

# STATE OF ARIZONA

Department of Revenue  
Office of the Director  
(602) 716-6090



Janice K. Brewer  
Governor

Gale Garriott  
Director

**CERTIFIED MAIL [redacted]**

**The Director's Review of the Decision  
of the Administrative Law Judge Regarding:** )  
 )  
[redacted] )  
 )  
**ID No. [redacted]** )  
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**ORDER**

**Case No. 200700222 - S**

On August 25, 2008, the Administrative Law Judge (“ALJ”) issued a decision regarding the protest of [redacted] (“Taxpayer”). The Taxpayer appealed this decision on September 24, 2008. As the appeal was timely, the Director (“Director”) of the Department of Revenue (“Department”) 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

The Transaction Privilege and Use Tax Section of the Audit Division (“Division”) of the Department audited Taxpayer for the period of August 1, 1999 through June 30, 2003. In the audit, the Division determined that certain sales of recreational vehicles, for which Taxpayer had claimed exemptions from tax, were taxable under the retail classification and did not qualify for any exemption. As a result, the Division assessed additional transaction privilege tax, penalties and interest. Taxpayer protested the disallowance of various types of claimed exemptions for sales of recreational vehicles, and the matter went to hearing. The ALJ upheld the assessment for the majority of the transactions at issue but allowed claimed exemptions for several transactions.

On appeal, Taxpayer argues that it is entitled to all claimed exemptions. Additionally, Taxpayer has requested abatement of interest due to unreasonable delay by the Department, and the Department’s Problem Resolution Officer has denied that request in

part and has granted the request in part. The Division argues that its assessment of transaction privilege tax under the retail classification, insofar as it was upheld by the ALJ, was proper under the circumstances.

### **FINDINGS OF FACT**

The Director adopts from the findings of fact in the decision of the ALJ and makes additional findings of fact based on the record as set forth below:

1. Taxpayer is a corporation, headquartered in [redacted], that has engaged in the business of selling at retail, within the meaning of Arizona Revised Statutes (“A.R.S.”) § 42-5061, new and used recreational vehicles at [redacted] in Arizona.
2. The Division audited Taxpayer for the period of August 1, 1999 through June 30, 2003, and disallowed exemptions for [redacted] sales that Taxpayer had claimed as exempt under various types of exemptions. The disallowed exemptions resulted in an assessment dated October 14, 2004 (“Assessment”) of additional transaction privilege tax in an amount of \$[redacted], plus penalty and interest.
3. Taxpayer protested the Assessment and provided additional information concerning its sales transactions, which reduced the number of disputed transactions and resulted in an amended assessment issued November 24, 2005 (“Amended Assessment”) of additional transaction privilege tax of \$[redacted], plus penalty and interest and less applied payments.
4. Pursuant to Taxpayer’s request, a formal administrative hearing was held. During the administrative hearing process, Taxpayer and the Division each conceded additional sales. At the time of the ALJ’s decision, the ALJ noted [redacted] disputed transactions. The ALJ concluded that [redacted] of those sales did qualify for an exemption from tax, and the Division did not appeal that part of the ALJ’s decision. The remaining [redacted] disputed sales, for which the ALJ upheld the Amended Assessment, are the subject of Taxpayer’s appeal.

5. For the [redacted] sales at issue, Taxpayer claimed exemptions for sales to nonresidents under A.R.S. § 42-5061(A)(14) and (A)(28)(a) and exemptions for two sales to Native Americans under A.R.S. § 42-5061(A)(28)(b).
6. For several of the sales at issue, no records were submitted.
7. For the remaining sales at issue, Taxpayer kept records of varying detail. Concerning the buyers' addresses, Taxpayer's records include sales contracts with the buyers' self-stated address and copies of the buyers' driver's licenses. For some sales, credit documents or check copies indicate a customer address. The records for some sales include incomplete ADOR exemption certificates (Form 5000 or Form 5002). In many instances, there is conflicting information concerning a buyer's residence with some of that information pointing to an Arizona residence at the time of the sale.
8. Taxpayer collected various types of records for the purpose of showing the location where the buyers took delivery of the recreational vehicles. Among those records are delivery statements and affidavits signed by one of Taxpayer's employees, post-sale customer declarations, and photos of vehicles at or near the Arizona/California or Arizona/New Mexico border. In those instances where Taxpayer claims an out-of-state delivery, the claimed location is typically near the Arizona border, such as Blythe or Winterhaven in California or Lordsburg in New Mexico.
9. Other records of the claimed sales to nonresidents include copies of 30-day non-resident registrations and statements by customers or one of Taxpayer's employees that the vehicle will be registered in another state.
10. The records for those sales at issue, for which Taxpayer claims an exemption under A.R.S. § 42-5061(A)(14) for sales to nonresidents with delivery outside Arizona, either point to a buyer residence in Arizona or lack evidence of out-of-state delivery.
11. With regard to those sales at issue, for which Taxpayer claims an exemption under A.R.S. § 42-5061(A)(28)(a) for sales to nonresidents who are residents of states that

