

# STATE OF ARIZONA

Department of Revenue  
Office of the Director  
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Janet Napolitano  
Governor

Gale Garriott  
Director

**CERTIFIED MAIL** [REDACTED]

**The Director's Review of the Decision  
of the Administrative Law Judge Regarding:** )  
)  
)  
[REDACTED], )  
**dba** [REDACTED] )  
)  
**ID No. .** [REDACTED] )  
\_\_\_\_\_ )

**O R D E R**

**Case No. 200600015-S**

On April 4, 2006, the Administrative Law Judge issued a decision regarding the protest of [REDACTED], LLC (“Taxpayer”). Taxpayer appealed this decision on April 22, 2006. Because the appeal was timely, the Director of the Department of Revenue (“Director”) issued a notice of intent to review the decision.

In accordance with the notice given the parties, the Director has reviewed the Administrative Law Judge's decision and now issues this order.

### Statement of Case

In September 2004 Taxpayer filed a claim for refunds of the transaction privilege taxes paid for the 1998 monthly periods. On October 22, 2004, the Transaction Privilege and Use Tax Audit Section of the Audit Division (“Division”) denied the refund request. Taxpayer protested the assessment, and the Administrative Law Judge denied the protest. On appeal, Taxpayer argues accountant error followed by the accounting firm’s closure, misinformation from the Collections Division of the Department and two deaths in her family resulted in untimely filing of the refund request. The Division maintains the refund is barred by the statute of limitations.

### Findings of Fact

The Director adopts from the findings of fact set forth in the decision of the Administrative Law Judge and makes additional findings as follows:

1. In 2003, Taxpayer filed a request for refunds of transaction privilege taxes paid for 2000 and 2001 and in April 2003 and May 2003, the Department issued refunds for these taxes.
2. In 2003, Taxpayer also filed a request for refund of transaction privilege taxes paid for 1999. In October 2003, the Department issued a refund for taxes for the periods of 1999, but at the hearing, the Division indicated it believed the refund was issued in error.
3. In September 2004, Taxpayer filed a request for refunds of transaction privilege taxes paid for its 1998 monthly periods, and on October 22, 2004, the Department issued a letter denying the refund request.
4. Taxpayer's September 2004 request for refund was more than four years beyond the dues dates of and the dates of filing of all the 1998 returns.
5. Taxpayer provided no evidence to show that any of the exceptions to the general four year time were applicable.

### **Conclusions of Law**

The Director adopts from the conclusions of law set forth in the decision of the Administrative Law Judge and makes additional conclusions as follows:

1. Generally, a claim for refund must be made within four years after the report or return was required to be filed or was filed, whichever period expires later. A.R.S. §§ 42-1104 and 42-1106.
2. Failure to file a refund claim within that time frame is a bar against the recovery of the taxes. A.R.S. § 42-1106(D).
3. Taxpayer filed its claims for refund of the taxes for the periods in 1998 after the expiration of that four year period.
4. While there are statutory exceptions to the general four year time frame, Taxpayer failed to show there was any applicable exception.

5. The Department is barred from refunding any of the transaction privilege taxes paid by Taxpayer for its 1998 monthly periods.

### **Discussion**

Taxpayer hired an accounting firm, [REDACTED], to prepare its transaction privilege tax returns for a number of years, including 1998. Taxpayer's president, [REDACTED] reviewed, signed and sent in the returns along with payment. This practice continued until approximately 2001, when Taxpayer could not keep up with the financial burden of taxes, and apparently stopped paying the transaction privilege taxes when filing its returns.

The Department began collections activity as to Taxpayer's tax liability. In 2003, Taxpayer filed a request for refunds of transaction privilege taxes paid for 2000 and 2001. In April 2003 and in May 2003, the Department issued refunds for taxes erroneously paid in 2000 and 2001. In 2003, Taxpayer also filed a request for refund of transaction privilege taxes paid for 1999. In October 2003, the Department issued a refund for taxes for the periods of 1999, but at the hearing, the Division indicated it believed the refund was issued in error.

