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**STATE OF ARIZONA  
EXECUTIVE HEARING OFFICE  
DEPARTMENT OF TRANSPORTATION**

**IN THE MATTER OF AN AIRCRAFT TAX  
AND REGISTRATION, A.R.S. §§ 28-5924,  
28-8244, 28-8328, 28-8336, 28-8329, 28-8330**

**AERO-2538, 2539, 2540, 2541, 2542**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED];

**Petitioners.**

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
DECISION and ORDER**

[REDACTED], Administrative Law Judge

Appearances

[REDACTED], Attorney for the Petitioner

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED], Assistant Attorney General

[REDACTED], Senior Auditor, Arizona Department of Transportation

[REDACTED], Supervisor of Aircraft Registration and License, Arizona Department of Transportation

Exhibit(s)

1. [REDACTED]
2. [REDACTED]  
[REDACTED]

3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]  
[REDACTED]
16. [REDACTED]
17. [REDACTED]  
[REDACTED]
18. [REDACTED]  
[REDACTED]
19. [REDACTED]
20. [REDACTED]  
[REDACTED]

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A hearing was convened in the above captioned matter on [REDACTED], 2019, in the Executive Hearing Office of the Arizona Department of Transportation in Phoenix, Arizona. The Administrative Law Judge’s jurisdiction in this matter is established pursuant to the authority A.R.S. § 28-8328 and § 28-8244. The purpose of the hearing was to allow Petitioner to show any and all cause why the Arizona Department of Transportation’s assessments on Petitioner’s aircraft dated [REDACTED], 2018 were in error.

**BACKGROUND**

After witnessing, Petitioner’s air operation at [REDACTED] Airport, the Arizona Department of Transportation issued license tax and registration fee assessments on Petitioner’s aircraft observed at that airport.

Petitioner challenged each of the assessments on the basis that none of the aircraft are involved in intrastate commerce because all of Petitioner's operations, in regards to the aircraft audited, take place within the sovereign nation of the [REDACTED] Indian Tribe; additionally, none of the assessed aircraft are based in Arizona, but rather Nevada. Therefore Petitioner is exempt from Arizona's aircraft license taxes and registration fees.

### **PROCEDURAL HISTORY**

Pursuant to Petitioner's objections, each matter was set for hearing before this Tribunal. However, at the pre hearing conference on [REDACTED] 2019, Petitioner moved to consolidate the above captioned matters. The motion was not contested and subsequently granted as consolidated under [REDACTED]. [REDACTED] is the umbrella-corporation under which the other aircraft ownership groups, [REDACTED], reside.

### **FINDINGS OF FACT**

Based on the testimony and evidence presented, the Administrative Law Judge finds the following facts:

1. [REDACTED] Airport ("[REDACTED]") is a public airport on the [REDACTED] Indian Reservation, operated by the [REDACTED] Indian Tribe ("Tribe").
2. The entire [REDACTED] Indian Reservation is located within the borders of the State of Arizona.
3. [REDACTED] on the [REDACTED] Indian Reservation is a tourism destination for visiting the western rim of the Grand Canyon.
4. As a public airport [REDACTED] is eligible to receive grant funding from Arizona.
5. To receive grant funding from Arizona, a public airport must submit tie-down reports.
6. A tie-down report notes where an aircraft is moored at a given point in time.

7. [REDACTED] has never submitted tie-down reports.
8. [REDACTED] does not have mooring points therefore an aircraft cannot tie-down there.
9. [REDACTED] does not have aircraft hangers.
10. [REDACTED]. (“Petitioner”) has an air-tourism operation at [REDACTED]. (Exhibit [REDACTED])
11. Petitioner is neither owned nor operated by the Tribe.
12. Petitioner is contracted as a vendor to the Tribe. (Exhibit [REDACTED])
13. Petitioner operates twenty-five aircraft out of [REDACTED] Airport (“[REDACTED]”), in Nevada. (Exhibit [REDACTED])
14. Petitioner’s aircraft only operate in the State of Nevada and inside the [REDACTED] Indian Reservation.
15. Petitioner sells a variety of online advanced reservation Grand Canyon tour packages.
16. Petitioner’s advanced reservation system allows a customer to choose from a variety of tours that include services by Petitioner, services by charter bus companies, and services by the Tribe.
17. Most of Petitioner’s advanced reservation tours originate and end in [REDACTED].
18. Some of Petitioner’s advanced reservation tours begin and end on the [REDACTED] Indian Reservation.
19. The Tribe operates a pontoon-boat tour of the Colorado River and uses Petitioner to ferry customers from the top of the canyon rim to the river’s edge; these flights are known as “up and downs.”
20. Petitioner’s aircraft involved in interstate activity typically do not aid in the “up and down” operations, but have and will be used when customer/tour volume dictates.
21. Petitioner is precluded by the Tribe from selling tickets directly to the public at [REDACTED].

