TAXPAYER INFORMATION RULING LR15-006

June 4, 2015

Thank you for your letter dated December 18, 2014 requesting a taxpayer information ruling ("TIR") on behalf of your unnamed homebuilder ("Company H" or "H") client's subsidiary, M. Specifically, you requested a ruling regarding the applicability of the Arizona transaction privilege tax ("TPT") on M's activities in Arizona. Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Arizona Department of Revenue ("Department") may issue taxpayer information rulings to taxpayers and potential taxpayers on request.

DESCRIPTION OF PARTIES:

- **H** is a home builder that builds and sells new homes in Arizona through its subsidiaries.
- **M** is a subsidiary wholly owned by H. It owns the underlying land and sells the completed home and lot to the final customer.
- **C** is another subsidiary wholly owned by H. It is responsible for the offsite improvements, lot development and vertical (home) construction under contract with **M**.
- ******* leases personnel to **H**'s subsidiaries including **M** and **C**.

ISSUE:

To determine the necessity of H of continuing to maintain a dual entity structure (marketing arm(M)/construction arm entity(C)) for the purpose of limiting the TPT under the prime contracting classification to its construction activities the following issues must be considered:

> Whether an unrelated third party general contractor contracted by M to hire construction trades and oversee their construction activity is taxable as a prime contractor?
>
> Whether *** used by M to oversee the completion of work activity conducted by trade contractors contracted by M are prime contractors?

Whether the provisions of A.R.S. § 42-5075(R)(10) prevents the imposition of the TPT under prime contracting classification from applying to M if it uses *** but does not perform any modification activity itself?

RULING:

Where C is no longer part of H's structure and an unrelated third party general contractor is engaged by M to hire construction trades and oversee their work, that unrelated third party general contractor retained by M will be considered the prime because it is responsible to complete the project for M. In that case, M is not acting as a prime contractor and is not taxable under the prime contracting classification.

Where C is no longer part of H's structure and M uses *** leased from ***, under the *Ormond* rule (discussed below) those *** could be considered prime contractors because of their work in supervising the completion of the project. However, while construction is taking place and there is no contract for the sale of the improved property so M does not receive any compensation for the supervision activities of its leased ***, no tax liability arises for M. At that point, M is not "undertaking to build for others" nor is it deriving income from "building for others." During that period, the individual trade contractors will be liable for the TPT as prime contractors because they are responsible for completing their own contracts with M and are being paid to do so.

The legislative history and the ordinary meaning of the word "itself" used in A.R.S. § 42-5075(R)(10) indicates that a contractor normally taxable as prime contractor is exempt from the TPT if he owns the land on which the modification activity is being conducted but does not perform any of that modification work himself but instead hires other contractors to do the modification work. This is so even if there is a contract for the sale of the land being improved. That being the case, H need not maintain its marketing arm/construction arm structure. M will be permitted to use *** to oversee the construction activities of its contracted third party trades. The TPT will only be due on the income derived from the construction activities of the contracted trades or the third party general contractor, if one is engaged.

The Department considers leased or temporary employees (whether *** or other workers) as much a part of a taxpayer as a taxpayer's permanent employees. Thus, to qualify for the exemption under A.R.S. § 42-5075(R)(10), M must be able to show that any and all modification activities were undertaken by unrelated third parties. To this end, modification activities will include any and all activities relating to improving the real estate on which new

construction activity will take place, including but not limited to, offsite improvements, lot development and vertical (home) construction. Hence, if any modification work is conducted by M through temporary, leased, contracted or permanent employees, the exemption would not apply. M is also required to retain a list of all contractors engaged to do construction work for each and every real property improvement project. That list must show contractors engaged for all phases of development and construction. M must also retain copies of all invoices from those contractors. Finally, because all the income M will be earning will be non-taxable for TPT purposes either because it retains a third party general contractor who hires third party trades or it uses its own *** and contracts with third party trades, M does not have to report any income or retain its TPT license unless it plans on engaging in other taxable activities.

This ruling does not affect the Department's marketing arm/construction arm policy.

