

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2628

(Reference to printed bill)

1 Page 1, between lines 1 and 2, 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.

1 (iv) Stabilizing or protecting the machinery, equipment or other  
2 tangible personal property during operation by bolting, burying or  
3 performing other similar nonpermanent connections to either real property  
4 or real property improvements.

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

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

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

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

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

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

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

25 11. The gross proceeds of sales or gross income that is derived from  
26 the installation, assembly, repair or maintenance of clean rooms that are  
27 deducted from the tax base of the retail classification pursuant to section  
28 42-5061, subsection B, paragraph 17.

29 12. For taxable periods beginning from and after June 30, 2001, the  
30 gross proceeds of sales or gross income derived from a contract entered  
31 into for the construction of a residential apartment housing facility that  
32 qualifies for a federal housing subsidy for low-income persons over

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

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

11 14. The gross proceeds of sales or gross income derived from a  
12 contract entered into for the construction of a launch site, as defined in  
13 14 Code of Federal Regulations section 401.5.

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

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

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

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

1 construction begins before January 1, 2024. To qualify for this deduction,  
2 the prime contractor must obtain a letter of qualification from the Arizona  
3 commerce authority before beginning work under the contract.

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

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

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

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

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

27 (a) "Mixed waste processing facility" means a solid waste facility  
28 that is owned, operated or used for the treatment, processing or disposal  
29 of solid waste, recyclable solid waste, ~~conditionally exempt~~ VERY small  
30 quantity generator waste or household hazardous waste. For the purposes of  
31 this subdivision, "~~conditionally exempt~~ VERY small quantity generator  
32 waste", "household hazardous waste" and "solid waste facility" have the

1 same meanings prescribed in section 49-701, except that solid waste  
2 facility does include a site that stores, treats or processes paper, glass,  
3 wood, cardboard, household textiles, scrap metal, plastic, vegetative  
4 waste, aluminum, steel or other recyclable material.

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

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

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

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

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

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

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

26 (b) Obtaining a certificate executed by the purchaser indicating the  
27 name and address of the purchaser, the precise nature of the business of  
28 the purchaser, the purpose for which the purchase was made, the necessary  
29 facts to establish the deductibility of the property under section 42-5061,  
30 subsection B, and a certification that the person executing the certificate  
31 is authorized to do so on behalf of the purchaser. The certificate may be



1 disregarded if the prime contractor has reason to believe that the  
2 information contained in the certificate is not accurate or complete.

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

6 3. The department may prescribe a form for the certificate described  
7 in paragraph 1, subdivision (b) of this subsection. The department may  
8 also adopt rules that describe the transactions with respect to which a  
9 person is not entitled to rely solely on the information contained in the  
10 certificate provided in paragraph 1, subdivision (b) of this subsection but  
11 must instead obtain such additional information as required in order to be  
12 entitled to the deduction.

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

28 D. Subcontractors or others who perform modification activities are  
29 not subject to tax if they can demonstrate that the job was within the  
30 control of a prime contractor or contractors or a dealership of  
31 manufactured buildings and that the prime contractor or dealership is  
32 liable for the tax on the gross income, gross proceeds of sales or gross

1 receipts attributable to the job and from which the subcontractors or  
2 others were paid.

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

16 F. Every person engaging or continuing in this state in the business  
17 of prime contracting or dealership of manufactured buildings shall present  
18 to the purchaser of such prime contracting or manufactured building a  
19 written receipt of the gross income or gross proceeds of sales from such  
20 activity and shall separately state the taxes to be paid pursuant to this  
21 section.

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

28 H. For the purposes of section 42-5032.02, from and after  
29 September 30, 2013, the department shall separately account for revenues  
30 reported and collected under the prime contracting classification from any  
31 prime contractor engaged in the construction of any buildings and  
32 associated improvements that are for the benefit of a manufacturing

1 facility. For the purposes of this subsection, "associated improvements"  
2 and "manufacturing facility" have the same meanings prescribed in section  
3 42-5032.02.

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

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

21 K. The portion of gross proceeds of sales or gross income  
22 attributable to the actual direct costs of providing architectural or  
23 engineering services that are incorporated in a contract is not subject to  
24 tax under this section. For the purposes of this subsection, "direct  
25 costs" means the portion of the actual costs that are directly expended in  
26 providing architectural or engineering services.

27 L. Operating a landfill or a solid waste disposal facility is not  
28 subject to taxation under this section, including filling, compacting and  
29 creating vehicle access to and from cell sites within the landfill.  
30 Constructing roads to a landfill or solid waste disposal facility and  
31 constructing cells within a landfill or solid waste disposal facility may  
32 be deemed prime contracting under this section.

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

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

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

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

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

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

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

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

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

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

11           (ii) The amount of an adjustment, if any, to the guaranteed maximum  
12 price as set in the contract for modification work. For the purposes of  
13 this item, "guaranteed maximum price" means the amount guaranteed to be the  
14 maximum amount due to a prime contractor for the performance of all  
15 modification work for the project.

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

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

23           (e) Inspection to determine the dates of substantial completion or  
24 final completion.

