

1 are taxable under the amusement classification have *specifically* included "recreational tours using motor
2 vehicles designed to operate on and off public highways;" A.R.S. § 42-5073(D). Appellant's activities
3 clearly fall within the scope of this statute. Nevertheless, Appellant argues that its tours are not taxable
4 pursuant to a number of statutory exemptions. The Board finds that none of the exemptions apply.

5 The amusement classification exempts from tax, gross income derived from "[a]rranging an
6 amusement activity as a service to a person's customers if that person is not otherwise engaged in the
7 business of operating or conducting an amusement themselves or through others." A.R.S. § 42-
8 5073(A)(10). Appellant is otherwise engaged in the business of operating or conducting an amusement;
9 therefore, this exemption does not apply.

10 Subsection (B)(4) of A.R.S. § 42-5073 excludes the following from tax:

11 The gross proceed of sales or gross income derived from sales to persons engaged in
12 the business of transient lodging classified under section 42-5070, if all of the following
apply:

- 13 (a) The persons who are engaged in the transient lodging business sell the amusement
to another person for consideration.
- 14 (b) The consideration received by the transient lodging business is equal to or greater
15 than the amount to be deducted under this subsection.
- 16 (c) The transient lodging business has provided an exemption certificate to the person
engaging in business under this subsection.

17 Appellant has provided only four such certificates – two are from entities that do not engage in the
18 business of transient lodging, and two do not include the required information. Accordingly, Appellant is
19 not entitled to this exemption.

20 Finally, Appellant argues that its activities are not taxable pursuant to exemptions that are
21 available under the transportation classification when certain fees are paid by motor carriers.¹ It is
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24 ¹ A.R.S. §§ 28-5860 and 5493.

1 unnecessary for the Board to address the inapplicability of these transportation tax exemptions to tax
2 imposed under the amusement classification because Appellant has provided no evidence that any such
3 fees were paid. Accordingly, the Board finds that Appellant is liable for the tax assessed.

4 CONCLUSIONS OF LAW

5 Appellant is liable for the tax assessed. A.R.S. § 42-5073(D).

6 ORDER

7
8 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied and the final order of the
9 Department is affirmed.

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

12 DATED this 5th day of March, 2013.

13 STATE BOARD OF TAX APPEALS

14 
15 Amy W. Fellner, Chairperson

16 AWF:ALW

17 CERTIFIED

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