22. All walk up / drive up traffic must buy the tours from the Tribe and then the Tribe reimburses Petitioner.
23. All walk up / drive up traffic tours begin and end on the [REDACTED] Indian Reservation.
24. The Tribe bills Petitioner for online advanced reservation tours that include tours or attractions run by the Tribe, known as “gate tours.” (Exhibit [REDACTED])
25. Petitioner is contracted with the Tribe to have at least 25% of its passengers dropped off at [REDACTED] and purchase a “gate tour” *Id.*
26. Petitioner has employed tribal members in the past but could not verify if any tribal members are currently employed.
27. Petitioner’s employees are shuttled to [REDACTED] daily from [REDACTED].
28. Petitioner operation team at [REDACTED] includes an onsite operations manager, loading and unloading crews, ticket counter associates, mechanic and pilots.
29. Petitioner’s employees rarely stay overnight at [REDACTED].
30. Petitioner’s pilots and aircraft do stay overnight at [REDACTED] when there are mechanical issues with the aircraft, weather or the pilot is at the FAA cap for allowed daily flight hours.
31. A fixed base operator (“FBO”) is an airport that has any combination of maintenance facilities, food services, and rental car services.
32. [REDACTED] does not have a FBO.
33. [REDACTED] has FBO. (Exhibit 15)
34. Petitioner is precluded from building maintenance facilities at [REDACTED]. (Exhibit [REDACTED])
35. Petitioner does all regular, scheduled and heavy maintenance of their aircraft at [REDACTED]. (Exhibit [REDACTED])
36. Petitioner stores all spare parts, pilot logs and aircraft records at [REDACTED]. (Exhibit [REDACTED])

37. Petitioner does only minor and unexpected repairs to aircraft at [REDACTED].
38. If Petitioner's aircraft requires more than minor repair while at [REDACTED], it will be put on a semi-truck and transported back to [REDACTED] for repair.
39. Petitioner's aircraft is maintained pursuant to manufacture standards.
40. Petitioner memorializes all work, maintenance, and preflight checks in the maintenance logs. (Exhibit [REDACTED])
41. Petitioner's aircraft [REDACTED] was not in service on [REDACTED] 2018, per the maintenance logs. *Id.*
42. Petitioner does all training at [REDACTED] and is precluded by the Tribe from doing training at [REDACTED].
43. Grand Canyon National Park is a special flight rules area. (Exhibit [REDACTED])
44. As a special flight rule area, Petitioner's aircraft must adhere to strict flight patterns.
45. Petitioner received a set number of allocations from the United States Department of Transportation to fly routes in Grand Canyon National Park. *Id.*
46. As a special flight rule area, Petitioner must use one of their allocations for each flight into or through Grand Canyon National Park, unless they receive an exemption.
47. Petitioner receives [REDACTED] exemptions from the Tribe for flights that land on tribal land. *Id.*
48. Petitioner's flight logs detail which flights used an exemption for 2018 with "Exempt." (Exhibit [REDACTED])
49. Petitioner's flight logs detail which flights used the federal allocation for 2018 with "CT" meaning "Commercial Tour." *Id.*

