

REFERENCE TITLE: prime contracting sales tax; grandfathering

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

SB 1258

Introduced by
Senator Bundgaard

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 33, SECTION 1, CHAPTER 63, SECTION 7, CHAPTER 214, SECTION 1 AND CHAPTER 359, SECTION 1; REPEALING SECTION 42-5075, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 372, SECTION 11; BLENDING MULTIPLE ENACTMENTS; RELATING TO THE PRIME CONTRACTING TRANSACTION PRIVILEGE TAX 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, as amended by
3 Laws 2000, chapter 33, section 1, chapter 63, section 7, chapter 214, section
4 1 and chapter 359, section 1, is amended to read:

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

7 A. The prime contracting classification is comprised of the business
8 of prime contracting and dealership of manufactured buildings. The sale of a
9 used manufactured building is not taxable under this chapter. The prime
10 contracting classification does not include the gross proceeds of sales or
11 gross income that is derived from contracts to perform postconstruction
12 treatment of real property for termite and general pest control, including
13 wood destroying organisms.

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

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

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

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

1 of qualification from the department of revenue. This paragraph shall apply
2 for ten full consecutive calendar or fiscal years after the start of initial
3 construction.

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

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

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

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

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

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

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

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

1 modification to, real property in order to facilitate the installation,
2 assembly, repair, maintenance or removal of machinery, equipment or other
3 tangible personal property that is deducted from the tax base of the retail
4 classification pursuant to section 42-5061, subsection B or that is exempt
5 from use tax pursuant to section 42-5159, subsection B. For purposes of this
6 paragraph, "permanent attachment" means at least one of the following:

7 (a) To be incorporated into real property.

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

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

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

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

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

24 (c) Any other information that the department considers to be
25 necessary.

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

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

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

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

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

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

38 11. The gross proceeds of sales or gross income that is derived from a
39 contract entered into with a person who is engaged in the commercial
40 production of livestock, livestock products or agricultural, horticultural,
41 viticultural or floricultural crops or products in this state for the
42 construction, alteration, repair, improvement, movement, wrecking or
43 demolition or addition to or subtraction from any building, highway, road,
44 excavation, manufactured building or other structure, project, development or

1 improvement used directly and primarily to prevent, monitor, control or
2 reduce air, water or land pollution.

3 12. The gross proceeds of sales or gross income that is derived from
4 the installation, assembly, repair or maintenance of clean rooms that are
5 deducted from the tax base of the retail classification pursuant to section
6 42-5061, subsection B, paragraph 17.

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

13 14. For taxable periods beginning from and after December 31, 1996 and
14 ending before January 1, 2011, the contractor's retail cost of solar energy
15 devices that the contractor supplies and installs pursuant to contracts. The
16 deduction shall not exceed five thousand dollars for each solar energy
17 device. Before deducting any amount under this paragraph, the contractor
18 shall register with the department as a solar energy contractor. By
19 registering, the contractor acknowledges that it will make its books and
20 records relating to sales of solar energy devices available to the department
21 for examination.

22 15. The gross proceeds of sales or gross income derived from a contract
23 entered into for the construction of a launch site, as defined in 14 Code of
24 Federal Regulations ~~part~~ SECTION 401.5.

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

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

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

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

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

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

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

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

25 D. Subcontractors or others who perform services in respect to any
26 improvement, building, highway, road, railroad, excavation, manufactured
27 building or other structure, project, development or improvement are not
28 subject to tax if they can demonstrate that the job was within the control of
29 a prime contractor or contractors or a dealership of manufactured buildings
30 and that the prime contractor or dealership is liable for the tax on the
31 gross income, gross proceeds of sales or gross receipts attributable to the
32 job and from which the subcontractors or others were paid.

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

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

6 G. FOR PURPOSES OF SECTION 42-5032.01, THE DEPARTMENT SHALL SEPARATELY
7 ACCOUNT FOR REVENUES COLLECTED UNDER THE PRIME CONTRACTING CLASSIFICATION
8 FROM ANY PRIME CONTRACTOR ENGAGED IN THE PREPARATION OR CONSTRUCTION OF A
9 MULTIPURPOSE FACILITY AND RELATED INFRASTRUCTURE THAT IS OWNED, OPERATED OR
10 LEASED BY THE TOURISM AND SPORTS AUTHORITY PURSUANT TO TITLE 5, CHAPTER 8.

11 H. ANY ADDITIONAL TAXES LEVIED PURSUANT TO AN INCREASE IN TAX RATES DO
12 NOT APPLY TO THE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM A CONTRACT
13 ENTERED INTO BEFORE THE TAX INCREASE BECOMES EFFECTIVE UNLESS THE CONTRACT
14 CONTAINS A PROVISION THAT ENTITLES THE PRIME CONTRACTOR TO RECOVER FROM THE
15 PURCHASER THE AMOUNT OF ADDITIONAL TAX LEVIED. TO QUALIFY FOR AN EXEMPTION
16 FROM THE TAX INCREASE UNDER THIS SUBSECTION, THE TAXPAYER MUST PROVIDE
17 SUFFICIENT DOCUMENTATION, IN A MANNER AND FORM PRESCRIBED BY THE DEPARTMENT,
18 TO CERTIFY THAT THE CONTRACT WAS ENTERED INTO BEFORE THE TAX INCREASE.

19 ~~G.~~ I. For purposes of this section:

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

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

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

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

37 (b) Supervises, performs or coordinates the excavation and completion
38 of site improvements, setup or moving of a manufactured building including
39 the contracting, if any, with any subcontractor or specialty contractor for
40 the completion of the contract.

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

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

1 6. "Prime contractor" means a contractor who supervises, performs or
2 coordinates the construction, alteration, repair, addition, subtraction,
3 improvement, movement, wreckage or demolition of any building, highway, road,
4 railroad, excavation, manufactured building or other structure, project,
5 development or improvement including the contracting, if any, with any
6 subcontractors or specialty contractors and who is responsible for the
7 completion of the contract.

8 7. "Sale of a used manufactured building" does not include a lease of
9 a used manufactured building.

10 Sec. 2. Repeal

11 Section 42-5075, Arizona Revised Statutes, as amended by Laws 2000,
12 chapter 372, section 11, is repealed.

13 Sec. 3. Emergency

14 This act is an emergency measure that is necessary to preserve the
15 public peace, health or safety and is operative immediately as provided by
16 law.