

# Construction contracting: construction contractors

## Section Number:

415.00

See also [Regulation 415.1](#) and [Regulation 415.2](#)

(a) The tax rate shall be at an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.

(1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by [A.R.S. Section 45-604\(link is external\)](#).

(2) (Reserved)

## ++(Local Option #K:

(2) However, gross income from the business activity of construction shall not include construction contracting derived from construction contracting activity occurring at Fort Huachuca.)++

(3) Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section \_\_\_\_-[427](#).

(4) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(5) Handyman exclusion. This classification does not include gross income from any work or operation performed by a person that is not required to be licensed by the registrar of contractors pursuant to [A.R.S. Section 32-1121\(link is external\)](#).

## (b) Deductions and exemptions.

(1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

(2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

(3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(A) Section \_\_\_\_-[465](#), subsections (g) and (p)

(B) Section \_\_\_\_-[660](#), subsections (g) and (p)

**\*\* (Model Option #15:**

(B) (Reserved)\*\*

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section \_\_\_\_-[110](#), that is deducted from the retail classification pursuant to Section \_\_\_\_-[465\(g\)](#), ~~that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement~~ shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

~~(A) to be incorporated into real property.~~

~~(B) to become so affixed to real property that it becomes part of the real property.~~

~~(C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed. AND THAT HAS INDEPENDENT FUNCTIONAL UTILITY, PURSUANT TO THE FOLLOWING PROVISIONS:~~

~~(A) THE DEDUCTION PROVIDED IN THIS PARAGRAPH INCLUDES THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM ALL OF THE FOLLOWING:~~

~~(I) ANY ACTIVITY PERFORMED ON MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY.~~

~~(II) ANY ACTIVITY PERFORMED ON ANY TANGIBLE PERSONAL PROPERTY RELATING TO MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY IN FURTHERANCE OF ANY OF THE PURPOSES PROVIDED FOR UNDER SUBDIVISION (D) OF THIS PARAGRAPH.~~

~~(III) ANY ACTIVITY THAT IS RELATED TO THE ACTIVITIES DESCRIBED IN ITEMS (I) AND (II) OF THIS SUBDIVISION, INCLUDING INSPECTING THE INSTALLATION OF OR TESTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.~~

~~(B) THE DEDUCTION PROVIDED IN THIS PARAGRAPH DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THE PORTION OF ANY~~

CONTRACTING ACTIVITY THAT CONSISTS OF THE DEVELOPMENT OF, OR MODIFICATION TO, REAL PROPERTY IN ORDER TO FACILITATE THE INSTALLATION, ASSEMBLY, REPAIR, MAINTENANCE OR REMOVAL OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROERTY THAT IS EITHER DEDUCTED FROM THE TAX BASE OF THE RETAIL CLASSIFICATION UNDER SECTION -465 OR EXEMPT FROM USE TAX UNDER SECTION -660.

(C) THE DEDUCTION PROVIDED IN THIS PARAGRAPH SHALL BE DETERMINED WITHOUT REGARD TO THE SIZE OR USEFUL LIFE OF THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(D) FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT FUNCTIONAL UTILITY" MEANS THAT THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY CAN INDEPENDENTLY PERFORM ITS FUNCTION WITHOUT ATTACHMENT TO REAL PROPERTY, OTHER THAN ATTACHMENT FOR ANY OF THE FOLLOWING PURPOSES:

(I) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(II) CONNECTING ITEMS OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY TO EACH OTHER.

(III) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY, WHETHER AS AN INDIVIDUAL ITEM OR AS A SYSTEM OF ITEMS, TO WATER, POWER, GAS, COMMUNICATION OR OTHER SERVICES.

(IV) STABILIZING OR PROTECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY DURING OPERATION BY BOLTING, BURYING OR PERFORMING OTHER SIMILAR NONPERMANENT CONNECTIONS TO EITHER REAL PROPERTY OR REAL PROPERTY IMPROVEMENTS.

(5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section \_\_\_\_-465, subsection (g) shall be exempt from the tax imposed under this Section.