On June 21, 2004 the Department's Tax Research & Analysis Section issued an information letter to Taxpayer addressing the taxation of transportation services. Following the personal tragedies including two deaths in the family, in September 2004 Taxpayer filed a request for refunds of transaction privilege taxes paid for 1998 monthly periods. On October 22, 2004, the Department issued a letter denying the refund request, indicating the requested periods of January 1998 through December 1998 were "outside the statutes of limitation." In the protest of that denial, [REDACTED] requested reconsideration of the refund denial due to the fact that Taxpayer had paid the Department thousands of dollars that it did not owe, which made it impossible for the company to stay in business.

A.R.S. § 42-1106 (A) sets the time frame within which a refund claim may be brought (and a refund may be allowed) as the period within which the Department may make an assessment of taxes under A.R.S. § 42-1104. A.R.S. § 42-1106(D) further states that a failure to begin a refund claim within that time frame is a bar against the recovery of

the taxes. Therefore, in the absence of any applicable exception to the time frames in either A.R.S. § 42-1106 or § 42-1104, a failure to bring a refund claim within the permissible assessment time frames is a bar to a taxpayer's recovery of taxes. These statutes make up what is described as the "statute of limitation".

A.R.S. § 42-1104(A) provides that all notices for additional taxes (an assessment of taxes) are required to be mailed by the Department within four years after the report or return was required to be filed or was filed, whichever period expires later. A tax return for January 1998 was due in February 1998. As the Administrative Law Judge noted in the Decision, the hearing record does not evidence the actual filing date of any of the 1998 returns. Although both the Taxpayer and the Division had the opportunity on appeal to state that one or more of the returns were filed after the due dates, no such evidence was offered. Having no such evidence, it is presumed that the returns were timely filed. In the absence of an exception to the general four year time period, the latest time at which a refund claim for January 1998 could have been timely made was February 2002.

While at hearing Taxpayer made a general claim that exceptions to the general four year statute of limitation applied, no evidence or specific argument was presented at the hearing, and on appeal no claim was made that any of the exceptions applied. Taxpayer's refund claims for all the 1998 periods were filed in September 2004; therefore, the claim for refund was made months after the expiration of the statute of limitations. Taxpayer's claim for refund is barred.

The policy considerations behind the statute of limitations are that everyone should have some measure of reliance on the taxes declared to be due. The State plans its budget to provide for the needs of its citizens. It relies on the taxes declared to be due and paid by taxpayers to provide the funds for its programs. The tax revenues are spent each year under the belief that the monies were properly received. If six or eight years down the road the State finds out that the monies were not legally received, it cannot go back and reverse the services provided, it must increase future taxes or cut future services. Similarly, taxpayers spend their refunds and budget their family expenses. An unexpected

eight year old tax bill can cause financial and emotional distress, especially when the taxpayer timely filed his return and believed all taxes due were paid.

The statute of limitations protects both the individual taxpayers and the State. If a taxpayer filed a timely return and remitted the taxes shown to be due on the return, the Department could not issue an assessment raising the tax liability shown to be due on the return after the expiration of the statute of limitations, even if the return was blatantly erroneous. Likewise, a taxpayer cannot lower the tax liability shown to be due on a return after the expiration of the statute of limitations, even where the taxes were clearly paid erroneously.

By letter dated November 23, 2004, [REDACTED] filed Taxpayer's protest of the refund denial. Taxpayer's protest states:

My previous accountant, [REDACTED], now out of business, filed erroneous and fraudulent returns, depicting my corporation as retail. I paid tax on gross receipts when it was not applicable, as you are fully aware. **Due to my ignorance and my trust in the accounting firm, I paid the taxes that they delegated until October 2002, when I could no longer afford to pay said fees and a state tax lien was imposed.** I was in total disbelief that such exorbitant tax would be imposed for the type of business I was in. **Through extensive research, I discovered that this tax was not applicable. This came to fruition in January of the year 2003. It has taken me this long to retrieve the information necessary to file amended returns. The fact that the accounting firm went out of business delayed my progression.** As a direct result of this snafu, the money used for tax purposes put such an enormous strain on my corporation, that I was forced to close my company with no gain. [Emphasis added]

