

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 15, 2003

Decision: MTHO #124

Tax Collector: City of Tucson

Hearing Date: August 7, 2003

DISCUSSION

Introduction

On April 30, 2003, *Taxpayer* filed a protest petition of a tax assessment made by the City of Tucson ("City"). On May 27, 2003, the Taxpayer filed an amended petition. After review, the City concluded on May 28, 2003, that the protest was timely and in the proper form. On June 3, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file any response on or before July 18, 2003. On June 24, 2003, the City filed a response to the protest. On June 26, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before July 17, 2003. On July 1, 2003 a Notice of Tax Hearing ("Notice") was issued setting the matter for hearing commencing on August 7, 2003. On July 2, 2003, the Taxpayer filed a reply to the City. Both the Taxpayer and City appeared and presented evidence at the August 7, 2003 hearing. On August 11, 2003, the Hearing Officer filed a letter indicating the record was closed and a written decision would be issued on or before September 22, 2003.

The Taxpayer is in the business of selling automobiles. The City conducted an audit for the period May 1998 through April 2002. As a result of that audit, the City assessed the Taxpayer for additional taxes in the amount of \$11,562.05 plus interest. The City also assessed the Taxpayer for penalties in the amount of \$2,312.48 which were subsequently waived by the City.

City Position

The City disallowed some exemptions claimed by the Taxpayer as being sales for resale. The disallowed sales were sales that took place at the Taxpayer's auction within the City. The City asserted that City Code Regulation 19-360.1 ("Regulation 360.1") provides as follows:

"A claim of purchase for resale or of purchase, rental, lease or license for rent, lease or license is valid only if the evidence is sufficient to persuade a reasonable prudent businessman that the particular item is being acquired for resale or for rental, lease or license in the ordinary course of business. The fact that the acquiring person possesses a privilege license number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence that exists objectively, and not merely in the mind of the vendor, that the property being acquired is

normally sold, rented, leased or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.”

The City disallowed those sales with no license number or ones that had been cancelled years earlier in which the Taxpayer had no documentation. The City argued that without some formal documentation, the City could not determine if the disallowed transactions were taxable or exempt. According to the City, the Taxpayer should obtain documentation from each customer to be able to make a determination of whether the customer is currently exempt.

Taxpayer Position

The Taxpayer made a number of sales of automobiles to organizations that represented they were going to resell the automobiles in the regular course of their business. The Taxpayer asserted that it is imperative to begin with the words of the operative statute that in this case was City Code Section 19-465(1) (“Section 465”). Section 465 provides an exemption for “sales of tangible personal property to a person regularly engaged in the business of selling such property”. The Taxpayer asserts that the City indicated they disallow “only those sales with no license number or ones that had been cancelled years earlier.” The Taxpayer argued the City has used the wrong test, as there is nothing in the words “regularly engaged in the business of selling” that implies the requirement that the purchaser “has a current Arizona transaction privilege tax license.” According to the Taxpayer, Regulation 360.1 requires evidence sufficient to “persuade a reasonably prudent businessman” that the purchaser is acquiring the item for resale in the regular course of business. The Taxpayer asserts that a reasonable prudent businessman would conclude that purchasers such as *Buyer A*, *Buyer B*, and *Buyer C* were purchasing automobiles that were destined for resale. Given past business dealings with these same purchasers the Taxpayer argued it was reasonable to conclude the sales were purchases by used car dealers for resale to the public.

According to the Taxpayer, another problem with the City’s approach is that the Taxpayer has no way of validating whether a transaction privilege tax license number is currently in force. For example, *Buyer B* provided the Taxpayer with what appears to be a valid Arizona transaction privilege tax number. However, the City determined the license was cancelled in October 1999. The Taxpayer argued that it should not be penalized because a purchaser has let its license get cancelled. The Taxpayer asserts that it has met the four statutory requirements for exemption and that the City has no authority to add a requirement that the purchasers provide written confirmation that they have a current Arizona transaction privilege tax license. Accordingly, the Taxpayer requested its protest should be granted.