do not allow a corresponding use tax exemption to the Arizona transaction privilege tax (so-called “non-reciprocal states”) and who have secured a special nonresident registration permit for the vehicle, the records either point to a buyer residence in Arizona, or they indicate a buyer residence in a reciprocal state, or they lack evidence of a nonresident registration.

12. Concerning the two sales for which Taxpayer claims exemptions for sales to Native Americans, Taxpayer’s records indicate the buyers’ tribal membership but are less clear regarding the buyer’s residence on the respective tribe’s reservation. For one of the two sales, the buyers indicated in the credit application that their current residence was on the [redacted - Reservation 1], but a check copy shows a [redacted - town 1] address, and the credit application states that one of the buyers is employed at a [redacted - town 2] address. For the second sale, the sales contract, the credit application, and a Form 5000 exemption certificate show a [redacted - town 3] street address for the [redacted – tribal 2] buyer. The exemption certificate states the buyer’s tribal identification number and includes an attached note stating “Tax Exempt: Tribal – lives on Reservation.” Taxpayer submitted a Wikipedia article concerning the [redacted - Reservation 2]. The article explains the [redacted] areas of the [redacted - Reservation 2] and states that the reservation’s [redacted] is located “in [redacted] [redacted - town 3] [redacted].”
13. In the ALJ’s decision, the ALJ discussed and evaluated the records for each of the [redacted] sales that were disputed at the time of the decision. The ALJ considered the entire evidence for each sale and gave the Taxpayer the benefit of the doubt when information was unclear, e.g., when the records indicated multiple locations of a buyer’s residence outside Arizona or when an Arizona location appeared to be a part-time residence such as an RV park.

## CONCLUSIONS OF LAW

The Director adopts from the conclusions of law in the Decision of the ALJ and makes additional conclusions of law as follows:

1. A.R.S. § 42-5061 (“retail classification”), imposes transaction privilege tax on the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. Income derived from sales of tangible personal property is subject to the transaction privilege tax under the retail classification unless a statutory deduction from the tax base applies.
2. A.R.S. § 42-5061(A)(14) provides an exemption for gross proceeds of sales or gross income derived from “[s]ales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state.”
3. A.R.S. § 42-5061(A)(28)(a) provides an exemption for income derived from the sale of a motor vehicle to “[a] nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by §§ 28-2154 and 28-2154.01.”
4. A.R.S. § 42-5061(A)(28)(b) provides an exemption for income derived from the sale of a motor vehicle to “[a]n enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.”
5. A.R.S. § 42-5009(A) provides that a seller may establish entitlement to statutory deductions by marking the invoice for the transaction and obtaining a certificate executed by the purchaser indicating the particular information, especially the necessary facts to establish the appropriate deduction. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

6. A.R.S. § 42-5009(B) provides that a person who does not comply with A.R.S. § 42-5009(A) “may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.”
7. A.R.S. § 42-5009(C) provides that the Department may prescribe a form for the certificate described in subsection A of A.R.S. § 42-5009 and that the Department may also “describe transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided for in subsection A of . . . [A.R.S. § 42-5009] . . . but must instead obtain such additional information as required by the rules in order to be entitled to the deduction.”
8. A.R.S. § 42-5009(I), which addresses certificates and additional evidence used to establish deductions for sales of motor vehicles to nonresidents under A.R.S. § 42-5061(A)(14) and (A)(28)(a), was inserted into A.R.S. § 42-5009 by Laws 2008, Ch. 246, and became effective September 26, 2008, after the end of the tax period at issue here.
9. Laws 2008, Ch. 246, Section 6, which includes interim provisions for motor vehicle dealers claiming a deduction under A.R.S. § 42-5061(A)(14) and (A)(28)(a), applies to the period beginning August 25, 2004 through September 26, 2008. The tax period at issue here is August 1, 1999 through June 30, 2003 and does not fall under the interim provisions in Laws 2008, Ch. 246.
10. Arizona Administrative Code (“A.A.C.”) Rule 15-5-175(A) provides that a “nonresident” means a person “who is not a resident for Arizona income tax purposes” or “[a]n entity which has no business location or business nexus in Arizona.”
11. A.A.C. Rule 15-5-175(B) provides that receipts from transactions with nonresidents who are temporarily in Arizona are exempt if the vendor ships or delivers the item “out of this state by common carrier, United States mail, or the vendor’s own conveyance” and the property “is not used in Arizona.”