SUMMARY OF FACTS:

The following facts are a summary based on your ruling request dated December 18, 2014, additional information provided in your letter dated February 9, 2015, as well as subsequent conversations clarifying certain facts and your confirmation of relevant facts dated April 30, 2015:

Company H is a homebuilder that builds and sells new homes in Arizona. Those homes may be in its own developments or in planned communities of other developers.[1] H carries out its building activities through the use of a dual entity structure: a marketing entity, M, which owns the underlying land and sells the completed home and lot to the customer and a construction entity, C, which is responsible for the offsite improvements, lot development and vertical (home) construction under contract to M. C neither employs nor leases personnel to do actual construction. Rather, C enters into contracts with third party trades that construct the various aspects of the project, such as the offsite improvements and homes. C operates under contract to M to ensure the requisite construction occurs and is compensated by M. Both M and C are wholly owned subsidiaries of H.

[1] A distinction is made between a developer that develops offsite improvements and infrastructure and sometimes finished lots, but does not do vertical construction (homes). Rather, a developer in this sense, sells parcels of land to homebuilders which build homes for sale to customers.

The Arizona and County TPT are currently remitted by C based on its gross receipts from an arms-length intercompany price which it charges to M.[2] Once title has passed to the customer, M is responsible to the customer to ensure that any necessary warranty work occurs, which M looks to C to perform. Neither M nor C is paid for warranty work requested by the customer. Most trades warranty their work for a period of time, which may be up to a year. If there is a problem during that time, the trade resolves the problem without compensation. If the problem occurs after that time, C compensates the trade for the warranty work performed. No other real property modifications are performed by or on behalf of M after title passes other than the warranty work described.

H's structure was put in place as a result of a policy issued by the Department in the 1980s. However, as a result of certain legislative changes to the prime contracting statute, H is contemplating changing its business structure to eliminate C. In the revised structure, M will either engage a third party general contractor to hire and supervise the trades or it will enter into contracts with the trades itself and use its own *** to supervise them. M will hold title to the land at all times during the construction process and will sell the improved property to the final customer.

If M hires third party general contractors, those third party general contractors will hire trade contractors and be responsible for completing the offsite improvements, infrastructure and/or vertical construction (homes) in M's projects.

In a situation where C no longer exists, and no third party general contractor is contracted by M, M will use *** to oversee the work of the trade contractors contracted by M. Neither M nor C hires employees directly unless required to do so for regulatory purposes. Rather, employees are leased ***. ***. ***. *** The leased personnel include ***. If C no longer exists, M will lease the ***. In addition, if C no longer exists and there is no general contractor, M will compensate the trade directly for any warranty work when such work is performed outside the trade's warranty period. Other than using ***, M will not perform any construction related activity nor have construction related personnel.

The primary responsibilities of the ***(s) are to:

- Validate schedule progression and adherence, and product quality.
- Work with the team to share feedback and improve planning activities, including, but not limited to, vendor coaching and performance feedback through schedule and quality recordables.

[2] For the purposes of this ruling municipal TPT is not in issue.

- Maintain design quality, materials management, budget accuracy, and take-off accuracy.
- Manage the customer experience.
- Assist in the customer orientation process as well as respond to warranty calls during the first year.
- Collaborate with trade partners throughout the construction process and first year warranty to improve quality and efficiency interface with sales personnel to manage neighborhood and customer activities and referrals.
- Ensure job sites adhere to company safety and Stormwater Pollution Prevention Plan ("SWPPP") standards.
- Assist in resolving issues/conflicts related to daily construction activities.
- Authorize payment for materials received and work completed.

M currently has a Class B, General Residential Contractor's license,[3] issued by the Arizona Registrar of Contractors. M does not utilize that license to construct any homes in Arizona but maintains one pursuant to Company H's policy.[4] C also holds a contractor's license. If the revised structure is implemented and C is eliminated, M will continue to hold its license pursuant to H's policy.

DISCUSSION & LEGAL ANALYSIS:

1. **Whether a general contractor contracted by M to hire and oversee the construction activity performed by construction trades is taxable as a prime contractor?**

A.R.S. § 42-5075(A) imposes TPT on "the business of prime contracting." The term "contracting" means "engaging in business as a contractor." See A.R.S. § 42-5075(R)(2). The tax base for the prime contracting classification is sixty-five percent of a prime

[3] According to the Arizona Registrar of Contractors website, a General Residential Contractor is authorized for: Construction of all or any part of a residential structure or appurtenance. Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor.

