

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HOUSE BILL 2049

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; 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, is amended to  
3 read:

4 42-5075. Prime contracting classification: deductions:  
5 definitions

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

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

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

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

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

24 4. The gross proceeds of sales or gross income received from a  
25 contract entered into for the construction, alteration, repair, addition,  
26 subtraction, improvement, movement, wrecking or demolition of any building,  
27 highway, road, railroad, excavation, manufactured building or other  
28 structure, project, development or improvement located in a military reuse  
29 zone for providing aviation or aerospace services or for a manufacturer,  
30 assembler or fabricator of aviation or aerospace products within an active  
31 military reuse zone after the zone is initially established or renewed under  
32 section 41-1531. To be eligible to qualify for this deduction, before  
33 beginning work under the contract, the prime contractor must have applied for  
34 a letter of qualification from the department of revenue.

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

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

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

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

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

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

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

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

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

1 classification pursuant to section 42-5061, subsection B or that is exempt  
2 from use tax pursuant to section 42-5159, subsection B. For the purposes of  
3 this paragraph, "permanent attachment" means at least one of the following:

4 (a) To be incorporated into real property.

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

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

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

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 a  
36 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 or  
42 improvement used directly and primarily to prevent, monitor, control or  
43 reduce air, water or land pollution.

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

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

11       14. For taxable periods beginning from and after December 31, 1996 and  
12 ending before January 1, 2011, the gross proceeds of sales or gross income  
13 derived from a contract to provide and install a solar energy device. The  
14 deduction shall not exceed five thousand dollars for each contract. Before  
15 deducting any amount under this paragraph, the contractor shall register with  
16 the department as a solar energy contractor. By registering, the contractor  
17 acknowledges that it will make its books and records relating to sales of  
18 solar energy devices available to the department for examination.

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

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

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

29       18. The gross proceeds of sales or gross income received from contracts  
30 entered into before July 1, 2006 for constructing a state university research  
31 infrastructure project if the project has been reviewed by the joint  
32 committee on capital review before the university enters into the  
33 construction contract for the project. For the purposes of this paragraph,  
34 "research infrastructure" has the same meaning prescribed in section 15-1670.

35       19. The gross proceeds of sales or gross income received from a  
36 contract for the construction of any building, or other structure, project,  
37 development or improvement owned by a qualified business under section  
38 41-1516 for harvesting or the initial processing of qualifying forest  
39 products removed from qualifying projects as defined in section 41-1516 if  
40 actual construction begins before January 1, 2010. To qualify for this  
41 deduction, the prime contractor must obtain a letter of qualification from  
42 the department of commerce before beginning work under the contract.

1        20. The gross proceeds of sales or gross income received from a  
2 contract for the construction of any building or other structure associated  
3 with motion picture production in this state. To qualify for the deduction,  
4 at the time the contract is entered into the motion picture production  
5 company must present to the prime contractor its certificate that is issued  
6 pursuant to section 42-5009, subsection H and that establishes its  
7 qualification for the deduction.

8        21. THE GROSS PROCEEDS OF SALES OR GROSS INCOME RECEIVED FROM A  
9 CONTRACT ENTERED INTO FOR THE CONSTRUCTION OF ANY BUILDINGS AND ASSOCIATED  
10 IMPROVEMENTS THAT ARE FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE  
11 JURISDICTION OF THE ARIZONA BOARD OF REGENTS. THE DEDUCTION IS NOT ALLOWED  
12 WITH RESPECT TO ANY STATE MONIES USED TO FUND THE CONSTRUCTION OF THE  
13 BUILDING AND ASSOCIATED IMPROVEMENTS. TO QUALIFY FOR THE DEDUCTION:

14        (a) THE PRIME CONTRACTOR SHALL AGREE IN WRITING WITH THE DEPARTMENT TO  
15 PAY THE EQUIVALENT AMOUNT OF STATE TRANSACTION PRIVILEGE TAX DUE UNDER THIS  
16 TITLE TO THE CITY OR TOWN IN WHICH THE BUILDING IS CONSTRUCTED.

