

## CHAPTER 12 – SALES TAX CODE

Sec. 12-417. Construction contracting: owner-builders who are not speculative builders.

(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 one and eight tenths percent (1 8/10%) 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 12-415(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 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 paragraph, “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 12-465, subsections (g) and (p)
  - (ii) Section 12-660, subsections (g) and (p)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 12-465, 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

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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:
- (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, A.R.S. Section 11-1102 or A.R.S. Title 48 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 12-110, that is deducted from the retail classification pursuant to Section 12-465(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.

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- (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.
- (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 12-540, will be based on reportable date.
- (E) (Reserved)

(Code 1977, § 9A-417)

(Ord. 03-17, 4/15/03, renumbered from Chapter 9A) SUPP 2003-2

(Ord. 05-55, 9/19/05, Resolution # 05-44 approved by voters 09/1305) SUPP 2006-3

(Ord. 07-07, 3/20/07, Amended by enacting (b)(1)(E)) SUPP 2007-1

(Ord. 08-08, 4/15/08, Amended by enacting (b), enacting (c) (2)(C)) SUPP 2008-2

(Ord. 2010-11, 6/1/2010, Amended) SUPP 2010-2

(Ord. 2011-24, 11/15/2011, Amended) SUPP 2011-4