(7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this Section.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to [A.R.S. Section 9-499.08\(link is external\)](#) if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(A) The certificate of qualification of the lake facility development issued by the City pursuant to [A.R.S. Section 9-499.08, subsection D\(link is external\)](#).

(B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.

(C) Any other information considered to be necessary.

(10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(A) the attributable amount shall not exceed the value of the development fees actually imposed.

(B) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(C) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to [A.R.S. Section 9-463.05\(link is external\)](#), [A.R.S. Section 11-1102\(link is external\)](#) or [A.R.S. Title 48\(link is external\)](#) regardless of the jurisdiction to which the fees are paid.

(11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(12) The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this

Section if the contract does not include modification activities, except as specified in this paragraph. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this Section. For the purposes of this paragraph:

(a) any term not defined in this paragraph that is defined in [A.R.S. Section 42-5075\(link is external\)](#) has the same meaning prescribed in [A.R.S. Section 42-5075\(link is external\)](#).

(b) tangible personal property that is incorporated or fabricated into a project described in this Subsection may be subject to the amount prescribed in Section \_\_\_\_-[415.1](#).

(c) each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

(d) this paragraph does not apply to a contract that primarily involves surface or subsurface improvements to land and that is subject to [A.R.S. Title 28, Chapter 19, 20 or 22\(link is external\)](#) or [A.R.S. Title 34, chapter 2 or 6\(link is external\)](#) even if the contract also includes vertical improvements. If a city or town imposes a tax on contracts that are subject to procurement processes under those provisions, the city or town shall include in the request for proposals a notice to bidders when those projects are subject to the tax. This subdivision does not apply to contracts with:

(i) community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.

(ii) any special taxing district not specified in item (i) of this subdivision if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

(13) The gross proceeds of sales or gross income derived from a contract entered into for the construction of a mixed waste processing facility that is located on a municipal solid waste landfill and that is constructed for the purpose of recycling solid waste or producing renewable energy from landfill waste. For the purposes of this paragraph:

(a) "mixed waste processing facility" means a solid waste facility that is owned, operated or used for the treatment, processing or disposal of solid waste, recyclable solid waste, conditionally exempt small quantity generator

waste or household hazardous waste. For the purposes of this subdivision, "conditionally exempt small quantity generator waste", "household hazardous waste" and "solid waste facility" have the same meanings prescribed in [A.R.S. Section 49-701\(link is external\)](#), except that solid waste facility does include a site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material.

(b) "municipal solid waste landfill" has the same meaning prescribed in [A.R.S. Section 49-701\(link is external\)](#).

(c) "recycling" means collecting, separating, cleansing, treating and reconstituting recyclable solid waste that would otherwise become solid waste, but does not include incineration or other similar processes.

(d) "renewable energy" has the same meaning prescribed in [A.R.S. Section 41-1511\(link is external\)](#)

(c) "Subcontractor" means a construction contractor performing work for either:

(1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number.

(2) an owner-builder who has provided the subcontractor with a written declaration that:

(A) the owner-builder is improving the property for sale; and

(B) the owner-builder is liable for the tax for such construction contracting activity; and

(C) the owner-builder has provided the contractor his City Privilege License number.

(3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

## Construction contracting: speculative builders

**Section Number:**  
416.00

(a) The tax shall be equal to \_\_\_\_\_ percent (\_\_\_\_ %) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.

(1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

(2) "Improved Real Property" means any real property:

(A) upon which a new structure has been substantially completed; or

(B) where improvements have been made to land containing no structure (such as paving or landscaping); or

(C) which has been reconstructed as provided by Section \_\_\_\_-416.2; or

(D) where water, power, and streets have been constructed to the property line.

For the purpose of paragraph (A), once a structure has been deemed "substantially complete" subsequent improvements to the structure shall not be considered for the purpose of determining the date on which a sale transaction would be taxable under this Section.

(3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.

(4) "Partially Improved Real Property", as used in this Section, means any improved real property, as defined in Subsection (a)(2) above, being developed for sale, where the improvement to such property is not substantially complete at the time of the sale.

(b) Exclusions.

(1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Section \_\_\_\_-416.2.

(2) Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.

