

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1068

AN ACT

AMENDING SECTIONS 42-5075 AND 42-6004, ARIZONA REVISED STATUTES; RELATING TO
STATE AND LOCAL 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 business
7 of prime contracting and dealership of manufactured buildings. The sale of a
8 used manufactured building is not taxable under this chapter.

9 B. The tax base for the prime contracting classification is sixty-five
10 per cent of the gross proceeds of sales or gross income derived from the
11 business. The following amounts shall be deducted from the gross proceeds of
12 sales or gross income before computing the tax base:

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

15 2. Sales and installation of groundwater measuring devices required
16 under section 45-604 and groundwater monitoring wells required by law,
17 including monitoring wells installed for acquiring information for a permit
18 required by law.

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

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

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

44 6. The gross proceeds of sales or gross income from a contract to
45 provide for one or more of the following actions, or a contract for site

1 preparation, constructing, furnishing or installing machinery, equipment or
2 other tangible personal property, including structures necessary to protect
3 exempt incorporated materials or installed machinery or equipment, and
4 tangible personal property incorporated into the project, to perform one or
5 more of the following actions in response to a release or suspected release
6 of a hazardous substance, pollutant or contaminant from a facility to the
7 environment, unless the release was authorized by a permit issued by a
8 governmental authority:

9 (a) Actions to monitor, assess and evaluate such a release or a
10 suspected release.

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

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

16 (d) Pumping and treatment or in situ treatment of contaminated
17 groundwater or surface water to reduce the concentration or toxicity of a
18 contaminant.

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

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

28 7. The gross proceeds of sales or gross income that is derived from a
29 contract entered into for the installation, assembly, repair or maintenance
30 of machinery, equipment or other tangible personal property that is deducted
31 from the tax base of the retail classification pursuant to section 42-5061,
32 subsection B, or that is exempt from use tax pursuant to section 42-5159,
33 subsection B, and that does not become a permanent attachment to a building,
34 highway, road, railroad, excavation or manufactured building or other
35 structure, project, development or improvement. If the ownership of the
36 realty is separate from the ownership of the machinery, equipment or tangible
37 personal property, the determination as to permanent attachment shall be made
38 as if the ownership were the same. The deduction provided in this paragraph
39 does not include gross proceeds of sales or gross income from that portion of
40 any contracting activity which consists of the development of, or
41 modification to, real property in order to facilitate the installation,
42 assembly, repair, maintenance or removal of machinery, equipment or other
43 tangible personal property that is deducted from the tax base of the retail
44 classification pursuant to section 42-5061, subsection B or that is exempt

1 from use tax pursuant to section 42-5159, subsection B. For the purposes of
2 this paragraph, "permanent attachment" means at least one of the following:

3 (a) To be incorporated into real property.

4 (b) To become so affixed to real property that it becomes a part of
5 the real property.

6 (c) To be so attached to real property that removal would cause
7 substantial damage to the real property from which it is removed.

8 8. THROUGH DECEMBER 31, 2009, the gross proceeds of sales or gross
9 income received from a contract for constructing any lake facility
10 development in a commercial enhancement reuse district that is designated
11 pursuant to section 9-499.08 if the prime contractor maintains the following
12 records in a form satisfactory to the department and to the city or town in
13 which the property is located:

14 (a) The certificate of qualification of the lake facility development
15 issued by the city or town pursuant to section 9-499.08, subsection D.

16 (b) All state and local transaction privilege tax returns for the
17 period of time during which the prime contractor received gross proceeds of
18 sales or gross income from a contract to construct a lake facility
19 development in a designated commercial enhancement reuse district, showing
20 the amount exempted from state and local taxation.

21 (c) Any other information that the department considers to be
22 necessary.

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

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

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

28 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
29 (c), (d), (e), (f), (i), (j) or (l).

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

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

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

44 12. The gross proceeds of sales or gross income that is derived from
45 the installation, assembly, repair or maintenance of clean rooms that are

1 deducted from the tax base of the retail classification pursuant to section
2 42-5061, subsection B, paragraph 17.

