



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

WESTERN RIVER EXPEDITIONS,)
)
Appellant,) Docket No. 1773-98-S
)
vs.)
)
ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
Appellee.)

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

In June 1989, the Arizona Court of Appeals ruled that gross revenues from river rafting expeditions are taxable under the amusement classification.¹ *Department of Rev. v. Moki Mac River Expeditions*, 160 Ariz. 369, 773 P.2d 474 (App. 1989). During the period April 1993 through May 1995 (the "Refund Period"), Western River Expeditions ("Appellant") conducted guided river rafting expeditions through the Grand Canyon National Park. Each customer paid Appellant a single fee for the raft trip. When Appellant billed its customers, it separately stated transaction privilege tax charges on the invoices. Thus, Appellant passed the cost of the tax on to its customers.

...
...

¹ A.R.S. § 42 - 5073 (formerly A.R.S. § 42-1310.13).

1 not separately itemize tax – even if a charge is added to cover the precise amount of the tax and is
2 passed on to the customer – the Department does not require the taxpayer to return the refund to the
3 customer. The Department bases its position on the final sentence of A.R.S. § 42-5002(A)(1) (formerly
4 A.R.S. § 42-1302(A)(1)), which states as follows:

5 A person who imposes an added charge to cover the tax levied by this
6 article or which is identified as being imposed to cover transaction
7 privilege tax shall not remit less than the amount so collected to the
8 department.

9 The Department contends that its interpretation is supported by the decision in *State Tax Comm'n v.*
10 *Garrett Corp.*, 79 Ariz. 389, 291 P.2d 208 (1955).

11 The Board finds that there is no significant practical difference between a taxpayer who itemizes
12 the tax and a taxpayer who “factors” the tax into the purchase price, and that the Department’s position is
13 not supported by either A.R.S. § 42-5002(A)(1) or *Garrett*.

14 A.R.S. § 42-5002(A)(1), entitled “Exclusions from gross income, receipts or proceeds,” deals
15 with just that – exclusions from income, not refunds. Further, the language of the last sentence
16 addresses only the *remittance* of money to the Department, not refunds. Finally, the Board has
17 previously determined that *Garrett* has no application to this controversy because the pertinent portions
18 of *Garrett* pertain to *fraudulent* profiting, arising from situations in which businesses were intentionally
19 misstating their tax liability and keeping the difference. *Phoenix Photo Type, Inc. v. Arizona Dep’t of*
20 *Rev.*, No. 640-88-S (BTA 1989). In this case, Appellant collected only the amount the Department
21 required and for which Appellant reasonably believed it was liable, and Appellant remitted the full amount
22 of tax collected to the Department. At no time did Appellant attempt to intentionally and fraudulently
23 profit under the guise of a compulsory tax.

24 The legislature has, in certain instances, specifically included language requiring taxpayers to
25 provide assurance that refunds would be returned to customers. See Laws 1994, Chapter 312, §§ 3-5
26 (creating a retroactive exemption under the commercial lease classification for leases to nursing homes
27 and requiring the taxpayers receiving the refunds to prove that the money would be returned to the
28 nursing home residents). The refund statute at issue does not include similar language. Without such
statutory authority, the Department cannot impose conditions on Appellant’s refund. Therefore,
Appellant is unconditionally entitled to the refund at issue.