50. Petitioner's flight logs indicate what flight path the aircraft used to get to [REDACTED] but do not indicate the flight back to [REDACTED] or any activity at [REDACTED] due to the lack of internet service at [REDACTED].
51. All of Petitioner's aircraft are registered with the Federal Aviation Administration ("FAA").
52. All of Petitioner aircraft are registered with the FAA as being based in [REDACTED] [REDACTED], [REDACTED].
53. All of Petitioner's aircraft are registered and licensed in the State of [REDACTED].
54. None of Petitioner's aircraft are registered or licensed in Arizona.
55. Petitioner's company is located in the State of [REDACTED].
56. Petitioner does not have any motor vehicles registered in Arizona.
57. On [REDACTED] 2018, the Arizona Department of Transportation ("Department") conducted an inspection of [REDACTED]'s air operations.
58. The Department observed several air-tour companies had a presence at [REDACTED].
59. The Department witnessed eight of Petitioner's aircraft, [REDACTED] [REDACTED] at [REDACTED].
60. The Department witnessed Petitioner's aircraft loading passengers and taking off from [REDACTED]. (Exhibit 1)
61. The Department witnessed Petitioner's aircraft landing at [REDACTED] and unloading of passengers.
62. The Department observed that several new buildings had been constructed at [REDACTED] since they last inspected the airport [REDACTED].
63. The Department observed advertisements on and in the buildings for various air-tours and other types of Grand Canyon tours. (Exhibit [REDACTED])

64. Petitioner's air-tour advertisements were present on and in the buildings.
65. The Department witnessed tour buses bringing people to the airport.
66. The Department witnessed private vehicles parked at [REDACTED] including vehicles bearing Arizona license plates.
67. The Department witnessed tour buses bearing Arizona license plates.
68. The Department witnessed tourists get off the buses and get in line at Petitioner's ticket window.
69. The Department witnessed tourists leave Petitioner's ticket window and get into boarding line for Petitioner's aircraft.
70. The Department observed that Petitioner's ticket window had sales information as to pricing and available tour types. *Id.*
71. The Department assessed Petitioner for all [REDACTED] aircraft observed at [REDACTED].
72. The Department used Aircraft Bluebook and Airport-Data.com to determine the value of said aircraft. (Exhibits [REDACTED])
73. The Department uses Airport-Data.com to get a more accurate account of the aircraft when using Aircraft Bluebook.
74. Not all aircraft were locatable on Airport-Data.com.
75. The Department applied a 0.05% license tax based on Petitioner participating in intrastate commercial activity.
76. The Department added a registration fees and statutory penalties to the assessments.
77. The Department completed the assessments on all [REDACTED] aircraft without the use of Petitioner's flight logs.
78. Auditor notes accompany the assessments. (Exhibit [REDACTED])
79. The auditor notes are all the same except the aircraft descriptions and tail numbers. *Id.*



80. Auditor notes represent the facts relied upon by the Department for the assessment, but are not exhaustive.
81. The Department assessed [REDACTED] on [REDACTED], 2018 (Exhibit [REDACTED]).
82. The Department assessed [REDACTED] [REDACTED] [REDACTED] [REDACTED], \$ [REDACTED] on [REDACTED] 2018 (Exhibit [REDACTED]).
83. The Department assessed [REDACTED] \$ [REDACTED] on [REDACTED], 2018 (Exhibit [REDACTED]).
84. The Department assessed [REDACTED], \$ [REDACTED] on [REDACTED] 2018 (Exhibit [REDACTED]).
85. The Department assessed [REDACTED], [REDACTED] and \$ [REDACTED] on [REDACTED] 2018 (Exhibit [REDACTED]).
86. The Department assessed [REDACTED], [REDACTED] on [REDACTED] 2018 (Exhibit 11).
87. The Department assessed [REDACTED], \$ [REDACTED] on [REDACTED], 2018 (Exhibit [REDACTED]).
88. The Department assessed [REDACTED], \$ [REDACTED] on [REDACTED], 2018. (Exhibit [REDACTED]).
89. The Department's Supervisor of Aircraft Registration and License approved the eight assessments on behalf of the Department.
90. "Based in," is not defined in Departmental policy.

#### CONCLUSIONS OF LAW

The Department argues that Petitioner's aircraft are subject to Arizona's aircraft registration and license tax because Petitioner's aircraft participate in intrastate commercial

operations out of [REDACTED], a public airport, within the State of Arizona. The Department argues pursuant to A.R.S. §28-8321 and §28-2001(A)(1)(f), the Petitioner is considered a resident, for the purposes of registration fee and license tax, due to their intrastate commercial operations. The Department argues that Petitioner's aircraft are based in Arizona at [REDACTED]. The Department argues that Petitioner's commercial operations at [REDACTED] are indicia of a base. The Department argues that Petitioner may have more than one base. The Department argues that Petitioner does not meet any exceptions for the license tax and registration fee to be waived or lowered from the rate pursuant to A.R.S. §28-8335 and the registration requirement pursuant to A.R.S. §28-8322.

