

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2535

AN ACT

AMENDING SECTIONS 42-5075 AND 42-6004, ARIZONA REVISED STATUTES; RELATING TO
PRIME CONTRACTING CLASSIFICATION.

(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. Sales for
8 resale to another dealership of manufactured buildings 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 proceeds from alteration and repairs to a used
12 manufactured building are taxable under this section.

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

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

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

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

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

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

1 for ten full consecutive calendar or fiscal years after the start of initial
2 construction.

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

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

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

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

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

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

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

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

1 maintenance or removal of machinery, equipment or other tangible personal
2 property that is deducted from the tax base of the retail classification
3 pursuant to section 42-5061, subsection B or that is exempt from use tax
4 pursuant to section 42-5159, subsection B. For the purposes of this
5 paragraph,--:

6 (a) "INDEPENDENT FUNCTIONAL UTILITY" MEANS THAT THE MACHINERY,
7 EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY CAN SUBSTANTIALLY PERFORM ITS
8 FUNCTION WITHOUT ATTACHMENT TO REAL PROPERTY. ATTACHMENT TO REAL PROPERTY
9 SHALL NOT BE DETERMINED BASED ON THE SIZE OR USEFUL LIFE OF THE MACHINERY,
10 EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY AND MUST INCLUDE MORE THAN:

11 (i) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL
12 PROPERTY.

13 (ii) CONNECTING ITEMS OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE
14 PERSONAL PROPERTY TO EACH OTHER.

15 (iii) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL
16 PROPERTY, WHETHER AS AN INDIVIDUAL ITEM OR AS A SYSTEM OF ITEMS, TO WATER,
17 POWER, GAS, COMMUNICATION OR OTHER SERVICES.

18 (iv) BOLTING DOWN OR BURYING THE MACHINERY, EQUIPMENT OR OTHER
19 TANGIBLE PERSONAL PROPERTY OR OTHERWISE AFFIXING THE MACHINERY, EQUIPMENT OR
20 OTHER TANGIBLE PERSONAL PROPERTY TO REAL PROPERTY OR REAL PROPERTY
21 IMPROVEMENTS TO STABILIZE OR PROTECT THE MACHINERY, EQUIPMENT OR OTHER
22 TANGIBLE PERSONAL PROPERTY DURING OPERATION.

23 (b) "Permanent attachment" means at least one of the following, EXCEPT
24 THAT PERMANENT ATTACHMENT DOES NOT INCLUDE MACHINERY, EQUIPMENT OR OTHER
25 TANGIBLE PERSONAL PROPERTY THAT HAS AN INDEPENDENT FUNCTIONAL UTILITY:

26 (i) To be incorporated into real property.

27 (ii) To become so affixed to real property that it becomes a part of
28 the real property.

29 (iii) To be so attached to real property that removal would cause
30 substantial damage to the real property from which it is removed.

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

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

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

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

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

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

43 10. The gross proceeds of sales or gross income that is derived from a
44 contract entered into with a person who is engaged in the commercial
45 production of livestock, livestock products or agricultural, horticultural,

1 viticultural or floricultural crops or products in this state for the
2 construction, alteration, repair, improvement, movement, wrecking or
3 demolition or addition to or subtraction from any building, highway, road,
4 excavation, manufactured building or other structure, project, development or
5 improvement used directly and primarily to prevent, monitor, control or
6 reduce air, water or land pollution.

7 11. The gross proceeds of sales or gross income that is derived from
8 the installation, assembly, repair or maintenance of clean rooms that are
9 deducted from the tax base of the retail classification pursuant to section
10 42-5061, subsection B, paragraph 16.

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

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

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

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

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

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

40 18. The gross proceeds of sales or gross income received from a
41 contract for the construction of any building, or other structure, project,
42 development or improvement owned by a qualified business under section
43 41-1516 for harvesting or processing qualifying forest products removed from
44 qualifying projects as defined in section 41-1516 if actual construction
45 begins before January 1, 2024. To qualify for this deduction, the prime

1 contractor must obtain a letter of qualification from the Arizona commerce
2 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 contract
5 for construction, development or improvement of real property and that are
6 paid by a prime contractor or subcontractor. For the purposes of this
7 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 total
12 development fees credited in exchange for the construction of, contribution
13 to or dedication of real property for providing public infrastructure, public
14 safety or other public services necessary to the development. The real
15 property must be the subject of the development fees.