[4] Under A.R.S. § 32-1121(A)(6) contractors are not required to obtain a license from the Registrar of Contractors if they own property and are developers that build or improve structures or appurtenances to structures on their property for the purpose of sale or rent provided they contract for such a project with a general contractor or specialty contractor licensed by the Registrar of Contractors. To qualify for the exemption, the licensed contractors' names and license numbers must be included in all sales documents.

contractor's gross receipts derived from the business. See A.R.S. § 42-5075(B). The tax base for TPT generally includes gross sales without any deductions for any business expense. Any deductions, exemptions, or exclusions from the tax base must be specifically provided for in statute because they are unique to each classification.

A.R.S. § 42-5075(R)(3) provides a contractor is synonymous with the term “builder" and means any person or organization 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, modify any building, structure or project. A.R.S. § 42-5075(R)(10) defines a prime contractor as a contractor who supervises, performs or coordinates the modification of any building and who is responsible for the completion of the contract.

The term prime contractor is not synonymous with the term "general contractor" as used in the contracting industry. Rather, for TPT purposes, the prime contractor need only be responsible for the completion of its contract that requires it to supervise, perform, or coordinate a modification. A prime contractor does not have to be responsible for the completion of an entire project, it only has to be responsible to complete its own contract. Furthermore, only the prime contractor on a project is responsible for the TPT, the other contractors on the project are not responsible for TPT and are not subject to the TPT if they can demonstrate the job was in the control of a prime contractor(s). See A.R.S. § 42-5075(D).

The legislature did not intend everyone who ever decided to build to be included within the ambit of the transaction privilege tax.[5] Rather, the legislative history reflects an intent to tax those who we might traditionally consider to be “contractors,” that is, those who for a consideration undertake to build for others.[6] Thus, a prime contractor taxable under the prime contracting classification must first be a contractor, a person who builds or purports to be able to do so as part of its regular business. Secondly, that contractor must qualify as a prime contractor in that it supervises, performs or coordinates the modification and is responsible for completing the contract or project.

In H’s revised structure where C no longer exists and M engages a third party general contractor to hire and supervise the trades to ensure they complete the development in accordance with M’s plans and specifications, the general contractor will be considered the prime contractor. In that case, the general contractor is responsible to complete the project

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[5] See *SDC Management., Inc. v. State ex rel. Arizona Dep't of Revenue*, 167 Ariz. 491, 497, 808 P.2d 1243, 1249 (Ct. App. 1991).
[6] *Id.*

for M. M is not acting as a prime contractor and is not taxable under the prime contracting classification. The third party general contractor engaged by M therefore will be responsible to pay the TPT on the gross income derived from the project. This is consistent with existing case law. See *SDC Mgmt., Inc. v. State ex rel. Arizona Dep't of Revenue,* 167 Ariz. 491, 499, 808 P.2d 1243, 1251 (Ct. App. 1991)(A general contractor who works for an owner-builder is itself taxed as a "prime contractor.").

2. Without considering A.R.S. § 42-5075(R)(10), whether the * used by M to oversee the completion of the construction activity of M's contracted trades are prime contractors?**

M is currently holds a contractor's license issued by the Arizona Registrar of Contractors and will continue to hold its contractors license pursuant to company policy if H revises its current structure.[7] However, M does not and will not perform any construction or modification work itself. If M does not hire a third party general contractor under its revised structure, it will use the *** currently used by C to oversee the completion of its projects. The *** will be leased ***. ***. They are generally responsible for providing the technical expertise in coordinating the activities of new home construction according to M's standards and processes.

To recap, A.R.S. § 42-5075(R)(10) defines a prime contractor as a *contractor* who supervises, performs or coordinates the modification of any building *and* who is responsible for the completion of the contract. Being taxable under the statute as a prime contractor does not depend on whether a person is a "general contractor" as that term might be used in industry; additionally, a construction project may not have a general contractor and a contractor may be taxable as a prime contractor without being a general contractor on a project.[8] Thus, a *title* used in a specific situation to describe work done is not critical, the *type* of work conducted by the person is.

