

1 customer and record the transaction like any other sale then forward the payment to the seller after
2 deducting its commission.

3 The Arizona Court of Appeals held that, because the activities of Stillwell did not include the
4 transference of title or possession of the cars, they were not sales within the meaning of the Tucson City
5 Business Privilege Code and were, therefore, not subject to the retail sales tax at issue. 168 Ariz. at 562,
6 815 P.2d at 931.

7 Because the Board finds that Appellants transferred title and possession of the vehicles at issue
8 to customers, *Stillwell* is not applicable. Appellant admittedly held and then transferred open titles to his
9 customers. Further, although Appellant testified that he rarely took possession of a vehicle and then only
10 for a specific customer's convenience, evidence presented to the Board, including multiple
11 advertisements and records documenting routine advertising charges, confirm that Appellant's
12 possession of the vehicles was not infrequent.

13 A decision of this Board that Appellants rely upon is also inapplicable. See *Ambassador Homes*
14 *v. Arizona Dep't of Rev.*, No. 166-79-S (June 19, 1980). In *Ambassador*, the Board found that the
15 taxpayer, which contracted with individuals to sell their used mobile homes, never took title or possession
16 of the mobile homes and was acting as an agent of the individuals.

17 There is no evidence of an agency agreement between the sellers and Appellants in this case.
18 Further, in the transactions at issue, Appellants transferred "the title or possession, or both" of the
19 vehicles to customers. Therefore, Appellants are taxable under the retail classification.

20 Appellants argue, in the alternative, that the Department is estopped from assessing the tax at
21 issue because Appellant received oral information from the Department advising him that he was a
22 consultant and that his services were not taxable. The Department may be estopped from assessing the
23 taxes only if it committed acts inconsistent with a position it later adopts and Appellants relied on the
24 Department and was injured by the changed position. *Valencia Energy v. Ariz. Dep't of Rev.*, 191 Ariz.
25 565, 959 P.2d 1256 (1998).

1 It is unknown what information was provided by Appellant or how he described Appellants
2 activities to the Department. Appellants arguments to this Board indicate that the information given to the
3 Department was incomplete. In any event, Appellants have not shown that the Department gave them
4 advice that was inconsistent with its audit position in this case. Therefore, the Department is not
5 estopped from assessing the tax at issue.

6 Finally, Appellants have not shown that their failure to timely file returns and pay the tax at issue
7 was due to reasonable cause and not willful neglect; therefore, the penalties at issue may not be waived.
8 A.R.S. § 42-1125(A), (D) and (F). Because the interest imposed represents a reasonable rate on the tax
9 due and owing and is made part of that tax by statute, it may not be abated. See A.R.S. § 42-1123; see
10 also *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

11 CONCLUSIONS OF LAW

12 1) Appellants are liable for the tax assessed. See A.R.S. § 42-5061.

13 2) Appellants have not shown that their failure to timely file returns and pay the tax at issue was
14 due to reasonable cause and not willful neglect; therefore, the penalties imposed may not be abated.
15 A.R.S. § 42-1125(A), (D) and (F).

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

19 ORDER

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

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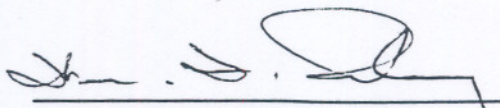
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1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 3rd day of August, 2001.

4 STATE BOARD OF TAX APPEALS

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6 _____
7 William L. Raby, Vice-Chairman

8 WLR:ALW

9 CERTIFIED

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