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

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

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

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

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

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

38 3. The department may prescribe a form for the certificate described
39 in paragraph 1, subdivision (b) of this subsection. The department may also
40 adopt rules that describe the transactions with respect to which a person is
41 not entitled to rely solely on the information contained in the certificate
42 provided in paragraph 1, subdivision (b) of this subsection but must instead
43 obtain such additional information as required in order to be entitled to the
44 deduction.

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

15 D. Subcontractors or others who perform services in respect to any
16 improvement, building, highway, road, railroad, excavation, manufactured
17 building or other structure, project, development or improvement are not
18 subject to tax if they can demonstrate that the job was within the control of
19 a prime contractor or contractors or a dealership of manufactured buildings
20 and that the prime contractor or dealership is liable for the tax on the
21 gross income, gross proceeds of sales or gross receipts attributable to the
22 job and from which the subcontractors or others were paid.

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

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

41 G. For the purposes of section 42-5032.01, the department shall
42 separately account for revenues collected under the prime contracting
43 classification from any prime contractor engaged in the preparation or
44 construction of a multipurpose facility, and related infrastructure, that is

1 owned, operated or leased by the tourism and sports authority pursuant to
2 title 5, chapter 8.

3 H. For the purposes of section 42-5032.02, from and after September
4 30, 2013, the department shall separately account for revenues reported and
5 collected under the prime contracting classification from any prime
6 contractor engaged in the construction of any buildings and associated
7 improvements that are for the benefit of a manufacturing facility. For the
8 purposes of this subsection, "associated improvements" and "manufacturing
9 facility" have the same meanings prescribed in section 42-5032.02.

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

20 J. The gross proceeds of sales or gross income derived from
21 landscaping activities are subject to tax under this section. Landscaping
22 includes installing lawns, grading or leveling ground, installing gravel or
23 boulders, planting trees and other plants, felling trees, removing or
24 mulching tree stumps, removing other imbedded plants, building or modifying
25 irrigation berms, repairing sprinkler or watering systems, installing
26 railroad ties and installing underground sprinkler or watering systems.

27 K. The portion of gross proceeds of sales or gross income attributable
28 to the actual direct costs of providing architectural or engineering services
29 that are incorporated in a contract is not subject to tax under this section.
30 For the purposes of this subsection, "direct costs" means the portion of the
31 actual costs that are directly expended in providing architectural or
32 engineering services.

33 L. Operating a landfill or a solid waste disposal facility is not
34 subject to taxation under this section, including filling, compacting and
35 creating vehicle access to and from cell sites within the landfill.
36 Constructing roads to a landfill or solid waste disposal facility and
37 constructing cells within a landfill or solid waste disposal facility may be
38 deemed prime contracting under this section.

39 M. The following apply to manufactured buildings:

40 1. For sales in this state where the dealership of manufactured
41 buildings contracts to deliver the building to a setup site or to perform the
42 setup in this state, the taxable situs is the setup site.

43 2. For sales in this state where the dealership of manufactured
44 buildings does not contract to deliver the building to a setup site or does

1 not perform the setup, the taxable situs is the location of the dealership
2 where the building is delivered to the buyer.

3 3. For sales in this state where the dealership of manufactured
4 buildings contracts to deliver the building to a setup site that is outside
5 this state, the situs is outside this state and the transaction is excluded
6 from tax.

7 N. The gross proceeds of sales or gross income attributable to a
8 separate, written design phase services contract or professional services
9 contract, executed before modification begins, is not subject to tax under
10 this section, regardless of whether the services are provided sequential to
11 or concurrent with prime contracting activities that are subject to tax under
12 this section. This subsection does not include the gross proceeds of sales
13 or gross income attributable to construction phase services. For the
14 purposes of this subsection:

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

17 (a) Administration or supervision of any modification performed on the
18 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 list"
23 means minor items of modification work performed after substantial completion
24 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 this
33 item, "guaranteed maximum price" means the amount guaranteed to be the
34 maximum amount due to a prime contractor for the performance of all
35 modification work for the project.

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

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

43 (e) Inspection to determine the dates of substantial completion or
44 final completion.

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

7 (g) Preparation of status reports after modification work has begun
8 detailing the progress of work performed, including preparation of any of the
9 following:

10 (i) Master schedule updates.

11 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

24 2. "Design phase services" means services for developing and
25 completing a design for a project that are not construction phase services,
26 including the following:

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

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

33 (c) Preparing drawings and specifications for architectural program
34 documents, schematic design documents, design development documents,
35 modification work documents or documents that identify the scope of or
36 materials for the project.

37 (d) Preparing an initial schedule for the project, excluding the
38 preparation of updates to the master schedule after modification work has
39 begun.

