

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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Phoenix, Arizona 85007
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4 TOM'S CAMPERLAND, INC.,

5 Appellant,

6 vs.

7 ARIZONA DEPARTMENT OF REVENUE,

8 Appellee.

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) Docket No. 1946-06-S
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) NOTICE OF DECISION
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)

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

11 FINDINGS OF FACT

12 Tom's Camperland, Inc. ("Appellant") sells and installs new and used truck shell campers and
13 truck cabover campers from its Tempe, Arizona facility. The Arizona Department of Revenue
14 ("Department") conducted an audit and issued an assessment of additional transaction privilege tax and
15 interest against Appellant for the period February 2001 through August 2004 (the "Audit Period"). Only
16 fifteen transactions involving truck cabover camper sales that Appellant asserts were tax exempt out-of-
17 state sales remain at issue. These transactions represent a very minor portion of the total sales during
18 the Audit Period. The Department determined all other sales during the Audit Period were properly
19 reported.

20 The facts of these transactions are as follows:

- 21 1. James Abbott. Purchaser ordered the cabover camper in October 2002. He executed an
22 exemption certificate and provided a copy of his New Mexico driver's license.
- 23 2. Gerald Augier. Purchaser ordered cabover camper in November 2002. He executed an
24 exemption certificate and provided a copy of his Washington driver's license. The invoice listed an
25 Arizona telephone number for the purchaser.

1 3. Hollis Baker. Purchaser ordered cabover camper in March 2003. He executed an exemption
2 certificate and provided a copy of his New Mexico driver's license.

3 4. John (Jay) Barr. Purchaser ordered cabover camper in March 2000. He executed an
4 exemption certificate and provided a copy of an Alaska driver's license. Barr had motor vehicles
5 registered in Arizona starting October 26, 2000. The Arizona Motor Vehicle Department ("MVD") records
6 for Barr listed the same date of birth as Barr's Alaska driver's license. Barr purchased property located in
7 Maricopa County, Arizona on May 24, 1999. He sold that property on November 17, 2005. He listed an
8 Arizona telephone number on the invoice.

9 5. Richard Daneck. Purchaser ordered cabover camper in March 2002. He executed an
10 exemption certificate and provided a copy of his New Mexico driver's license.

11 6. David Dunn. Purchaser ordered cabover camper in May 2002. He executed an exemption
12 certificate and provided a copy of his Colorado driver's license. He listed an Arizona address and phone
13 number on the invoice and exemption certificate. Dunn had a vehicle licensed in Arizona starting May 25,
14 2001 and renewed in June 2002. The Arizona MVD records for Dunn listed the same date of birth as
15 Dunn's Colorado driver's license. Additionally, the records list Dunn's address as 8909 E. Larry Hughes
16 Drive, Scottsdale, Arizona, 85262. Dunn purchased real property located at 8909 E. Larry Hughes Drive,
17 Scottsdale, Arizona (Tax Parcel # 219-11-391) in March 1995. The Maricopa County property tax records
18 indicated that he still owned the property in 2005.

19 7. Nancy Markle. Purchaser ordered cabover camper in April 2002. She executed an exemption
20 certificate and provided a copy of her Montana driver's license. Her Montana driver's license expired
21 August 6, 2003. On July 23, 2003, she obtained an Arizona driver's license. She had a vehicle licensed
22 in Arizona starting August 26, 1998 and renewed it effective September 2004. Markle purchased real
23 property located in Maricopa County, Arizona in November 1997. She sold that property in December
24 2001. She then purchased another piece of real property located at 5809 S. Terrace Road, Tempe,
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1 Arizona in September 2002. That is the address that the Arizona MVD records list for Markle. She listed
2 a local telephone number and address on the invoice.

3 8. Terry Newland. Purchaser ordered cabover camper in January 2004. He executed an
4 exemption certificate and provided a copy of his Nebraska driver's license.

5 9. Gary Parr. Purchaser ordered cabover camper in December 2001. He executed an
6 exemption certificate and provided a copy of his Alaska driver's license. Parr purchased property located
7 at 17949 N. Somerset Drive, Surprise, Arizona on February 29, 2000. He used that Surprise address on
8 the exemption certificate. He also listed an Arizona phone number on the invoice. He licensed a vehicle
9 in Arizona in November 2001. Arizona MVD records list the Surprise address.

10 10. Allan (Blu) Picard. Purchaser ordered cabover camper in June 2004. He executed an
11 exemption certificate and provided a copy of his New Mexico driver's license.

12 11. Jerry Polverino. Purchaser ordered cabover camper in May 2004. He executed an
13 exemption certificate. He did not provide an out-of-state driver's license but claimed to live in Florida. An
14 Arizona phone number is listed on the invoice. Polverino purchased real property located at 14116 S.
15 45th Avenue, Laveen, Arizona in November 2003. He sold the Laveen property in June 2004.

16 12. Marvin (Richard) Rohde. Purchaser ordered cabover camper in April 2004. He executed an
17 exemption certificate and provided a copy of his Iowa driver's license. Rodhe purchased property in
18 Maricopa County, Arizona on March 29, 2000. The Maricopa County tax records indicate that he still
19 owned that property in 2005.