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

9 14. For taxable periods beginning from and after December 31, 1996 and
10 ending before January 1, 2011, the gross proceeds of sales or gross income
11 derived from a contract to provide and install a solar energy device. The
12 deduction shall not exceed five thousand dollars for each contract. Before
13 deducting any amount under this paragraph, the contractor shall register with
14 the department as a solar energy contractor. By registering, the contractor
15 acknowledges that it will make its books and records relating to sales of
16 solar energy devices available to the department for examination.

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

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

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

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

33 19. The gross proceeds of sales or gross income received from a
34 contract for the construction of any building, or other structure, project,
35 development or improvement owned by a qualified business under section
36 41-1516 for harvesting or the initial processing of qualifying forest
37 products removed from qualifying projects as defined in section 41-1516 if
38 actual construction begins before January 1, 2010. To qualify for this
39 deduction, the prime contractor must obtain a letter of qualification from
40 the department of commerce before beginning work under the contract.

41 20. The gross proceeds of sales or gross income received from a
42 contract for the construction of any building or other structure associated
43 with motion picture production in this state. To qualify for the deduction,
44 at the time the contract is entered into the motion picture production
45 company must present to the prime contractor its certificate that is issued

1 pursuant to section 42-5009, subsection H and that establishes its
2 qualification for the deduction.

3 21. ANY AMOUNT OF THE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM A
4 CONTRACT THAT CONSTITUTES DEVELOPMENT OR IMPACT FEES PAID TO THE STATE OR A
5 LOCAL GOVERNMENT TO OFFSET GOVERNMENTAL COSTS OF PROVIDING PUBLIC
6 INFRASTRUCTURE, PUBLIC SAFETY AND OTHER PUBLIC SERVICES TO A DEVELOPMENT.

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

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

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

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

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

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

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

1 D. Subcontractors or others who perform services in respect to any
2 improvement, building, highway, road, railroad, excavation, manufactured
3 building or other structure, project, development or improvement are not
4 subject to tax if they can demonstrate that the job was within the control of
5 a prime contractor or contractors or a dealership of manufactured buildings
6 and that the prime contractor or dealership is liable for the tax on the
7 gross income, gross proceeds of sales or gross receipts attributable to the
8 job and from which the subcontractors or others were paid.

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

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

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

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

43 I. The gross proceeds of sales or gross income derived from
44 landscaping activities are subject to tax under this section. Landscaping
45 includes installing lawns, grading or leveling ground, installing gravel or

1 boulders, planting trees and other plants, felling trees, removing or
2 mulching tree stumps, removing other imbedded plants, building or modifying
3 irrigation berms, repairing sprinkler or watering systems, installing
4 railroad ties and installing underground sprinkler or watering systems.

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

11 K. For the purposes of this section:

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

13 2. "Contractor" is synonymous with the term "builder" and means any
14 person, firm, partnership, corporation, association or other organization, or
15 a combination of any of them, that undertakes to or offers to undertake to,
16 or purports to have the capacity to undertake to, or submits a bid to, or
17 does personally or by or through others, construct, alter, repair, add to,
18 subtract from, improve, move, wreck or demolish any building, highway, road,
19 railroad, excavation, manufactured building or other structure, project,
20 development or improvement, or to do any part of such a project, including
21 the erection of scaffolding or other structure or works in connection with
22 such a project, and includes subcontractors and specialty contractors. For
23 all purposes of taxation or deduction, this definition shall govern without
24 regard to whether or not such contractor is acting in fulfillment of a
25 contract.

26 3. "Dealership of manufactured buildings" means a dealer who either:

27 (a) Is licensed pursuant to title 41, chapter 16 and who sells at
28 retail manufactured buildings.

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

33 4. "Manufactured building" means a manufactured home, mobile home or
34 factory-built building, as defined in section 41-2142.

