

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

DEBCON, INC.,)
Appellant,) Docket No. 1782-98-S
vs.)
ARIZONA DEPARTMENT OF REVENUE,) **NOTICE OF DECISION:**
Appellee.) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**
)

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

Debcon, Inc. ("Appellant") is an out-of-state corporation which entered into a contract with the United States Department of Commerce to construct a weather station on a federal reserve located within the State of Arizona. The Arizona Department of Revenue (the "Department") learned that Appellant failed to report and pay transaction privilege tax on the revenues generated from the contract. Subsequently, the Department audited Appellant for the period June 1, 1994 through May 31, 1995 and issued an assessment, including interest and penalties for late filing and late payment, under the prime contracting classification. After unsuccessfully protesting the assessment to an Administrative Law Judge and the Director of the Department, Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether Appellant is liable for the transaction privilege tax assessed under the prime contracting classification. See A.R.S. § 42-5075 (formerly A.R.S. § 42-1310.16). The assessment of tax is presumed correct and the taxpayer bears the burden of overcoming this presumption. *State Tax Comm'n v. Kieckhefer*, 67 Ariz. 102, 105, 191 P.2d 729, 732 (1948); see also A.A.C. R16-3-118 ("The burden of proof will be upon the appellant as to all issues of fact.").

1 Arizona imposes transaction privilege tax under the prime contracting classification on a
2 contractor who "supervises, performs or coordinates the construction, alteration, repair, addition,
3 subtraction, improvement . . . of any building . . . or improvement." A.R.S. § 42-5075(G)(6). Appellant
4 does not dispute the calculation of tax imposed by the Department or the fact that it acted as a prime
5 contractor in the construction of the weather station. Appellant argues that Arizona lacks jurisdiction to
6 tax business activities on a federal reserve absent an agreement with the United States granting such
7 jurisdiction. Appellant essentially argues that it was an agent of the United States in the construction of
8 the weather station and that the federal government is exempt from taxation by the state. The Board
9 disagrees.

10 The United States Supreme Court has consistently ruled that states can tax earnings of
11 contractors providing services to the government, even if the financial burden of the levy falls on the
12 United States. See, e.g., *South Carolina v. Baker*, 485 U.S. 505, 523, 108 S.Ct. 1355, 1366 (1988); *U.S.*
13 *v. New Mexico*, 455 U.S. 720, 734, 102 S.Ct. 1373, 1383 (1982). Arizona has historically taxed those
14 who provide services to the federal government. See, e.g., *Tucson Mechanical Contracting, Inc. v.*
15 *Arizona Dep't of Rev.*, 175 Ariz. 176, 854 P.2d (App. 1992). A.A.C. R15-5-604 provides that
16 "[c]onstruction projects performed for the United States Government, state, cities, counties, or any
17 agencies thereof, are taxable." Accordingly, Appellant is liable for the tax assessed under the prime
18 contracting classification.

19 Further, because Appellant has not shown that the failure to timely file a return and pay the tax
20 was due to reasonable cause and not willful neglect, the penalties may not be abated. See A.R.S. § 42-
21 1125(A) and (D) (formerly A.R.S. § 42-136(A) and (D)). Finally, the interest imposed represents a
22 reasonable interest rate on the tax due and owing and is made part of the tax by statute; therefore, it
23 may not be abated. See A.R.S. § 42-1123(B) (formerly A.R.S. § 42-134(B)); see also *Biles v. Robey*, 43
24 Ariz. 276, 30 P.2d 841 (1934).

25 CONCLUSIONS OF LAW

26 1. Appellant is liable for the transaction privilege tax assessed under the prime contracting
27 classification. See *South Carolina v. Baker*, 485 U.S. 505, 523, 108 S.Ct. 1355, 1366 (1988); *U.S. v.*
28 *New Mexico*, 455 U.S. 720, 734, 102 S.Ct. 1373, 1383 (1982); *Tucson Mechanical Contracting, Inc. v.*

1 *Arizona Dep't of Rev.*, 175 Ariz. 176, 854 P.2d (App. 1992); A.R.S. § 42-5075; A.A.C. R15-5-604.

2 2. Because Appellant has not shown that the failure to timely file a return and pay the tax was
3 due to reasonable cause and not willful neglect, the penalties may not be abated. See A.R.S. § 42-
4 1125(A) and (D).

5 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is
6 made part of the tax by statute; therefore, it may not be abated. See A.R.S. § 42-1123(B); see also *Biles*
7 *v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

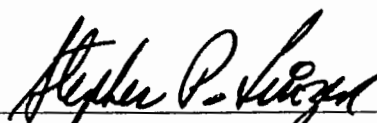
8 ORDER

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

11 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
12 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254
13 (formerly A.R.S. § 42-124).

14 DATED this 26th day of July, 1999.

16 STATE BOARD OF TAX APPEALS

17
18 
19 Stephen P. Linzer, Chairman

20
21 SPL:MAS
CERTIFIED

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