

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

MOBILE MINI, INC.,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

)
)
) Docket No. 1944-06-S
)
)
)
)
) NOTICE OF DECISION
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)

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

FINDINGS OF FACT

Mobile Mini, Inc. ("Appellant") operates a manufacturing facility in Maricopa, Arizona where it manufactures, refurbishes and repairs portable storage containers, security office units, and custom structures. Appellant has two offices in Arizona from which it sells and/or leases its containers, offices, or structures and from which it provides on-site storage rentals. Appellant delivers most of its portable storage containers using its own trucks. It uses third-party transportation companies to transport, deliver, or pickup some of its portable storage containers and custom structures and all of its office units, which are too large for Appellant's trucks. Very rarely does Appellant move and deliver items other than its own.

The Arizona Department of Revenue ("Department") audited Appellant for the period November 1, 1998 through August 31, 2002 (the "Audit Period"). On or about August 19, 2003, the Department issued an assessment for additional transaction privilege and use tax and associated penalties and interest under the personal property rental classification. A.R.S. 42-5071. Appellant timely protested the assessment. Appellant provided additional information and documentation to the Department, and the Department issued an amended assessment in May 2004. Appellant protested the modified assessment

1 to the Office of Administrative Hearings ("OAH"), which upheld in part and denied in part Appellant's
2 protest. At the hearing before OAH, the Department abated the assessment of penalties, and Appellant
3 abandoned its protest of the use tax assessment. Appellant then protested to the Director of the
4 Department who upheld the penalty abatement, but otherwise vacated the OAH decision. Appellant now
5 timely appeals to this Board.

6 DISCUSSION

7 The issues remaining before the Board are: 1) whether Appellant's receipts from charges on its
8 rental invoices for set-up, take-down, delivery, and return are taxable gross receipts under the personal
9 property renting classification; and, 2) whether finance charges and late fees assessed to customers are
10 subject to tax. Appellant concedes that it is engaged in the taxable business of renting tangible personal
11 property but contends that delivery, set-up, take-down, and return charges are attributable to the separate
12 business of transporting (A.R.S. 42-5062)¹ and that, under the transportation classification, these receipts
13 are exempt from taxation.²

14 Generally, all proceeds from a business activity classified under a taxable business classification
15 are presumed to be included within the tax base unless the contrary is established. A.R.S. 42-5023. A
16 taxpayer may be engaged in more than one business and may be obligated to pay tax on each as
17 recognized by Arizona courts. *See, e.g., Trico Elec. Coop. v. State Tax Commission*, 79 Ariz. 293, 288
18 P.2d 782 (1955). In *State Tax Commission v. Holmes & Narver, Inc.*, 113 Ariz. 165, 548 P.2d 1162
19 (1976), the Arizona Supreme Court set forth the test to determine whether income is part of a taxable
20 business or constitutes a separate nontaxable business. Although Appellant argues that the income at
21 issue in this case is *exempt* under a separate *taxable* business, the same analysis applies. The Court
22 found that an ancillary business may be separated for tax purposes only if: a) the separate business is
23

24 ¹ The parties agree that Appellant engages in the separate business of retail sales. The taxability of these receipts is not at issue
before the Board.

25 ² Transporting by motor carriers subject to Arizona's motor carrier fee is exempt from taxation under the transporting classification.
A.R.S. 42-5062.A.1. The fact that Appellant pays motor carrier fees is not in dispute.

1 readily ascertainable; b) the ancillary portion is not inconsequential; and, c) the ancillary business is not
2 incidental to the main business. *Id* at 169, 548 P.2d at 1166. The Court of Appeals further explained the
3 *Holmes & Narver* test in 1995 finding that “when the amount involved is not minimal, when it can be easily
4 calculated, and when the service it relates to is not an integral part of the main business, the main and
5 ancillary services can be separated for tax purposes.” *City of Phoenix v. Arizona Rent-A-Car Systems*,
6 182 Ariz. 75, 78, 548 P.2d 1162, 1165 (App. 1995).

7 Appellant argues that its transportation activity is not “incidental” to its taxable leasing activity
8 because Appellant: 1) does not require customers to use its transportation; 2) uses third party
9 transportation for its office units; and, 3) occasionally transports property for others who have not leased
10 property from Appellant. There is no evidence that customers were informed that they could use their
11 own transportation even if it were practicable to move such large units, and the evidence indicates that
12 the number of customers who did transport their own units -- namely construction companies with the
13 necessary equipment -- was minimal, as was the amount of income attributable to transporting for others.

14 Whether it uses its own trucks or third party transportation, Appellant has taken on the obligation
15 of providing transportation for its customers. The Board finds that this transportation -- the delivery and
16 set-up then the take-down and return of Appellant’s *mobile* units - is an integral and incidental part of
17 Appellant’s business of renting tangible personal property.

18 Appellant next argues that the finance charges and late fees charged to its customers are not
19 taxable.³ Former A.A.C. R15-5-1502(D) provided that “gross income from rental of personal property
20 includes charges made for insurance, maintenance and repairs, title and license fees, and lieu taxes even
21 though such charges may be billed as separate items.” Effective July 18, 2000, this rule was amended to
22 provide a more exhaustive list of items considered to be part of the rental business, including “charges for
23 installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property
24

25 ³ Prior to appealing to the Board, Appellant argued that the Department was estopped from taxing these fees based on a prior assessment in which the Department first included and then removed these fees from the tax base. Appellant did not argue this before the Board; therefore, it is not at issue.

1 taxes and penalty fees even if these charges are billed as separate items, unless a specific statutory
2 exemption, exclusion or deduction applies." Appellant argues that the amended A.A.C. R15-5-1502(D)
3 exceeds the scope of its enabling statute, A.R.S. § 42-5071, and, in any event, cannot be applied
4 retroactively to the audit period.

5 As previously noted, all gross proceeds from a business taxable under a classification are
6 presumed to be included within the tax base unless the contrary is established. A.R.S. § 42-5023. The
7 contrary has not been established. Late fees and finance charges are a part of the tax base of the
8 business generating them. This was true before A.A.C. R15-5-1502(D) was amended as well as after.
9 Finally, Appellant argues that late fees that were not collected are not taxable. The Department concedes
10 that such uncollected late fees, if substantiated, are not taxable. At the hearing before the Board,
11 Appellant provided sufficient evidence to substantiate the abatement or non collection of these fees;
12 therefore, Appellant is not liable for the portion of the assessment attributable to uncollected late fees.

13 CONCLUSIONS OF LAW

14 Appellant is liable for the tax assessed, except for that portion attributable to uncollected late
15 fees. See A.R.S. §§ 42-5023, 5071; *Trico Elec. Coop. v. State Tax Commission*, 79 Ariz. 293, 288 P.2d
16 782 (1955); *State Tax Commission v. Holmes & Narver, Inc.*, 113 Ariz. 165, 548 P.2d 1162 (1976); *City*
17 *of Phoenix v. Arizona Rent-A-Car Systems*, 182 Ariz. 75, 548 P.2d 1162 (App. 1995).

18 ORDER

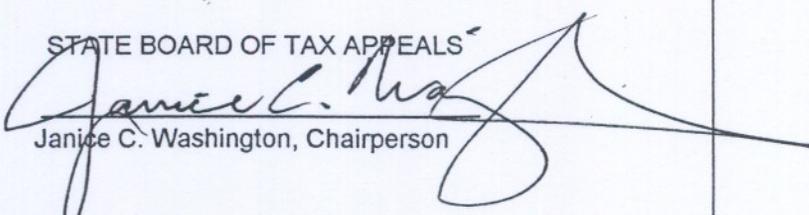
19 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied in part and upheld in part,
20 and the final order of the Department is modified.

21 . . .
22 . . .
23 . . .
24 . . .
25 . . .

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 16th day of November, 2006.

4 STATE BOARD OF TAX APPEALS

5 
6 Janice C. Washington, Chairperson

7
8 JCW:ALW

9 CERTIFIED

10 Copies of the foregoing
11 Mailed or delivered to:

12 Patrick Derdenger
13 Steptoe and Johnson LLP
14 201 East Washington Street, 16th Floor
15 Phoenix, Arizona 85004-2382

16 Lisa A. Nueville
17 Assistant Attorney General
18 Civil Division, Tax Section
19 1275 West Washington Street
20 Phoenix, Arizona 85007