



1 tax. The Department appealed this decision to its Director who reversed the decision and affirmed the  
2 assessment with modifications that removed proceeds from the sales of three vehicles and reduced the  
3 estimated gross proceeds from the sale of another. Eight vehicle sales remain in dispute. The vehicles  
4 and the Kelley Blue Book values used by the Department to calculate the tax due are as follows: a 1990  
5 Lexus - \$7,775.00; a 1994 Dodge - \$5,315.00; a 1994 Jaguar - \$8,175.00; a 1984 Lincoln - \$2,125.00; a  
6 1989 Cadillac - \$6,450.00; a 1990 Toyota - \$2,635.00; a 2000 Ford - \$5,715.00; and, a 1999 Chevy  
7 Suburban - \$10,215. The Department has determined that the sales of the 1994 Dodge and the 1984  
8 Lincoln were consignment sales in which title did not transfer to either of the Appellants prior to the date  
9 of sale. Appellants took title to the six other vehicles prior to sale.

10 Appellants now timely appeal these remaining eight transactions to this Board.

11 DISCUSSION

12 The issue in this appeal is whether Appellants are liable for the tax, penalties and interest  
13 assessed. Appellant acknowledges that he has been in the car business most of his life but maintains  
14 that he and his wife only wanted to help people in need and never intended to make any money on the  
15 transactions at issue. Appellants claim that they did not, in fact, profit from any of the sales and argue  
16 that they are not liable for the tax assessed. The Board disagrees.

17 A.R.S. § 42-5061 imposes transaction privilege tax on the business of selling tangible personal  
18 property at retail. "Business" is defined to include "all activities or acts, personal or corporate, engaged in  
19 or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but  
20 not casual activities or sales." A.R.S. § 42-5001(1). A "sale" is "any transfer of title or possession, or  
21 both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means  
22 whatever, including consignment transactions and auctions, of tangible personal property . . . ." A.R.S. §  
23 42-5001(13). A.R.S. § 42-5061(V)(3) provides that "selling at retail" means "a sale for any purpose other  
24 than for resale in the regular course of business . . . ." A nontaxable "casual sale" is defined as "an  
25 occasional transaction of an isolated nature made by a person who is not engaged in the business of

1 selling, within or without the state, the same type or character of property as that which was sold."

2 Arizona Administrative Code ("A.A.C.") Rule R15-5-2001.

3 Appellant has a long history in the business of selling cars. Further, there are multiple sales at  
4 issue in this case, and all but two transactions involve actual transfers of title, which would not be  
5 necessary if Appellants were simply assisting people in need as claimed. Finally, Appellants pled guilty to  
6 the charge of engaging in business without a license. These facts all contradict Appellants' assertions  
7 that the sales were casual. Consequently, the Board finds that Appellants were engaged in a taxable  
8 business. However, after considering Appellant's testimony before the Board, the Board finds that the  
9 1989 Cadillac and the 1999 Chevy were transferred to Appellants pursuant to loan repayment  
10 arrangements. Therefore, these transactions are not taxable. Further, the Board finds that the  
11 Department used inflated values in calculating the tax due. In accordance with the testimony offered by  
12 Appellant, the Board finds that the tax base for the sale of the remaining six vehicles should be  
13 recalculated using the following values: \$2,500.00 for the 1990 Lexus; \$4,200.00 for the 1994 Dodge;  
14 \$2,000.00 for the 1994 Jaguar; \$2,000.00 for the 1984 Lincoln; \$500.00 for the 1990 Toyota; and,  
15 \$1,500.00 for the 2000 Ford. This results in a significantly decreased tax liability for Appellants.<sup>2</sup>

16 A.R.S. § 42-1123(C) provides that if the tax "or any portion of the tax is not paid" when due "the  
17 department shall collect, as a part of the tax, interest on the unpaid amount" until the tax has been paid."  
18 Accordingly, Appellants are liable for the interest assessed. Additionally, Appellants have not presented  
19 any evidence establishing reasonable cause for their failure to timely report and pay transaction privilege  
20 tax on the gross income derived from the transactions at issue; therefore, the Department properly  
21 assessed late filing penalties under A.R.S. § 42-1125.

#### 22 CONCLUSIONS OF LAW

- 23 1) Appellant is liable for the tax assessed. See A.R.S. § 42-1251.  
24 2) Appellant is liable for the interest assessed. See A.R.S. § 42-1123(C).

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<sup>2</sup> In its memorandum filed with the Board, the Department stated that it remains willing to negotiate a payment schedule with Appellants and, if Appellants are able to document their economic distress, they may be able to further reduce their tax burden through an "offer in compromise" procedure.

