



1 The Arizona Court of Appeals has made it clear that construction activities performed for State  
2 school districts located on reservations are taxable. *Arizona Dep't of Rev. v. M. Greenberg Construction*  
3 *Co.*, 182 Ariz. 397, 897 P.2d 699 (App. 1995). Appellant argues that the *M. Greenberg* decision is wrong.  
4 In any event, Appellant argues that the decision should be applied prospectively only based on  
5 Appellant's reliance on the United States Supreme Court's decision in *Ramah Navajo School Board v.*  
6 *Bureau of Rev. of New Mexico*, 458 U.S. 832, 102 S. Ct. 3394 (1982) and this Board's decision in *M.*  
7 *Greenberg Construction v. Arizona Dep't of Rev.* No. 699-89-S (November 1990).

8 In 1982, the United States Supreme Court held that receipts from a school construction contract  
9 directly entered into and fully-funded by the Navajo Tribe was preempted from state taxation. *Ramah*,  
10 485 U.S. 832. In *M. Greenberg*, a contractor contracted with Arizona School districts located on the  
11 Navajo Reservation and not directly with the Tribe but because the evidence before the Board at that time  
12 indicated that the facilities at issue were built exclusively with federal funds and that the State's interest in  
13 the construction was negligible, the Board found that Arizona tax was preempted. The Arizona Court of  
14 Appeals eventually held that receipts from contracts with State school districts are taxable even if the  
15 construction takes place on a reservation. *M. Greenberg Construction Co.*, 182 Ariz. 397.

16 Discounting the fact that the Board's decision in *M. Greenberg* was reversed by the court of  
17 appeals and that Appellant is bound by this decision, Appellant has not shown, or even claimed, that the  
18 construction at issue was fully funded by Indian tribes. This fact was key to *Ramah* and the Board's *M.*  
19 *Greenberg* decision. Therefore, Appellant could not have reasonably relied on either decision.

20 Appellant next argues that the Department is estopped from collecting the tax at issue because it  
21 previously granted Appellant a refund for tax paid on receipts from contracts with the Department of  
22 Interior, Bureau of Indian Affairs ("BIA").

23 Estoppel is essentially an equitable remedy that may lie against the Department only under  
24 limited circumstances. *Valencia Energy v. Arizona Dep't of Rev.*, 154 Ariz. 539, 540, 744 P.2d 451, 452  
25 (App. 1987). In order for estoppel to apply against the Department, Appellant must show that 1) the

1 Department committed affirmative acts inconsistent with a position later relied on; (2) Appellant actually  
2 and reasonably relied on the Department's actions; and (3) Appellant's reliance resulted in substantial  
3 detriment. *Id.* at 577. Appellant has not established the requisite elements for estoppel.

4 After *Ramah* was decided, Appellant requested a refund for tax paid on construction activities  
5 performed on Indian reservations pursuant to contracts with the BIA. Courts had previously determined  
6 that contracting with the BIA was, in effect, contracting with the federal government and that the receipts  
7 from such contracts were taxable. *See, e.g., United States v. New Mexico*, 455 U.S. 720 (1982). In 1982,  
8 however, the New Mexico Court of Appeals concluded that construction on reservations that was funded  
9 by the BIA and administered pursuant to a contract between the contractor and the BIA instead of  
10 between the contractor and a tribe did not preclude application of the preemption analysis. *Blaze*  
11 *Construction Co. v. Taxation and Rev. Dept of New Mexico*, 871 P.2d 1368 (N.M Ct. App. 1993) (holding  
12 that tax on the taxpayer's road construction activities on the reservation were preempted). In the wake of  
13 the *Ramah* and *Blaze* decisions, the Department granted Appellant's refund request. The United States  
14 Supreme Court eventually overruled the *Blaze* decision, drawing a bright line between taxation of receipts  
15 from contracts with Indians and contracts with non-Indians. *Arizona v. Blaze Construction Co.*, 526 U.S.  
16 32 (1999).

17 Appellant contends that it believed it was not taxable for construction on Indian reservations  
18 based on a note on the worksheet of the Department employee reviewing Appellant's BIA contracts  
19 indicated that refunds were due on "contracting on Indian reservations for the benefit of Indians." The  
20 contracts currently at issue were entered into with Arizona school districts, which are political subdivisions  
21 of the State, not the BIA. Further, the Board finds that the worksheet note relied on by the Appellant does  
22 not rise to the level of the "absolute, unequivocal, and formal state action" to which estoppel applies and  
23 upon which Appellant could have reasonably relied. Finally, Appellant did not suffer a detriment at the  
24 hands of the Department resulting from "a positional change not compelled by law" as required under  
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1 *Valencia*. 191 Ariz. at 577. "[N]o detriment is incurred when the party's only injury is that it must pay  
2 taxes legitimately owed under the correct interpretation of the law." *Id.*

3 For the foregoing reasons, the Board finds that Appellant is not entitled to the refund requested  
4 and is liable for the tax and interest assessed.

5 CONCLUSIONS OF LAW

6 Appellant is not entitled to the refund requested and is liable for the tax and interest assessed.  
7 *Valencia Energy v. Arizona Dep't of Rev.*, 154 Ariz. 539, 540, 744 P.2d 451, 452 (App. 1987); *Arizona v.*  
8 *Blaze Construction Co.*, 526 U.S. 32 (1999); *Arizona Dep't of Rev. v. M. Greenberg Construction Co.*, 182  
9 Ariz. 397, 897 P.2d 699 (App. 1995); *Ramah Navajo School Board v. Bureau of Rev. of New Mexico*, 458  
10 U.S. 832, 102 S. Ct. 3394 (1982); *M. Greenberg Construction v. Arizona Dep't of Rev.* No. 699-89-S  
11 (November 1990).

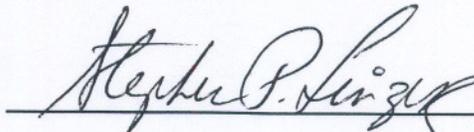
12 ORDER

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

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

17 DATED this 12th day of January, 2001.

18 STATE BOARD OF TAX APPEALS

19 

20 Stephen P. Linzer, Chairman  
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24 SPL:ALW  
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1 CERTIFIED

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