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

1 (g) Preparation of status reports after modification work has begun  
2 detailing the progress of work performed, including preparation of any of  
3 the following:

4 (i) Master schedule updates.

5 (ii) Modification work cash flow projection updates.

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

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

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

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

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

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

19 2. "Design phase services" means services for developing and  
20 completing a design for a project that are not construction phase services,  
21 including the following:

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

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

28 (c) Preparing drawings and specifications for architectural program  
29 documents, schematic design documents, design development documents,  
30 modification work documents or documents that identify the scope of or  
31 materials for the project.

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

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

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

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

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

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

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

22 (vi) Any bond and insurance premiums.

23 (vii) Any applicable taxes.

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

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

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

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

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

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

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

28 P. Notwithstanding subsection 0 of this section, a contract that  
29 primarily involves surface or subsurface improvements to land and that is  
30 subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is  
31 taxable under this section, even if the contract also includes vertical  
32 improvements. Agencies that are subject to procurement processes under



1 those provisions shall include in the request for proposals a notice to  
2 bidders when those projects are subject to this section. This subsection  
3 does not apply to contracts with:

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

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

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

25 1. If any part of the contract for sale of the property specifies  
26 amounts to be paid to the original owner for the modifications to be made  
27 in the period subsequent to the transfer of title, the amounts are included  
28 in the original owner's gross proceeds of sale or gross income under this  
29 section. Proceeds from the sale of the property that are received after  
30 transfer of title and that are unrelated to the modifications made  
31 subsequent to the transfer of title are not considered gross proceeds of  
32 sale or gross 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  
4 subsequent to the transfer of title to the property, the amounts are  
5 included in the original owner's gross proceeds of sale or gross income  
6 received for the 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  
11 disbursement from escrow unrelated to the modifications, it is presumed  
12 that the amounts are received for the modifications made subsequent to the  
13 transfer of title unless the contrary is established by the owner through  
14 its books, records 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           R. For the purposes of this section:

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

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

28           (b) For all existing property other than existing property described  
29 in subdivision (a) of this paragraph, this paragraph does not apply if the  
30 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.

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

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

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

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

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

11          (b) Any wreckage or demolition of existing property, or any other  
12 activity that is a necessary component of a project described in subsection  
13 0 of this section.

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

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

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

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

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

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

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

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

18 Renumber to conform

19 Page 1, line 10, strike the first comma insert "AND"; after "MONIES" strike  
20 remainder of line

21 Line 11, strike "GIFTS, CONTRIBUTIONS AND DEVICES"

22 Page 3, line 33, strike the first comma insert "AND"; after "MONIES" strike  
23 remainder of line

24 Line 34, strike "AND DEVICES"

25 Page 15, strike lines 20 through 22

26 Renumber to conform

27 Page 17, line 28, strike "conditionally exempt" insert "VERY"

28 Lines 30 and 31, strike "conditionally exempt" insert "VERY"

29 Page 19, line 18, strike "conditionally exempt" insert "VERY"

1 Page 21, line 5, strike "conditionally exempt" insert "VERY"

2 Between lines 41 and 42, insert:

3 "54. "VERY SMALL QUANTITY GENERATOR WASTE" MEANS HAZARDOUS WASTE IN  
4 QUANTITIES AS DEFINED BY RULES ADOPTED PURSUANT TO SECTION 49-922."

5 Renumber to conform

6 Page 22, between lines 10 and 11, insert:

7 "Sec. 7. Section 49-766, Arizona Revised Statutes, is amended to  
8 read:

9 49-766. Agricultural landfills; notice

10 A. A single family residence located on a farm or ranch of more than  
11 forty acres in an unincorporated area may operate on site a landfill for  
12 the disposal of solid waste resulting from the residents' household  
13 activities. The owner or operator of the farm or ranch shall comply with  
14 all of the following:

15 1. The landfill does not violate the floodplain provisions of  
16 section 49-772, subsection C or the wetland provisions of section 49-772,  
17 subsection D.

18 2. The owner or operator submits to the ~~local~~ board of supervisors a  
19 location map and a written, general description of the landfill by October  
20 21, 1994, or if solid waste disposal begins after April 24, 1994, within  
21 thirty days after disposing of solid waste.

22 3. The landfill does not create an environmental nuisance.

23 B. A person engaged in farming or ranching on at least forty acres  
24 in an unincorporated area may operate an agricultural landfill on the  
25 property for disposal of solid waste, but not hazardous waste, generated on  
26 the property. The person shall comply with all of the following:

27 1. The landfill does not accept household waste, household hazardous  
28 waste or ~~conditionally exempt~~ VERY small generator waste.

29 2. The owner or operator submits to the board of supervisors or its  
30 designee a location map and a written, general description of the landfill  
31 by October 21, 1994, or if solid waste disposal begins after April 24,  
32 1994, within thirty days after disposing of solid waste.

1           3. The landfill does not violate the floodplain provisions of  
2           section 49-772, subsection C or the wetland provisions of section 49-772,  
3           subsection D.

4           4. The landfill does not create an environmental nuisance."

5 Renumber to conform

6 Amend title to conform

GAIL GRIFFIN

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C: HM