

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1335

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

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

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

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

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

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

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

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

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

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

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

1 environment, unless the release was authorized by a permit issued by a
2 governmental authority:

3 (a) Actions to monitor, assess and evaluate such a release or a
4 suspected release.

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

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

10 (d) Pumping and treatment or in situ treatment of contaminated
11 groundwater or surface water to reduce the concentration or toxicity of a
12 contaminant.

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

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

22 7. The gross proceeds of sales or gross income that is derived from
23 a contract for the installation, assembly, repair or maintenance of
24 machinery, equipment or other tangible personal property that is either
25 deducted from the tax base of the retail classification under section
26 42-5061, subsection B or that is exempt from use tax under section 42-5159,
27 subsection B and that has independent functional utility, pursuant to the
28 following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 12. For taxable periods beginning from and after June 30, 2001, the
28 gross proceeds of sales or gross income derived from a contract entered
29 into for the construction of a residential apartment housing facility that
30 qualifies for a federal housing subsidy for low-income persons ~~over~~ WHO ARE
31 AT LEAST sixty-two years of age and that is owned by ~~a nonprofit charitable~~
32 ~~organization that has qualified under section 501(c)(3) of the internal~~

1 ~~revenue code~~, OR IS A WHOLLY OWNED SUBSIDIARY OF, A CORPORATION THAT IS
2 QUALIFIED PURSUANT TO SECTION 501(c)(3) OR 501(c)(4) OF THE INTERNAL
3 REVENUE CODE OR A LIMITED PARTNERSHIP OR LIMITED LIABILITY COMPANY IN WHICH
4 THE GENERAL PARTNER OR THE MANAGING MEMBER, AS APPLICABLE, IS AN ELIGIBLE
5 NONPROFIT CORPORATION OR A SINGLE PURPOSE ENTITY THAT IS WHOLLY OWNED BY
6 ONE OR MORE ELIGIBLE NONPROFIT CORPORATIONS. FOR THE PURPOSES OF THIS
7 PARAGRAPH, "FEDERAL HOUSING SUBSIDY" INCLUDES THE UNITED STATES DEPARTMENT
8 OF HOUSING AND URBAN DEVELOPMENT SECTION 202 SUPPORTIVE HOUSING FOR THE
9 ELDERLY PROGRAM AUTHORIZED BY THE HOUSING ACT OF 1959 (P.L. 86-372; 73
10 STAT. 654; 12 UNITED STATES CODE SECTION 1701q, AS AMENDED) AND THE
11 LOW-INCOME HOUSING TAX CREDIT PROGRAM AS DEFINED IN SECTION 42-13601.

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

19 14. The gross proceeds of sales or gross income derived from a
20 contract entered into for the construction of a launch site, as defined in
21 14 Code of Federal Regulations section 401.5.

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

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

29 17. The gross proceeds of sales or gross income received from
30 contracts entered into before July 1, 2006 for constructing a state
31 university research infrastructure project if the project has been reviewed
32 by the joint committee on capital review before the university enters into

1 the construction contract for the project. For the purposes of this
2 paragraph, "research infrastructure" has the same meaning prescribed in
3 section 15-1670.

4 18. The gross proceeds of sales or gross income received from a
5 contract for the construction of any building, or other structure, project,
6 development or improvement owned by a qualified business under section
7 41-1516 for harvesting or processing qualifying forest products removed
8 from qualifying projects as defined in section 41-1516 if actual
9 construction begins before January 1, 2024. To qualify for this deduction,
10 the prime contractor must obtain a letter of qualification from the Arizona
11 commerce authority before beginning work under the contract.

12 19. Any amount of the gross proceeds of sales or gross income
13 attributable to development fees that are incurred in relation to a
14 contract for construction, development or improvement of real property and
15 that are paid by a prime contractor or subcontractor. For the purposes of
16 this paragraph:

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

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

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

30 20. The gross proceeds of sales or gross income derived from a
31 contract entered into for the construction of a mixed waste processing
32 facility that is located on a municipal solid waste landfill and that is

1 constructed for the purpose of recycling solid waste or producing renewable
2 energy from landfill waste. For the purposes of this paragraph:

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

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

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

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

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

27 C. Entitlement to the deduction pursuant to subsection B, paragraph
28 7 of this section is subject to the following provisions:

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

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

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

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

15 3. The department may prescribe a form for the certificate described
16 in paragraph 1, subdivision (b) of this subsection. The department may
17 also adopt rules that describe the transactions with respect to which a
18 person is not entitled to rely solely on the information contained in the
19 certificate provided in paragraph 1, subdivision (b) of this subsection but
20 must instead obtain such additional information as required in order to be
21 entitled to the deduction.