12. A.A.C. Rule 15-5-175(C) provides that a vendor may substantiate the transaction with a nonresident by obtaining “a completed exemption certificate or a written statement from such a buyer certifying that the buyer is not a resident of Arizona and that the property purchased is for use outside of Arizona.” A vendor may use the exemption certificate form created by the Department.
13. A.A.C. Rule 15-5-175(D) provides that “[s]uitable records, as delineated in R15-5-170, shall be kept by the vendor to establish out-of-state shipments.”
14. A.A.C. Rule 15-5-170(C)(2) lists suitable records for substantiating out-of-state shipments, including common carrier receipts and “[i]nternal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property.”
15. A.R.S. § 43-104(19) defines the term “resident” for income tax purposes as including every individual who is in Arizona for other than a temporary or transitory purpose.
16. The Department’s Individual Income Tax Procedure (“ITP”) 92-1 sets forth additional factors to be considered with regard to persons who have established residency in Arizona. ITP 92-1 lists nine examples of actions which are considered in determining a person’s residency. Among the nine examples are physical presence in the new locality, registration of a vehicle, driver’s license renewal or relinquishment, purchase of a new home or sale of an old home, location of bank accounts or business connections, payment of personal or real property taxes, payment of state income taxes, registering to vote in the new location and changing old voting locality, and consistent use of new permanent address on all appropriate records and correspondence.
17. A.A.C. Rule 15-5-2214 addresses the information required to establish the right to a deduction from the tax base by use of a certificate or other documentation. R15-5-2214 provides that a vendor may refuse to accept and honor a certificate if the vendor has reason to believe that the information contained in the certificate is not

accurate, complete, or applicable to a transaction. R15-5-2214 further provides that the Department may challenge the certificate as accepted by the vendor if the Department has reason to believe that the information in the certificate is incomplete, inaccurate, or if the exemption claimed is not based on statutory provisions, but that the burden of proof lies with the Department when a vendor accepts a completed departmental certificate and marks the applicable invoice pursuant to statute.

18. The Department's Transaction Privilege Tax Procedure ("TPP") 08-1, which provides guidance regarding the taxability of Arizona sales of motor vehicles to nonresidents and Native Americans, and which explains the documentation necessary for sales that qualify for a statutory deduction, became effective in October 2008, after the tax periods at issue here.
19. The Department's TPP 00-3 provides guidance in the use of departmental certificates in claiming deductions and exclusions from Arizona transaction privilege tax. TPP 00-3 explains that "[t]he department may require the vendor to establish the accuracy of the information provided on a departmental certificate if it has reason to believe that the vendor did not act in *good faith* in accepting the certificate" and that "[g]*ood faith* means honesty of intention and freedom from knowledge of circumstances that should cause the vendor to deny the claimed deduction or exemption."
20. With regard to those sales where Taxpayer has conflicting information in its records concerning the location of a buyer's residence, including information that indicates an Arizona address, Taxpayer had reason to believe that a Form 5000 exemption certificate stating an out-of-state address was incorrect. Without further verification of the buyer's current residence for tax purposes, the conflicting information means that Taxpayer had knowledge of circumstances that should have caused it to deny the claimed exemption.
21. Photos of vehicles do not prove delivery of the vehicles in the pictured location.



22. Taxpayer's practice of claiming out-of-state delivery for vehicles taken barely across the Arizona State border, to buyers who did not reside at or near that place of delivery, raises questions concerning the validity of such a practice. When the documentation concerning delivery or other elements of an exemption is less than clear for such a transaction, a sufficient basis for exempting those sales is not established.
23. Taxpayer's records for the sales at issue lack sufficient evidence to substantiate an exemption from tax for sales to residents of so-called "non-reciprocal" states who secured a special nonresident registration permit.
24. Taxpayer's records for two sales for which Taxpayer claims exemptions for sales to Native Americans contain conflicting information regarding the buyers' residence, resulting in circumstances the knowledge of which should have caused Taxpayer to deny the claimed exemption without further evidence of a reservation residence.
25. Taxpayer's proceeds attributable to the [redacted] sales of recreational vehicles at issue do not qualify for exemptions from transaction privilege tax provided in A.R.S. §§ 42-5061(A)(14), 5061(A)(28)(a), or 5061(A)(28)(b).
26. Taxpayer is not entitled to any additional exemptions from transaction privilege tax other than those allowed in the Amended Assessment, conceded by the Department during the administrative hearing process, or allowed by the ALJ in the decision of August 25, 2008.

