TAXPAYER INFORMATION RULING LR16-004

April 18, 2016

Thank you for your letter dated September 10, 2015 requesting a taxpayer information ruling ("TIR") on behalf of your unnamed homebuilder client ("Company H" or "H") doing business in Arizona. Specifically, you requested a ruling regarding the applicability of the Arizona transaction privilege tax ("TPT") related to Company H's subsidiaries' 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 and the ultimate parent of an affiliated group of entities that builds and sells new homes in Arizona through its subsidiaries, which are held within its own developments.
- **Marketing Companies** are subsidiaries of H. Each of the Marketing Companies owns the underlying land and sells the completed home and lot to the final customer. They are also responsible for the offsite improvements and lot development.
- **Construction Companies** are also subsidiaries of H. Each of the Construction Companies is responsible for the vertical (home) construction under contracts with the Marketing Companies.
- **P** is an affiliate payroll master entity of H that is responsible for hiring personnel throughout the United States including Marketing Companies and Construction Companies in Arizona.

ISSUE:

To determine the necessity of H continuing to maintain a dual entity structure (consisting of Marketing Companies and Construction Companies) for the purpose of limiting the TPT under the prime contracting classification to construction activities the following issues must be considered:

> Whether an unrelated third party general contractor contracted by Marketing Companies to hire construction trades and oversee their construction activity is taxable as a prime contractor?

Whether land and construction managers used in the revised structure by Marketing Companies to oversee the work activity conducted by trade contractors directly contracted by Marketing Companies 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 Marketing Companies if they use land and construction managers but do not perform any modification activity themselves?

RULING:

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

Where Construction Companies are no longer part of H's structure and Marketing Companies utilize land and construction managers hired by affiliate P, under the *Ormond* rule[1] (discussed below) those managers could be considered prime contractors because of their work in supervising the completion of the project.

The legislative history and the ordinary meaning of the word "itself" used in A.R.S. § 42-5075(R)(10) suggests 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 and 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. Marketing Companies will be permitted to use land and construction managers 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. TPT will be paid directly to the Department by the trades or third party general contractor.

The Department considers leased or temporary employees (whether land or construction managers or other workers) as much a part of a taxpayer as a taxpayer's permanent employees or workforce. Thus, to qualify for the exemption under A.R.S.

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

§ 42-5075(R)(10), Marketing Companies 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 Marketing Companies through temporary, leased, contracted or permanent employees or other workers, the exemption would not apply. Marketing Companies are 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. Marketing Companies must also retain copies of all invoices from those contractors. Finally, because all the income Marketing Companies will be earning will be non-taxable for TPT purposes either because they retain a third party general contractor who hires third party trades or they use their own land and construction managers and contract with third party trades, Marketing Companies do not have to report any income or retain its TPT license unless it plans on engaging in other taxable activities. In addition, because Marketing Companies are not conducting any contracting work they may not use Form 5000 to purchase construction materials tax exempt.

This ruling is based on the dissolution of Construction Companies per the contemplated structure. It is also based on the stated fact that Marketing Companies do not hold contractor's licenses.

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 September 10, 2015 as well as additional information provided in your letter dated November 13, 2015:

Company H is a homebuilder that builds and sells new homes in Arizona through its subsidiaries, which are held within its own developments. H's business activities in Arizona are segregated into two distinct operations controlled by multiple Marketing Companies and Construction Companies.

Each of the Marketing Companies own the underlying land of a respective development throughout the entire construction process then sells the completed home and lot to the final customer. The Marketing Companies are each responsible for the lot development and offsite improvements and engage third party contractors directly for the performance of the lot development and offsite improvements. Arizona and county TPT is remitted by the

third party contractors based on their gross receipts from the Marketing Companies for the prime contracting services provided.

The Construction Companies are each responsible for the vertical (house) construction under separate contracts with the Marketing Companies and they pay the Arizona and county TPT based on their gross receipts on an arms-length intercompany price charged to the Marketing Companies.[2] Neither Construction Companies nor Marketing Companies perform actual construction work, rather the Companies enter into contractual agreements with third party contractors directly to perform the vertical construction, lot development and offsite improvement.