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

43 (i) Labor, materials, machinery and equipment, tools, water, heat,
44 utilities, transportation and other facilities and services used in the
45 execution and completion of modification work, regardless of whether they are

1 temporary or permanent or whether they are incorporated in the
2 modifications.

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

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

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

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

12 (vi) Any bond and insurance premiums.

13 (vii) Any applicable taxes.

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

16 (f) Reviewing and evaluating cost estimates and project documents to
17 prepare recommendations on site use, site improvements, selection of
18 materials, building systems and equipment, modification feasibility,
19 availability of materials and labor, local modification activity as related
20 to schedules and time requirements for modification work.

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

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

28 0. Notwithstanding subsection P, paragraph 8 of this section, a person
29 owning real property who enters into a contract for sale of the real
30 property, who is responsible to the new owner of the property for
31 modifications made to the property in the period subsequent to the transfer
32 of title and who receives a consideration for the modifications is considered
33 a prime contractor solely for purposes of taxing the gross proceeds of sale
34 or gross income received for the modifications made subsequent to the
35 transfer of title. The original owner's gross proceeds of sale or gross
36 income received for the modifications shall be determined according to the
37 following methodology:

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

1 2. If the original owner enters into an agreement separate from the
2 contract for sale of the real property providing for amounts to be paid to
3 the original owner for the modifications to be made in the period subsequent
4 to the transfer of title to the property, the amounts are included in the
5 original owner's gross proceeds of sale or gross income received for the
6 modifications made subsequent to the transfer of title.

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

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

17 P. For the purposes of this section:

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

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

30 3. "Dealership of manufactured buildings" means a dealer who either:
31 (a) Is licensed pursuant to title 41, chapter 16 and who sells
32 manufactured buildings to the final consumer.

33 (b) Supervises, performs or coordinates the excavation and completion
34 of site improvements, setup or moving of a manufactured building including
35 the contracting, if any, with any subcontractor or specialty contractor for
36 the completion of the contract.

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

39 5. "Modification" means construction, alteration, repair, addition,
40 subtraction, improvement, movement, wreckage or demolition.

41 6. "Modify" means to construct, alter, repair, add to, subtract from,
42 improve, move, wreck or demolish.

43 7. "Prime contracting" means engaging in business as a prime
44 contractor.

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

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

14 Sec. 2. Section 42-6004, Arizona Revised Statutes, is amended to read:
15 42-6004. Exemption from municipal tax

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

18 1. Exhibition events in this state sponsored, conducted or operated by
19 a nonprofit organization that is exempt from taxation under section
20 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
21 organization is associated with a major league baseball team or a national
22 touring professional golfing association and no part of the organization's
23 net earnings inures to the benefit of any private shareholder or individual.

24 2. Interstate telecommunications services, which include that portion
25 of telecommunications services, such as subscriber line service, allocable by
26 federal law to interstate telecommunications service.

27 3. Sales of warranty or service contracts.

28 4. Sales of motor vehicles to nonresidents of this state for use
29 outside this state if the vendor ships or delivers the motor vehicle to a
30 destination outside this state.

31 5. Interest on finance contracts.

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

33 7. Sales of food or other items purchased with United States
34 department of agriculture food stamp coupons issued under the food stamp act
35 of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section
36 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661,
37 section 4302; 42 United States Code section 1786) but may impose such a tax
38 on other sales of food. If a city, town or special taxing district exempts
39 sales of food from its tax or imposes a different transaction privilege rate
40 on the gross proceeds of sales or gross income from sales of food and nonfood
41 items, it shall use the definition of food prescribed by rule adopted by the
42 department pursuant to section 42-5106.

43 8. Sales of internet access services to the person's subscribers and
44 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 or
4 successor protocol, to communicate information of all kinds by wire or radio.

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

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

12 10. Through August 31, 2014, sales of Arizona centennial medallions by
13 the historical advisory commission.

14 11. The gross proceeds of sales or gross income derived from a
15 commercial lease in which a reciprocal insurer or a corporation leases real
16 property to an affiliated corporation. For the purposes of this paragraph:

17 (a) "Affiliated corporation" means a corporation that meets one of the
18 following conditions:

19 (i) The corporation owns or controls at least eighty per cent of the
20 lessor.

21 (ii) The corporation is at least eighty per cent owned or controlled
22 by the lessor.

23 (iii) The corporation is at least eighty per cent owned or controlled
24 by a corporation that also owns or controls at least eighty per cent of the
25 lessor.

26 (iv) The corporation is at least eighty per cent owned or controlled
27 by a corporation that is at least eighty per cent owned or controlled by a
28 reciprocal insurer.

