

STATE OF ARIZONA

Department of Revenue
Office of the Director
(602) 716-6090



Katie Hobbs
Governor

Robert Woods
Director

CERTIFIED MAIL

The Director's Review of the Decision
of the Administrative Law Judge Regarding:

[REDACTED]

ID No. [REDACTED]

) ORDER

) Case No. 202200024-S

On December 27, 2022, the Administrative Law Judge (“ALJ”) issued a decision regarding the protest of [redacted] (“Taxpayer”). Taxpayer appealed that decision on January 26, 2023 to the Director of the Department of Revenue (“Department”). As the appeal was timely, the Director has reviewed the ALJ's decision and now issues this order.

Taxpayer operates a [redacted] tour business in [redacted] and provides recreational tours of the [redacted]. The Transaction Privilege Tax Unit in the Education and Compliance Division (“Division”) of the Department issued an assessment against Taxpayer, dated June 15, 2021, of [redacted] additional transaction privilege and city tax under the amusement classification, plus interest, for the period of February 1, 2017 through September 30, 2020 (“Audit Period”). No penalties were assessed. Because Taxpayer did not provide the requested business records, the Division’s auditor relied on Taxpayer’s corporate income tax returns when preparing the assessment. At hearing, Taxpayer did not provide additional records. Although Taxpayer had filed returns under the amusement classification, Taxpayer argued it should not be subject to tax under that classification and should be exempt from tax under the transportation classification.

Arizona Administrative Code (A.A.C.) R15-10-131(H)(2) authorizes the Director to issue a decision that summarily affirms the decision of the Hearing Officer or ALJ. The record in this matter does not indicate that there is any basis for reversing the ALJ’s decision. In that

decision, the ALJ addressed the parties' disagreement concerning the Division's assessment. The ALJ specifically considered and rejected Taxpayer's argument that it should not be taxable under the amusement classification. The ALJ determined that Taxpayer was properly assessed under the amusement classification because it provides recreational tours using motor vehicles designed to operate on and off public highways. The ALJ excluded several of Taxpayer's exhibits from the hearing record, as the documents concern an unrelated third party's activities and vehicle registration, and the ALJ noted there was insufficient foundation to admit those documents. The ALJ explained that even if those documents had been considered, they would not have established any lack of equal application of the law, as the third party's vehicles were not designed to operate both on and off public highways. The ALJ concluded that Taxpayer failed to provide documentation to demonstrate any overstatement of gross income in the assessment, and that Taxpayer did not meet its burden to prove it was exempt from the tax or that it should not be subject to the amusement classification under which Taxpayer itself had filed its returns. The ALJ denied Taxpayer's protest and upheld the Division's assessment.

On appeal, Taxpayer argues again that it should not be subject to tax under the amusement classification and that it should fall under a motor carrier or vehicle for hire exemption in the transportation classification. No additional documents were provided with the appeal.

The Division explained the Assessment in a pre-hearing conference memorandum. As the Division explained there, Taxpayer's receipts are not derived from transport, which is defined in A.R.S. § 42-5062(A) as transporting for hire persons, freight or property from one point to another point in the state.

The gross proceeds or gross income from recreational tours using motor vehicles designed to operate on and off public highways are subject to taxation under the amusement classification of A.R.S. § 42-5073 and the Model City Tax Code ("MCTC") § -410. See A.R.S. § 42-5073(D). Taxpayer's recreational [redacted] tours fall within that provision, and Taxpayer does not dispute the recreational nature of its tours and that its vehicles operate on and off public highways.

The Division's Assessment is proper. Taxpayer is liable for the tax and interest assessed.

ORDER

The ALJ's decision is affirmed.

This Decision is the final order of the Department of Revenue. Taxpayer may contest the final order of the Department in one of two manners. Taxpayer may file an appeal to the State Board of Tax Appeals, 100 North 15th Avenue, Suite 140, Phoenix, AZ 85007 or may bring an action in Tax Court (125 West Washington, Phoenix, Arizona 85003) within sixty (60) days of the receipt of this order. For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102. For information from the Tax Court, call (602) 506-8297.

Dated this 5th day of July 2023.

ARIZONA DEPARTMENT OF REVENUE

Robert Woods
Director

[REDACTED]
Case No. 202200024-S
Page 4

Certified original of the foregoing
mailed to:

[Redacted]

Copy of the foregoing mailed to:

[Redacted]

Copy: Transaction Privilege Tax Appeals
Education and Compliance Division
Transaction Privilege Tax Unit