

## Article IV - Privilege Taxes

### Sec. \_\_\_-416. Construction contracting: speculative builders. Prior to 1 April 2019

(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 structure has been constructed; 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 Regulation; or

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

(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 Residential Real Property", as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon 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 Regulation.

(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 #M:**

(2) Cost of land. Gross income from the sale of improved real property shall not include the seller's original purchase price 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.)++

OR

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

(2) Fair market value of land. Gross income from the sale of improved real 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 residential 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 residential real property has a valid City privilege license for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller 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 residential 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 and provides the City with the written declaration attached to the City privilege tax return where he claims the exclusion.

(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:

(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 \_\_\_-[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.

(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 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 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.