Petitioner argues that their aircraft are not subject to Arizona's aircraft license tax and registration fee. Petitioner argues that it is not a resident of Arizona. Petitioner argues that their aircraft neither participate in intrastate commercial operations nor are they based at [REDACTED]. Petitioner argues that they only operate these aircraft within Nevada and the sovereign nation of the [REDACTED] Indian Tribe; thereby only engaging in interstate commercial operations. Petitioner argues in the alternative, if Petitioner is found to have been participating in intrastate commercial operations then only an aircraft registration fee per A.R.S. §28-8322 (E) may be applied and not a license tax because Petitioner is not based at [REDACTED] or in Arizona. In support of the latter, Petitioner argues that the phrase "base in," is not defined by statute or departmental policy. As such the phrase "based-in" is left nebulous, thereby making the statutes ambiguous requiring a ruling in favor of the taxpayer.

The Administrative Law Judge's ("ALJ") jurisdiction in this matter is established pursuant to the authority A.R.S. §28-5924 and §28-8328. The decision in an administrative proceeding may be based on circumstantial evidence alone. *Justice v. City of Casa Grande*, 116 Ariz. 66, 567 P.2d 1195 (App. 1977). An administrative law judge need not adhere to the

Arizona Rules of Evidence in every respect. *Ciulla v. Miller*, 169 Ariz. 540, 821 P.2d 201 (App. 1991). A.R.S. § 41-1062(A)(1).

The first part of Petitioner's argument is that Arizona, through the Department, cannot levy a license tax or registration fee on their aircraft because they only operate in and on the sovereign nation of the ████████ Indian Tribe. However, a long line of U.S. Supreme Court cases have upheld state taxes on non-tribal and tribal businesses serving non-tribal customers on Reservation land. The state may impose a tax on non-Indians for cigarettes sold to them by Indian smoke shops. *Moe v. Confederate Salish & Kootenai Tribes*, 425 U.S. 463 (1976). Impositions of on-Reservation state luxury tax and tobacco sales tax, did not infringe on the sovereignty of the tribe when non enrolled member of the tribe sold cigarettes to non-Indian customers. *State ex rel, Arizona Department of Revenue v. Dillon*, 70 Ariz. 560 (1991). In most of the cases, when non-tribal members are doing business with other non-tribal members, state taxes have been upheld as applicable. "There is no direct conflict between the state and tribal schemes, since each government is free to impose its taxes without ousting the other." *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 158 (1980).

In *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578 (1980), the Court held, a state tax on Indian Reservation land or activities is considered valid unless (1) congressional legislation explicitly preempts the tax, or (2) the tax would interfere with the tribe's ability to govern itself. *Id.* at 145. In *Bracker*, the Court struck down two Arizona taxes, use fuel tax and motor carrier tax, on a contracted non-tribal logging company working for the tribe on that tribe's Reservation felling trees, building and maintaining roads, and milling the felled timber at the tribe's own sawmill. The non-tribal company conducted all of their operations within the Reservation and all for the benefit of that Reservation's tribe. The non-tribal company was paid by the tribe but the profits from the company's timber production

returned to the tribe. Writing for the Court in *Bracker*, Justice Marshall noted that the “Federal Government’s regulations of the harvesting, sale, and management of tribal timber, and of the Bureau of Indian Affairs [“BIA”] and tribal timber operations were so pervasive as to preclude the additional burdens sought to be imposed....” *Id.* at 145-6.

In the case at hand, the ALJ neither found congressional legislation that explicitly preempts the tax nor was any offered by Petitioner. The BIA regulates much of the activity on the Reservation and the Federal Aviation Administration (“FAA”) regulations are the most pervasive as to the operation of █████ Airport. The ALJ neither found nor did Petitioner offer any policy or rule of the BIA that preempts the tax or fee. However, the ALJ did find a FAA regulation that allows for a state or political subdivision of the state to levy or collect a tax on a flight of a commercial aircraft only if the aircraft takes off or lands in the state as part of the flight. 49 U.S. Code § 40116(c). The █████ Indian Reservation is within the State of Arizona.

