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Conference Engrossed

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Jane Dee Hull
Secretary of State

State of Arizona
Senate
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Second Regular Session
1996

CHAPTER 319

# SENATE BILL 1280

AN ACT

AMENDING SECTION 42-1310.16, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1996, CHAPTER 93, SECTION 4; RELATING TO TRANSACTION PRIVILEGE TAX.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-1310.16, Arizona Revised Statutes, as amended by Laws 1996, chapter 93, section 4, is amended to read:

42-1310.16. Prime contracting classification; definitions; exemptions

A. The prime contracting classification is comprised of the business of prime contracting and dealership of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter.

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

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

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

3. The sales price of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be

subject to the taxes imposed by this article separately and distinctly from the sale of the manufactured building.

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

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

6. The gross proceeds of sales or gross income from a contract to provide one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

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

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

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

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

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

This paragraph does not include asbestos removal or the construction or use of pollution control equipment, facilities or other control items required or to be used by a person to prevent or control contamination before it

reaches the environment. The sale of tangible personal property used in activities under this paragraph does not qualify for the exemption under section 42-1310.01, subsection A, paragraph 27 or section 42-1409, subsection A, paragraph 13, subdivision (g).

7. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT ENTERED INTO FOR THE INSTALLATION, ASSEMBLY, REPAIR OR MAINTENANCE OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS DEDUCTED FROM THE TAX BASE OF THE RETAIL CLASSIFICATION PURSUANT TO SECTION 42-1310.01, SUBSECTION B, THAT DOES NOT BECOME PERMANENTLY ATTACHED TO A BUILDING, HIGHWAY, ROAD, RAILROAD, EXCAVATION OR MANUFACTURED BUILDING OR OTHER STRUCTURE, PROJECT, DEVELOPMENT OR IMPROVEMENT. FOR PURPOSES OF THIS PARAGRAPH, "PERMANENTLY ATTACHED" MEANS AT LEAST ONE OF THE FOLLOWING:

(a) TO BE INCORPORATED INTO REAL PROPERTY.

(b) TO BECOME SO AFFIXED TO REAL PROPERTY THAT IT BECOMES A PART OF THE REAL PROPERTY.

(c) TO BE SO ATTACHED TO REAL PROPERTY THAT REMOVAL WOULD CAUSE SUBSTANTIAL DAMAGE TO THE REAL PROPERTY FROM WHICH IT IS REMOVED. IF THE OWNERSHIP OF THE REALTY IS SEPARATE FROM THE OWNERSHIP OF THE MACHINERY, EQUIPMENT OR TANGIBLE PERSONAL PROPERTY, THE DETERMINATION AS TO PERMANENTLY ATTACHED SHALL BE MADE AS IF THE OWNERSHIP WERE THE SAME. THE DEDUCTION PROVIDED IN THIS PARAGRAPH DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THAT PORTION OF ANY CONTRACTING ACTIVITY WHICH CONSISTS OF THE DEVELOPMENT OF, OR MODIFICATION TO, REAL PROPERTY IN ORDER TO FACILITATE THE INSTALLATION, ASSEMBLY, REPAIR, MAINTENANCE OR REMOVAL OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS DEDUCTED FROM THE TAX BASE OF THE RETAIL CLASSIFICATION PURSUANT TO SECTION 42-1310.01, SUBSECTION B.

C. ENTITLEMENT TO THE DEDUCTION PURSUANT TO SUBSECTION B, PARAGRAPH 7 OF THIS SECTION IS SUBJECT TO THE FOLLOWING PROVISIONS:

1. A PRIME CONTRACTOR MAY ESTABLISH ENTITLEMENT TO THE DEDUCTION BY BOTH:

(a) MARKING THE INVOICE FOR THE TRANSACTION TO INDICATE THAT THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE TRANSACTION WAS DEDUCTED FROM THE BASE.

(b) OBTAINING A CERTIFICATE EXECUTED BY THE PURCHASER INDICATING THE NAME AND ADDRESS OF THE PURCHASER, THE PRECISE NATURE OF THE BUSINESS OF THE PURCHASER, THE PURPOSE FOR WHICH THE PURCHASE WAS MADE, THE NECESSARY FACTS TO ESTABLISH THE DEDUCTIBILITY OF THE PROPERTY UNDER SECTION 42-1310.01, SUBSECTION B, AND A CERTIFICATION THAT THE PERSON EXECUTING THE CERTIFICATE IS AUTHORIZED TO DO SO ON BEHALF OF THE PURCHASER. THE CERTIFICATE MAY BE DISREGARDED IF THE PRIME CONTRACTOR HAS REASON TO BELIEVE THAT THE INFORMATION CONTAINED IN THE CERTIFICATE IS NOT ACCURATE OR COMPLETE.