Once title has passed to the final customer, Marketing Companies are each responsible to the customer to ensure that any necessary warranty work occurs, which Marketing Companies look to the Construction Companies to perform. Neither Marketing Companies nor Construction Companies is paid for warranty work requested by the customer. The trades are paid by the Construction Companies for any warranty work requested, unless the trades are responsible under their separate construction contracts for the work. No other real property modifications are performed by or on behalf of Marketing Companies after title passes other than the warranty work described.

Neither Construction Companies nor Marketing Companies hire employees. Rather, H has an affiliate payroll master company ("P") that is responsible for hiring personnel throughout the United States, including Arizona. Marketing and Construction Companies are charged a service fee, via journal entry, for their utilization of land development managers and construction managers used in coordinating construction activities performed by third party contractors. The managers receive compensation directly from P and not the Marketing or Construction Companies. P hires personnel other than marketing managers and land development managers, but none of those employees do any actual construction work.

Construction Companies each hold an Arizona contractor's license. Marketing Companies do not hold Arizona contractor's licenses.[3]

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

[3] 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.

H's dual-entity 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 believes that Marketing Companies need not engage Construction Companies for the vertical (house) construction in order to limit the imposition of the TPT to the gross receipts from the construction activity. Rather, H believes that Marketing Companies should be able to enter into contractual arrangements with third party contractors directly to perform the necessary vertical construction activities, including warranty work.

In the revised structure Marketing Companies will either engage a third party general contractor to hire and supervise the trades or it will enter into contracts directly with the trades itself. In a situation where a third party general contractor is retained by Marketing Companies, the trades hired by the general contractor will do all of the construction work. In a situation where Construction Companies no longer exist and a third party general contractor is not hired, Marketing Companies will use land development managers and construction managers to oversee the work of the unrelated third party trade contractors contracted by the Marketing Companies to ensure the proper completion of the development.

The primary responsibilities of the land development manager(s) include:

- Plan and direct the technical planning functions of each proposed community
- Develop and implement construction guidelines as they relate to land development.
- Coordinate all public and private utility companies during all phases of assigned community development
- Negotiate, execute and monitor contracts for both professional and construction services
- Conduct initial site visits
- Monitor compliance with established safety procedures, quality standard and work schedules through regular site inspections, determining reasons for any deviation
- Develop and oversee plans for corrective action when work deviated from the planned schedule
- Monitor change orders and design problems and consult with architects, engineers, contractors, etc., as required to meet standards and evaluate alternative methods when appropriate
- Ensure that the community is built consistent with engineering drawings and construction specifications
- Prepare and monitor land development schedules for assigned communities to ensure home production milestones are met and all approval contingencies are satisfied.

The primary responsibilities of the construction manager(s) include:

- Serve as the company's representative at the worksite in dealings with subcontractors, suppliers, customers and government inspectors
- Manage the homebuilding administrative process from receipt of the building permit to closing of the sale and ensure building code, environmental safety compliance and the quality specifications of the Company and its customers
- Resolve issues with architectural plans when the plans cannot be well executed in the field or will not comply with building codes
- Ensure that contractors and vendors perform on schedule and within budget
- Conduct and document inspections; consult with inspectors
- Proactively identify and mitigate recurring construction issues
- Train others in established company safety and work with subcontractors to ensure compliance with federal and state safety and storm water procedures and regulations
- Verify that safety equipment is used, directing the elimination of safety hazards and fining non-compliant vendors

DISCUSSION & LEGAL ANALYSIS:

1. **Whether a general contractor contracted by Marketing Companies 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 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.[4] 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.[5] 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 Construction Companies no longer exist and Marketing Companies engage a third party general contractor to hire and supervise the trades to ensure they complete the development in accordance with Marketing Companies’ plans and specifications, the general contractor will be considered the prime contractor. In that case, the general contractor is responsible to complete the project for Marketing Companies. Marketing Companies are not acting as a prime contractors and are not taxable under the prime contracting classification. The third party general contractor engaged by Marketing Companies therefore will be responsible for paying 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.”).

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[4] 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).
[5] *Id.*

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

Currently, Marketing Companies do not perform any construction work and if they do not hire a third party general contractor under the revised structure, they will utilize construction managers and land managers to oversee the completion of vertical (house) construction in its projects. The construction managers and land managers will be hired by P and a journal entry will be made accounting for service fees for the use of those managers. The managers are paid directly by P. They are generally responsible for managing the homebuilding process and ensuring compliance with quality standards, including resolving any building issues and ensuring projects are completed on time and within budget. They will also oversee the activities of the contracted trades who will do the construction work.