After finding no legislation that explicitly preempts the tax at federal level, the ALJ examined the second prong established by the Court in *Bracker*. The *Bracker* Court was concerned that the tax imposed on the White Mountain Apache would affect the timber operation’s profitability and by extension the White Mountain Apache Tribe’s sovereignty. In the case at hand, Petitioner does not hold the same position with the Tribe, vis-à-vis the White Mountain Apache Tribe and the timber company in *Bracker*. Petitioner is in a vendor relationship with the Tribe in return for landing rights on the Tribe’s Reservation. These landing rights support Petitioner’s air-tourism business of the Grand Canyon. Petitioner pays the Tribe or bills the Tribe for tours sold per their vendor agreement. This Tribunal presumes that the Tribe receives the benefit of additional tourist revenue due to Petitioner’s air operations at █████. However, Petitioner presented neither testimony nor evidence that all of Petitioner profits are disputed to the Tribe as was the case in *Bracker*. Petitioner is only required to have 25% of its

customers dropped off at [REDACTED] and buy a gate tour from the Tribe. Petitioner transports non-tribal members from Nevada into Arizona using the public airport, [REDACTED], on the Reservation. Also, Petitioner transports non-tribal members from [REDACTED] to other parts of the Reservation as part of Petitioner's air-tours. Moreover, Petitioner testified that the up and downs, arguably the most advantageous to the Tribes tourism, is only one of a variety of tours offered by the aircraft tour company.

The evidence established that Petitioner's business relationship with the Tribe is not as exclusive, as the relation between the White Mountain Apache Tribe and the timber company in *Bracker*. Additionally, there was no evidence that the aircraft license taxes or registration fees sought by the Department would affect the sovereignty of the Tribe. Therefore, it is found that Arizona's aircraft license tax and registration fee on Petitioner's aircraft that land and operate exclusively on the sovereign nation of the [REDACTED] Indian Tribe are not precluded by federal law.

Further, Arizona Statutes indicate that the license tax and registration fee are allowed on the Reservation. Pursuant to A.R.S. §28-8206, Arizona has sovereignty in the space above land and water, unless sovereignty is granted to and assumed by the United States pursuant to a lawful grant from Arizona. The State Aviation Fund that consists of the collected registration fees and aircraft license taxes, requires the Department to distribute those monies for planning, design, development, acquisition, construction and improvement of publicly owned and operated airport facilities in counties, incorporated cities and towns and *Indian Reservations*. (*Emphasis added*, A.R.S. §28-8202). Specifically, A.R.S. §28-8202(D) states, "publicly owned and operated airport facility, means city, town, or county of this state or an *Indian tribe or tribal government* hold an interest in the land on which the airport is located." (*Emphasis added*).

In the case at hand, the sovereign nation of the ██████ Indian Tribe is an Indian Reservation. The ██████ Indian Reservation is entirely within the borders of the State of Arizona. ██████ is a public airport and eligible for disbursement of grant money from the Arizona State Aviation Fund. Additionally, by statute the airport does not lose its public status by being within an Indian Reservation or by being run by an Indian tribe or tribal government. Therefore, it is found that Arizona's aircraft license tax and registration fee on Petitioner's aircraft that land and operate exclusively on the sovereign nation of the ██████ Indian Tribe are not precluded by Arizona law.

It is not contested that that Petitioner's business is involved in interstate commercial operations, as Petitioner offers tours that transport non-tribal members from Nevada to the Tribe's Reservation in Arizona. However, the evidence establishes that Petitioner offers tours that transport non-tribal members from one part of the Reservation to other parts of the Reservation. The Reservation is entirely located within the borders of Arizona. A.R.S. Title 28, does not define intrastate. However, A.R.S. does define intrastate in Title 42, Arizona tax provision defines "intrastate telecommunications services" as "transmitting . . . , data or other information of any nature by wire, . . . or other electromagnetic means *if the information transmitted originates and terminates in this state.*" A.R.S. § 42-5064(E)(5) (*emphasis added*). Additionally, as noted above, A.R.S. §§ 28-8206 and 28-8202 both note no difference as to a Sovereign Indian Nation and the State of Arizona in regards to aircraft taxation and disbursement of those funds.

