House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 309

SENATE BILL 1293

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

42-5075. Prime contracting classification; exemptions; definitions

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 article 1 of this chapter 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 or renewed 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 for one or more of the following actions, or a contract for site

1 preparation, constructing, furnishing or installing machinery, equipment or
2 other tangible personal property, including structures necessary to protect
3 exempt incorporated materials or installed machinery or equipment, and
4 tangible personal property incorporated into the project, to perform one or
5 more of the following actions in response to a release or suspected release
6 of a hazardous substance, pollutant or contaminant from a facility to the
7 environment, unless the release was authorized by a permit issued by a
8 governmental authority:
9 (a) Actions to monitor, assess and evaluate such a release or a
10 suspected release.
11 (b) Excavation, removal and transportation of contaminated soil and
12 its treatment or disposal.
13 (c) Treatment of contaminated soil by vapor extraction, chemical or
14 physical stabilization, soil washing or biological treatment to reduce the
15 concentration, toxicity or mobility of a contaminant.
16 (d) Pumping and treatment or in situ treatment of contaminated
17 groundwater or surface water to reduce the concentration or toxicity of a
18 contaminant.
19 (e) The installation of structures, such as cutoff walls or caps, to
20 contain contaminants present in groundwater or soil and prevent them from
21 reaching a location where they could threaten human health or welfare or the
22 environment.
23 This paragraph does not include asbestos removal or the construction or use
24 of ancillary structures such as maintenance sheds, offices or storage
25 facilities for unattached equipment, pollution control equipment, facilities
26 or other control items required or to be used by a person to prevent or
27 control contamination before it reaches the environment.
28 7. The gross proceeds of sales or gross income that is derived from
29 a contract entered into for the installation, assembly, repair or maintenance
30 of machinery, equipment or other tangible personal property that is deducted
31 from the tax base of the retail classification pursuant to section 42-5061,
32 subsection B, or that is exempt from use tax pursuant to section 42-5159,
33 subsection B, and that does not become a permanent attachment to a building,
34 highway, road, railroad, excavation or manufactured building or other
35 structure, project, development or improvement. If the ownership of the
36 realty is separate from the ownership of the machinery, equipment or tangible
37 personal property, the determination as to permanent attachment shall be made
38 as if the ownership were the same. The deduction provided in this paragraph
39 does not include gross proceeds of sales or gross income from that portion
40 of any contracting activity which consists of the development of, or
41 modification to, real property in order to facilitate the installation,
42 assembly, repair, maintenance or removal of machinery, equipment or other
43 tangible personal property that is deducted from the tax base of the retail
44 classification pursuant to section 42-5061, subsection B or that is exempt

1 from use tax pursuant to section 42-5159, subsection B. For purposes of this
2 paragraph, "permanent attachment" means at least one of the following:
3 (a) To be incorporated into real property.
4 (b) To become so affixed to real property that it becomes a part of
5 the real property.
6 (c) To be so attached to real property that removal would cause
7 substantial damage to the real property from which it is removed.
8 8. The gross proceeds of sales or gross income received from a
9 contract for constructing any lake facility development in a commercial
10 enhancement reuse district that is designated pursuant to section 9-499.08
11 if the prime contractor maintains the following records in a form
12 satisfactory to the department and to the city or town in which the property
13 is located:
14 (a) The certificate of qualification of the lake facility development
15 issued by the city or town pursuant to section 9-499.08, subsection D.
16 (b) All state and local transaction privilege tax returns for the
17 period of time during which the prime contractor received gross proceeds of
18 sales or gross income from a contract to construct a lake facility
19 development in a designated commercial enhancement reuse district, showing
20 the amount exempted from state and local taxation.
21 (c) Any other information that the department considers to be
22 necessary.
23 9. The gross proceeds of sales or gross income attributable to the
24 purchase of machinery, equipment or other tangible personal property that is
25 exempt from or deductible from transaction privilege and use tax under:
26 (a) Section 42-5061, subsection A, paragraph 25 or 29.
27 (b) Section 42-5061, subsection B.
28 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
29 (c), (d), (e), (f), (i) or (j).
30 (d) Section 42-5159, subsection B.
31 10. The gross proceeds of sales or gross income received from a
32 contract for the construction of an environmentally controlled facility for
33 the raising of poultry for the production of eggs and the sorting, cooling
34 and packaging of eggs.
35 11. The gross proceeds of sales or gross income that is derived from
36 a contract entered into with a person who is engaged in the commercial
37 production of livestock, livestock products or agricultural, horticultural,
38 viticultural or floricultural crops or products in this state for the
39 construction, alteration, repair, improvement, movement, wrecking or
40 demolition or addition to or subtraction from any building, highway, road,
41 excavation, manufactured building or other structure, project, development
42 or improvement used directly and primarily to prevent, monitor, control or
43 reduce air, water or land pollution.
44 12. The gross proceeds of sales or gross income that is derived from
45 the installation, assembly, repair or maintenance of clean rooms that are