29 (b) For the purposes of subdivision (a) of this paragraph, ownership
30 and control are determined by reference to the voting shares of a
31 corporation.

32 (c) "Reciprocal insurer" has the same meaning prescribed in section
33 20-762.

34 12. The gross proceeds of sales or gross income derived from a
35 commercial lease in which a corporation leases real property to a corporation
36 of which at least eighty per cent of the voting shares of each corporation
37 are owned by the same shareholders.

38 13. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT
39 ENTERED INTO FOR THE INSTALLATION, ASSEMBLY, REPAIR OR MAINTENANCE OF
40 MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS DEDUCTED
41 FROM THE TAX BASE OF THE RETAIL CLASSIFICATION PURSUANT TO SECTION 42-5061,
42 SUBSECTION B OR THAT IS EXEMPT FROM USE TAX PURSUANT TO SECTION 42-5159,
43 SUBSECTION B, AND THAT DOES NOT BECOME A PERMANENT ATTACHMENT TO A BUILDING,
44 HIGHWAY, ROAD, RAILROAD, EXCAVATION OR MANUFACTURED BUILDING OR OTHER
45 STRUCTURE, PROJECT, DEVELOPMENT OR IMPROVEMENT. IF THE OWNERSHIP OF THE

1 REALTY IS SEPARATE FROM THE OWNERSHIP OF THE MACHINERY, EQUIPMENT OR OTHER
2 TANGIBLE PERSONAL PROPERTY, THE DETERMINATION AS TO PERMANENT ATTACHMENT
3 SHALL BE MADE AS IF THE OWNERSHIP WERE THE SAME. THE DEDUCTION PROVIDED IN
4 THIS PARAGRAPH DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS INCOME
5 DERIVED FROM THAT PORTION OF ANY CONTRACTING ACTIVITY THAT CONSISTS OF THE
6 DEVELOPMENT OF, OR MODIFICATION TO, REAL PROPERTY TO FACILITATE THE
7 INSTALLATION, ASSEMBLY, REPAIR, MAINTENANCE OR REMOVAL OF MACHINERY,
8 EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS DEDUCTED FROM THE TAX
9 BASE OF THE RETAIL CLASSIFICATION PURSUANT TO SECTION 42-5061, SUBSECTION B
10 OR THAT IS EXEMPT FROM USE TAX PURSUANT TO SECTION 42-5159, SUBSECTION B.
11 MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT HAS INDEPENDENT
12 FUNCTIONAL UTILITY IS NOT A PERMANENT ATTACHMENT. FOR THE PURPOSES OF THIS
13 PARAGRAPH, "PERMANENT ATTACHMENT" AND "INDEPENDENT FUNCTIONAL UTILITY" HAVE
14 THE SAME MEANINGS PRESCRIBED IN SECTION 42-5075.

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

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

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

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

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

33 4. Incarcerating or detaining in a privately operated prison, jail or
34 detention facility prisoners who are under the jurisdiction of the United
35 States, this state or any other state or a political subdivision of this
36 state or of any other state.

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

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

43 (a) The attributable amount shall not exceed the value of the
44 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 providing
5 public infrastructure, public safety or other public services necessary to
6 the development. The real property must be the subject of the development
7 fees.

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

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

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

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

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

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

28 Sec. 3. Declaration of intent

29 It is the intent of the legislature to clarify that for purposes of the
30 deduction from the tax base of the retail classification under section
31 42-5061, Arizona Revised Statutes, and the exemption from use tax under
32 section 42-5159, Arizona Revised Statutes, and section 42-5075, subsection B,
33 paragraph 7, Arizona Revised Statutes, as amended by this act, is construed
34 consistent with this act beginning from and after June 30, 1996.

35 Sec. 4. Retroactivity; refund

36 A. This act applies retroactively to taxable periods beginning from
37 and after June 30, 1996.

38 B. Any claim for refund of tax based on the retroactive application of
39 this act shall be considered timely filed under section 42-1106, Arizona
40 Revised Statutes, if the claim is filed with the department of revenue on or
41 before December 31, 2013 pursuant to section 42-1118, Arizona Revised
42 Statutes. A failure to file a claim on or before December 31, 2013
43 constitutes a waiver of the claim for refund under this section.

1 C. The aggregate amount of the refund under this section is ten
2 thousand dollars. If the aggregate amount of claims that are determined to
3 be valid equals more than ten thousand dollars, the department shall reduce
4 each claim proportionately so the aggregate amount of the refund is not more
5 than ten thousand dollars.

6 D. Any claim for refund not based on the retroactive application of
7 this act is not subject to subsections B and C of this section.