

**Jerry Rudibaugh**  
**Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: May 12, 2003  
Decision: MTHO #105  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On February 23, 2003, *Taxpayer* ("Taxpayer") filed a protest of a Use Tax assessed by the City of Phoenix ("City"). After review, the City concluded on February 25, 2003 that the protest was timely and in the proper form. On March 3, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before April 17, 2003. The protest was classified as a redetermination. The City filed its response on March 20, 2003. On March 28, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before April 28, 2003. The Taxpayer filed a reply on March 31, 2003. The Hearing Officer issued an April 7, 2003 letter indicating a written decision would be issued on or before May 15, 2003.

The Taxpayer purchased a new vehicle outside of the State of Arizona ("State") and registered the vehicle on August 20, 2002 with the Arizona Department of Transportation ("ADOT") using a City address. The Taxpayer paid a Use Tax to the State. The City assessed a Use Tax of \$774.72, a penalty of \$77.48, as well as accrued interest on the purchase of the vehicle.

**City Position**

The State and the City impose a Use Tax on the value of tangible personal property brought into the State and City if no equivalent tax was paid at the time of purchase. The City argued that the Use Tax was proper pursuant to City Code Sections 14-600 and 14-610 ("Sections 600 and 610"). According to the City, the Use Tax is imposed based on the purchaser's registration address. The City asserted that the Taxpayer has not provided evidence to substantiate his claim that the vehicle was not domiciled within the City at the time of registration. Based on the above, the City argued the assessment was proper and shall be upheld.

**Taxpayer Position**

The Taxpayer asserted that the vehicle in question is not used or stored in the City. The vehicle was inspected and licensed in the City of Mesa. According to the Taxpayer, the vehicle has never been used or stored at the address at which it was registered. The Taxpayer asserted that he lives in an apartment and there is no room to park or store the vehicle at his apartment location.

## ANALYSIS

The City Code imposes the Use Tax on the cost of tangible personal property stored or used in the City. Based on the evidence presented, the Taxpayer never stored or used the vehicle within the City. The Taxpayer has stored and used the vehicle in the City of Mesa. As a result, the assessment of tax, penalty, and interest by the City was not proper.

## FINDINGS OF FACT

1. On February 23, 2003, the Taxpayer filed a protest of a Use Tax assessed by the City.
2. After review, the City concluded on February 25, 2003 that the protest was timely and in proper form.
3. On March 3, 2003, the Hearing Officer ordered the City to file a response to the protest on or before April 17, 2003.
4. The protest was classified as a redetermination.
5. The City filed its response on March 20, 2003.
6. On March 28, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before April 28, 2003.
7. The Taxpayer filed a reply on March 31, 2003.
8. The Hearing Officer issued an April 7, 2003 letter indicating a written decision would be issued on or before May 15, 2003.
9. The Taxpayer purchased a new vehicle outside of the State and registered the vehicle with ADOT using a City address.
10. The Taxpayer paid a Use Tax to the State.
11. The City assessed a Use Tax of \$774.72, a penalty of \$77.48, as well as accrued interest on the purchase of the vehicle by the Taxpayer
12. The vehicle was inspected and licensed in the City of Mesa.
13. The vehicle has never been used or stored at the address at which it was registered.
14. The Taxpayer has stored and used the vehicle in the City of Mesa.
15. The Taxpayer has stated Under Penalties of Perjury that this vehicle has never been at the City address in which it was registered.

### **CONCLUSIONS OF LAW**

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. The City imposes a Use Tax on the storage or use in the City of tangible personal property pursuant to Section 610.
3. Section 610 provides a presumption that all tangible personal property acquired by any person who at the time of acquisition resides in the City is acquired for storage or use in the City.
4. The Taxpayer has established that the vehicle was not acquired for storage or use in the City, but was acquired for storage or use in the City of Mesa.
5. The Taxpayer's protest should be approved.

### **ORDER**

It is therefore ordered that the February 23, 2003 protest by *Taxpayer* of a Use Tax assessed by the City of Phoenix shall be approved.

It is further ordered that the City of Phoenix shall abate the Use Tax, penalty, and interest assessed to *Taxpayer* for the vehicle purchase.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer