

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

CABEZON CABLE OF ARIZONA, INC.,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,
 Appellee.

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) Docket No. 1849-00-S
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NOTICE OF DECISION:
 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

Cabazon Cable of Arizona, Inc. ("Appellant") is an Arizona corporation engaged in the general contracting business. Appellant primarily excavates and installs cable for various cable television systems in the State. The Arizona Department of Revenue (the "Department") previously audited Appellant and assessed transaction privilege tax on these activities under the prime contracting classification. Appellant did not timely protest that assessment.

The subject of this appeal is a subsequent audit conducted by the Department for the period January 1, 1993 through April 30, 1996 ("Audit Period"). During this time, Appellant performed work pursuant to contracts with the related entities, Times-Mirror Cable Television of Arizona, Inc ("Times-Mirror") and Dimension Cable Service of Arizona, Inc. ("Dimension"). The work was, apparently, ultimately for the benefit of American Cable Television, Inc., an Arizona corporation ("ACT"), which possessed the non-exclusive right to construct, reconstruct, maintain and operate the cable television systems at issue.

1 During the Audit Period, Appellant either did not file returns or filed returns indicating zero
2 income. The Department again assessed Appellant tax under the prime contracting classification, plus
3 interest and penalties for late payment, late filing, and negligence.

4 Appellant protested the assessment to an administrative hearing officer who denied the protest.
5 Appellant then protested to the Director of the Department who affirmed the hearing officer's decision.
6 Appellant now timely appeals to this Board.

7 DISCUSSION

8 The issue before the Board is whether Appellant is liable for the assessment at issue. Appellant
9 bears the burden of proof as to all issues of fact. A.A.C. R16-3-118. Appellant concedes it is engaged in
10 contracting but argues that it is a nontaxable subcontractor and not a prime contractor.

11 During the Audit Period, A.R.S. § 42-1310.16(A)¹ provided that the term "contractor"

12
13 is synonymous with the term "builder" and means . . . [one] that undertakes to . . . himself
14 or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or
15 demolish any building . . . excavation . . . or other structure, project, development or
improvement, or to do any part thereof . . . and includes subcontractors and specialty
contractors. For all purposes of taxation or deduction, this definition shall govern without
regard to whether or not such contractor is acting in fulfillment of a contract.

16 A.R.S. § 42-1310.16(F)(6) defined a "prime contractor" as

17 a contractor who supervises, performs, or coordinates the construction, alteration, repair,
18 addition, subtraction, improvement, movement, wreckage or demolition of any building, highway,
19 road, railroad, excavation, manufactured building or other structure, project, development or
improvement including the contracting, if any, with any subcontractors or specialty contractors,
and is responsible for the completion of the contract.

20 A.R.S. § 42-1310.16(D) specifically exempted subcontractors from the application of the prime
21 contracting transaction privilege tax if they could "demonstrate that the job was within the control of a
22 prime contractor . . . and that the prime contractor . . . is liable for the tax on the gross income . . .
23 attributable to the job and from which the subcontractors or others were paid."
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¹ The prime contracting classification is currently codified as A.R.S. § 42-5075.

1 Appellant contends that Times-Mirror and Dimension were the prime contractors on the work at
2 issue. Appellant performed the construction pursuant to contracts with Times-Mirror and Dimension.
3 Because ACT actually had the right to construct the cable systems, Appellant argues that Times-Mirror
4 and Dimension must have entered into contracts with ACT to perform the construction. Because Times-
5 Mirror and Dimension "coordinated" the construction and were responsible for the completion of the
6 contracts, Appellant argues that they were the taxable prime contractors on the work performed.
7 Appellant is unable to present evidence supporting this argument.

8 ACT, Times-Mirror and Dimension are all related entities. As such, Times-Mirror and Dimension
9 may have had the ability to act on behalf of ACT. More likely, any contracts that ACT had with Times-
10 Mirror and Dimension may have been for the operation of cable systems rather than contracting. In any
11 event, Appellant has failed to prove it was an exempt subcontractor under A.R.S. § 42-1310.16(D) on
12 work it performed during the Audit Period. Accordingly, Appellant is liable for the tax assessed. Further,
13 Appellant has not shown that its failure to timely file returns and pay the tax at issue was due to
14 reasonable cause and not willful neglect; therefore, the penalties at issue may not be waived. A.R.S.
15 § 42-1125(A), (D) and (F).

16 CONCLUSIONS OF LAW

- 17 1. Appellant is liable for the tax assessed. A.R.S. § 42-1310.16(D).
18 2. Appellant has not shown that its failure to timely file returns and pay the tax at issue was due
19 to reasonable cause and not willful neglect; therefore, the penalties imposed may not be abated. A.R.S.
20 § 42-1125(A), (D) and (F).

21 ORDER

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

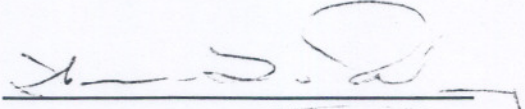
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1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 19th day of June, 2001.

4 STATE BOARD OF TAX APPEALS

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6 _____
7 William L. Raby, Vice-Chairman

8 WLR:ALW

9 CERTIFIED

10 Copies of the foregoing
11 Mailed or delivered to:

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