In *Ariz. Dep't of Revenue v. Ormond Builders, Inc*., 216 Ariz. 379, 166 P.3d 934, (App.2007), the Arizona Court of Appeals looked at the issue of whether a construction

[7] A.R.S. § 32-1121(A)(6) exempts property owners from obtaining a contractor's license if they are developers and build on their property for the purpose of renting or selling the improved property as long as they contract with a general contractor or specialty contractors licensed by the Arizona Registrar of Contractors. However, to qualify for this exemption, all the licensed contractors' names and license numbers must be included in all sales documents.

[8] See *Ariz. Dep't of Revenue v. Ormond Builders, Inc*., 216 Ariz. 379, 385, 166 P.3d 934, 940 (App.2007).

manager could be a prime contractor. In that case, Ormond was contracted to do work for two Arizona school districts that required it to supervise and coordinate two separate construction projects. As part of its contractual activities, Ormond was responsible for developing time schedules, preparing budgets, monitoring and inspecting the performance of the trade contractors. In addition it was responsible for maintaining full-time employees at the sites, coordinating and providing general direction to trade contractors' work, processing and reviewing change orders, assisting in obtaining all building permits, reviewing and processing applications by the trade contractors for progress and final payments and assisting the school districts in determining substantial completion of the work.

The trade contractors were hired directly by the school districts but were paid by Ormond on behalf of the school districts. One of the questions considered by the court was whether their (Ormond's) work as construction managers qualified them as prime contractors for TPT purposes. The court acknowledged that Ormond performed many of the functions that a general contractor would have performed had one been engaged. In addition, Ormond had the skill and experience to supervise the subcontractors, and so the court concluded Ormond was a contractor as well as the prime contractor on both projects. Ormond was responsible for completing its own contracts with the school districts to act as a construction manager, it acted as a prime contractor in doing so and was responsible for the TPT on it gross receipts from the construction manager contract.[9] See *Arizona Dep't of Revenue v. Ormond Builders, Inc*., 216 Ariz. 379, 385, 166 P.3d 934, 940 (Ct. App. 2007).

While M is not required to hold a contractor's license, it holds one anyway. This indicates that M is holding itself out to the public as being able to build homes. Indeed, the fact that it describes its activities as homebuilding is also evidence of this fact. Although, the TPT statutes do not require a person to hold a contractor's license to be liable for the tax, the fact that M holds a license (and is not required to hold one) provides support for the fact that it is in the business of contracting as one might traditionally consider it. In addition, by engaging others to do the modification work, it is modifying "by or through others," thus falling squarely within the definition of the term "contractor" as provided under A.R.S. § 42-5075(R)(3).

You have indicated that M will lease the *** and the *** will ensure the proper completion of M's development by the various trade contractors contracted by M to do the modification work in its development projects. Those *** would be responsible for providing technical

[9] Although the court held they were contractors, Ormond was not liable to pay any additional TPT on other grounds.

expertise in coordinating home construction activities, ensuring quality standards are maintained throughout the construction process, overseeing materials management, budget accuracy and take off accuracy, and authorizing payment for materials received and work completed. In essence, they would be doing the work of a general contractor had one been retained. Thus, under the *Ormond* analysis, M's *** could be considered prime contractors because of their work in supervising and coordinating the completion of M's development projects.

While construction is taking place and there is no contract for the sale of the improved property so that M does not receive any income from the supervision activities for its leased ***, no tax liability arises for M. At that point M is not "undertaking to build for others" nor is it deriving income from building for others. During that period, the third party trade contractors contracted by M will be liable for the TPT as prime contractors because they are performing the modification work, they are responsible for completing their own contracts with M and are being paid to do so. "By imposing the tax on contractors who are "responsible for the completion of the contract," … and exempting only those subcontractors who can demonstrate they worked on a job within the control of a taxable prime contractor… the Legislature recognized that there may be more than one taxable prime contractor on a single project."[10] Thus, having more than one prime contractor on a project is not inconsistent with the statute's legislative intent.

3. **Whether the provisions of A.R.S. § 42-5075(R)(10) prevents the imposition of the TPT under prime contracting classification on M when it uses *** but does not perform any modification activities itself?**

The question of whether M becomes taxable arises when it actually enters into a contract for the sale of the real property being improved. You have indicated that M receives a deposit from its customer when it enters into a contract for the sale of the improved property and the balance of the purchase price is paid after the home is completed. Title passes to the customer simultaneously with the payment of the balance of the purchase price at the close of escrow, and at that point no construction activity is taking place. Whether the income M receives from its customer on signing a sales contract and at the close of escrow is taxable as income derived from prime contracting is dependent on the interpretation of the amendment to A.R.S. § 42-5075(R)(10).