**++(Local Option #N:**

(2) Fair market value of land. Gross income from the sale of improved real 1 property shall not include the "fair market value" of the land which is included in the real property sold, when a charge for such land is included in the total selling price of the real property sold.

(A) Except as provided in Subsection (b)(2)(B) below, the taxpayer must document such "fair market value" to the satisfaction of the Tax Collector, and maintain and provide such documentation upon demand in addition to and in like manner to the books and records required in Article III.

(B) In lieu of the documented fair market value of land allowed in Subsection (b)(2)(A) above, an amount equal to twenty percent (20%) of the total selling price may be used to estimate the "fair market value" of land.)++

(3) (Reserved)

**++(Local Option #K:**

(3) When the improved real property is located at Fort Huachuca, the sale of such improved real property is excluded from the tax imposed by this Section.)++

(4) A speculative builder may exclude gross income from the sale of partially improved real property as defined in (a)(4) above to another speculative builder only if all of the following conditions are satisfied:

(A) The speculative builder purchasing the partially improved real property has a valid municipal privilege tax license for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller 1 with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved real property; and

(C) The seller also:

(i) maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and

(ii) retains a copy of the written declaration provided by the buyer for the transaction; and

(iii) is properly licensed with the City as a speculative builder

(5) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.



(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section \_\_\_-[465](#), subsections (g) and (p)

(ii) Section \_\_\_-[660](#), subsections (g) and (p)

**\*\* (Model Option #15):**

(ii) (Reserved)\*\*

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section \_\_\_-[465](#), Subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(iii) the attributable amount shall not exceed the value of the development fees actually imposed.

(iv) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to

(v) the development. The real property must be the subject of the development fees.

(vi) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to [A.R.S. Section 9-463.05\(link is external\)](#), [A.R.S. Section 11-1102\(link is external\)](#) or [A.R.S. Title 48\(link is external\)](#) regardless of the jurisdiction to which the fees are paid.

(F) The gross proceeds of sales or gross income that is derived from the value of existing tenant leases in place at the time of the sale shall be exempt from tax imposed under this section. The value of the in-place leases shall be determined as of the close of escrow or transfer of title as follows:

(i) For a residential lease the value of the in-place lease is the total value of all expected lease receipts through the end of the current lease term multiplied by a factor of 1.5. Expected lease receipts includes non-refundable deposits and excludes all refundable deposits regardless of whether the refundable deposit may be forfeited.

(ii) For a commercial lease the value of the in-place lease is the present value of the expected lease receipts through the end of the current lease term or first option of either party to terminate the lease, whichever is less. The discount rate used to calculate the present value shall be the [100% Mid-term Applicable Federal Rate published by the Internal Revenue Service\(link is external\)](#) associated with the payment terms of the lease related to the month preceding the close of escrow plus three (3) percentage points.

A transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of or equitable ownership in improved real property, including any lease of the property for a 1 term of thirty (30) years or more (with all options for renewal being included as a part of the term) is deemed to be a sale of improved real property pursuant to subsection (a)(3) of this section and is not considered an in-place lease.

## (2) "Deductions."

(A) All state and county taxes associated with the project and reported and paid to the Department of Revenue by a contractor constructing the improvements on the property shall be deducted from the selling price.

(B) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(C) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section ~~\_\_\_-110~~, that is deducted from the retail classification pursuant to Section ~~\_\_\_-465(g)~~, ~~that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other~~

~~structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:~~

~~(i) to be incorporated into real property.~~

~~(ii) to become so affixed to real property that it becomes part of the real property.~~

~~(iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.~~ AND THAT HAS INDEPENDENT FUNCTIONAL UTILITY, PURSUANT TO THE FOLLOWING PROVISIONS:

(I) THE DEDUCTION PROVIDED IN THIS PARAGRAPH INCLUDES THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM ALL OF THE FOLLOWING:

(A) ANY ACTIVITY PERFORMED ON MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY.

(B) ANY ACTIVITY PERFORMED ON ANY TANGIBLE PERSONAL PROPERTY RELATING TO MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY IN FURTHERANCE OF ANY OF THE PURPOSES PROVIDED FOR UNDER SUBDIVISION (IV) OF THIS PARAGRAPH.