20 13. Jerry Toms. Purchaser ordered cabover camper in December 2001. He executed an
21 exemption certificate and provided a copy of his Iowa driver's license. Toms listed an Arizona address on
22 the exemption certificate and an Arizona phone number on the invoice.

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1 A.A.C. R15-5-175(B). The Department interprets A.A.C. R15-5-175(B) to mean, essentially, that
2 Appellant must deliver its campers in a van or truck owned by or leased to Appellant.

3 Appellant counters that the sheer weight and size of its cabover campers (i.e., 4000 to 5000
4 pounds) make such delivery impossible. More importantly, relying on standard dictionary definitions of
5 conveyance, Appellant argues that the term "own conveyance" requires only that it, as opposed to the
6 purchaser, transport or move the campers to the out-of-state location. *See, e.g., Webster's New*
7 *Collegiate Dictionary* 249 (8th ed. 1974).

8 The Department has issued no taxpayer rulings defining the term "vendor's own conveyance" for
9 purposes of the rule, and nothing in either the rule or statute precludes Appellant's reasonable
10 interpretation of the term. Therefore, the Board finds that Appellant has satisfied the delivery method
11 requirement for exemption. Should the Department wish to specify a certain definition for "vendor's own
12 conveyance" numerous avenues are available to do so to provide guidance for Arizona taxpayers on the
13 issue.

14 The next issue before the Board is whether the disputed sales were made to nonresidents for use
15 outside the State. A.R.S. § 42-5009 (A) (formerly A.R.S. § 42-1316) provides that a seller may establish
16 entitlement to statutory deductions by marking the invoice to indicate that the income derived from the
17 transaction was deducted from the tax base and obtaining a certificate executed by the purchaser
18 indicating the necessary facts to establish the appropriate deduction. A.C.C. R15-5-175(C) states that, in
19 order to substantiate the exemption, the vendor shall obtain a completed exemption certificate or a written
20 statement from a buyer certifying that the buyer is not a resident of Arizona and that the property
21 purchased is for use outside of Arizona. An exemption certificate may be disregarded if the seller has
22 reason to believe that the information provided is not accurate or complete. A.R.S. § 42-5009(A)(2). In
23 other words, the seller must accept the certificates in good faith, not ignoring apparent inconsistencies
24 that call into question entitlement to the exemption claimed.

1 Appellant obtained the requisite exemption certificates from the purchasers involved in the 15
2 disputed transactions. However, the Department contends that the evidence does not substantiate the
3 purchasers' claims that the property was purchased for use outside the State; thus, the Department
4 asserts that Appellant did not accept the certificates in good faith. This places the Board in the position of
5 weighing all the facts to determine if Appellant acted reasonably in accepting the certificates.

6 Appellant testified that if a customer asked about purchasing a camper tax-free, it would have the
7 customer fill out a departmental exemption certificate (Form 5002) and provide an out-of-state driver's
8 license.¹ None of the customers in the transactions at issue provided an Arizona driver's license.
9 However, in seven of the disputed transactions, customers either listed an Arizona phone number and/or
10 address on the purchase invoice and/or exemption certificate, or they had vehicles registered in Arizona
11 at the time of purchase, meaning the vehicles receiving the campers could have displayed Arizona
12 license plates.² The Board finds that these seven transactions do not qualify as tax-exempt because they
13 involved information that indicated Arizona use, thereby, requiring further scrutiny by Appellant as to
14 where the campers would be used.

15 The Department disputed the remainder of the transactions based on the facts that, at or near the
16 time of the transaction, a purchaser either had a driver's license from a state other than California where
17 the vehicles were delivered or, according to tax records, owned property in Arizona. Appellant could not
18 discern whether its customers owned property in Arizona from information provided on the invoices or
19 exemption certificates, and the Board finds it unreasonable to require Appellant to search county tax
20 records to determine this. Further, the fact that purchasers did not have driver's licenses for the state to
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23 ¹ The transaction with Jerry Polverino is the only case in which a purchaser failed to provide an out-of-state driver's license.

24 ² These customers are Gerald Augier, Jay Barr, David Dunn, Nancy Markle, Gary Parr, Jerry Polverino and Jerry Toms.
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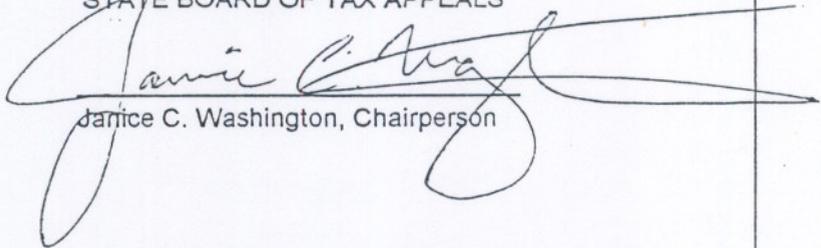
ORDER

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

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

DATED this 16th day of February, 2007.

STATE BOARD OF TAX APPEALS



Janice C. Washington, Chairperson

JCW:ALW

CERTIFIED

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