



### **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 an Arizona resident who lives in [redacted].
2. Taxpayer purchased cigarettes via the internet from a New York vendor (“New York Vendor”) in 2007 and 2008. The New York Vendor billed Taxpayer and shipped the cigarettes to Taxpayer’s [redacted] address.
3. Taxpayer did not remit any Arizona luxury or use taxes on the cigarette purchases.
4. The New York Vendor reported invoice information regarding his sales to Arizona customers to the Division.
5. Based on the information it received from the New York Vendor, the Division concluded that Taxpayer had purchased cigarettes from 2007 through 2008 and that those cigarettes did not contain Arizona tobacco tax stamps.
6. On January 16, 2014, the Division issued an Assessment against Taxpayer for luxury tax and use tax in the amount of [redacted], plus penalties and interest. Taxpayer protested the Assessment.
7. The ALJ concluded that the Assessment was appropriate and denied Taxpayer’s protest.
8. With her appeal, Taxpayer provided some credit card statements for January, February, March and May 2008 that show payments to the New York Vendor.

### **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. The cigarettes that Taxpayer purchased from the New York Vendor were subject to Arizona luxury tax. A.R.S. §§ 42-3051, 42-3202.01.

[redacted]

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3. Taxpayer is liable for Arizona luxury tax. A.R.S. §§ 42-3051, 42-3202.01, former A.R.S. § 42-3201(C),<sup>1</sup> A.R.S. § 42-3201(F).<sup>2</sup> Taxpayer is also liable for Arizona use tax on the cigarettes she purchased from the New York Vendor. A.R.S. §§ 42-5155(A) and (E).

### **DECISION**

Taxpayer appealed the ALJ's decision and argues that it is the seller's responsibility to collect and pay Arizona tax, that she made some of her cigarette purchases for family members or friends, and that her credit card statements do not match the information supplied by the Division. The Division argues that Taxpayer is responsible for the tax on her cigarette purchases and that Taxpayer's credit card statements support the Assessment.

Arizona luxury tax is imposed on all cigarettes. A.R.S. § 42-3051. A.R.S. § 42-3052(5) establishes the tax rate. A.R.S. § 42-3202.01 provides that unless an exception applies,

[U]ntil the contrary is established, it is presumed that cigarettes that are sold, distributed, used or consumed by a person in this state, but not placed in packages or containers on which official tax stamps are affixed, are intended for first sale by the person and are subject to the taxes imposed by this chapter.

The cigarettes that Taxpayer purchased were used or consumed in Arizona. Under the former A.R.S. § 42-3201(C), as applicable to the period at issue here, an individual who "acquires or possesses unstamped cigarettes solely for that individual's own use or consumption in this state" had to register with the Department to remit luxury taxes and use taxes and had to pay those taxes within ten calendar days after receipt of unstamped cigarettes. An individual must be licensed as a cigarette distributor if the individual acquires or possesses unstamped cigarettes in Arizona "for any other purpose besides or in addition to that individual's own use or consumption." See A.R.S. § 42-3201(F).

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<sup>1</sup> Former A.R.S. § 42-3201(C) applies to the period at issue here. It was replaced and amended by Laws 2014, Ch. 160, § 11, effective July 24, 2014.

<sup>2</sup> Former A.R.S. § 42-3201(D) was renumbered as Subsection (F) by Laws 2014, Ch. 160, § 11, effective July 24, 2014.

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Irrespective of whether Taxpayer acquired the cigarettes from the New York Vendor for her own or any other person's use or consumption, they were subject to Arizona luxury tax.

Arizona also imposes use tax on the storage, use or consumption in Arizona of tangible personal property purchased from an out-of-state retailer if Arizona transaction privilege tax was not paid on the retailer's gross receipts from the sale. See A.R.S. § 42-5155(A), A.A.C. R15-5-2302(B). Arizona use tax, thus, generally applies to the use, storage, or consumption in Arizona of tangible personal property purchased from an out-of-state retailer. See A.A.C. R15-5-2302(C). Every person storing, using or consuming such property in Arizona is liable for the tax, and that liability is not extinguished until the tax has been paid. See A.R.S. § 42-5155(E). Taxpayer is therefore liable for Arizona use tax on the cigarettes she purchased from the New York Vendor. The Arizona use tax is reduced by the amount of an excise tax paid to another state on the purchased property. See A.R.S. § 42-5159(A)(2), A.A.C. R15-5-2302(D). However, Taxpayer has not shown that she paid an excise tax on the cigarettes she purchased, and the invoices the Division provided do not indicate that any excise tax was paid.

Taxpayer's credit card statements show payments that are slightly higher than corresponding transactions in the Division's documents, but Taxpayer explained that those differences may be due to shipping costs. There are no significant discrepancies between the records in the months for which Taxpayer provided credit card statements.

Taxpayer argues that it was not disclosed to her upon her purchases that there would be a tax liability. 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. See *Newman v. Fidelity Savings and Loan Association*, 14 Ariz. 354, 128 P. 53 (1912). Taxpayer is liable for the Arizona luxury and use taxes at issue.

## **ORDER**

The ALJ's decision is affirmed.

This Decision is the final order of the Department of Revenue. Taxpayers may contest the final order of the Department in one of two manners. Taxpayers may file an appeal to the

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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) 506-8297.

Dated this        day of December 2014.

ARIZONA DEPARTMENT OF REVENUE

David Raber  
Director

Certified original of the foregoing  
mailed to:

[redacted]

c:     Transaction Privilege Tax Appeals Section  
       Audit Division  
       Special Taxes Audit Section  
       Office of Administrative Hearings