

1 argues that the Department erroneously based its assessment on the guaranteed maximum amount,
2 even though Appellant did not receive these funds. Further, Appellant argues that some of the deposits
3 into the money market account were reimbursement for nontaxable, non-contracting services and fees
4 that Appellant paid on behalf of the owners.

5 A review of the evidence indicates that, during the Audit Period, Appellant maintained more than
6 one account; more than one entity shared accounts; and, there were transfers between accounts.
7 Further, there are inconsistencies and discrepancies in the records submitted by Appellant.¹ Therefore,
8 the Board concludes that Appellant has not sufficiently shown that the money market account at issue
9 contained only and all the actual monies received for the Oak Street Project.

10 Next, Appellant argues that it is not liable for tax on monies attributable to reimbursement it
11 received for third-party services, including fees for building permits, soil reports, municipal fees and
12 architectural/engineering services. See *State Tax Comm'n v. Holmes & Narver, Inc.*, 113 Ariz. 165, 548
13 P.2d 1162 (Ariz. 1976); *State Tax Comm'n v. Ebasco Services, Inc.*, 105 Ariz. 94, 459 P.2d 719 (Ariz.
14 1969).

15 In *Holmes & Narver* and *Ebasco*, the taxpayers performed engineering/design services as well as
16 contracting services. The Arizona Supreme Court held that "[w]here it can be readily ascertained without
17 substantial difficulty which portion of the business is for non-taxable professional services . . . , [and] the
18 amounts in relation to the company's total taxable Arizona business are not inconsequential, and those
19 services cannot be said to be incidental to the contracting business, the professional services are not
20 merged for tax purposes into the taxable contracting business and are not subject to taxation." 113 Ariz.
21 165 at 169. The Board finds that Appellant has not satisfied these requirements. Therefore, Appellant is
22 taxable on monies attributable to reimbursement for third-party fees.

23 Finally, Appellant has not proven that its failure to pay the tax at issue was due to reasonable
24 cause; therefore, the penalties may not be abated. A.R.S. § 42-1125. The interest imposed represents a
25 reasonable rate on the tax due and owing and is made part of that tax by statute; therefore, it may not be
26 abated. See A.R.S. § 42-1123; see also *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

¹The Board is cognizant of the fact that Appellant and the owners of the Oak Street Project are associated entities. The Board queries but cannot answer whether it should have been easier for Appellant to substantiate its claims given the nature of its relationship with the Oak Street Project owners.

CONCLUSIONS OF LAW

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2 1) Appellant is liable for the tax assessed. See *State Tax Comm'n v. Holmes & Narver, Inc.*, 113
3 Ariz. 165, 548 P.2d 1162 (Ariz. 1976); *State Tax Comm'n v. Ebasco Services, Inc.*, 105 Ariz. 94, 459
4 P.2d 719 (Ariz. 1969); A.A.C. R16-3-118.

5 2) Appellant has not proven that its failure to pay the tax at issue was due to reasonable cause;
6 therefore, the penalties may not be abated. A.R.S. § 42-1125.

7 3) The interest imposed represents a reasonable rate on the tax due and owing and is made part
8 of that tax by statute; therefore, it may not be abated. See A.R.S. § 42-1123; see also *Biles v. Robey*, 43
9 Ariz. 276, 30 P.2d 841 (1934).

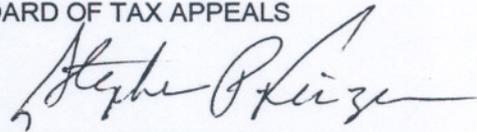
ORDER

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

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

14 DATED this 12th day of January, 2001.

15 STATE BOARD OF TAX APPEALS



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Stephen P. Linzer, Chairman

SPL:ALW

CERTIFIED

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