

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 JEWELRY EXCHANGE, INC.,)
Appellant,) Docket No. 1797-98-U
vs.)
ARIZONA DEPARTMENT OF REVENUE,) **NOTICE OF DECISION:**
Appellee.) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**

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 Jewelry Exchange, Inc. ("Appellant") is an Arizona corporation which operates a pawn shop that buys, sells, and trades tangible personal property. Among the items sold by Appellant are jewelry, precious metal bullion and monetized bullion. The Arizona Department of Revenue (the "Department") audited Appellant for the period of November 1, 1993 through December 31, 1995 and issued an assessment, including interest and penalties, under the retail classification. Appellant supplied the Department with documentation to support some exemptions that were not allowed by the Department's audit. Subsequently, the Department amended the assessment to reflect some of Appellant's proposed exemptions, but upheld most of the assessment. After unsuccessfully protesting the amended assessment to an Administrative Law Judge, Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether Appellant is liable for the assessment. The assessment of tax is presumed correct and the taxpayer bears the burden of overcoming this presumption. *State Tax Comm'n v. Kieckhefer*, 67 Ariz. 102, 105, 191 P.2d 729, 732 (1948); see also A.A.C. R16-3-118 ("The burden of proof will be upon the appellant as to all issues of fact.").

1 Arizona transaction privilege tax statutes impose tax on the business of selling tangible personal
2 property at retail. A.R.S. § 42-5061 (formerly A.R.S. § 42-1310.01). Sales for resale are exempt under
3 A.R.S. § 42-5009 (formerly A.R.S. § 42-1316). In addition, A.R.S. § 42-5061(A)(21) exempts from
4 taxation "(t)he sale of precious metal bullion and monetized bullion to the ultimate consumer." Appellant
5 argues that its sales of tangible personal property were either exempt sales for resale or sales of bullion;
6 therefore, it is not liable for the tax assessed. The Board disagrees.

7 In order for Appellant to demonstrate that its sales are non-taxable sales for resale it must obtain
8 proper certification from the purchaser or present facts necessary to support the entitlement to the
9 deduction. A.R.S. § 42-5009. All gross receipts (sales) are presumed to be taxable until the contrary is
10 established. A.R.S. § 42-5023. "The burden of showing a sale is not at retail is upon the seller unless he
11 has taken a resale certificate from the buyer containing the minimum statutory requirements." *Goodyear*
12 *Aircraft Corp. v. Arizona State Tax Comm'n*, 1 Ariz. App. 302, 310, 402 P.2d 423, 431 (1965). At the
13 hearing before the Board, Appellant conceded the taxability of certain sales and the Department
14 conceded the exemption of others. For the sales remaining in dispute, Appellant did not provide
15 exemption certificates from its customers or information necessary to establish entitlement to the
16 deductions. Accordingly, Appellant is liable for the transaction privilege tax assessed on these sales
17 transactions.

18 Further, Appellant has not met its burden of proof under A.R.S. § 42-1125 (formerly A.R.S. § 42-
19 136); therefore, the penalties may not be abated. Finally, the interest imposed represents a reasonable
20 interest rate on the tax due and owing and is made part of the tax by statute; therefore, it may not be
21 abated. See A.R.S. § 42-1123(B) (formerly A.R.S. § 42-134(B)); see also *Biles v. Robey*, 43 Ariz. 276,
22 30 P.2d 841 (1934).

23 CONCLUSIONS OF LAW

24 1. Appellant is liable for the transaction privilege tax assessed. See *Goodyear Aircraft Corp. v.*
25 *Arizona State Tax Comm'n*, 1 Ariz. App. 302, 310, 402 P.2d 423, 431 (1965); see also A.R.S. § 42-5061;
26 A.R.S. § 42-5009.

27 2. Appellant has not met its burden of proof under A.R.S. § 42-1125; therefore, the penalties
28 may not be abated.

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

ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is upheld in part and denied in part, and the final order of the Department is modified.

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 10th day of August, 1999.

STATE BOARD OF TAX APPEALS


Stephen P. Linzer, Chairman

SPL:MAS
CERTIFIED

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