1 deducted from the tax base of the retail classification pursuant to section
2 42-5061, subsection B, paragraph 17.
3 13. For taxable periods beginning from and after June 30, 2001, the
4 gross proceeds of sales or gross income derived from a contract entered into
5 for the construction of a residential apartment housing facility that
6 qualifies for a federal housing subsidy for low income persons over sixty-two
7 years of age and that is owned by a nonprofit charitable organization that
8 has qualified under section 501(c)(3) of the internal revenue code.
9 14. For taxable periods beginning from and after December 31, 1996 and
10 ending before January 1, 2011, the gross proceeds of sales or gross income
11 derived from a contract to provide and install a solar energy device. The
12 deduction shall not exceed five thousand dollars for each contract. Before
13 deducting any amount under this paragraph, the contractor shall register with
14 the department as a solar energy contractor. By registering, the contractor
15 acknowledges that it will make its books and records relating to sales of
16 solar energy devices available to the department for examination.
17 15. The gross proceeds of sales or gross income derived from a contract
18 entered into for the construction of a launch site, as defined in 14 Code of
19 Federal Regulations section 401.5.
20 16. The gross proceeds of sales or gross income derived from a contract
21 entered into for the construction of a domestic violence shelter that is
22 owned and operated by a nonprofit charitable organization that has qualified
23 under section 501(c)(3) of the internal revenue code.
24 17. The gross proceeds of sales or gross income derived from contracts
25 to perform postconstruction treatment of real property for termite and
26 general pest control, including wood destroying organisms.
27 18. The gross proceeds of sales or gross income received from contracts
28 entered into before July 1, 2006 for constructing a state university research
29 infrastructure project if the project has been reviewed by the joint
30 committee on capital review before the university enters into the
31 construction contract for the project. For the purposes of this paragraph,
32 "research infrastructure" has the same meaning prescribed in section 15-1670.
33 C. Entitlement to the deduction pursuant to subsection B, paragraph
34 7 of this section is subject to the following provisions:
35 1. A prime contractor may establish entitlement to the deduction by
36 both:
37 (a) Marking the invoice for the transaction to indicate that the gross
38 proceeds of sales or gross income derived from the transaction was deducted
39 from the base.
40 (b) Obtaining a certificate executed by the purchaser indicating the
41 name and address of the purchaser, the precise nature of the business of the
42 purchaser, the purpose for which the purchase was made, the necessary facts
43 to establish the deductibility of the property under section 42-5061,
44 subsection B, and a certification that the person executing the certificate
45 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 also
8 adopt rules that describe the transactions with respect to which a person is
9 not entitled to rely solely on the information contained in the certificate
10 provided in paragraph 1, subdivision (b) of this subsection but must instead
11 obtain such additional information as required in order to be entitled to the
12 deduction.
13 4. If a prime contractor is entitled to a deduction by complying with
14 paragraph 1 of this subsection, the department may require the purchaser who
15 caused the execution of the certificate to establish the accuracy and
16 completeness of the information required to be contained in the certificate
17 which would entitle the prime contractor to the deduction. If the purchaser
18 cannot establish the accuracy and completeness of the information, the
19 purchaser is liable in an amount equal to any tax, penalty and interest which
20 the prime contractor would have been required to pay under article 1 of this
21 chapter if the prime contractor had not complied with paragraph 1 of this
22 subsection. Payment of the amount under this paragraph exempts the purchaser
23 from liability for any tax imposed under article 4 of this chapter. The
24 amount shall be treated as a transaction privilege tax to the purchaser and
25 as tax revenues collected from the prime contractor in order to designate the
26 distribution base for purposes of section 42-5029.
27 D. Subcontractors or others who perform services in respect to any
28 improvement, building, highway, road, railroad, excavation, manufactured
29 building or other structure, project, development or improvement are not
30 subject to tax if they can demonstrate that the job was within the control
31 of a prime contractor or contractors or a dealership of manufactured
32 buildings and that the prime contractor or dealership is liable for the tax
33 on the gross income, gross proceeds of sales or gross receipts attributable
34 to the job and from which the subcontractors or others were paid.
35 E. Amounts received by a contractor for a project are excluded from
36 the contractor's gross proceeds of sales or gross income derived from the
37 business if the person who hired the contractor executes and provides a
38 certificate to the contractor stating that the person providing the
39 certificate is a prime contractor and is liable for the tax under article 1
40 of this chapter. The department shall prescribe the form of the certificate.
41 If the contractor has reason to believe that the information contained on the
42 certificate is erroneous or incomplete, the department may disregard the
43 certificate. If the person who provides the certificate is not liable for
44 the tax as a prime contractor, that person is nevertheless deemed to be the
45 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. 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.