Prior to hearing, [REDACTED] filed a pre-hearing submission containing a three page letter regarding the background of this matter, her dealings with the Department and her positions with regard to the refund denial. At hearing, [REDACTED] testified that she had been misled ("told falsehoods") by the Department's collection personnel as to taxes being due and then, after finding out that no taxes were actually owed since 1998, that the Department could not help her with the amended returns and she could not file claims for

refund for 1998 and 1999. [REDACTED] testified that when a competitor told her that he did not pay taxes, she began to discuss with the Collections personnel that no tax was actually due on her business, but was given no assistance with a refund claim. After receiving the 2000 and 2001 refunds, she discussed the matter with her counsel and new accountant who suggested that she file for 1999 just to see if she could get it. While [REDACTED] testified that the Departmental misinformation was the “main reason” she had not filed all the years at once, the hearing was the first time Taxpayer raised the issue of misinformation from the Department. That claim was continued in the two memoranda submitted on appeal.

[REDACTED] testified that she kept paying the “exorbitant” taxes on her activity until she could no longer afford in 2001 to pay, and that no one informed her that the law had changed in 1998. The law change to which she referred is A.R.S. § 42-5062(A)(1), effective January 1, 1998, which provides that no state transporting transaction privilege taxes were due on receipts from the business of transporting for hire using light motor vehicles subject to light motor vehicle fees in A.R.S. Title 28, Chapter 15, Article 4. See Laws 1997, Chapter 110, Section 2.

As noted by the Administrative Law Judge in the Decision, the Department is not required to notify taxpayers of law changes:

In Arizona, it is well settled that every person is presumed to know the law and its requirements, and a mistake as to such requirements is no excuse for failure to meet them, or, as here, a failure to know proper compliance with them. See *Newman v. Fidelity Savings and Loan Association*, 14 Ariz. 354, 128 P. 53 (1912). The Department is not required to continually advise all persons of all laws, of changes in laws, or of possible consequences of not complying with those laws. Absent some legislatively designated responsibility to do so, the Department is simply not responsible to update all persons wherever located of all Arizona tax matters.

While not required to do so by law, the Department does attempt to educate taxpayers as to law changes that affect them, where possible. The Department sends preprinted tax returns to transaction privilege tax license holders, such as Taxpayer. Each year along with one of the summer or autumn mailings, the Department sends a brief

summary of that year's state legislation affecting transaction privilege tax. Not only would the new exemption at issue be mentioned in the legislative update, but in 1997 there was a later flyer was sent with the October 1997 form that mentioned the exemption at issue. The flyer listed model city code changes that had recently been made. One of those changes described an exemption from city privilege taxes were due on receipts from the business of transporting for hire using light motor vehicles subject to light motor vehicle fees. The flyer mentioned that the model city code exemption mirrored the state exemption. Therefore, prior to 1998, the Department had sent taxpayers two flyers mentioning the new exemption.

At hearing, [REDACTED] made the following statement: "Please don't punish me for someone else's negligence. I employed an accountant who did not know what he was doing. That's what's happening here. I paid a professional to look out for my best interest and he did not." Even if Taxpayer relied to its detriment on its hired accountant, the Department cannot be held to be responsible for correcting the bad advice or bad actions of hired professionals who were employed by Taxpayer. And, as noted by the Administrative Law Judge in her decision, holding the accountant responsible for bad advice given to a taxpayer is far outside the authority and jurisdiction of the Department.

The Division properly denied the claim for refund for the months of 1998.

## **ORDER**

The Administrative Law Judge's decision is affirmed.

This decision is the final order of the Department of Revenue. Taxpayer may contest the final order of the Department in one of two manners. Taxpayer may file an appeal to the State Board of Tax Appeals, 100 North 15<sup>th</sup> Avenue, Suite 140, Phoenix, AZ 85007 or may bring an action in Tax Court (125 West Washington, Phoenix, Arizona 85003) within sixty (60) days of the receipt of this order. For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102. For information from the Tax Court, call (602) 506-3763.

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Dated this 5th day of December, 2006.

ARIZONA DEPARTMENT OF REVENUE

Gale Garriott  
Director

Certified original of the foregoing  
mailed to:

[REDACTED]

GG:st

cc: Transaction Privilege and Use Tax Audit Section  
Office of Administrative Hearings  
Transaction Privilege Tax Appeals Section  
Audit Division