[10] *Arizona Dep't of Revenue v. Ormond Builders, Inc*., 216 Ariz. 379, 389, 166 P.3d 934, 944 (Ct. App. 2007).

By legislative amendment in 2007, the definition of the term “prime contractor” was changed. A.R.S. § 42-5075(R)(10), as amended, provides:

> "Prime contractor" means a contractor who supervises, performs or coordinates the modification 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. ***Except as provided in subsections E and Q of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.*** [Highlighted portion added in the 2007 amendment].[11]

The term “modification” and “to modify” were also added by the 2007 amendment. Under A.R.S. § 42-5075(Q)(5) “modification” meant construction, alteration, repair, addition, subtraction, improvement, movement, wreckage or demolition; and under A.R.S. § 42-5075(Q)(6) the term "modify" meant construct, alter, repair, add to, subtract from, improve, move, wreck or demolish.[12]

If the legislature does not define terms used in a section, and it does not appear from the context that a special meaning was intended, one must be guided by the ordinary meaning of the words. *State Board of Dispensing Opticians v. Schwab*, 93 Ariz. 328, 380 P.2d 784 (1963); *Arizona State Tax Commission v. First Bank Building Corp*., 5 Ariz. App. 594, 429 P.2d 481 (1967). See also *Martin v. Martin*, 156 Ariz. 452, 457, 752 P.2d 1038, 1043 (1988) (primary task in interpreting a statute is to determine and carry out the intent of the legislature); *State ex rel. Ariz. Dep't of Revenue v. Capitol Castings, Inc*., 207 Ariz. 445, 447, 88 P.3d 159, 161 (2004) (Nevertheless, we are mindful that this court must reasonably construe the words and provisions of the exemptions to give effect to the Arizona Legislature's intent and purpose). However, tax exemptions are “strictly construed” against

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[11] The last sentence of A.R.S. § 42-5075(R)(10) detailing the exemption of a property owner from being considered a prime contractor was added in 2007 by Laws 2007, chapter 188 section 1.

[12] The definition of the terms modification and modify were again changed by an amendment in 2015. See SB 1446, Laws 2015 Chapter 4, section 11.

the taxpayer. *Kitchell Contractors, Inc. v. City of Phoenix*, 151 Ariz. 139, 144, 726 P.2d 236, 241 (App.1986).

In this case, the term "itself modify" was not given a special meaning and it does not appear from the context that a special meaning was intended. A look at the fact sheet from the 2007 amendment reveals it was enacted to address certain issues being encountered. The fact sheet notes:

> It is common practice for a property owner to hire a prime contractor to construct a building or make other property improvements. In some cases, a property owner may agree to a contract to sell the property to another party, including an agreement to make additional improvements to the property before the property's title is transferred to the new owner. In a recent ruling, the Department of Revenue (DOR) has interpreted current law as requiring the original owner to be designated the prime contractor as soon as the sales contract is made, whether or not the title has been transferred. As a result, the original owner is taxed as a prime contractor upon consummation of the sale.
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> Using this scenario, the original prime contractor may have already made some TPT payments during construction. By having to pay TPT on the gross proceeds of the sale, it could lead to the owner's share of the gross proceeds related to new construction being double-counted along with the original prime contractor's sales tax payments. State law does not provide a mechanism for the owner to receive a refund for taxes already paid by the original prime contractor in those instances where the original prime contractor subsequently becomes a subcontractor and has no further prime contracting tax liability.[13]

In explaining the amended provisions, it indicates that the statute:

> 1. Excludes property owners who hire contractors to make improvements on the property from the definition of prime contractor, regardless of the existence of a sales contract, retroactive to January 8, 1991.

[13] See Senate Fact Sheet to HB 2627, forty-eighth legislature, first regular session available on the Arizona Legislature's website www.azleg.gov.

