

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
602.364.1102

1 4 PACIFIC INDUSTRIAL PIPELINE, 5 Appellant, 6 vs. 7 ARIZONA DEPARTMENT OF REVENUE, 8 Appellee. 9 _____))))))))))	Docket No. 1866-01-S NOTICE OF DECISION: FINDINGS OF FACT AND <u>CONCLUSIONS OF LAW</u>
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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

Pacific Industrial Pipeline ("Appellant") installs pipeline throughout Arizona. Within the period March 1, 1994 through April 30, 1998 ("Audit Period"), Appellant contracted with Black Mountain Gas Company ("Black Mountain") and Citizens Utilities ("Citizens"). In turn, Black Mountain entered into a series of contracts with residential developers and Citizens entered into a series of contracts with homeowners or homebuilders.

The Arizona Department of Revenue (the "Department") audited Appellant and assessed transaction privilege tax under the prime contracting classification, a penalty for failure to timely pay the tax due and interest for the Audit Period.¹ Appellant protested the assessment to the Office of Administrative Hearings ("OAH"), which upheld the assessment. Appellant then protested to the Director of the Department, who affirmed the decision issued by OAH. Appellant now timely appeals to this Board.

¹ The Department originally assessed tax against Appellant on behalf of a number of cities. Appellant appeals only the State transaction privilege tax involved.

DISCUSSION

The issue before the Board is whether Appellant is liable for the tax assessed. The presumption is that an assessment of additional . . . tax is correct. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).

The term "contractor"

"is synonymous with the term "builder" and means . . . [one] that undertakes to . . . himself or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building . . . excavation . . . or other structure, project, development or improvement, or to do any part thereof . . . and includes subcontractors and specialty contractors." A.R.S. § 42-5075(H)(2).²

A.R.S. § 42-5075(H)(6) defines a "prime contractor" as a contractor who "is responsible for the completion of the contract." Under Arizona law, all contractors are presumed to be prime contractors and are taxable on their contracting receipts unless they can prove that they are subcontractors. A.A.C. R15-5-602(C). A subcontractor is exempt from tax if it "can demonstrate [1] that the job was within the control of a prime contractor . . . and [2] that the prime contractor . . . is liable for the tax on the . . . gross receipts attributable to the job and [3] from which the subcontractors or others were paid." A.R.S. § 42-5075(D).

Appellant argues that it is an exempt subcontractor because Black Mountain and Citizens contracted with developers, homeowners or homebuilders to install pipeline and supervised the work subcontracted to Appellant.

The Department argues that Black Mountain and Citizens are utility companies that contracted with developers, homeowners or homebuilders to provide gas services, not to perform construction. They are not builders and do not engage in prime contracting activities according to the Department. Therefore, Appellant cannot demonstrate that it is an exempt subcontractor.

At the hearing before the Board, the Department noted that while Appellant had previously conceded that some of its income was taxable, it is now appealing the entire assessment. Appellant

² References are to the current version of the transaction privilege tax statutes.

1 acknowledged that it had conceded a portion of the assessment, but failed to establish for the Board how
2 much of its income was attributable to taxable activities and how, if at all, those activities differ from the
3 activities now at issue. Thus, Appellant has not met its burden of proof in this matter and is liable for the
4 tax assessed.

5 Further, Appellant has not shown that its failure to timely pay the tax due is attributable to
6 reasonable cause; therefore, the penalties imposed may not be abated. A.R.S. § 42-1125(D). Finally,
7 the interest at issue is made a part of the tax by statute and represents a reasonable interest rate on the
8 tax due; therefore, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d
9 841 (1934).

10
11 CONCLUSIONS OF LAW

12 1. Appellant has not demonstrated that the Department's assessment is incorrect; therefore,
13 Appellant is liable for the tax assessed. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102,
14 191 P.2d 729 (1948).

15 2. Because Appellant has not shown that its failure to timely pay the tax due is attributable to
16 reasonable cause, the penalties imposed may not be abated. A.R.S. § 42-1125(D).

17 3. Because the interest at issue is made a part of the tax by statute and represents a reasonable
18 interest rate on the tax due, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30
19 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.

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

3 DATED this 8th day of October , 2002.

4 STATE BOARD OF TAX APPEALS

5 *Janice C. Washington*
6 Janice C. Washington
7 Janice C. Washington, Chairperson
8 *[Signature]*
9

10 JCW:ALW

11 CERTIFIED

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