

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

JAMES CULLEN dba NILES RADIO,)	Docket No. 1868-02-F
Appellants,)	
vs.)	NOTICE OF DECISION:
ARIZONA DEPARTMENT OF REVENUE,)	FINDINGS OF FACT AND
Appellee.)	<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

The Arizona Department of Revenue (the "Department") audited James Cullen dba Niles Radio ("Appellant") and assessed him transaction privilege tax, penalties and interest for unreported income under the telecommunications classification for the period May 1989 through December 1992 ("Audit Period"). The Department also assessed tax on the access fee charged to customers by Appellant.

Appellant protested the assessment to the Department, arguing that (1) because he failed to take a deduction for bad debts or returned merchandise, he had overpaid tax under the retail classification exceeding the additional tax due under the telecommunications classification, and (2) \$15 of the \$35 access fee charged to Appellant's customers was attributable to nontaxable maintenance fees.

The Department determined that Appellant failed to adequately identify and report the transactions supporting the bad debt deduction or prove that part of the access fees charged to its customers were not taxable. Accordingly, the Department denied Appellant's protest and Appellant then appealed to this Board.

1 At the hearing before the Board, Appellant conceded the argument involving the access fees.
2 Appellant also reduced the amount of bad debt deduction he claimed to be entitled to and produced
3 documentation substantiating the reduced deduction to the Board's satisfaction. Therefore, the Board
4 upheld the portion of the appeal attributable to the reduced bad debt deduction. Appellant now appeals to
5 this Board for the reimbursement of fees and costs related to the administrative process.

6 DISCUSSION

7 The issue before the Board is whether Appellant is entitled to the reimbursement requested.
8 Appellant bears the burden as to all issues of fact. See A.A.C. R16-3-118.

9 A.R.S. § 42-139.14(A) allows for the reimbursement of a taxpayer who is a 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 purposes for which reimbursement is allowed. See A.R.S. § 42-139.14(H)(1).

14 "Substantially justified" is not defined for purposes of A.R.S. § 42-139, but courts have generally
15 held a position to be substantially justified if it has "a reasonable basis both in law and in fact." *Portillo v.*
16 *Commissioner*, 988 F.2d 27, 28 (5th Cir. 1993) (interpreting the federal standard for the recovery of
17 administrative and litigation costs from the Internal Revenue Service under § 7430(c)(4)(B) of the Internal
18 Revenue Code). This necessarily requires a case-by-case analysis of the facts and circumstances. Such
19 analysis does not support reimbursement in this case.

20 Throughout the administrative process, Appellant continued to modify the amount of bad debt
21 deduction he claimed to be entitled to, significantly reducing it from the original amount claimed. Further,
22 Appellant did not submit documentation that sufficiently supported even the reduced deduction until the
23 hearing before the Board. Therefore, the Board finds that the Department's denial of the bad debt
24 deduction claimed by Appellant was substantially justified. In addition, Appellant did not prevail as to the
25 most significant issues in the Department's assessment, measured by the amounts at issue. Thus,
Appellant is not entitled to the reimbursement requested.

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CONCLUSIONS OF LAW

Appellant is not entitled to the reimbursement claimed. See A.R.S. § 43-1123.

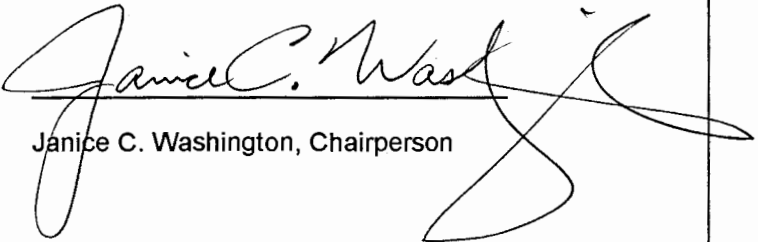
ORDER

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

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

DATED this 24th day of May, 2002.

STATE BOARD OF TAX APPEALS


Janice C. Washington, Chairperson

WLR:alw

CERTIFIED

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