2. A PERSON WHO DOES NOT COMPLY WITH PARAGRAPH 1 OF THIS SUBSECTION MAY ESTABLISH ENTITLEMENT TO THE DEDUCTION BY PRESENTING FACTS NECESSARY TO SUPPORT THE ENTITLEMENT, BUT THE BURDEN OF PROOF IS ON THAT PERSON.

3. THE DEPARTMENT MAY PRESCRIBE A FORM FOR THE CERTIFICATE DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION. THE DEPARTMENT MAY ALSO PROMULGATE RULES THAT DESCRIBE THE TRANSACTIONS WITH RESPECT TO WHICH A PERSON IS NOT ENTITLED TO RELY SOLELY ON THE INFORMATION CONTAINED IN THE CERTIFICATE PROVIDED IN PARAGRAPH 1 OF THIS SUBSECTION BUT MUST INSTEAD OBTAIN SUCH ADDITIONAL INFORMATION AS REQUIRED IN ORDER TO BE ENTITLED TO THE DEDUCTION.

4. IF A PRIME CONTRACTOR IS ENTITLED TO A DEDUCTION BY COMPLYING WITH PARAGRAPH 1 OF THIS SUBSECTION, THE DEPARTMENT MAY REQUIRE THE PURCHASER WHO CAUSED THE EXECUTION OF THE CERTIFICATE TO ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION REQUIRED TO BE CONTAINED IN THE CERTIFICATE WHICH WOULD ENTITLE THE PRIME CONTRACTOR TO THE DEDUCTION. IF THE PURCHASER CANNOT ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION, THE PURCHASER IS LIABLE IN AN AMOUNT EQUAL TO ANY TAX, PENALTY AND INTEREST WHICH THE PRIME CONTRACTOR WOULD HAVE BEEN REQUIRED TO PAY UNDER THIS ARTICLE IF THE PRIME CONTRACTOR HAD NOT COMPLIED WITH PARAGRAPH 1 OF THIS SUBSECTION. PAYMENT OF THE AMOUNT UNDER THIS PARAGRAPH EXEMPTS THE PURCHASER FROM LIABILITY FOR ANY TAX IMPOSED UNDER ARTICLE 2 OF THIS CHAPTER. THE AMOUNT SHALL BE TREATED AS A TRANSACTION PRIVILEGE TAX TO THE PURCHASER AND AS TAX REVENUES COLLECTED FROM THE PRIME CONTRACTOR IN ORDER TO DESIGNATE THE DISTRIBUTION BASE FOR PURPOSES OF SECTION 42-1341.

~~C.~~ D. Through December 31, 1996, in computing the tax base, the contractor shall deduct the contractor's cost of solar energy devices that the contractor supplies and installs pursuant to contracts, but the deduction shall not exceed five thousand dollars for each solar energy device. Before deducting any amount under this subsection, the contractor shall register with the department as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

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

~~E.~~ F. Amounts received by a contractor for a project are excluded from the contractor's gross proceeds of sales or gross income derived from the business if the person who hired the contractor executes and provides a certificate to the contractor stating that the person providing the certificate is a prime contractor and is liable for the tax under this

article. The department shall prescribe the form of the certificate. If the contractor has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. If the person who provides the certificate is not liable for the tax as a prime contractor, that person is nevertheless deemed to be the prime contractor in lieu of the contractor and is subject to the tax under this section on the gross receipts or gross proceeds received by the contractor.

~~F.~~ G. For purposes of this section:

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

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

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

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

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

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

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

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

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

~~G.~~ H. Every person engaging or continuing in this state in the business of prime contracting or dealership of manufactured buildings shall

present to the purchaser of such prime contracting or manufactured building a written receipt of the gross income or gross proceeds of sales from such activity and shall separately state the taxes to be paid pursuant to this section.

Sec. 2. Delayed effective date

This act is effective from and after June 30, 1997.

Sec. 3. Effect on prior law

The addition of section 42-1310.06, subsection B, paragraph 7, Arizona Revised Statutes, by this act is not intended to affect, and shall not be cited or considered in, the construction or interpretation of section 42-1310.16, Arizona Revised Statutes, with regard to issues involving tax periods beginning before July 1, 1997.

**APPROVED BY THE GOVERNOR MAY 1, 1996**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1,1996**