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.[6] Thus, the *title* used in a specific situation to describe work done by a contractor is not critical, the *type* of work conducted by the contractor 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 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.

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

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

You have indicated that Marketing Companies will utilize construction and land managers hired by affiliate P to ensure the proper completion of its development projects by the various trade contractors. Those managers would be responsible for providing technical expertise in coordinating construction activities, ensuring quality standards are maintained throughout the construction process, overseeing materials management, monitoring budgets, construction plans and schedules taking corrective action where appropriate. In essence, they would be doing the work of a general contractor had one been retained. Thus, under the *Ormond* analysis, Marketing Companies' construction managers and land managers would be considered prime contractors because of their work in supervising and coordinating the completion of the development projects. Because those managers are working with Marketing Companies as *de facto* employees, the Marketing Companies would be considered the prime contractors.

3. **Whether the provisions of A.R.S. § 42-5075(R)(10) prevents the imposition of the TPT under prime contracting classification on Marketing Companies when they use land and construction managers but do not perform any modification activities themselves?**

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

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

> 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 a 2007 amendment].[8]

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.[9]

A look at the fact sheet from the 2007 amendment reveals it was enacted to address certain issues being encountered at the time. 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

[8] 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.

[9] 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 original prime contractor in those instances where the original prime contractor subsequently becomes a subcontractor and has no further prime contracting tax liability.[10]

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.
>
> 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.[11]

Thus, a reading of the statute together with the fact sheet indicates that where a property owner hires contractors to modify their property but do not do any of the modification activities themselves, they should not be considered prime contractors. A property owner is a "person," and that term is defined very broadly in A.R.S. § 42-5001(8) as including individuals, firms, partnerships joint ventures, associations, corporations etc. The term would include various entities that may include entities acting as contractors who are also property owners. The terms modification and to modify generally include construction activity. The word "itself," however is not defined by the statute.

If the legislature does not define a term 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 word(s). *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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[10] See Senate Fact Sheet to HB 2627, Forty-eighth Legislature, First Regular Session available on the Arizona Legislature's website www.azleg.gov.
[11] *Id.*

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

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 property owner ***itself*** that is prohibited from making the modifications or conducting the construction activity. 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 on that property 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))[12] 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)).[13] If the property owner does the modification work itself, 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 provided, Marketing Companies will be the property owners for each development project. In the revised structure Marketing Companies will either contract with the third party trades directly or engage a third party general contractor who will hire the trades to do the construction work. Where Marketing Companies hire trades directly, they will use land and construction managers who will, in essence, perform the functions of a prime contractor and oversee the work of the trades. Although the work they perform would normally qualify as prime contracting under the *Ormond* analysis, as a result of A.R.S. § 42-5075(R)(10) they are not considered the prime contractor because they own real property, contracted with contractors to modify the real property and are not performing

[12] 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.

[13] 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.

any of the modification work themselves. The trades will receive compensation for the construction work performed. Neither Marketing Companies nor Construction Companies receive any compensation after title passes to the new owner for modification/warranty work to be done.[14] In the case where a third party general contractor is retained by Marketing Companies, 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.

Because Marketing Companies 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 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 party trade contractors will be performing the actual modification work.

It is important to note that the Department considers leased or temporary employees (whether construction or land managers or other workers) paid directly by an affiliate of a taxpayer as much a part of the taxpayer as the taxpayer's permanent employees. Thus, to qualify for the exemption under A.R.S. § 42-5075(R)(10), Marketing Companies 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 Marketing Companies through temporary, leased, contracted or permanent employees, or other workers hired by P, the exemption would not apply. Marketing Companies are 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. Marketing Companies must also retain copies of all invoices from those contractors. Finally, because all the income Marketing Companies will be earning will be non-taxable for TPT purposes either because they retain a third party general contractor who hires third party trades or they use their own land and construction managers and contract with third party trades, Marketing Companies do not have to report any income or retain its TPT license unless it plans on engaging in other taxable activities.

[14] Warranty work, if any, is done by the trades and the trades are either paid for work or it is already covered under existing trades contracts; see above.

This ruling is conditioned on the dissolution of Construction Companies per the contemplated structure. It is also based on the stated fact that Marketing Companies do not hold contractor's licenses.

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

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.