22 4. If a prime contractor is entitled to a deduction by complying
23 with paragraph 1 of this subsection, the department may require the
24 purchaser who caused the execution of the certificate to establish the
25 accuracy and completeness of the information required to be contained in
26 the certificate that would entitle the prime contractor to the deduction.
27 If the purchaser cannot establish the accuracy and completeness of the
28 information, the purchaser is liable in an amount equal to any tax, penalty
29 and interest that the prime contractor would have been required to pay
30 under article 1 of this chapter if the prime contractor had not complied
31 with paragraph 1 of this subsection. Payment of the amount under this
32 paragraph exempts the purchaser from liability for any tax imposed under

1 article 4 of this chapter. The amount shall be treated as a transaction
2 privilege tax to the purchaser and as tax revenues collected from the prime
3 contractor in order to designate the distribution base for purposes of
4 section 42-5029.

5 D. Subcontractors or others who perform modification activities are
6 not subject to tax if they can demonstrate that the job was within the
7 control of a prime contractor or contractors or a dealership of
8 manufactured buildings and that the prime contractor or dealership is
9 liable for the tax on the gross income, gross proceeds of sales or gross
10 receipts attributable to the job and from which the subcontractors or
11 others were paid.

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

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

31 G. For the purposes of section 42-5032.01, the department shall
32 separately account for revenues collected under the prime contracting

1 classification from any prime contractor engaged in the preparation or
2 construction of a multipurpose facility, and related infrastructure, that
3 is owned, operated or leased by the tourism and sports authority pursuant
4 to title 5, chapter 8.

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

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

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

30 K. The portion of gross proceeds of sales or gross income
31 attributable to the actual direct costs of providing architectural or
32 engineering services that are incorporated in a contract is not subject to

1 tax under this section. For the purposes of this subsection, "direct
2 costs" means the portion of the actual costs that are directly expended in
3 providing architectural or engineering services.

4 L. Operating a landfill or a solid waste disposal facility is not
5 subject to taxation under this section, including filling, compacting and
6 creating vehicle access to and from cell sites within the landfill.
7 Constructing roads to a landfill or solid waste disposal facility and
8 constructing cells within a landfill or solid waste disposal facility may
9 be deemed prime contracting under this section.

10 M. The following apply in determining the taxable situs of sales of
11 manufactured buildings:

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

15 2. For sales in this state where the manufactured building dealer
16 does not contract to deliver the building to a setup site or does not
17 perform the setup, the taxable situs is the location of the dealership
18 where the building is delivered to the buyer.

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

23 N. The gross proceeds of sales or gross income attributable to a
24 written contract for design phase services or professional services,
25 executed before modification begins and with terms, conditions and pricing
26 of all of these services separately stated in the contract from those for
27 construction phase services, is not subject to tax under this section,
28 regardless of whether the services are provided sequential to or concurrent
29 with prime contracting activities that are subject to tax under this
30 section. This subsection does not include the gross proceeds of sales or
31 gross income attributable to construction phase services. For the purposes
32 of this subsection:

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

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

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

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

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

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

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

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

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

31 (f) Preparation of any manuals, warranties, as-built drawings,
32 spares or other items the prime contractor must furnish pursuant to the

1 contract for modification work. For the purposes of this subdivision,
2 "as-built drawing" means a drawing that indicates field changes made to
3 adapt to field conditions, field changes resulting from change orders or
4 buried and concealed installation of piping, conduit and utility services.

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

8 (i) Master schedule updates.

9 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

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

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

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

1 (c) Preparing drawings and specifications for architectural program
2 documents, schematic design documents, design development documents,
3 modification work documents or documents that identify the scope of or
4 materials for the project.

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

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

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

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

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

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

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

26 (vi) Any bond and insurance premiums.

27 (vii) Any applicable taxes.

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

30 (f) Reviewing and evaluating cost estimates and project documents to
31 prepare recommendations on site use, site improvements, selection of
32 materials, building systems and equipment, modification feasibility,

1 availability of materials and labor, local modification activity as related
2 to schedules and time requirements for modification work.

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

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

10 0. The gross proceeds of sales or gross income derived from a
11 contract with the owner of real property or improvements to real property
12 for the maintenance, repair, replacement or alteration of existing property
13 is not subject to tax under this section if the contract does not include
14 modification activities, except as specified in this subsection. The gross
15 proceeds of sales or gross income derived from a de minimis amount of
16 modification activity does not subject the contract or any part of the
17 contract to tax under this section. For the purposes of this subsection:

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

21 2. Each contract is independent of any other contract, except that
22 any change order that directly relates to the scope of work of the original
23 contract shall be treated the same as the original contract under this
24 chapter, regardless of the amount of modification activities included in
25 the change order. If a change order does not directly relate to the scope
26 of work of the original contract, the change order shall be treated as a
27 new contract, with the tax treatment of any subsequent change order to
28 follow the tax treatment of the contract to which the scope of work of the
29 subsequent change order directly relates.

