

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
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4 GEORGE FRAZIER,

5 Appellant,

6 vs.

7 ARIZONA DEPARTMENT OF REVENUE,

8 Appellee.

)
) Docket No. 1990-10-U
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) NOTICE OF DECISION
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
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)

9 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
10 having taken the matter under advisement, finds and concludes as follows:

11 FINDINGS OF FACT

12 George Frazier ("Appellant") is a California resident. On January 31, 2008, he purchased a new
13 Designer 35RLTS fifth-wheel trailer ("Trailer") in Des Moines, Iowa for \$47,540. Appellant picked up the
14 Trailer at the Iowa dealership on February 12, 2008. He drove the Trailer from Iowa through Kansas,
15 Oklahoma and New Mexico, then into Arizona on February 17, 2008, as substantiated by receipts
16 submitted by Appellant verifying fuel and campground charges acquired while in transit. After arriving in
17 Arizona, Appellant proceeded to the vacation home of his niece in Mohave Valley, Arizona, where he
18 parked the Trailer. Appellant did not pay any sales tax in Iowa on the purchase of the Trailer, nor did he
19 pay any use tax on the Trailer in any of the states through which he traveled on his way from Iowa to
20 Arizona.

21 On September 18, 2008, after receiving information from the State of California, the Arizona
22 Department of Revenue (the "Department") issued an assessment for Arizona use tax, including penalties
23 and interest, in the amount of \$3,415.74. Appellant protested the use tax by letter dated September 29,
24 2008. The Department affirmed Appellant's use tax liability in a letter dated October 21, 2008.

25 On November 4, 2008, Appellant requested a formal hearing before the Department.

1 In July 2009, the matter was referred to the Office of Administrative Hearings ("OAH") which
2 upheld the protest. On March 23, 2010, the Department protested the OAH decision to the Director of the
3 Department who reversed the decision by order dated August 18, 2010. Appellant now timely appeals to
4 this Board.

5 DISCUSSION

6 The issue in this appeal is whether Appellant is liable for the use tax, penalties and
7 interest assessed.

8 The Arizona use tax is imposed on the storage, use or consumption in this state of tangible
9 personal property purchased outside of Arizona from a retailer. See A.R.S 42-5155(A). Such property is
10 presumed to be taxable, and the burden of proving otherwise rests upon the purchaser. Arizona
11 Administrative Code ("A.A.C.") R15-5-2302(C). Appellant argues that he is exempt from use tax under
12 A.A.C. R15-5-2352(B), which provides that "[t]angible personal property brought into Arizona for use by a
13 nonresident temporarily within the state is not subject to the tax if the property is for the personal use of
14 the nonresident and is taken out of the state when the nonresident leaves the state." It is undisputed that
15 Appellant is a nonresident who uses the Trailer at issue for personal rather than business purposes.
16 However, the Department contends that Appellant has failed to meet his burden of proving that he took
17 the Trailer with him each time he left Arizona. The Board agrees.

18 On May 12, 2008, Appellant requested a certificate of use tax clearance from the California State
19 Board of Equalization ("CBOE") that would allow him to register the Trailer with the California Department
20 of Motor Vehicles without paying California use tax. In his request, Appellant certified that the Trailer had
21 remained outside California for a period of not less than ninety days after the purchase; that he had
22 returned to California in February and again in April 2008 -- each time leaving the Trailer behind him; and,
23 that the Trailer did not enter California until he and his wife brought it home on May 11, 2008. Appellant
24 specifically certified that he left the Trailer in Mohave Valley, Arizona, to use during the winter months,
25 which use occurred on February 15th through the 19th, April 24th through the 27th and May 9th through

1 May 11th. Appellant presented gas receipts from Mohave Valley dated February 19, April 24, and May 11,
2 2008.

3 Appellant now testifies that he always took the Trailer with him when he left Arizona. He claims to
4 have knowingly made false statements to the California Board because it was easier to say he stayed in
5 Arizona than trying to explain his actual travels to destinations in Texas and Florida. Appellant was
6 unable to provide any documents or receipts as proof for these purported travels. Further, even
7 Appellant's niece, in a letter to the Department (dated November 3, 2008) supporting his claims that he
8 traveled to Texas and Florida, stated that he left the Trailer in Arizona in February, 2008, before
9 beginning his travels, to check on his California property.

10 Appellant has acknowledged that the intention behind his behavior in this case was to avoid
11 paying any tax on the purchase of the Trailer, and because this case is replete with false statements, and
12 inconsistent and contradictory representations from Appellant, it is impossible to correctly ascertain all the
13 pertinent facts. However, the contemporaneous certified affidavit Appellant signed for the CBOE must be
14 viewed as the best evidence over self-serving, contradictory statements made several years later.
15 Accordingly, the Board must conclude that Appellant did not always take the Trailer with him when he left
16 Arizona. Therefore, Appellant is not exempt under A.A.C. R 15-5-2352(B) but is liable for the use tax
17 assessed.¹ Further, Appellant has not shown reasonable cause for his failure to timely file and pay the
18 use tax at issue; therefore, the penalties may not be abated. A.R.S. § 42-2062.

19 CONCLUSIONS OF LAW

- 20 1) Appellant is liable for the use tax assessed. See A.R.S 42-5155.
21 2) Appellant is liable for the penalties assessed. See A.R.S. § 42-2062.
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25 ¹While Appellant did not focus on it before the Board, there is an additional exemption for nonresidents using property for personal purposes that applies "if the first actual use . . . of the property was outside this state . . ." 42-5159(A)(6). However, use that is merely preparation of the property (i.e., traveling to Arizona) for its intended use (i.e., to be parked in Arizona) has been held not sufficient to constitute "first use" for tax purposes where a single party engaged in the "preparation for use" and the "use." See *Exxon Corp. v. Wyoming State Board of Equalization*, 783 P.2d 685 (Wyo. 1989), cert. denied, 495 U.S. 910, 110 S.Ct. 1937 (1990).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the Department is affirmed.

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.

DATED this 22nd day of May, 2012.

STATE BOARD OF TAX APPEALS


Amy W. Fellner, Chairperson

AWF:ALW

CERTIFIED

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