

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
101 North First Avenue - Suite 2340
Phoenix, Arizona 85003
602.528.3966

1
2
3
4 ROBERT and CAROL MACE dba MACE)
AVIATION,) Docket No. 1847-00-S
5)
6)
Appellant,)
7 vs.) NOTICE OF DECISION:
8 ARIZONA DEPARTMENT OF REVENUE,) FINDINGS OF FACT AND
9 Appellee.) CONCLUSIONS OF LAW

10
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 Robert and Carol Mace operate Mace Aviation ("Appellant") in Globe, Arizona on the San Carlos
15 Apache Indian Reservation. Robert and Carol Mace are not members of the Apache Tribe.

16 The Arizona Department of Revenue (the "Department") audited Appellant for the period April 1,
17 1989 through July 31, 1995 (the "Audit Period") and determined that Appellant was liable for transaction
18 privilege tax under the retail sales, the tangible personal property rental, and the jet fuel tax
19 classifications. Thereafter, the Department assessed Appellant additional transaction privilege tax,
20 penalties for late payment, late filing and negligence, and interest.

21 Appellant protested the assessment to the Office of Administrative Hearings ("OAH"). OAH held
22 that the sales of certain aircraft and parts were exempt out-of-state sales. See A.R.S. § 42-1310.01.B.7.
23 The OAH also allowed Appellant a deduction for separately itemized services but otherwise upheld the
24 remainder of the assessment. Appellant timely appealed the OAH decision to the Director of the
25 Department. The Director vacated the portion of the assessment attributable to the rental of a helicopter
to an out-of-state lessee, but otherwise affirmed the OAH decision. Appellant now timely appeals the
remainder of the assessment to this Board.

1 Others were removed from contention by an amended assessment submitted by the Department. The
2 Department argues that Appellant has not met its burden of proof concerning the transactions that remain
3 in dispute.

4 The Board has reviewed the evidence submitted and finds that Appellant has met its burden of
5 proving that all but one of these transactions are exempt from taxation. Appellant has failed to
6 substantiate that the sale of helicopter parts to a Grand Canyon tour company is exempt. Therefore,
7 Appellant is liable for tax on this single itemized transaction.

8 Finally, Appellant argues that its sales of jet fuel to the federal government are exempt because
9 the sales took place on the reservation and the government used the fuel in aircraft that it operated on the
10 reservation.

11 The United States Supreme Court has clearly established that contracts, like those at issue,
12 between a contractor and the federal government to perform work on an Indian reservation are taxable.
13 *Arizona Dep't of Rev. v. Blaze Construction Co.*, 526 U.S. 32 (1999). Appellant acknowledges the bright
14 line test established by the Court, but argues that the *Blaze* decision is wrong, and that, in any event, it
15 should be applied prospectively only.

16 This Board is bound by decisions of the U.S. Supreme Court. The Court applied its decision to
17 the taxpayer in *Blaze* retroactively. Further, the Court has specifically held that

18 "When this Court applies a rule of federal law to the parties before it, that
19 rule is the controlling interpretation of federal law and must be given full
20 retroactive effect in all cases still open on direct review as to all events,
21 regardless of whether such events predate or postdate our
22 announcement of the rule."

23 *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993). Only the U.S. Supreme Court can decide
24 whether to apply one of its decisions retroactively. It expressly did so in *Blaze*. Therefore, Appellant is
25 liable for the tax assessed on its sales of jet fuel.

26 CONCLUSIONS OF LAW

27 1. Appellant is not engaged in the business of selling airplanes at retail. See A.R.S. §§ 42-5061,
28 5001(13); *Stillwell Grand Prix Motors v. City of Tucson*, 168 Ariz. 560, 815 P.2d 929 (App.1991).

29 2. Appellant has met its burden of proof concerning all of the disputed itemized transactions,
30 except for the sale of helicopter parts discussed herein.

1 3. Appellant is liable for tax assessed on its sales of jet fuel. See *Arizona Dep't of Rev. v. Blaze*
2 *Construction Co.*, 526 U.S. 32 (1999); *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993).

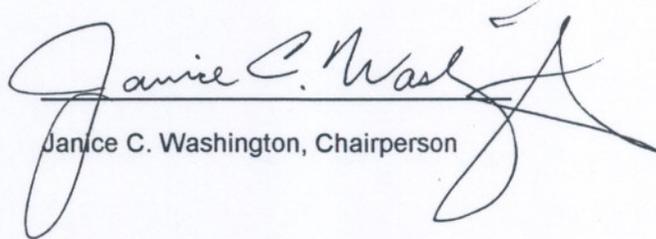
3 ORDER

4 THEREFORE, IT IS HEREBY ORDERED that the appeal is granted in part and denied in part,
5 and the final order of the Department is modified.

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

8 DATED this 28th day of January, , 2002.

9 STATE BOARD OF TAX APPEALS

10 
11 Janice C. Washington, Chairperson

12 SPL:ALW

13 CERTIFIED

14 Copies of the foregoing
15 mailed or delivered to:

16 Robert and Carol Mace dba Mace Aviation
17 P.O. Box 2775
18 Globe, Arizona 85502

19 Sara Bransum
20 Assistant Attorney General
21 Civil Division, Tax Section
22 1275 West Washington Street
23 Phoenix, Arizona 85007
24
25