

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 30, 2004
Decision: MTHO #154
Tax Collector: City of Tucson
Hearing Date: March 19, 2004

DISCUSSION

Introduction

On October 27, 2003, *Taxpayer* dba *ABC Car Rental* ("Taxpayer") filed a protest of a tax assessment made by the City of Tucson ("City"). After review, the City concluded on November 7, 2003 that the protest was timely and in the proper form. On November 17, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file any response to the protest on or before January 2, 2004. The City filed a response on December 30, 2003. On January 5, 2004, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before January 26, 2004. On January 15, 2004, a Notice of Tax Hearing ("Notice") was issued setting this matter for hearing on March 19, 2004. Both parties appeared and presented evidence at the March 19, 2004 hearing. On March 22, 2004, the Hearing Office issued a letter indicating the record was closed and that a written decision would be issued on or before May 3, 2004.

City Position

The Taxpayer is in the business of renting passenger vehicles. The City conducted an audit of the Taxpayer for the period January 1999 through November 2002 and assessed the Taxpayer for additional taxes in the amount of \$12,620.78 plus associated interest. A.R.S. Section 28-5810(A) "Section 5810(A)" imposes a five percent vehicle license tax surcharge on each rental contract that is for a period of one hundred eighty days or less. The business is required to collect the surcharge at the time the vehicle is rented. A.R.S. Section 5810(b)(2) ("Section 5810(B)") provides that the surcharge is not subject to the taxes imposed by Title 42, Chapter 5, Article 1 and Title 48, Chapter 26, Article 2. A.R.S. Section 42-5071(d) ("Section 5071") states that in computing the tax base for the personal property rental classification, the gross proceeds did not include any amount attributable to the car rental surcharge pursuant to Section 5810(A).

While the State does not tax the rental surcharge, the City asserts that it is taxable by the City. The City argued that Model City Code Section 450 ("Section 450") imposes the transaction privilege tax on the gross income derived from the business of renting tangible personal property. According to the City, Code Section 260(a) ("Section 260") excludes from gross income those motor vehicle registration fees, license fees and taxes, and lien taxes imposed by A.R.S. title 28 in connection with the initial purchase of a motor vehicle. Section 260(a) also states the terms "vendor" and "vendee" apply to a lessor and lessee of a motor vehicle if, ... "the lease agreement specifically requires the lessee to pay such fees or taxes. The City construes the lease referred to in Section 260(a) to be a long-term (over 180 days) agreement. Lastly, the City

argued that A.R.S. Section 42-6004 ("Section 6004") and Section 5810(B) do not exempt the vehicle license tax surcharge from municipal taxes. Based on the above, the City requested the assessment be upheld.

Taxpayer Position

The Taxpayer argued that the vehicle license tax surcharge imposed by Section 5810 is merely a pass through and not gross income. The Taxpayer argued that the City was taxing a tax. According to the Taxpayer the Arizona Department of Revenue ("DOR") excludes the amount from gross income and the cities of Phoenix and Mesa also exclude the surcharge from gross income. As a result, the Taxpayer requested a full abatement on the City tax assessed on the vehicle license tax.

ANALYSIS

The Taxpayer is required to collect a vehicle license tax surcharge from its customers pursuant to Section 5810. The surcharge reimburses the Taxpayer for the tax already paid to the State. In addition, if the Taxpayer collects surcharges in excess of the amount of vehicle license tax paid to the State then the excess shall be remitted to the State. The City agrees with the Taxpayer that the excess tax is not taxable gross income. Under the City's reasoning, if the Taxpayer did not pay the vehicle license tax upfront, but instead paid for the tax as it was collected as a surcharge then it would not be taxable gross income, whether or not the vehicle license tax is paid upfront or remitted as it is collected as a surcharge, the Hearing Officer concludes the tax is not part of the Taxpayer's gross income from the business of renting passenger vehicles. Accordingly, the Hearing Officer concludes the City's assessment of tax on the surcharge was erroneous and the Taxpayer's protest should be granted.

FINDINGS OF FACT

1. On October 27, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on November 7, 2003, that the protest was timely and in proper form.
3. On November 17, 2003, the Hearing Officer ordered the City to file any response to the protest on or before January 2, 2004.
4. The City filed a response to the protest on December 30, 2003.
5. On January 5, 2004, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before January 26, 2004.
6. On January 15, 2004, a Notice was issued setting this matter for hearing on March 19, 2004.
7. Both parties appeared and presented evidence at the March 19, 2004 hearing.

8. On March 22, 2004, the Hearing Officer issued a letter indicating the record was dosed and that a written decision would be issued on or before May 3, 2004.
9. The Taxpayer is in the business of renting passenger vehicles.
10. The City conducted an audit of the Taxpayer for the period January 1999 through November 2002 and assessed the Taxpayer for additional taxes in the amount of \$12,620.78 plus associated interest.
11. The Taxpayer collected a five percent vehicle license tax surcharge on each of its rental contracts that was for a period of one hundred and eighty days or less.
12. The tax surcharge either reimbursed the Taxpayer for the vehicle license tax already paid the State or was paid to the State if in excess of the amount already paid by the Taxpayer.

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 5810(A) imposes a five percent vehicle license tax surcharge on each rental contract that is for a period of one hundred eighty days or less.
3. The Taxpayer was required to collect the surcharge at the time they rented vehicles to their customers.
4. Section 450 imposes the transaction privilege tax on the gross income derived from the business of renting tangible personal property.
5. The vehicle license tax surcharge was not part of the gross income derived from the business of renting tangible personal.
6. The Taxpayer's protest should be granted.

ORDER

It is therefore ordered that the October 27, 2003 protest by *Taxpayer* dba *ABC Car Rental* of a tax assessment made by the City of Tucson is hereby granted.

It is further ordered that the City of Tucson shall revise its assessment by excluding the vehicle license tax surcharge from the taxable income during the audit period.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer