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BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
Bank of America Tower
101 North First Avenue - Suite 2340
Phoenix, Arizona 85003
(602) 528-3966

ARIZONA OUTDOOR ADVERTISERS, INC.,)	
Appellant,)	Docket No. 1738-98-F
vs.)	
ARIZONA DEPARTMENT OF REVENUE,)	NOTICE OF DECISION:
Appellee.)	FINDINGS OF FACT AND
)	<u>CONCLUSIONS OF LAW</u>

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

Arizona Outdoor Advertisers, Inc. ("Appellant") is an Arizona corporation engaged in the business of leasing strategic locations for the placement of billboards, soliciting advertising business from various customers, designing the advertising for these customers and placing the advertisement on its billboards. The Arizona Department of Revenue (the "Department") audited Appellant for the period of August 1, 1988 through July 31, 1992 and determined that Appellant was liable for transaction privilege tax under the commercial lease classification. A.R.S. § 42-5069 (formerly A.R.S. § 42-1310.09). The Department subsequently issued an assessment of tax, interest and penalties. After unsuccessfully protesting the assessment to the Department, Appellant appealed to this Board. The Board upheld the appeal, finding that Appellant does not lease for a consideration the use or occupancy of real property used by a lessee for commercial purposes, therefore, Appellant is not liable for the tax under A.R.S. § 42-5069.

Thereafter, pursuant to A.R.S. § 42-2064 (formerly A.R.S. § 42-139.14), Appellant submitted a timely application for reimbursement of attorneys' fees and costs expended during the appeal process to the Department's Problem Resolution Officer. The Problem Resolution Officer denied the reimbursement request, claiming that the Department was substantially justified in assessing the additional tax on Appellant under the commercial lease classification. Pursuant to A.R.S. § 42-2064(C),

1 the decision of the Problem Resolution Officer constitutes the final order of the Department.¹

2 DISCUSSION

3 The issue before the Board is whether Appellant is entitled to the reimbursement of fees and
4 costs claimed. Appellant bears the burden of proof as to all issues of fact. A.A.C. R16-3-118.

5 A.R.S. § 42-2064(A) allows for the reimbursement of reasonable fees and costs expended by a
6 taxpayer who is a prevailing party in an administrative proceeding if the Department's position was not
7 substantially justified and if the taxpayer prevails as to the most significant issue or issues. Proceedings
8 before the Department and the Board are administrative proceedings for which reimbursement is
9 allowed. A.R.S. § 42-2064(H)(1).

10 In *Pierce v. Underwood*, 487 U.S. 552(1988), the United States Supreme Court stated that
11 "substantially justified" has been said to be satisfied if there is a " 'genuine dispute,' . . . or 'if reasonable
12 people could differ as to [the appropriateness of the contested action]. . . ." 487 U.S. at 565. The Court
13 further noted that "a position can be justified even though it is not correct, and we believe it can be
14 substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has
15 a reasonable basis in law and fact." *Id.* The Department relied on several cases holding that billboards
16 are real property for property tax purposes to support the imposition of the transaction privilege tax at
17 issue. In its decision on the substantive tax issue in this case, the Board disagreed with the
18 Department's position but finds it had a reasonable basis in law and fact and, therefore, was substantially
19 justified. Accordingly, Appellant is not entitled to a reimbursement of fees and costs. A.R.S.
20 § 42-2064(A).

21 CONCLUSIONS OF LAW

22 The Department was substantially justified in assessing the additional tax on Appellant under the
23 commercial lease classification; therefore, Appellant is not entitled to a reimbursement of fees and costs.

24 A.R.S. § 42-2064(A).

25 . . .

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27 _____
28 ¹ The Board held this matter in abeyance pending the final resolution of the substantive tax issue. The Arizona
Tax Court recently granted Appellant's motion for summary judgment in its minute entry (No. TX 97-00454) dated
December 20, 1998; therefore, the matter at issue is ready for decision by this Board.

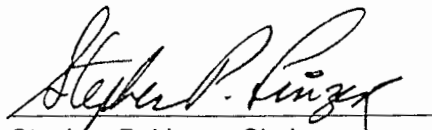
ORDER

THEREFORE, IT IS HEREBY ORDERED that Appellant's request for reimbursement of fees and costs is denied.

This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254 (formerly A.R.S. § 42-124).

DATED this 2nd day of June, 1999.

STATE BOARD OF TAX APPEALS


Stephen P. Linzer, Chairman

SPL:MAS
CERTIFIED

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