

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: May 3, 2002

Decision: MTHO #29

Taxpayer: Taxpayer

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On December 26, 2001, Taxpayer filed a protest appeal of the City of Phoenix ("City") tax assessment. After review of the protest, the City concluded the protest was timely and in the proper form. On January 7, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file their response to the protest on or before February 21, 2002. The protest was processed as a redetermination. On February 1, 2002, the City filed its response to the protest. The Hearing Officer ordered the Taxpayer to file his reply on or before March 13, 2002. Subsequently, the Taxpayer requested an extension in which to file his reply, which was granted to March 18, 2002. On March 18, 2002, the Taxpayer filed his reply. On March 19, 2002, the Hearing Officer issued a letter indicating a written ruling would be made on the protest on or before May 3, 2002.

The Taxpayer is an attorney whose firm represented Company A Automotive and Company B Corporation (Collectively, hereafter "Companies") in a complex civil litigation. Several years later the owner of Companies presented the Taxpayer with a new (2001) BMW car. The Taxpayer registered the vehicle with the State of Arizona ("State") in July of 2001 and at that time paid a use tax to the State. City tax is not collected at the time of registration. In November of 2001, the City assessed the Taxpayer \$1,094.35 for use tax and \$109.44 as a penalty for failure to remit tax when due.

City Position

City Code Section 14-620(a) ("Section 620(a)") indicates that any person who acquires tangible personal property from a retailer, whether or not such retailer is located in the City, when such person uses said property within the City shall be deemed liable for the tax. Further, the City asserted that City Code Section 14-200(a)(3) ("Section 200") states that "gross income" includes: all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness. Since the Taxpayer failed to provide any documentation that an equivalent local jurisdiction tax was paid in Wisconsin (state where car was purchased), the City asserts that the use tax should be upheld in full.

Taxpayer Position

The Taxpayer asserts that he made a mistake in paying the State use tax and is in the process of attempting to reverse that payment. The Taxpayer provided an affidavit from the owner of Companies swearing that the BMW car was a gift to the Taxpayer. Further, the Taxpayer asserted that there was no reduction of professional fees to Companies and there was no barter, forgiveness of debt, or exchange in any manner. As a result, the Taxpayer disputed the entire tax assessment.

ANALYSIS

Clearly, the Taxpayer received a new car that was purchased out of State to be used within the City. The sole issue is whether or not the Taxpayer is liable for a City use tax. The City has argued that since there has been no evidence that an equivalent tax has been paid at the time of purchase of the vehicle, then the Taxpayer owes a City use tax. The Hearing Officer concurs with the City that there has been no evidence presented that an equivalent tax was paid at the time of purchase. As a result, there may be an equivalent tax that is owed. However, the Hearing Officer is unable to conclude that the Taxpayer owes a use tax. Based on the evidence, the Taxpayer did not acquire the car. Further, there is no evidence to demonstrate that the Taxpayer received any gross income by receiving the car. The Hearing Officer concludes the car was a gift to the Taxpayer and as a result the Taxpayer is not liable for any City use tax.

FINDINGS OF FACT

1. On December 26, 2001, the Taxpayer filed a protest of the City's tax assessment.
2. After review of the protest, the City concluded the protest was timely and in the proper form.
3. On January 7, 2002, the Hearing Officer ordered the City to file their response to the protest on or before February 21, 2002.
4. The City filed its response on February 1, 2002.
5. The Hearing Officer ordered the Taxpayer to file his reply on or before March 13, 2002.
6. The Hearing Officer granted the Taxpayer's request for an extension until March 18, 2002.
7. On March 18, 2002, the Taxpayer filed his reply.
8. On March 19, 2002, the Hearing Officer issued a letter indicating a written ruling would be issued on or before May 3, 2002.
9. The Taxpayer is an attorney whose firm represented Companies in a civil litigation matter.
10. The owner of Companies presented the Taxpayer with a new 2001 BMW car as a gift of friendship.
11. The car was purchased out of State for use within the City.
12. The Taxpayer presented no evidence that an equivalent City tax was paid at the time the car was purchased.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for bearing or redetermination under the Model City Tax Code.
2. Section 620(a) imposes a use tax on any person acquiring tangible personal property from a retailer outside of the City when such property is used within the City.
3. The Taxpayer received tangible personal property that was purchased outside of the City for use within the City.
4. There was no evidence that the Taxpayer either acquired the tangible personal property or received any income as a result of receiving the tangible personal property.
5. The protest should be granted.

ORDER

It is therefore ordered that the December 26, 2001 protest of Taxpayer is hereby approved.

It is further ordered that the City of Phoenix shall abate the tax and associated penalties and interest assessed against Taxpayer.

It is further ordered that this decision is effective immediately.

Dated: May 3, 2002

Jerry Rudibaugh

Municipal Tax Hearing Officer