## **DISCUSSION**

Taxpayer is protesting the disallowance of exemptions in an assessment of additional transaction privilege tax under the retail classification of A.R.S. § 42-5061. The issue is whether Taxpayer is entitled to additional exemptions for sales of recreational vehicles to nonresidents and to Native Americans based on the records that Taxpayer has kept for [redacted] sales remaining in dispute.

[redacted]

Case No. 200700222 – S

Page 10

**Exemption for Sales to Nonresidents for Use outside Arizona if the Vendor Ships or Delivers out of Arizona, A.R.S. § 42-5061(A)(14)**

A.R.S. § 42-5061(A)(14) provides an exemption from transaction privilege tax for:

Sales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state.

Under A.R.S. § 42-5009(A), a taxpayer may establish entitlement to a deduction by marking the invoice for a transaction and obtaining a certificate executed by the purchaser indicating the particular information, especially the necessary facts to establish the appropriate deduction. However, the certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete. Pursuant to A.R.S. § 42-5009(C), the Department has prescribed a general exemption certificate (Arizona Department of Revenue Form 5000) and several special certificates to be used in documenting that a transaction is not subject to transaction privilege tax. Although there are now special certificates to establish residency in another state and out-of-state delivery of motor vehicles to nonresidents, those forms were not available during the tax periods at issue.

Sale to Nonresidents for Use Outside Arizona

Taxpayer seeks to exempt sales for which it has kept varying types of records. With regard to sales for which Taxpayer obtained a Form 5000 exemption certificate, Taxpayer argues that the ALJ held Taxpayer to a higher standard of good faith than the Department's published guidance provides. Taxpayer argues that the ALJ incorrectly considered whether Taxpayer was able to determine that the purchaser was in fact a nonresident rather than considering whether the Department had reason to believe that Taxpayer did not accept the certificate in good faith. Taxpayer cites TPP 00-3, which explains:

The department may require the vendor to establish the accuracy of the information provided on a departmental certificate if it has reason to believe that the vendor did not act in good faith in accepting the certificate. Good faith means honesty of intention

and freedom from knowledge of circumstances that should cause the vendor to deny the claimed deduction or exemption.

Taxpayer further argues that the ALJ failed to consider the likelihood that many purchasers of recreational vehicles were winter residents or permanently transients. The Division argues that Taxpayer could not have accepted the questioned certificates in good faith because they were either noticeably incomplete or shown to be inaccurate by contradictory information contained within Taxpayer's own records which indicated Arizona residency.

The ALJ has described the documents for each transaction in detail in the Findings of Fact of the ALJ's decision, and neither Taxpayer nor the Division have disputed the accuracy of the document description. Instead, the issue is the weight given in the ALJ's Conclusions of Law to the presence or the lack of certain information within those documents. The ALJ evaluated the evidence for each transaction as a whole and noted where there was conflicting information within the documents for a transaction. A Form 5000 exemption certificate may establish a vendor's entitlement to an exemption only when it contains all the information required under A.R.S. § 42-5009(A), and even a complete certificate does not protect the vendor if the vendor, based on other information obtained in the course of the transaction, has reason to believe that the information contained in the certificate, such as the buyer's current address, is incorrect.

In a case involving claimed exemptions for sales to nonresidents for use outside Arizona, where the taxpayer's records for those sales included Arizona phone numbers and/or addresses for the customers, the Board of Tax Appeals stated:

The seller must accept the certificates in good faith, not ignoring apparent inconsistencies that call into question entitlement to the exemption claimed.

*Tom's Camperland, Inc. v. Ariz. Dep't. of Revenue*, 1946-06-S, Arizona State Board of Tax Appeals (02/16/2007). The Board concluded that the transactions in question did not qualify as tax-exempt because they involved information that indicated Arizona use, thereby, requiring further scrutiny as to where the sold items would be used.