> 2. Allows the former property owner to be considered a prime contractor and liable for TPT under the prime contracting classification only on improvements not included in the sales contract made by the former owner after the property's title has been transferred to a new owner, retroactive to January 8, 1991.[14]

In addition to the legislative history, the ordinary meaning of the word "itself" shows that it could either be used as a reflexive pronoun or to emphasize something. In the context of the prime contracting exclusion as provided under A.R.S. § 42-5075(R)(10), the word "itself" and the term "does not itself modify" together with the then definition of the term "to modify" suggests that it is the prime contractor ***itself*** that is prohibited from making the modifications. Thus, a person or organization that would normally be a prime contractor under the terms of the statute is not taxable if he owns property and retains contractors to do the actual construction work and does not do any of that construction work himself. This is so even if there is a contract for the sale of the property and modification is ongoing. As an exception to this exception, the prime contractor will nevertheless be taxable under the prime contracting classification if that person issues a Form 5005 (pursuant to A.R.S. § 42-5075(E))[15] to the other contractors on the project indicating to them that it will be responsible for the tax or it receives consideration for modifications it performs after title has passed to the customer (pursuant to A.R.S. § 42-5075(Q)).[16] If the prime contractor does the modification work itself (i.e. it "performs" the modification), then the exception does not apply making any amount it receives under a contract for the sale of the improved property taxable for TPT purposes.

From the facts you provided, M does not receive any compensation after title passes to the new owner for modification work to be done as it is normally covered warranty work under the real property sales contract. Because M will either contract with the third party trades directly or engage a third party general contractor who will hire the trades, it is not doing any of the modification activities itself. Therefore, M is not a prime contractor as a result of

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[14] *Id.*

[15] A.R.S. § 42-5075(E) provides that a contractor may indicate it will be responsible for the TPT if that contractor issues a certificate (Form 5005) to the contractors it hires even if that contractor issuing the certificate would not otherwise be liable for the TPT as a prime contractor.

[16] A.R.S. § 42-5075(Q) imposes TPT under the prime contracting classification where a person who owns real property sells that property to a third party but still remains responsible to the new owner for modifications made to the property after title has passed and receives payment for the modifications. However, only the income received after title passes is taxable.

the provisions in A.R.S. § 42-5075(R)(10) in either case because it is not performing any of the modification work itself. Under both scenarios, third part trade contractors will be performing the actual modification work.

In the case where a third party general contractor is retained by M, the trades hired by the general contractor will do the construction work and the general will be responsible for the completion of the project and TPT on the income it derives from the contracting activity. The normal contracting rules apply in that case and the general is taxable as the prime contractor. In the case where M leases ***, although the work the *** perform could qualify as prime contracting, as a result of A.R.S. § 42-5075(R)(10) M is not considered the prime contractor because it is not performing any of the modification work itself. In that case, each individual third party trade contractor is treated as the prime contractor because it is responsible for completing its contract and is performing the modification work. Because M is not the prime contractor in either case as a result of the provisions of A.R.S. § 42-5075(R)(10), in either scenarios of M's contemplated revised structure, the TPT is based on the construction activity and not the sales price of the house. Thus, H does not need to maintain its marketing arm/construction arm entity structure.

It is important to note that the Department considers leased or temporary employees (whether *** or other workers) as much a part of a taxpayer as a taxpayer's permanent employees. Thus, to qualify for the exemption under A.R.S. § 42-5075(R)(10), M must be able to demonstrate that any and all modification activities were undertaken by unrelated third parties. To this end, modification activities will include any and all activities relating to improving the real estate on which new construction activity will take place, including but not limited to, offsite improvements, lot development and vertical (home) construction. Hence, if any modification work is conducted by M through temporary, leased, contracted or permanent employees, the exemption would not apply. M is also required to retain a list of all contractors engaged to do construction work for each and every real property improvement project for which it relies on the exception in A.R.S. § 42-5075(R)(10). That list must show contractors engaged for all phases of development and construction. M must also retain copies of all invoices from those contractors. Finally, because all the income M will be earning will be non-taxable for TPT purposes either because it retains a third party general contractor who hires third party trades or it uses its own *** and contracts with third party trades, M does not have to report any income or retain its TPT license unless it plans on engaging in other taxable activities.

This response is a taxpayer information ruling (TIR) and the determination herein is based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that

undisclosed facts were substantial or material to the Department's making of an accurate determination, this taxpayer information ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law, or notification of a different Department position.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.