

1 Prime contracting activity is defined, in pertinent part, as undertaking to "[a]lter, repair, add to,
2 subtract from, improve . . . any building . . . or other structure, project, development or improvement, or to
3 do any part of such a project . . . and includes subcontractors and specialty contractors. A.R.S. § 42-
4 5075(J)(2). The rule R15-5-613 of the Arizona Administrative Code ("A.A.C.") further specifies that "[t]he
5 sale and installation of all floor covering which is affixed to real property is subject to tax under the
6 contracting activity."

7 Appellant argues that its business activities fall within the scope of the retail sales classification
8 because it sells professional, personal services and that income attributable to the installation of carpet is
9 exempt from tax under the retail classification.¹ A.R.S. § 42-5061. Appellant further contends it is not
10 taxable under A.A.C. R15-5-613 because the rule imposes tax only on those who *sell and install* floor
11 coverings. Because it only installs carpet and does not sell it, Appellant argues it is not taxable.

12 The Board acknowledges that Appellant does not *sell* carpeting. This is precisely the reason
13 Appellant's activities do not fall within the scope of the retail classification, which is comprised of the
14 business of *selling tangible personal property at retail*. See A.R.S. § 42-5061(A). Further, the Board has
15 previously determined that while A.A.C. R15-5-613 clarifies that those who install the carpeting they sell
16 may be taxable under the contracting, rather than the retail sales classification, there is nothing in either
17 the rule or the pertinent statute that indicates the sale of floor covering is a prerequisite to taxation on the
18 installation. See *Hohn v. Arizona Dep't of Rev.*, Docket No. 922-92-S (BOTA Feb. 22, 1994).
19 Accordingly, Appellant is liable for the tax assessed on its installation services.

20 Next, while Appellant concedes that its services are taxable when performed as a subcontractor,
21 it argues that the Department erroneously disregarded several valid exemptions certificates it provided
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24 ¹ The retail classification exempts from tax the gross proceeds of sales or gross income from "[p]rofessional or
25 personal service occupations or businesses which involve sales or transfers of tangible personal property only as
inconsequential elements" and "[s]ervices rendered in addition to selling tangible personal property at retail."
Id(A)(1)and (A)(2).

1 pursuant to A.R.S. § 42-5075(E). This subsection exempts from taxation income derived from contracting
2 activities if the person who hired the contractor executes and provides the contractor with a certificate
3 stating that the person is the prime contractor liable for the tax. The subsection further provides that the
4 Department shall prescribe the form of the certificate. Additionally, Appellant contends that the
5 Department erroneously assessed City of Sedona transaction privilege tax against Appellant for receipts
6 earned outside the City of Sedona.

7 The Department counters that it accepted valid certificates that provided the required information
8 and assessed City of Sedona tax on projects determined to be subject to the tax based on information
9 provided by Appellant.

10 After the hearing before the Board, at the Board's request, the Department reviewed additional
11 information provided by Appellant and, subsequently, revised the assessment to exclude certain amounts
12 that had been erroneously included in taxable receipts under the prime contracting classification, and to
13 exclude from the City of Sedona assessment certain amounts that had been erroneously included in
14 taxable receipts from projects within that city. The Board finds that Appellant is liable for the assessment
15 as modified.

16 The late filing and late payment penalties at issue may not be abated because Appellant has not
17 shown that its failure to timely file returns and pay the tax due was attributable to reasonable cause.
18 A.R.S. § 42-1125(A) and (D). Finally, the interest at issue is made a part of the tax by statute and
19 represents a reasonable interest rate on the tax due; therefore, it may not be abated. A.R.S. § 42-1123;
20 *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

21 CONCLUSIONS OF LAW

22 1. Appellant is liable for the assessment as modified. See A.R.S. § 42-5075; *Hohn v. Arizona*
23 *Dep't of Rev.*, Docket No. 922-92-S (BOTA Feb. 22, 1994).

24 2. Appellant has not shown that its failure to timely pay the tax due was attributable to
25 reasonable cause; therefore, the penalties imposed may not be abated. A.R.S. § 42-1125(D).