In this case, Petitioner has air-tours that originate and terminate in Arizona on the Tribe's Reservation. The evidence established that a tourist in Arizona may purchase a ticket (online or at ██████ gate), embark one of Petitioner's aircraft at ██████, take a tour of the Grand Canyon,

then return and disembark at [REDACTED] thereby all the commerce occurs within Arizona. Therefore, it is found that Petitioner is involved in intrastate commercial operations in Arizona.

Having determined the assessments by the Department against Petitioner are not contrary to federal law and Petitioner is involved in intrastate commercial activity in Arizona, the Tribunal must determine whether the assessments comport to Arizona Law. The Arizona Constitution establishes a license tax on aircraft registered for operation in this state in lieu of ad valorem property taxes. Ariz. Const. art 9, §15. Also, Arizona's Constitution states that there is not an exemption for aircraft that are engaged in any intrastate commercial activity. Ariz. Const. art. 9, § 15(3). Therefore, the tax itself is allowed by Arizona's Constitution and since it is found that Petitioner is participating in intrastate activity, the Petitioner will not be exempt from the tax. Additionally, pursuant to A.R.S. § 28-8322 (E) Petitioner's aircraft will have to be registered in Arizona as it engages in intrastate commercial activity.

However, in order to apply the license tax on an aircraft involved in intrastate commercial activity, the aircraft licensing statutes state that an aircraft must be "based in" Arizona. The Aeronautics section of A.R.S does not define "based in." It is not contested that Petitioner has a base in [REDACTED] at [REDACTED]. What is contested is whether or not Petitioner's intrastate commercial operations at [REDACTED] constitute a base in Arizona for the purposes of applying A.R.S. §28-8335.

The Department concedes that no departmental policy defines "based in." However, the Department testified that in determining an aircraft's base, a totality of the circumstances is evaluated. [REDACTED], supervisor of aircraft registration, testified that the Department determines "base in" by whether the aircraft is present in the state, the day count, the residency of the aircraft's owner or entity, tie-down rights and its involvement with intrastate commercial operations. The Department testified that an aircraft's intrastate commercial operations are a

strong indicia of a base at the airport where the operations occur. The Department argues that Petitioner may have more than one base. The Department argues that Petitioner's commercial operation at █████ constitutes a base in Arizona.

Conversely, Petitioner argues that they are not based in Arizona at █████ and that aircraft can only have one base. Petitioner defined an aircraft's base as where maintenance can be performed, spare parts can be warehoused, aircraft and pilot records can be kept, training can be conducted, where the FAA has them registered and aircraft can be moored in inclement weather. Petitioner argues that █████ cannot be a base as it does not have any of the aforementioned. Additionally, █████ neither has a FBO nor are any allowed to be built by Petitioner. Accordingly "based in" is nebulous and therefore the statute is ambiguous.

Contrary to Petitioner's argument, the Arizona aircraft registration and license statutes presume an aircraft may have more than one base. For example, the nonresident statute, A.R.S. §28-8336, calculates the aircraft license tax on the number of days an aircraft is based in Arizona. Thereby, the statute presumes that aircraft may be based in another state for the remainder of the time they are not based in Arizona. "Words in statutes should be read in context in determining their meaning." *Stambaugh v Killian*, 242 Ariz. 508, 398 P.3d 574, (2017). Therefore, by context, it is found that Petitioner's aircraft may be based in Arizona and based in Nevada.

However, Title 28, chapter 25 does not define the word base or what based in means. in *BSI Holdings, LLC v. Arizona Department of Transportation*; 244 Ariz. 17, 417 P.3d 782, 786 (2018), the Arizona Supreme Court looked at the phrase "based in," in the statutes but found the facts as presented in the case prevented a definitive analysis. The *BSI* court stated:

"Base" is generally defined as "that on which something rests for support; foundation." Base, Webster's New International



Dictionary 225 (2d ed. 1944); see also Base, Webster's II New College Dictionary 92 (1995) (defining base as “a fortified center of operations”). Used as a verb in legal parlance, it means “[t]o take up or maintain one's headquarters” or “to have one's main place of work in a particular place.” Base, Black's Law Dictionary (10th ed. 2014). Those definitions imply more of a domiciliary analysis rather than physical presence alone.

*Id.* at 787 (2018). The aforementioned definitions supplied by the Court in *BSI* imply that a base is more than a mere physical presence. The Court in *Kendrick*, noted, “we recognize that a dictionary definition may not be conclusive, and because context gives meaning, statutory terms should not be considered in isolation” *State v. Kendrick*; 232 Ariz. 428, 306 P.3d 85, 88 (App. 2013). The statutes echo that a mere presence is not enough to consider an aircraft based in Arizona. For example, aircraft may be in Arizona for an extended period of time without Arizona becoming its base.

Indeed A.R.S. § 28-8341(C), another aircraft tax statute, defines “maintenance aircraft” as one “that is not based in this state but that is present in this state solely for the purpose of maintenance, repair or servicing at a federal certified maintenance facility.” That language suggests that “based” has a more technical meaning that is different than, and more than, mere physical presence.

*BSI* at 787 (2018). The *BSI* court went on to note that it was unpersuaded by the Department’s contention in *BSI* that a mere physical presence of the aircraft creates a base in Arizona.

“[D]ay” cannot be construed to sustain . . . holding that an aircraft's momentary presence on the ground in Arizona can count as a day for purposes of accruing tax liability. The legislature's use of the different terms “present” and “base,” along with the common definition of “base,” demonstrate that momentary physical presence alone cannot count as a day an aircraft is based in Arizona. Likewise, the purposes of the statute would be defeated if an aircraft that is based in Arizona loses that status merely because it briefly departs, . . . .

*Id.* at 787 (2018).

In the case at hand, the evidence established that Petitioner's aircraft have more than a momentary or mere physical presence in Arizona at [REDACTED]. As testified to by Petitioner and observed by the Department, Petitioner runs a substantial air-tourism operation out of [REDACTED]. Several factors support a finding that Petitioner maintains a base at [REDACTED]. First, Petitioner has a leased structure at [REDACTED] for its customer service personnel to interact with the public and a place for pilots or mechanics to shelter, including a cot for employees to sleep overnight when necessary. Second, most mornings of the year, a crew is flown into [REDACTED] from [REDACTED]. These crews consist of Petitioner's employees including operation/yard manager, customer service personnel, loading and unloading crews, pilots, and mechanics. Third, on most days of the year, Petitioner operates between one to eight aircraft at [REDACTED], supporting and/or doing intrastate commercial activities. Fourth, due to the remoteness of [REDACTED], Petitioner's operations are self-sustaining. Meaning, if the aircraft can be fixed for something minor during operations, it will be fixed at [REDACTED] and not be trucked back to [REDACTED]. Furthermore, if additional aircraft are needed due to business needs, the operations/yard manager will make that operational call from [REDACTED]. [REDACTED] is the center of Petitioner's [REDACTED] Grand Canyon operations in Arizona. [REDACTED] is Petitioner's main place of work in Arizona. Petitioner's aircraft may sleep in [REDACTED] but they certainly work in Arizona. Accordingly, it is found by a preponderance of the evidence that Petitioner's aircraft are "based in" Arizona at [REDACTED].

#### **DECISION AND ORDER**

After due and deliberate consideration of the testimony and evidence, it is found that Arizona, through the Arizona Department of Transportation has jurisdiction to assess [REDACTED] license taxes and registration fees on their aircraft operating at [REDACTED] pursuant to A.R.S. §§28-8335 and 28-8322. Additionally, it is found that [REDACTED] engages in intrastate commerce activity from [REDACTED].

Finally, it is found that [REDACTED] aircraft have a base at [REDACTED] and are thus based in Arizona for purposes of the license tax statute.

Therefore, it is ORDERED that [REDACTED] pay the license tax and registration fees for the following assessments: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

It is so ORDERED this [REDACTED] [REDACTED], 2019.

[REDACTED]  
[REDACTED]  
Administrative Law Judge  
Executive Hearing Office  
Arizona Department of Transportation

NOTE: The assessment or civil penalty ordered herein must be paid not later than thirty (30) days from the date of this Order. The check or money order is to be made payable to the Arizona Department of Transportation, Motor Vehicle Division and mailed to:

Arizona Department of Transportation  
Motor Vehicle Division  
Collections Unit  
PO Box 2100  
Mail Drop 529M  
Phoenix, AZ 85001-2100  
(602) 712-8745

Copy mailed this [REDACTED], 2019, to:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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[REDACTED]

/s/ [REDACTED]

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[REDACTED], Case Management Specialist