraph does not apply if the contract amount is more  
33 than twenty-five percent of the most recent full cash value established  
34 under chapter 13, article 2 of this title as of the date of any bid for  
35 the work or the date of the contract, whichever value is higher.

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

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

43           (d) If a project for which the owner and the person performing the  
44 work reasonably believed, at the inception of the contract, would be  
45 treated as an alteration under this paragraph and, on completion of the

1 project, the project exceeded the applicable threshold described in either  
2 subdivision (a) or (b) of this paragraph by not more than twenty-five  
3 percent of the applicable threshold for any reason, the work performed  
4 under the contract qualifies as an alteration.

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

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

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

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

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

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

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

27 (b) Supervises, performs or coordinates the excavation and  
28 completion of site improvements or the setup of a manufactured building,  
29 including the contracting, if any, with any subcontractor or specialty  
30 contractor for the completion of the contract.

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

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

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

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

41 7. "Modify" means to make a modification or cause a modification to  
42 be made.

43 8. "Owner" means the person that holds title to the real property  
44 or improvements to real property that is the subject of the work, as well  
45 as an agent of the title holder and any person with the authority to

1 perform or authorize work on the real property or improvements, including  
 2 a tenant and a property manager. For the purposes of subsection 0 of this  
 3 section, a person who is hired by a general contractor that is hired by an  
 4 owner, or a subcontractor of a general contractor that is hired by an  
 5 owner, is considered to be hired by the owner.

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

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

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

27 12. "Sale of a used manufactured building" does not include a lease  
 28 of a used manufactured building.

29 Sec. 2. Retroactivity

30 This act applies retroactively to taxable periods beginning from and  
 31 after December 31, 2023.