35 5. "Prime contracting" means engaging in business as a prime
36 contractor.

37 6. "Prime contractor" means a contractor who supervises, performs or
38 coordinates the construction, alteration, repair, addition, subtraction,
39 improvement, movement, wreckage or demolition of any building, highway, road,
40 railroad, excavation, manufactured building or other structure, project,
41 development or improvement including the contracting, if any, with any
42 subcontractors or specialty contractors and who is responsible for the
43 completion of the contract.

44 7. "Sale of a used manufactured building" does not include a lease of
45 a used manufactured building.

1 Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to read:
2 42-6004. Exemption from municipal tax

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

5 1. Exhibition events in this state sponsored, conducted or operated by
6 a nonprofit organization that is exempt from taxation under section
7 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
8 organization is associated with a major league baseball team or a national
9 touring professional golfing association and no part of the organization's
10 net earnings inures to the benefit of any private shareholder or individual.

11 2. Interstate telecommunications services, which include that portion
12 of telecommunications services, such as subscriber line service, allocable by
13 federal law to interstate telecommunications service.

14 3. Sales of warranty or service contracts.

15 4. Sales of motor vehicles to nonresidents of this state for use
16 outside this state if the vendor ships or delivers the motor vehicle to a
17 destination outside this state.

18 5. Interest on finance contracts.

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

20 7. THROUGH DECEMBER 31, 2009, the gross proceeds of sales or gross
21 income received from a contract from constructing any lake facility
22 development in a commercial enhancement reuse district established pursuant
23 to section 9-499.08.

24 8. Sales of food or other items purchased with United States
25 department of agriculture food stamp coupons issued under the food stamp act
26 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section
27 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,
28 section 4302; 42 United States Code section 1786) but may impose such a tax
29 on other sales of food. If a city, town or special taxing district exempts
30 sales of food from its tax or imposes a different transaction privilege rate
31 on the gross proceeds of sales or gross income from sales of food and nonfood
32 items, it shall use the definition of food prescribed by rule adopted by the
33 department pursuant to section 42-5106.

34 9. Sales of internet access services to the person's subscribers and
35 customers. For the purposes of this paragraph:

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

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

44 B. A city, town or other taxing jurisdiction shall not levy a
45 transaction privilege, sales, use, franchise or other similar tax or fee,

1 however denominated, on natural gas or liquefied petroleum gas used to propel
2 a motor vehicle.

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

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

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

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

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

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

23 6. THROUGH DECEMBER 31, 2009, AND except as provided in section
24 42-6104, a contract from constructing any lake facility development in a
25 commercial enhancement reuse district established pursuant to section
26 9-499.08.

27 7. DEVELOPMENT OR IMPACT FEES INCLUDED IN A CONSTRUCTION OR
28 DEVELOPMENT CONTRACT FOR PAYMENT TO THE STATE OR A LOCAL GOVERNMENT TO OFFSET
29 GOVERNMENTAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY AND
30 OTHER PUBLIC SERVICES TO A DEVELOPMENT.

31 D. A city, town or other taxing jurisdiction shall not levy a
32 transaction privilege, sales, use, franchise or other similar tax or fee,
33 however denominated, in excess of one-tenth of one per cent of the value of
34 the entire product mined, smelted, extracted, refined, produced or prepared
35 for sale, profit or commercial use, on persons engaged in the business of
36 mineral processing, except to the extent that the tax is computed on the
37 gross proceeds or gross income from sales at retail.

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

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

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

1 Sec. 3. Legislative intent

2 The provisions of this act are not intended to affect and shall not be
3 cited or considered in the construction or interpretation of section 42-5075,
4 Arizona Revised Statutes, or sections 415, 416 or 417, model city tax code as
5 adopted in the ordinance of Arizona cities and towns for taxable periods
6 prior to the effective date of this act.

7 Sec. 4. Effective date

8 This act is effective for taxable periods beginning from and after
9 August 31, 2006.