

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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4 SUPERSTITION HOMES, INC.)
5 Appellant,) Docket No. 1844-00-S
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW

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

12 FINDINGS OF FACT

13 Superstition Homes, Inc. ("Appellant") is an Arizona corporation. Appellant and its affiliate,
14 Superstition Sales, Inc., operated under a contracting arm/marketing arm configuration. Appellant built
15 houses, then transferred them to Superstition Sales, Inc., which sold them to the ultimate homebuyer.

16 Great Western Communities, Inc. ("Great Western") is an Arizona corporation that does business
17 as a residential production homebuilder under the name of Great Western.

18 On December 2, 1994, Appellant entered into an agreement ("Agreement") to sell all of its assets
19 to Great Western. The assets sold consisted of contracts for the construction of homes and options to
20 purchase lots. The contracts for the construction of homes sold to Great Western were contracts for
21 homes where ground had already been broken ("Home Contracts") and contracts where no ground had
22 been broken ("Backlog Contracts").

23 By the terms of the Agreement, Appellant engaged Great Western as construction manager and
24 agreed to pay \$5,000 for construction management services on each house completed under the Home
25 Contracts. Appellant retained all gross profits from the sale of these homes and collected and paid the
transaction privilege tax under the prime contracting classification on the Home Contracts. See A.R.S. §
42-5075. Great Western received all gross profits from the completion and sale of the Backlog Contracts.

1 The Arizona Department of Revenue (the "Department") audited Appellant for the period October
2 1994 through May 1997 ("Audit Period"). The Department used Appellant's costs plus a profit percentage
3 of 5% to determine Appellant's taxable gross receipts for the Audit Period and issued an assessment.

4 After unsuccessfully protesting the assessment to the Office of Administrative Hearings and the
5 Department, Appellant now timely appeals to this Board.

6 DISCUSSION

7 The issue before the Board is whether Appellant is liable for the tax assessed. The assessment
8 is presumed correct and the Appellant bears the burden of overcoming this presumption. *Arizona State*
9 *Tax Comm'n v. Kieckhefer*, 67 Ariz. 102, 105 (Ariz. 1948). Appellant contends that it has no tax liability
10 under the prime contracting classification for the Audit Period because it had sold all its contracting assets
11 to Great Western in December of 1994.

12 The Department examined Appellant's general ledger for the Audit Period and added a 5% profit
13 margin to amounts reported as Appellant's costs to determine Appellant's tax liability. The Department
14 then reviewed Appellant's income tax returns and determined that figures reported on the returns
15 generally supported the numbers it used for its calculations. Accordingly, the Department issued an
16 assessment of tax, under the prime contracting classification, against Appellant.

17 Appellant claims that figures used by the Department to determine its liability were mistakenly
18 designated as costs or expenses on its general ledger but were actually loans made to Great Western.
19 Testimony before the Board from Appellant's president, accountant and tax preparer, and the president of
20 Great Western substantiates Appellant's claim.

21 The testimony confirms the following facts. Great Western ran into financial difficulties after
22 acquiring Appellant's assets. The purchase price of the assets was to be paid out of the sales of the
23 homes that were the subject of the Backlog Contracts ("Backlog Homes.") To ensure Great Western's
24 continued financial viability, and, in particular, its ability to pay the deferred purchase price for Appellant's
25 assets, Appellant loaned funds to Great Western to complete the construction of the Backlog Homes.
Great Western completed and sold the homes, paid the applicable tax and repaid the loans made by
Appellant. Appellant designated the loan repayments as construction costs in its general ledger.

1 The Department offered no evidence to rebut the testimony. Therefore, while Appellant's
2 mischaracterization of its loans and loan repayments in its general ledger and on its tax returns may have
3 caused confusion during the audit, the Board finds that Appellant has shown it did not act as a prime
4 contractor during the audit period and is not liable for the transaction privilege tax assessed.

5 CONCLUSIONS OF LAW

6 Appellant is not liable for the tax at issue. *Arizona State Tax Comm'n v. Kieckhefer*, 67 Ariz. 102,
7 105 (Ariz. 1948); A.R.S. § 42-5075.

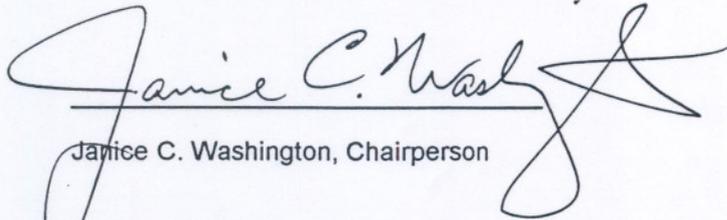
8 ORDER

9 THEREFORE, IT IS HEREBY ORDERED that the appeal is granted, and the final order of the
10 Department is vacated.

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

13 DATED this 14th day of March, 2002.

14 STATE BOARD OF TAX APPEALS

15 
16 Janice C. Washington, Chairperson

17 JCW:ALW

18 CERTIFIED

19 Copies of the foregoing
20 mailed or delivered to:

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