30 P. Notwithstanding subsection 0 of this section, a contract that
31 primarily involves surface or subsurface improvements to land and that is
32 subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is

1 taxable under this section, even if the contract also includes vertical
2 improvements. Agencies that are subject to procurement processes under
3 those provisions shall include in the request for proposals a notice to
4 bidders when those projects are subject to this section. This subsection
5 does not apply to contracts with:

6 1. Community facilities districts, fire districts, county television
7 improvement districts, community park maintenance districts, cotton pest
8 control districts, hospital districts, pest abatement districts, health
9 service districts, agricultural improvement districts, county free library
10 districts, county jail districts, county stadium districts, special health
11 care districts, public health services districts, theme park districts or
12 revitalization districts.

13 2. Any special taxing district not specified in paragraph 1 of this
14 subsection if the district does not substantially engage in the
15 modification, maintenance, repair, replacement or alteration of surface or
16 subsurface improvements to land.

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

27 1. If any part of the contract for sale of the property specifies
28 amounts to be paid to the original owner for the modifications to be made
29 in the period subsequent to the transfer of title, the amounts are included
30 in the original owner's gross proceeds of sale or gross income under this
31 section. Proceeds from the sale of the property that are received after
32 transfer of title and that are unrelated to the modifications made

1 subsequent to the transfer of title are not considered gross proceeds of
2 sale or gross income from the modifications.

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

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

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

19 R. For the purposes of this section:

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

22 (a) For existing property that is properly classified as class two
23 property under section 42-12002, paragraph 1, subdivision (c) or paragraph
24 2, subdivision (c) and that is used for residential purposes, class three
25 property under section 42-12003 or class four property under section
26 42-12004, this paragraph does not apply if the contract amount is more than
27 twenty-five percent of the most recent full cash value established under
28 chapter 13, article 2 of this title as of the date of any bid for the work
29 or the date of the contract, whichever value is higher.

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

1 (c) Project elements may not be artificially separated from a
2 contract to cause a project to qualify as an alteration. The department
3 has the burden of proof that project elements have been artificially
4 separated from a contract.

5 (d) If a project for which the owner and the person performing the
6 work reasonably believed, at the inception of the contract, would be
7 treated as an alteration under this paragraph and, on completion of the
8 project, the project exceeded the applicable threshold described in either
9 subdivision (a) or (b) of this paragraph by ~~no~~ NOT more than twenty-five
10 percent of the applicable threshold for any reason, the work performed
11 under the contract qualifies as an alteration.

12 (e) A change order that directly relates to the scope of work of the
13 original contract shall be treated as part of the original contract, and
14 the contract amount shall include any amount attributable to a change order
15 that directly relates to the scope of work of the original contract.

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

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

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

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

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

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

3 (b) Supervises, performs or coordinates the excavation and
4 completion of site improvements or the setup of a manufactured building,
5 including the contracting, if any, with any subcontractor or specialty
6 contractor for the completion of the contract.

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

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

10 (b) Any wreckage or demolition of existing property, or any other
11 activity that is a necessary component of a project described in subsection
12 0 of this section.

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

16 7. "Modify" means to make a modification or cause a modification to
17 be made.

18 8. "Owner" means the person that holds title to the real property or
19 improvements to real property that is the subject of the work, as well as
20 an agent of the title holder and any person with the authority to perform
21 or authorize work on the real property or improvements, including a tenant
22 and a property manager. For the purposes of subsection 0 of this section,
23 a person who is hired by a general contractor that is hired by an owner, or
24 a subcontractor of a general contractor that is hired by an owner, is
25 considered to be hired by the owner.

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

28 10. "Prime contractor" means a contractor who supervises, performs
29 or coordinates the modification of any building, highway, road, railroad,
30 excavation, manufactured building or other structure, project, development
31 or improvement, including the contracting, if any, with any subcontractors
32 or specialty contractors and who is responsible for the completion of the

1 contract. Except as provided in subsections E and Q of this section, a
2 person who owns real property, who engages one or more contractors to
3 modify that real property and who does not itself modify that real property
4 is not a prime contractor within the meaning of this paragraph regardless
5 of the existence of a contract for sale or the subsequent sale of that real
6 property.

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

15 12. "Sale of a used manufactured building" does not include a lease
16 of a used manufactured building.

17 Sec. 2. Retroactivity

18 This act applies retroactively to taxable periods beginning from and
19 after December 31, 2022."

20 Amend title to conform

DAVID LIVINGSTON

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