ANALYSIS

The burden of proof is on the Taxpayer to demonstrate that the sales in question were intended for resale. Pursuant to Regulation 360.1, the Taxpayer needs to provide evidence to “persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease or license in the ordinary course of business.” For those sales referred to as sales to

Mexican companies in which there is a blank under the resale I.D.# column, we do not find the Taxpayer has provided sufficient evidence to meet its burden of proof. Based on the name and the fact they provided a resale I.D.# (even though cancelled) would provide sufficient evidence to “persuade a reasonable prudent businessman” that the sales to **Buyer B** were sales intended for resale. For the same reason, we find a “reasonably prudent businessman” would find the sales to **Buyer A** (even though resale I.D.# listed was not a valid number) were sales intended for resale. We find a “reasonably prudent businessman” would be more cautious on sales to **Buyer D**, **Buyer E**, **Buyer F**, and **Buyer C**. The names alone don’t tell a “reasonably prudent businessman” what type of business these companies are in. This is demonstrated by the fact that **Buyer E** is an auto glass company and it would not appear to be purchasing an automobile for resale in the ordinary course of business. As a result, we do not find there was sufficient evidence to demonstrate to a “reasonably prudent businessman” that the sales to **Buyer D**, **Buyer E**, and **Buyer C** were sales for resale in the ordinary course of business. Based on the above we find the Taxpayer’s protest should be granted for the sales to **Buyer B** and **Buyer A** and disallowed for all other sales.

FINDINGS OF FACT

1. On April 30 8, 2003, the Taxpayer filed a protest of a tax assessment by the City.
2. On May 27, 2003, the Taxpayer filed an amended petition.
3. After review, the City concluded on May 28, 2003 that the protest was timely and in proper form.
4. On June 3, 2003, the Hearing Officer ordered the City to file any response on or before July 18, 2003.
5. On June 24, 2003, the City filed a response to the protest.
6. On June 26, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before July 17, 2003.
7. On July 1, 2003, a Notice was issued setting the matter for hearing commencing on August 7, 2003.
8. On July 2, 2003, the Taxpayer filed a reply to the City.
9. Both the Taxpayer and the City appeared and presented evidence at the August 7, 2003 hearing.
10. On August 11, 2003, the Hearing Officer filed a letter indicating the record was closed and a written Decision would be issued on or before September 22, 2003.
11. The Taxpayer is in the business of selling automobiles.

12. The City conducted an audit for the period May 1998 through April 2002.
13. As a result of the audit, the City assessed the Taxpayer for additional taxes in the amount of \$11,562.05 plus interest.
14. The City also assessed the Taxpayer for penalties in the amount of \$2,312.48 that were subsequently waived by the City.
15. The City disallowed some exemptions claimed by the Taxpayer as being sales for resale.
16. The disallowed sales were sales that took place at the Taxpayer's auction within the City.
17. **Buyer B** provided the Taxpayer with what appeared to be a valid Arizona transaction privilege tax number.
18. The City determined the license from **Buyer B** had been cancelled in October of 1999.
19. For those sales referred to as sales to Mexican companies, the Taxpayer did not obtain any resale I.D.#.
20. The Taxpayer obtained a resale I.D.# from **Buyer A**.
21. The resale I.D.# for **Buyer A** was not a valid I.D.#.
22. The Taxpayer did not have a valid I.D.# for **Buyer D**, **Buyer E**, **Buyer F**, or **Buyer C**.
23. **Buyer E** is an auto glass company.

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. Section 465 provides an exemption for "sales of tangible personal property to a person regularly engaged in the business of selling such property".
3. Regulation 360.1 requires evidence sufficient to persuade a "reasonably prudent businessman" that the purchaser is acquiring the item for resale in the regular course of business.
4. There was sufficient evidence to "persuade a reasonably prudent businessman" that the sales to **Buyer B**, and **Buyer A** were sales intended for resale.

5. There was not sufficient evidence to “persuade a reasonably prudent businessman” that the sales to the Mexican companies, *Buyer D*, *Buyer E*, *Buyer F*, or *Buyer C* were sales intended for resale.
6. The Taxpayer’s protest should be granted for the sales to *Buyer B* and *Buyer A*.

ORDER

It is therefore ordered that the April 30, 2003 protest of *Taxpayer* of a tax assessment made by the City of Tucson is hereby granted in part and denied in part, consistent with the Discussion herein.

It is further ordered that the City of Tucson shall revise its tax assessment by allowing the claimed exemption for *Buyer B* and *Buyer A*.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer