

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

ROBERT D. BOGGS dba

R.D. BOGGS CONSTRUCTION,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

)  
)  
) Docket No. 1973-09-S  
)  
)

) 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

The Arizona Department of Revenue ("Department") determined that Robert D. Boggs dba R.D. Boggs Construction ("Appellant") was liable on a construction project for transaction privilege tax under the prime contracting classification. The Department issued a letter to Appellant on July 25, 2006 requiring it to file the appropriate transaction privilege tax return/schedule within 15 days. Appellant failed to do so.

Thereafter, the Department, as authorized by A.R.S. § 42-1109(B), estimated the amount of tax due on Appellant's activity, added penalties and interest and, on April 30, 2007, issued a Notice of Proposed Assessment ("assessment"). The assessment was sent via certified mail, and the records of the United States Postal Service confirm that Appellant received it on May 11, 2007.

On September 18, 2008, Appellant sent a facsimile to the Department attempting to demonstrate that it was not a prime contractor on the project at issue and, therefore, was not liable for the transaction privilege tax assessed. On October 9, 2008, the Department sent a letter to Appellant explaining that its protest of the amount due was untimely. Appellant protested this determination to the Office of

1 Administrative Hearings ("OAH"), which denied the protest. Appellant then protested to the Director of the  
2 Department who upheld the OAH decision. Appellant now appeals to this Board.

3 DISCUSSION

4 The issue in this appeal is whether Appellant timely protested the assessment to the Department.

5 Under A.R.S. § 42-1251, a taxpayer must file a protest of an assessment within 45 days after  
6 receiving it; otherwise, the assessment becomes final. Appellant received the assessment on May 11,  
7 2007 but did not respond to it until September 18, 2008 – well beyond the 45 day statutory time period  
8 that closed on June 25, 2007.

9 Appellant does not contend that it timely filed a protest. Instead, Appellant argues that it is not  
10 liable for transaction privilege tax under the prime contracting classification because it performed  
11 management contract services only. Because Appellant failed to timely protest the tax assessed, the  
12 Board is precluded from considering this argument if the assessment was properly issued.

13 The Board initially questioned whether the Department had, in fact, properly issued the  
14 assessment. Under A.R.S. § 42-1104(A), the Department may assess tax "within four years after the  
15 report or return is required to be filed or within four years after the report or return is filed, whichever  
16 period expires later." If a taxpayer fails to file a return, the Department is not subject to the statute of  
17 limitations and may assess the tax at any time. *Id*(B)(1)(b).

18 The written materials submitted indicate that the activity at issue occurred in 2002. However, the  
19 materials do not state the exact period to which the assessment pertains. Further, in a letter to the Board  
20 dated June 24, 2009, Appellant claims that it filed its transaction privilege tax returns/schedules as usual  
21 in 2002 but did not pay tax on the activity at issue because it performed under a management contract on  
22 which no tax was due.

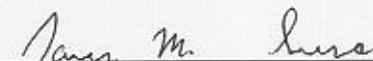
23 Unable to determine whether the Department's assessment was issued in a timely manner, the  
24 Board requested additional information from the parties. The Board requested that the Department clarify  
25 the period to which the assessment pertains and to provide Appellant's filing history for this period.  
Further, the Board requested that Appellant confirm the filing of the returns associated with the activity at



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 9<sup>th</sup> day of November, 2010.

4 STATE BOARD OF TAX APPEALS

5   
6 James M. Susa, Member

7 AWF:ALW

8 CERTIFIED

9 Copies of the foregoing  
10 Mailed or delivered to:

11 Robert D. Boggs  
12 dba R.D. Boggs Construction  
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