



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

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AT&T CORP.,	)	
	)	
Appellant,	)	
	)	Docket No. 1803-99-F
vs.	)	
	)	
ARIZONA DEPARTMENT OF REVENUE,	)	
	)	NOTICE OF DECISION:
Appellee.	)	FINDINGS OF FACT AND
	)	<u>CONCLUSIONS OF LAW</u>

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

AT&T Corp. ("Appellant") is in the business of selling equipment used in the telecommunications business. The Arizona Department of Revenue (the "Department") assessed AT&T additional transaction privilege tax, plus interest, for the period January 1990 through March 1995. Appellant protested that portion of the tax imposed on the sale of certain telecommunications central office switching equipment on the basis that the equipment is exempt under A.R.S. § 42-5061(B)(3) (formerly A.R.S. § 42-1310.01(B)(3)).

An administrative law judge upheld the protest finding that the equipment was exempt from transaction privilege tax. The Director of the Department reviewed the decision and determined that a portion of the equipment was exempt, but upheld the tax on the remaining equipment. Appellant timely appealed the modified assessment to this Board. Subsequently, the Department inspected Appellant's facility and, thereafter, withdrew the portion of the assessment still at issue. As a result, Appellant's entire audit assessment was decreased to an amount less than that already paid by Appellant for the items it did not dispute. The Department issued Appellant a refund. Thereafter, Appellant filed a motion for summary judgement. Because no issue remained for the Board to decide, the Board dismissed the appeal pursuant to a motion by the Department.

1 Appellant then applied for reimbursement of attorneys' fees and costs expended during the  
2 appeal process to the Department's Problem Resolution Officer. The Problem Resolution Officer denied  
3 the reimbursement request, claiming that the Department was substantially justified in assessing the tax  
4 at issue. Pursuant to A.R.S. § 42-139.14(C), the decision of the Problem Resolution Officer constitutes  
5 the final order of the Department. Appellant now appeals the reimbursement denial to this Board.

6 DISCUSSION

7 The issue before the Board is whether Appellant is entitled to the reimbursement of fees and  
8 costs claimed.

9 A.R.S. § 42-139.14(A) allows for the reimbursement of a taxpayer who is prevailing party for  
10 amounts expended for reasonable fees and costs related to administrative proceedings if the  
11 Department's position was not substantially justified and if the taxpayer prevails as to the most significant  
12 issue or issues. Proceedings before the Department and the Board are administrative proceedings for  
13 which reimbursement is allowed. See A.R.S. § 42-139.14(H)(1).

14 The Board finds that the facts of the case demonstrate that the Department was not justified in  
15 its position. However, the Department argues that Appellant is not entitled to reimbursement because  
16 the Board did not decide the underlying substantive appeal on its merits. Therefore, according to the  
17 Department, Appellant is not a "prevailing party" for purposes of A.R.S. § 42-139.14(A). A majority of the  
18 Board disagrees.<sup>1</sup>

19 A.R.S. § 12-348(Board) authorizes an award of attorneys' fees to a prevailing taxpayer in a  
20 superior court action only if the taxpayer "prevails by an adjudication on the merits." There is no  
21 comparable language in the statute authorizing the Board to award attorneys' fees and costs. See  
22 A.R.S. § 42-139.14. Appellant achieved its goal in this case. The Department withdrew its assessment  
23 and granted Appellant a refund for tax paid on exempt equipment. These events occurred only after  
24 Appellant appealed to this Board. Accordingly, Appellant is a prevailing party for the purposes of A.R.S.  
25 § 42-139.14.

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28 <sup>1</sup> Chairman Linzer dissents. He would find Appellant is not a prevailing party for purposes of the statute.

1 At the hearing before this Board, the Department concedes that Appellant's fees and costs were  
2 not unreasonable. Therefore, Appellant is entitled to the reimbursement claimed for costs incurred in the  
3 appeal before this Board.

4 CONCLUSIONS OF LAW

5 Appellant is entitled to the reimbursement requested pursuant to A.R.S. § 42-2064.

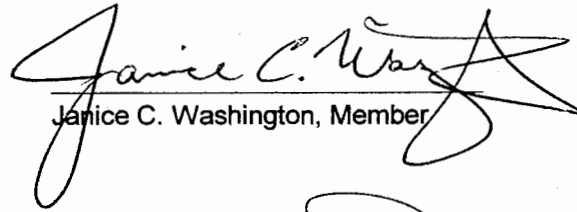
6 ORDER

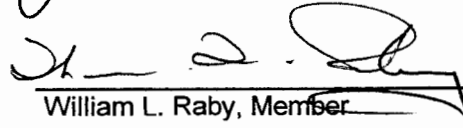
7 THEREFORE, IT IS HEREBY ORDERED that Appellant's request for reimbursement of fees and  
8 costs is granted.

9 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,  
10 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

11 DATED this 19th day of October, 1999.

12  
13 STATE BOARD OF TAX APPEALS

14  
15   
16 Janice C. Washington, Member

17  
18   
19 William L. Raby, Member

20 JCW/WLR:AW  
21 CERTIFIED

22 Copies of the foregoing  
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