When a customer's driver's license, credit application, check, or other documents stated a different address than the exemption certificate, Taxpayer had knowledge of circumstances that should have caused it to ask for further verification of the buyer's current residence for tax purposes or to deny the claimed exemption. Without such further verification, Taxpayer could not accept an exemption certificate in good faith. See TPP 00-3.

Concerning sales for which Taxpayer did not obtain a Form 5000 certificate, Taxpayer argues that the ALJ weighed the evidence based on a construction of the burden of proof that exceeds the burden imposed by statute and by case law. Taxpayer cites A.R.S. § 42-5009(B), TPP 00-3, and *State Tax Comm'n v. Graybar Electric Co.*, 86 Ariz. 253, 257-58, 344 P.2d 1008, 1012 (1959), for the position that Taxpayer need only prove that, "more likely than not", a sale satisfied the criteria for exemption. The Division argues that Taxpayer did not meet its burden of overcoming strict construction against an exemption from tax.

The *Graybar Electric* decision is a 1959 case that did not involve provisions addressing required documentation, or the burden of proof in the absence of such documentation, in such detail as A.R.S. § 42-5009 and related rules and procedures. It involved a claimed deduction for the sale of equipment either through an agent to the United States government or as a sale for resale to said government. Although the Court did not consider the buyer's declaration that the government would take title to the equipment conclusive, it reasoned that the declaration was entitled to consideration as part of the evidence, that it was uncontradicted, and that the trial court could draw conclusions from that evidence. Here in Taxpayer's case, all submitted documentation has been considered, and the problem with Taxpayer's documentation of the customers' residency is that the records are contradictory. When multiple documents relate to a buyer's address, and one or more documents indicate an Arizona address, the buyer's nonresident status has not been established in accordance with A.R.S. § 42-5009(B) unless the conflicting information or the address change is explained by further evidence.

Delivery out of Arizona

Taxpayer argues that the ALJ applied a standard for documenting out-of-state delivery that exceeded that which the Department prescribed in A.A.C. R15-5-170(C)(2) and R15-5-175(D). A.A.C. Rule 15-5-175(D) provides that “[s]uitable records, as delineated in R15-5-170, shall be kept by the vendor to establish out-of-state shipments.” A.A.C. Rule 15-5-170(C)(2) lists suitable records for substantiating out-of-state shipments, including common carrier receipts and “[i]nternal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property.”

The Division argues that Taxpayer’s records are not “suitable records” under A.A.C. R15-5-170, R15-5-175 because documents were often incomplete, obtained years after the actual sale, or were not signed. The Division further argues that deliveries just over the Arizona border give reason for a closer examination of other statutory factors to ensure that the delivery is in line with the intent of the exemption, that photos of vehicles at a border or out-of-state location do not prove out-of-state delivery, and that post-sale customers’ declarations offer less probative value than contemporaneous declarations.

Photos taken of a vehicle in a certain location only show that the vehicle, at some point in time, was at that location, but not that it was delivered at that point. Moreover, even if deliveries did take place at highway locations right outside the Arizona border, those types of deliveries raise questions concerning the circumstances of those transactions as a whole. Again, the Board of Tax Appeals’ decision in *Tom’s Camperland, Inc. v. Ariz. Dep’t. of Revenue*, 1946-06-S, Arizona State Board of Tax Appeals (02/16/2007) is instructive here. With regard to deliveries just across the state border, the Board noted:

Nevertheless, the Board does question whether retailers, including Appellant, are operating in good faith when there seems to be little or no business purpose, other than tax avoidance, for delivering a product to a specific location just outside the State of Arizona. In the majority of instances, the Board would find such actions lacking in legitimate business purpose and thus of no validity in determining if the requirement of the exemption had been met.

Only when the Board considered the totality of the circumstances in that particular case, including the taxpayer's good faith efforts to comply with the statutory requirements and the apparent absence of any indication of a purchaser's Arizona residency, was the Board willing to accept the taxpayer's delivery to California as legitimate. Here, in Taxpayer's disputed transactions, a large majority of purported out-of-state deliveries are claimed to have been made in such a manner just outside Arizona, and the totality of the circumstances does include some indications of Arizona residency for many buyers. The ALJ was therefore correct to question those transactions with less than clear documentation and to disallow the exemption based on the totality of the circumstances.