17        (b) A CITY OR TOWN SHALL AGREE IN WRITING WITH THE DEPARTMENT THAT THE  
18 MONIES RECEIVED UNDER SUBDIVISION (a) OF THIS PARAGRAPH WILL BE USED TO PAY  
19 FOR INFRASTRUCTURE IMPROVEMENTS THAT RELATE DIRECTLY TO THE CONSTRUCTION OF  
20 THE BUILDING FOR WHICH THE DEDUCTION IS CLAIMED UNDER THIS PARAGRAPH AND THAT  
21 THE CITY OR TOWN WILL PAY FOR AT LEAST TWENTY PER CENT OF THE COSTS OF THOSE  
22 INFRASTRUCTURE IMPROVEMENTS. FOR THE PURPOSES OF THIS SUBDIVISION,  
23 "INFRASTRUCTURE" MEANS WATER OR SEWER LINES, SIDEWALKS, STREETS, ROADS,  
24 TRAFFIC CONTROL AND PUBLIC PARKING.

25        (c) A CITY OR TOWN SHALL AGREE IN WRITING WITH THE DEPARTMENT THAT THE  
26 CITY OR TOWN PAY AN AMOUNT EQUAL TO THE AMOUNT OF MONIES THAT WOULD HAVE BEEN  
27 ALLOCATED PURSUANT TO SECTION 42-5029, SUBSECTION D, PARAGRAPHS 1 THROUGH 3  
28 AND SUBSECTION E. IF THE CITY OR TOWN RECEIVES MONIES UNDER THIS SECTION IN  
29 EXCESS OF EIGHTY PER CENT OF THE ACTUAL COSTS OF THE INFRASTRUCTURE  
30 IMPROVEMENTS, THEN THE CITY OR TOWN SHALL REVERT THE REMAINDER TO THE  
31 DEPARTMENT FOR DEPOSIT IN THE STATE GENERAL FUND.

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

34        1. A prime contractor may establish entitlement to the deduction by  
35 both:

36        (a) Marking the invoice for the transaction to indicate that the gross  
37 proceeds of sales or gross income derived from the transaction was deducted  
38 from the base.

39        (b) Obtaining a certificate executed by the purchaser indicating the  
40 name and address of the purchaser, the precise nature of the business of the  
41 purchaser, the purpose for which the purchase was made, the necessary facts  
42 to establish the deductibility of the property under section 42-5061,  
43 subsection B, and a certification that the person executing the certificate  
44 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 of  
31 a prime contractor or contractors or a dealership of manufactured buildings  
32 and that the prime contractor or dealership is liable for the tax on the  
33 gross income, gross proceeds of sales or gross receipts attributable to the  
34 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

1 this section on the gross receipts or gross proceeds received by the  
2 contractor.

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

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

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

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

31 J. The portion of gross proceeds of sales or gross income attributable  
32 to the actual direct costs of providing architectural or engineering services  
33 that are incorporated in a contract is not subject to tax under this section.  
34 For the purposes of this subsection, "direct costs" means the portion of the  
35 actual costs that are directly expended in providing architectural or  
36 engineering services.

37 K. For the purposes of this section:

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

39 2. "Contractor" is synonymous with the term "builder" and means any  
40 person, firm, partnership, corporation, association or other organization, or  
41 a combination of any of them, that undertakes to or offers to undertake to,  
42 or purports to have the capacity to undertake to, or submits a bid to, or  
43 does personally or by or through others, construct, alter, repair, add to,  
44 subtract from, improve, move, wreck or demolish any building, highway, road,  
45 railroad, excavation, manufactured building or other structure, project,



1 development or improvement, or to do any part of such a project, including  
2 the erection of scaffolding or other structure or works in connection with  
3 such a project, and includes subcontractors and specialty contractors. For  
4 all purposes of taxation or deduction, this definition shall govern without  
5 regard to whether or not such contractor is acting in fulfillment of a  
6 contract.

7 3. "Dealership of manufactured buildings" means a dealer who either:  
8 (a) Is licensed pursuant to title 41, chapter 16 and who sells at  
9 retail manufactured buildings.

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

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

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

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

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