

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

A - W DELIVERY SERVICE,)	
)	
Appellant,)	
)	Docket No. 1809-99-S
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

A - W Delivery Service ("Appellant") is engaged in the business of delivering packages by motor vehicles in Arizona. Appellant did not register its vehicles with the Arizona Department of Transportation Motor Vehicle Division ("MVD") or pay motor vehicle carrier tax to MVD. The gross weight of each vehicle used by Appellant was not more than 12,001 pounds.

The Arizona Department of Revenue (the "Department") audited Appellant for the period July 1, 1987 to April 30, 1997 ("Audit Period") and found that Appellant did not have a transaction privilege tax license and did not file transaction privilege tax returns or pay transaction privilege tax to the Department during this time. Consequently, the Department issued an assessment of tax and interest against Appellant for the Audit Period. Appellant protested the assessment to an administrative law judge who denied the protest. Appellant then protested to the Director of the Department who affirmed the administrative law judge's decision. Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether Appellant is liable for the tax assessed.

Arizona transaction privilege tax is imposed on "the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in the state."

1 A.R.S. § 42-1310.02(A) (renumbered as A.R.S. § 42-5062, effective January 1, 1999).¹ However,
2 transporting by vehicles that are "subject to" the motor carrier tax is specifically exempted from the tax
3 under A.R.S. § 42-1310.02(A)(1).

4 A.R.S. § 28-1599.05(A) imposes "against each motor vehicle and each lightweight motor vehicle
5 a motor carrier tax for the use of the public highways" The statute imposes a graduated tax on
6 vehicles weighing 12,001 to 80,000. *Id* (B) and (C). Appellant argues that it was "subject to" - even
7 though it admits it did not pay - the motor carrier tax, and therefore it is exempt from the transaction
8 privilege tax pursuant to A.R.S. § 42-1310.02(A)(1).

9 Appellant essentially argues that there is no specific exemption from the motor carrier tax for
10 vehicles weighing less than 12,001; therefore, they must be subject to tax, and the only reason the motor
11 carrier tax is not collected on delivery vehicles weighing less than 12,001 pounds is because the
12 Legislature has failed to provide a tax rate.

13 The Board disagrees. During the Audit Period, the pertinent statutes made no reference to a tax
14 on vehicles weighing less than 12,000 pounds. Further, the fact that the Legislature has since enacted a
15 new motor carrier tax on vehicles weighing less than 12,000 pounds confirms that no such tax existed
16 prior to 1997.

17 In a previous case, the Board established that unless a taxpayer timely *registers* its vehicles as
18 lightweight motor carriers and timely *pays* the motor carrier tax, then the exemption from transaction
19 privilege tax under A.R.S. § 42-1310.02 does not apply. See *Pro-Courier, Inc. v. Arizona Department of*
20 *Rev.* No. 935-92-S(2) (B.T.A., July 13, 1993). Because Appellant did neither, it is liable for transaction
21 privilege tax.

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

25 . . .

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28 ¹ All statutes will be referred to as they existed during the Audit Period.