**Exemption for Sales of Motor Vehicles to Nonresidents who are Residents of Nonreciprocal States and who have Secured a Special Nonresident Registration Permit, A.R.S. § 42-5061(A)(28)(a)**

A.R.S. § 42-5061(A)(28)(a) provides an exemption from transaction privilege tax for the sale of a motor vehicle to:

A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by §§ 28-2154 and 28-2154.01.

Taxpayer does not address the elements of this exemption except for the purchasers' nonresident status as discussed above. The Division argues that Taxpayer's records either lacked documentation to prove the customer's state of residence or lacked documentation to prove a nonresident registration permit, and that some of Taxpayer's documentation contradicts the alleged residence in a state that does not provide a use tax exemption corresponding to the Arizona transaction privilege tax (i.e., did not prove residence in a "non-reciprocal state").

With regard to the buyers' state of residence, the records for the sales that are disputed under this exemption contain the same types of inconsistencies as noted with respect to the documents for claimed sales to nonresidents under A.R.S. § 42-5061(A)(14). Additionally, some of the records include copies of Arizona driver's licenses or of states

other than the non-reciprocal state stated in the sales contract. Where the buyer's residency is not in question, the records lack a copy of the nonresident registration permit.

The ALJ appropriately denied the exemption for these sales.

**Exemption for Sales of Motor Vehicles to Native Americans, A.R.S. § 42-5061(A)(28)(b)**

A.R.S. § 42-5061(A)(28)(b) provides an exemption from transaction privilege tax for the sale of a motor vehicle to:

An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.

There are only two disputed sales under this exemption. The first sale was made in [redacted - town 1] to buyers who claimed a residence on the [redacted - Reservation 1] with a post office box address in [redacted - town 4]. See the Division's Exhibit K-2. Taxpayer's records of the sale include proof of tribal enrollment for one of the buyers, a check copy with a [redacted - town 1] address, and a credit application in which the buyers listed the post office box address in [redacted - town 4] as their current address and the [redacted - town 1] address and a [redacted - town 6] address as their previous addresses, noting that they were currently renting a [redacted - Reservation 1] residence. In the credit application, the buyer who submitted proof of tribal enrollment stated a present employment address in [redacted - town 2]. There is no tax exemption certificate. The buyer's employment in [redacted - town 2] made the [redacted - Reservation 1] residence questionable and should have caused Taxpayer to ask for further substantiation of the reservation residence. The ALJ correctly denied the exemption for this sale.

The second sale was made in [redacted - town 3] to a buyer who signed a completed Form 5000 exemption certificate for sales to Native Americans. The buyer stated a [redacted - town 3] street address in the exemption certificate, in the sales contract and in the credit application. The exemption certificate states the buyer's tribal identification number and includes an attached note stating "Tax Exempt: Tribal – lives on Reservation." Taxpayer's records for this sale include copies of the buyer's Arizona driver's license with a street

address in [redacted - town 5] and of the buyer's [redacted - tribal 2] identification. Taxpayer submitted a Wikipedia article concerning the [redacted - Reservation 2]. See the Division's Exhibit K-3. The article explains the [redacted] areas of the [redacted - Reservation 2] and states that the reservation's [redacted] is located "in [redacted] [redacted - town 3] [redacted]." The assumption that this reservation may include [redacted - town 3] street addresses is therefore reasonable, and the buyer's [redacted - town 3] address, alone, would not give Taxpayer reason to believe that the exemption certificate was inaccurate or indicate that Taxpayer did not act in good faith in accepting the certificate. However, the Town of [redacted - town 5] is located completely outside the reservation, and the [redacted - town 5] street address on the buyer's driver's license, combined with the buyer's use of a [redacted - town 3] address where most of that city is not located on any Indian reservation amounted to circumstances the knowledge of which should have caused Taxpayer to deny the claimed exemption without further evidence of a reservation residence. See TPP 00-3. The ALJ therefore correctly denied the exemption for this sale also.

Given inconsistencies or lack of documentation, the ALJ correctly denied the exemptions taken for the [redacted] sales of recreational vehicles at issue in this appeal. Taxpayer is not entitled to any additional exemptions from transaction privilege tax other than those allowed in the Amended Assessment, conceded by the Department during the administrative hearing process, or allowed by the ALJ in the decision of August 25, 2008.

## **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



[redacted]  
Case No. 200700222 – S  
Page 17

(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.

Dated this 15<sup>th</sup> day of June, 2009.

ARIZONA DEPARTMENT OF REVENUE

Gale Garriott  
Director

Certified original of the foregoing  
mailed to:

[redacted]

Copy of the foregoing mailed to:

[redacted]

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