

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

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4 SEDONA INTERNET SERVICES, LLC,)
dba eSEDONA WIRELESS INTERNET,)
5 Appellant,) Docket No. 1941-06-U(2)
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION
8 Appellee.) FINDINGS OF FACT AND
CONCLUSIONS OF LAW

9 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
10 having taken the matter under advisement, finds and concludes as follows:

11 FINDINGS OF FACT

12 Since 2002, Sedona Internet Services, LLC, dba eSedona Wireless Internet ("Appellant"), has
13 provided high-speed internet service to the Sedona, Arizona area. Due to the mountainous terrain and
14 the lack of cabled network systems in the area, Appellant provides its internet services through a wireless
15 network of radio communications using repeater towers on which the wireless radio communications
16 equipment is installed. Appellant also installs wireless radio communications equipment on customers'
17 homes. This equipment is connected to the customer's computer via a cable. Appellant then transfers
18 signals to its microwave repeater towers, which route the signals through fiber optic cables to telephone
19 lines.

20 The Arizona Department of Revenue ("Department") audited Appellant for the period of June 1,
21 2002 through August 31, 2004 ("Audit Period") and determined that Appellant had purchased equipment
22 used in its business from out-of-state vendors in Colorado, Illinois, Pennsylvania, Texas, California, and
23 Virginia but had not reported or paid use tax on the purchases.¹ Subsequently, the Department issued an
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25 ¹ The Department also discovered that Appellant, which was licensed and remitted Arizona transaction privilege tax returns under the retail classification, was reporting income from its installation services under that classification then deducting 100% of the income. The Department reclassified the retail installation as prime contracting activity. A.R.S. § 42-5075.

1 assessment against Appellant for additional Arizona and City of Sedona use tax, penalty and interest.
2 Appellant protested the assessment to the Office of Administrative Hearings, which upheld the
3 Department's assessment. Appellant now timely appeals to this Board.

4 DISCUSSION

5 The issue before the Board is whether Appellant is liable for the use tax assessed. The use tax
6 complements the transaction privilege tax imposed on in-state businesses and is designed to capture
7 revenue for tangible personal property purchased out-of-state, thereby eliminating an unfair advantage for
8 businesses located outside the State.

9 A.R.S. § 42-5155 imposes the use tax on the storage, use or consumption in Arizona of tangible
10 personal property purchased from a retailer. "[U]se or consumption" is defined as the "exercise of any
11 right or power over tangible personal property in the regular course of business." A.R.S. § 42-5151(20).
12 Certain specifically listed types of tangible personal property sold "to persons engaged in business
13 classified under the telecommunications classification" are exempt from the use tax. A.R.S. § 42-
14 5159(B)(3). The telecommunications classification comprises only the business of providing "intrastate
15 telecommunications services." A.R.S. § 42-5064(A). "Intrastate telecommunications services" means
16 "transmitting signs, signals . . . data or other information . . . by wire, radio wave . . . or other
17 electromagnetic means if the transmission originates and terminates in" Arizona. *Id.*(E)(4). The
18 telecommunications classification specifically excludes the sale of internet access services from the
19 scope of the tax. *Id.*(A)(2).

20 Appellant argues that its business as a wireless internet provider falls within the scope of the
21 telecommunications classification because it constitutes "intrastate telecommunications services" under
22 42-5064(E)(4). Appellant then contends that it is not subject to the transaction privilege tax on these
23 services because the sale of internet access services does not fall within the scope of the
24 telecommunications classification. *Id.*(A)(2). Further, Appellant argues it is not taxable on its purchases of
25 radio equipment because A.R.S. § 42-5159(B)(3) exempts telecommunication equipment including

1 microwave radio equipment and carrier equipment and other transmission equipment purchased by
2 someone providing intrastate telecommunication services.

3 The Board finds that the language of the exemption statute at issue creates two requirements for
4 exemption. The first requirement is what is purchased. Undisputed testimony at the hearing was that
5 Appellant's purchases were of the type of equipment meeting this requirement. The second requirement
6 is by whom the equipment is purchased. The Board finds that the service Appellant provides meets the
7 statutory definition of "intrastate telecommunication services." However, the exemption statute does not
8 grant the exemption to those who provide intrastate telecommunication services, but rather to those
9 "engaged in business classified under the telecommunications classification." A.R.S. § 42-5064(A). The
10 telecommunications classification *explicitly excludes the sale of internet access services from the*
11 *scope of the telecommunications classification.* A.R.S. § 42-5064(A)(2). For the foregoing reasons,
12 the Board finds Appellant does not meet the requirements for exemption and, therefore, is liable for the
13 use tax assessed.²

14 Further, Appellant has not established that its failure to timely file was due to reasonable cause
15 under A.R.S. § 42-1125(A); therefore, the penalty cannot be abated. Finally, interest applies to unpaid
16 taxes from the date the taxes were due and continues to accrue on unpaid tax until the time the tax is
17 paid. A.R.S. § 42-1123.

18 CONCLUSIONS OF LAW

19 1. Appellant is liable for the use tax assessed on equipment purchased from out-of-state
20 vendors and does not qualify for the exemption. A.R.S. § 42-5159(B)(3).

21 2. The penalty assessed cannot be abated because Appellant has not shown that its failure to
22 timely file was due to reasonable cause. A.R.S. § 42-1125(A).

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25 ² Appellant additionally argues that there is no mechanism that allows for the proper reporting of use tax on the TPT-1 Forms. The Board finds the TPT-1 Forms to be adequate for the reporting of use tax.

