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2 BEFORE THE STATE BOARD OF TAX APPEALS  
3 STATE OF ARIZONA  
4 100 North 15th Avenue - Suite 140  
5 Phoenix, Arizona 85007  
6 602.364.1102

5 JESUS ARVIZU dba COCORAQUE RANCH )  
6 CATTLE DRIVE, )

7 Appellant, )

8 vs. )

9 ARIZONA DEPARTMENT OF REVENUE, )

10 Appellee. )

) Docket No. 1999-10-S

) NOTICE OF DECISION  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW

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

13 FINDINGS OF FACT

14 Jesus Arvizu dba Cocoraque Ranch Cattle Drive ("Appellant") is an Arizona business. For a per  
15 person fee, a company (such as a hotel or event organizer) can contract with Appellant for a group to  
16 participate in a mock "cattle drive." The three to four hour experience begins with horseback riding  
17 instruction, followed by a "cattle drive" moving cattle from one part of the Ranch to another with the  
18 assistance of Appellant's personnel, and may end with food and musical entertainment (if these items are  
19 purchased as part of the agreement). Appellant supplies the setting, the horses, personnel and the food,  
20 drink and music.

21 Appellant was regularly reporting transaction privilege tax on its activities under the amusement  
22 classification but, in May 2008, requested a refund for the taxes paid in 2004, 2005, 2006 and 2007. In a  
23 letter dated June 30, 2008, the Department denied the refund claim. Appellant ultimately protested to the  
24 Office of Administrative Hearings ("OAH"). OAH advised Appellant that it would consider any Form 5000s  
25 it could provide indicating that the companies hiring Appellant were liable for the transaction privilege tax.

1 Appellant did not provide any of the forms and OAH denied the protest. Appellant now timely  
2 appeals to this Board.

3 DISCUSSION

4 The issue in this appeal is whether Appellant is entitled to the refund claimed.

5 A.R.S. § 42-5073 provides the following:

6 A. The amusement classification is comprised of the business of operating or conducting  
7 theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses,  
8 amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling  
9 alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts,  
10 except as provided in subsection B of this section, video games, pinball machines, sports events  
11 or any other business charging admission or user fees for exhibition, amusement or  
12 entertainment . . . .

13 The statute further specifies that

14 D. Until December 31, 1988, the revenues from hayrides and other animal-drawn  
15 amusement rides, from horseback riding and riding instruction and from recreational tours  
16 using motor vehicles designed to operate on and off public highways are exempt from the  
17 tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross  
18 income from hayrides and other animal-drawn amusement rides, from **horseback riding  
19 and riding instruction** and from recreational tours using motor vehicles designed to  
20 operate on and off public highways are subject to taxation under this section.

21 Emphasis added.

22 Appellant initially argues that it is entitled to the refund because it is a "service business"  
23 providing participants with skilled and directed services that are not taxable under the amusement  
24 classification. However, a review of the facts confirms that, although Appellant may characterize its  
25 activities as "cattle drives," they consist, essentially, of horseback riding that is clearly taxable under the  
amusement classification.

Appellant next notes that its "cattle drive" experiences were purchased by hotels and  
similar groups and argues that the income it derived is deductible from its tax base under A.R.S. § 42-  
5073(B)(4), which provides as follows:

B. The tax base for the amusement classification is the gross proceeds of sales or gross  
income derived from the business, except that the following shall be deducted from the  
tax base:

(4) The gross proceeds of sales or gross income derived from sales to persons  
engaged in the business of transient lodging . . . if all of the following apply:

(a) The persons who are engaged in the transient lodging business sell the  
amusement to another person for consideration.

1 (b) The consideration received by the transient lodging business is equal to or greater  
2 than the amount to be deducted under this subsection.

3 (c) The transient lodging business has provided an exemption certificate to the person  
4 engaging in business under this section.

5 In the appeal before this Board, Appellant has provided only one pertinent exemption certificate  
6 that applies to the refund period.<sup>1</sup> This Form 5000 from Ventana Canyon Hotel Associates was executed  
7 in 1999 and covers the period 1996 until revoked. However, Appellant did not identify any particular  
8 portion of its refund claim to be associated with this hotel. Additionally, Appellant has failed to provide a  
9 monthly breakdown of the invoices to Ventana Canyon or any evidence that Appellant originally reported  
10 this income to the Department on its returns. Finally, this Form 5000 does not refer to Appellant's  
11 services but to an inapplicable exemption for "tangible personal property to be leased or rented in the  
12 ordinary course of business."

13 Because Appellant has failed to provide any valid exemption certificates, the Board finds that  
14 Appellant's activities fall squarely within the scope of the amusement classification, and it is not entitled to  
15 the refund claimed.

16 CONCLUSIONS OF LAW

17 Appellant is not entitled to the refund claimed. See A.R.S. § 42-5073(D).

18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the  
20 Office of Administrative Hearings is affirmed.

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

23 DATED this 22<sup>nd</sup> day of May, 2012.

24 STATE BOARD OF TAX APPEALS

25   
Amy W. Fellner, Chairperson

<sup>1</sup> Other certificates provided by Appellant referred to a different exemption, fell outside of the audit period, or both.

1 AWF:ALW

2 CERTIFIED

3 Copies of the foregoing  
4 Mailed or delivered to:

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