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

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

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

J. THE PORTION OF GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT ARE NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.

~~J.~~ K. For THE 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 personally 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 of such a project, including

1 the erection of scaffolding or other structure or works in connection with
2 such a project, and includes subcontractors and specialty contractors. For
3 all purposes of taxation or deduction, this definition shall govern without
4 regard to whether or not such contractor is acting in fulfillment of a
5 contract.
6 3. "Dealership of manufactured buildings" means a dealer who either:
7 (a) Is licensed pursuant to title 41, chapter 16 and who sells at
8 retail manufactured buildings.
9 (b) Supervises, performs or coordinates the excavation and completion
10 of site improvements, setup or moving of a manufactured building including
11 the contracting, if any, with any subcontractor or specialty contractor for
12 the completion of the contract.
13 4. "Manufactured building" means a manufactured home, mobile home or
14 factory-built building, as defined in section 41-2142.
15 5. "Prime contracting" means engaging in business as a prime
16 contractor.
17 6. "Prime contractor" means a contractor who supervises, performs or
18 coordinates the construction, alteration, repair, addition, subtraction,
19 improvement, movement, wreckage or demolition of any building, highway, road,
20 railroad, excavation, manufactured building or other structure, project,
21 development or improvement including the contracting, if any, with any
22 subcontractors or specialty contractors and who is responsible for the
23 completion of the contract.
24 7. "Sale of a used manufactured building" does not include a lease of
25 a used manufactured building.
26 Sec. 2. Retroactivity; refunds; nonseverability
27 A. Section 42-5075, subsection J, Arizona Revised Statutes, as amended
28 by this act, providing that the portion of gross proceeds of sales or gross
29 income attributable to architectural or engineering services that are
30 incorporated into a design-build contract are not subject to tax under
31 section 42-5075, Arizona Revised Statutes, applies retroactively to taxable
32 periods beginning from and after October 17, 1969.
33 B. Any claim for refund of transaction privilege tax based on the
34 retroactive application of section 42-5075, subsection J, Arizona Revised
35 Statutes, as amended by this act, shall be submitted to the department of
36 revenue on or before December 31, 2004, pursuant to section 42-1118, Arizona
37 Revised Statutes. A failure to file a claim on or before December 31, 2004
38 constitutes a waiver of the claim for refund under this section.
39 C. The burden is on the taxpayer to establish by competent evidence
40 the amount of tax paid for all taxable periods and the amount, if any,
41 attributable to gross proceeds of sales or gross income attributable to
42 architectural or engineering services incorporated into a design-build
43 contract and qualifying for exemption under the amendment to section 42-5075,
44 Arizona Revised Statutes, as provided by this act. The department of revenue
45 shall:

1. Review all timely filed claims.

2. Determine, on audit if necessary, the correct amount of each claim.

3. Notify the taxpayer of its determination. The notice is final unless a taxpayer appeals in the manner provided in section 42-1119, Arizona Revised Statutes.

D. Notwithstanding section 42-1119, Arizona Revised Statutes, the department of revenue shall not make a refund until after determination of the amount of all refund claims filed pursuant to this section. If a taxpayer appeals the department's determination, the department, pursuant to the rules protecting confidentiality under title 42, chapter 2, article 1, Arizona Revised Statutes, may notify other taxpayers who have filed claims as to the nature of any delay and, if possible, estimate the possible extent of the delay.

E. The aggregate amount of the refund under this section shall not exceed one hundred thousand dollars. If the aggregate amount of claims under this section that are ultimately determined to be correct exceeds one hundred thousand dollars, the department shall reduce each claim proportionately so that the total refund amount equals one hundred thousand dollars.

F. Interest shall not be allowed or compounded on any refundable amount if paid before July 1, 2005, but if the amount cannot be determined or paid until after June 30, 2005, interest accrues thereafter under section 42-1123, Arizona Revised Statutes.

G. If any part of this section is finally adjudicated to be invalid, this entire section is void. The provisions of this section are intended to be nonseverable.

APPROVED BY THE GOVERNOR JUNE 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2004.

Passed the House May 25, 2004,

by the following vote: 45 Ayes,

10 Nays, 5 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 2, 2004,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Ken Bennett
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1293

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 26, 2004,

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24th day of May, 2004,

at 3:04 o'clock P. M.

Secretary to the Governor

Approved this 1 day of

June, 2004,

at 3:50 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of June, 2004,

at 4:38 o'clock P M.

Secretary of State

S.B. 1293