(C) ANY ACTIVITY THAT IS RELATED TO THE ACTIVITIES DESCRIBED IN ITEMS (A) AND (B) OF THIS SUBDIVISION, INCLUDING INSPECTING THE INSTALLATION OF OR TESTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(II) THE DEDUCTION PROVIDED IN THIS PARAGRAPH DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THE PORTION OF ANY CONTRACTING ACTIVITY THAT CONSISTS OF THE DEVELOPMENT OF, OR MODIFICATION TO, REAL PROPERTY IN ORDER TO FACILITATE THE INSTALLATION, ASSEMBLY, REPAIR, MAINTENANCE OR REMOVAL OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS EITHER DEDUCTED FROM THE TAX BASE OF THE RETAIL CLASSIFICATION UNDER SECTION -465 OR EXEMPT FROM USE TAX UNDER SECTION -660.

(III) THE DEDUCTION PROVIDED IN THIS PARAGRAPH SHALL BE DETERMINED WITHOUT REGARD TO THE SIZE OR USEFUL LIFE OF THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(IV) FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT FUNCTIONAL UTILITY" MEANS THAT THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY CAN INDEPENDENTLY PERFORM ITS FUNCTION WITHOUT ATTACHMENT TO REAL PROPERTY, OTHER THAN ATTACHMENT FOR ANY OF THE FOLLOWING PURPOSES:

(A) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(B) CONNECTING ITEMS OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY TO EACH OTHER.

(C) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY, WHETHER AS AN INDIVIDUAL ITEM OR AS A SYSTEM OF ITEMS, TO WATER, POWER, GAS, COMMUNICATION OR OTHER SERVICES.

(D) STABILIZING OR PROTECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY DURING OPERATION BY BOLTING, BURYING OR PERFORMING OTHER SIMILAR NONPERMANENT CONNECTIONS TO EITHER REAL PROPERTY OR REAL PROPERTY IMPROVEMENTS.

(D) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

### (3) Tax credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax 1 collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) A tax credit equal to the amount of privilege taxes paid to this City by any speculative builder on the gross income derived by said person from the sale of improved real property pursuant to Subsections (a)(2)(B) or (a)(2)(D) of this section against the gross income of any speculative

builder from the sale of improved real property pursuant to Subsection (a)(2)(A).

(D) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

**Sec. \_\_\_\_-416.1. Speculative builders: homeowner's bona fide non-business sale of a family residence.**

(a) A sale of a home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:

(1) the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and

(2) the seller has not sold more than two (2) such residences (or, if the residence is a vacation residence, two (2) such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and

(3) the seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale.

(b) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner's bona fide non-business purpose and all construction contractors shall be required to report and pay the tax imposed on all such improvements.

(c) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.

(d) "Owner", "Homeowner", and "Seller" as used in this Section shall only mean an individual or qualified trust, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings, for the estate of a deceased or incompetent person or a minor, may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.

(e) "Qualified trust" as used in this Section means any legal trust where a beneficiary of the trust is an individual that has been the resident of the property and that individual meets the criteria listed in subsection (a) of this Section.

**Sec. \_\_\_\_-416.2. Reconstruction contracting.**

(a) "Reconstruction (of Real Property)" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:

(1) a structure existed on said real property prior to the reconstruction activity; and

(2) the "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and

(3) the total cost of all construction contracting activities performed on said real property in the twenty-four (24) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and

(4) the structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.

(b) Except as provided in Subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where, according to [Title 42 of the Arizona Revised Statutes\(link is external\)](#), a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply. Where, according to [Title 42 of the Arizona Revised Statutes\(link is external\)](#), a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s).

(c) "Alternative Prior Value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, at a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. (Only long-term lending - not interim or construction financing will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below.

(d) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty) whichever is earlier, to a purchaser or grantee of any single residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens or security interests) of a share, or a

sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases a person shall include a husband and wife as a community, or any co-occupants of a single unit as joint tenants.

