



BEFORE THE STATE BOARD OF TAX APPEALS
 STATE OF ARIZONA
 Bank of America Tower
 101 North First Avenue - Suite 2340
 Phoenix, Arizona 85003
 602.528.3966

4)	
5	WILLIAM ANDERSON, dba SUN VALLEY)	Docket No. 1819-99-S
6	LANDSCAPING; SUN DIAL MASONRY, INC.; WK)	
7	ANDERSON ENTERPRISES, INC., dba SUN)	
8	VALLEY LANDSCAPE; WK ANDERSON, INC.,)	
9	dba J&J LANDSCAPING,)	NOTICE OF DECISION:
10)	FINDINGS OF FACT AND
11	Appellants,)	<u>CONCLUSIONS OF LAW</u>
12	vs.)	
13)	
14	ARIZONA DEPARTMENT OF REVENUE,)	
15	Appellee.)	

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

William Anderson, dba Sun Valley Landscaping, Sun Dial Masonry, Inc., WK Anderson Enterprises, Inc., dba Sun Valley Landscape and WK Anderson, Inc., dba J&J Landscaping ("Appellants") are engaged in landscaping, masonry and rock businesses in Arizona. The Arizona Department of Revenue (the "Department") audited Appellants and issued assessments of Arizona transaction privilege tax.¹ The Department audited Appellants for the period January 1, 1996 through March 31, 1997, except for William Anderson, dba Sun Valley Landscaping, which was audited for the period July 1, 1991 through March 31, 1997.

Appellants timely protested the entire amount of the assessment, including all additional tax, late filing and late payment penalties, and interest.

¹ The assessments issued against William Anderson, dba Sun Valley Landscaping and WK Anderson Enterprises, Inc., dba Sun Valley Landscape include transaction privilege tax for the cities of Gilbert and Carefree in addition to the State tax.

1 suitable for the use or occupancy intended, shall be subject to tax under this classification for the purpose
2 of taxing the sale of those improvements incorporated within that twenty-four month period." Thus, owner
3 builders are potentially taxable only on the incorporated improvements, not on the entire project. In any
4 event, Appellants have failed to provide proof that anyone else involved in the projects performed during
5 the audit period is taxable as an owner builder or a prime contractor. Accordingly, Appellants are liable
6 for the tax assessed.

7 The penalties imposed may not be abated because Appellants have not shown that their failure
8 to timely file returns and pay tax was due to reasonable cause and not willful neglect. A.R.S. § 42-
9 1125(A) and (D) (formerly A.R.S. § 42-136). Finally, the interest at issue is made a part of the tax by
10 statute and represents a reasonable interest rate on the tax due, therefore, it may not be abated. A.R.S.
11 § 42-1123 (formerly A.R.S. § 42-134); *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

12 CONCLUSIONS OF LAW

13 1. Appellants are liable for the tax assessed under the prime contracting classification. A.R.S.
14 § 42-5075.

15 2. Appellants have not shown that their failure to file returns and pay the tax at issue is due to
16 reasonable cause; therefore, the penalties may not be abated. A.R.S. § 42-1125(A) and (D).

17 3. The interest remaining at issue represents a reasonable interest rate on the tax due and owing
18 and is made part of the tax by statute; therefore, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*,
19 43 Ariz. 276, 286, 30 P.2d 841 (1934).

20 ORDER

21 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
22 Department is affirmed.

23 ...

24 ...

25 ...

...

...