## Construction contracting: owner-builders who are not speculative builders

**Section Number:**  
417.00

(a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of:

- (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in subsection \_\_\_\_-[415](#)(c)(2); and
- (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

- (i) Section \_\_\_\_-[465](#), Subsections (g) and (p)
- \*\*((ii) Section \_\_\_\_-[660](#), Subsections (g) and (p)

**Model Option #15:** (ii) (Reserved)\*\*

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section \_\_\_-465, subsection (g) shall be exempt from the tax imposed under this Section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to [A.R.S. Section 9-463.05\(link is external\)](#), [A.R.S. Section 11-1102\(link is external\)](#) or [A.R.S. Title 48\(link is external\)](#) regardless of the jurisdiction to which the fees are paid.

## (2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).



(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section \_\_\_ - [110](#), that is deducted from the retail classification pursuant to Section \_\_\_ - [465\(g\)](#), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) to be incorporated into real property.

(ii) to become so affixed to real property that it becomes part of the real property.

(iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed. AND THAT HAS INDEPENDENT FUNCTIONAL UTILITY, PURSUANT TO THE FOLLOWING PROVISIONS:

(I) THE DEDUCTION PROVIDED IN THIS PARAGRAPH INCLUDES THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM ALL OF THE FOLLOWING:

(A) ANY ACTIVITY PERFORMED ON MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY.

(B) ANY ACTIVITY PERFORMED ON ANY TANGIBLE PERSONAL PROPERTY RELATING TO MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY WITH INDEPENDENT FUNCTIONAL UTILITY IN FURTHERANCE OF ANY OF THE PURPOSES PROVIDED FOR UNDER SUBDIVISION (IV) OF THIS PARAGRAPH.

(C) ANY ACTIVITY THAT IS RELATED TO THE ACTIVITIES DESCRIBED IN ITEMS (A) AND (B) OF THIS SUBDIVISION, INCLUDING INSPECTING THE INSTALLATION OF OR TESTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(II) THE DEDUCTION PROVIDED IN THIS PARAGRAPH DOES NOT INCLUDE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THE PORTION OF ANY CONTRACTING ACTIVITY THAT CONSISTS OF THE DEVELOPMENT OF, OR MODIFICATION TO, REAL PROPERTY IN ORDER TO FACILITATE THE INSTALLATION, ASSEMBLY, REPAIR, MAINTENANCE OR REMOVAL OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS

EITHER DEDUCTED FROM THE TAX BASE OF THE RETAIL CLASSIFICATION UNDER SECTION -465 OR EXEMPT FROM USE TAX UNDER SECTION -660.

(III) THE DEDUCTION PROVIDED IN THIS PARAGRAPH SHALL BE DETERMINED WITHOUT REGARD TO THE SIZE OR USEFUL LIFE OF THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(IV) FOR THE PURPOSES OF THIS PARAGRAPH, "INDEPENDENT FUNCTIONAL UTILITY" MEANS THAT THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY CAN INDEPENDENTLY PERFORM ITS FUNCTION WITHOUT ATTACHMENT TO REAL PROPERTY, OTHER THAN ATTACHMENT FOR ANY OF THE FOLLOWING PURPOSES:

(A) ASSEMBLING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY.

(B) CONNECTING ITEMS OF MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY TO EACH OTHER.

(C) CONNECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY, WHETHER AS AN INDIVIDUAL ITEM OR AS A SYSTEM OF ITEMS, TO WATER, POWER, GAS, COMMUNICATION OR OTHER SERVICES.

(D) STABILIZING OR PROTECTING THE MACHINERY, EQUIPMENT OR OTHER TANGIBLE PERSONAL PROPERTY DURING OPERATION BY BOLTING, BURYING OR PERFORMING OTHER SIMILAR NONPERMANENT CONNECTIONS TO EITHER REAL PROPERTY OR REAL PROPERTY IMPROVEMENTS.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

### (3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction

contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(d) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section \_\_\_\_-540, will be based on reportable date.

(e) (Reserved)

**++(Local Option #K:**

(e) The tax imposed by this Section shall not apply to improved real property located at Fort Huachuca.)++