

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 24, 2003

Decision: MTHO #66

Tax Collector: City of Scottsdale

Hearing Date: December 17, 2002

DISCUSSION

Introduction

On August 28, 2002, "*Taxpayer*" filed a protest of a tax assessment of the City of Scottsdale ("City"). After review, the City concluded on September 10, 2002, that the protest was timely and in proper form. On September 16, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before October 31, 2002. The City filed its response on October 18, 2002. On October 24, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before November 14, 2002. The Taxpayer filed a reply on November 5, 2002. The matter was scheduled for hearing commencing on December 17, 2002. The City and Taxpayer both appeared at the December 17, 2002 hearing and presented evidence.

The Taxpayer purchased a vehicle from a dealer outside the State of Arizona ("State"). The Taxpayer did not pay any local sales tax at the time of purchase. When the Taxpayer registered the vehicle in the State, the State Department of Transportation ("DOT") required the State's portion of the use tax in the amount of \$1,166.70 to be paid. On March 19, 2002, the State Department of Revenue ("DOR") forwarded a report to the City with the vehicle information. As a result, the City sent an April 12, 2002 letter to the Taxpayer assessing him for City Use Tax in the amount of \$250.01.

City Position

The City imposes a use tax on any person who acquires tangible personal property from an out-of-City retailer when such person stores or uses said property within the City. In this case, the Taxpayer purchased a vehicle from an out-of-State retailer without paying any City tax or any equivalent out-of-City tax. The City asserted that the vehicle was purchased by the Taxpayer for use within the City. According to the City, the use tax was enacted in an effort to provide a level playing field for the local businesses. The City did not dispute the fact that the use tax is difficult to enforce because of the difficulty of knowing about out-of-City purchases. However, the City asserted that the use tax is uniformly enforced for those purchases the City becomes aware of. Vehicles are the most obvious purchase the City becomes aware of because the vehicle has to be registered within the State DOT. The City was not aware of any out-of-City purchases similar to the Taxpayer's purchase for which the City failed to assess a use tax.

Taxpayer Position

The Taxpayer argued that the City is trying to collect a sales tax disguised as a use tax. Further, the Taxpayer argued that the City cannot collect a sales tax on any item purchased out-of-State. The Taxpayer also asserted that the use tax ordinance is flawed and cannot be uniformly and properly collected. Lastly, the Taxpayer asserted that he was not "trying to get away with something," but he feels the City is trying to get away with something.

ANALYSIS

Clearly, the Taxpayer purchased a vehicle out-of-State and paid no local or State tax. It is also clear that the Taxpayer purchased the vehicle with the intent to use and did use the vehicle within the City. As a result, the City is authorized pursuant to Sections 610 and 620 to assess a use tax on the purchase. While the Taxpayer complained the City tax was an illegal Transaction Privilege Tax, the Hearing Officer disagrees with the Taxpayer. The City tax was a use tax in lieu of a Transaction Privilege Tax. The State also assessed a use tax on the Taxpayer. The use tax was enacted to preclude out-of-State companies from having an unfair advantage over local companies that are required to charge a transaction privilege tax. Otherwise, the City could lose substantial tax revenues on high value purchases made out-of-State. The Taxpayer is correct that it is difficult for the City to become aware of all out-of-State purchase that are subject to the use tax. However, there was no evidence to demonstrate that the City had not charged a use tax when it became aware of an out-of-State purchase that was subject to the use tax. The Hearing Officer also concludes that there was no evidence to demonstrate that the Taxpayer was “trying to get away with something.” Based on the above, the Taxpayer’s protest is denied.

FINDINGS OF FACT

1. On August 28, 2002, the Taxpayer filed a protest of a tax assessment of the City.
2. After review, the City concluded on September 10, 2002 that the protest was timely and in the proper form.
3. On September 16, 2002, the Hearing Officer ordered the City to file a response to the protest on or before October 31, 2002.
4. The City filed its response on October 18, 2002.
5. On October 24, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before November 14, 2002.
6. The Taxpayer filed a reply on November 5, 2002.
7. The matter was scheduled for hearing commencing on December 17, 2002.
8. The City and Taxpayer both appeared at the December 17, 2002 hearing and presented evidence.
9. The Taxpayer purchased a vehicle from a dealer outside the State.

10. The Taxpayer did not pay any local sales tax at the time of purchase.
11. When the Taxpayer registered the vehicle in the State, the DOT required the State's portion of the use tax in the amount of \$1,166.70 to be paid.
12. On March 19, 2002, the DOR forwarded a report to the City with the vehicle information.
13. The City sent an April 12, 2002 letter to the Taxpayer assessing him for City use tax in the amount of \$250.01.
14. While the Taxpayer purchased the vehicle out-of-State, the vehicle was stored or used within the City.
15. The use tax ordinance was enacted in an effort to provide a level playing field for local businesses.
16. The use tax is difficult to enforce because of the difficulty of knowing about out-of-City purchases.
17. Vehicles are the most obvious purchase the City becomes aware of because the vehicle has to be registered with the State DOT.
18. The City was not aware of any out-of-City purchases similar to the Taxpayers purchase for which the City failed to assess a use tax.

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 610 authorizes the City to impose a tax on the storage or use in the City of tangible personal property.
3. Section 620 makes the person who acquires the tangible personal property from a retailer for use within the City liable for the use tax, except that a receipt from a retailer

separately charging the tax will relieve the person from further liability.

4. There was no evidence to demonstrate that the Taxpayer had paid any local or State tax on the purchase of a vehicle from out-of-State.
5. There was no evidence to demonstrate that the use tax is not uniformly enforced.
6. The City's assessment of a use tax pursuant to Sections 610 and 620 was proper.
7. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the August 28, 2002 protest of *Taxpayer* of the City of Scottsdale tax assessment is hereby denied.

It is further ordered that this decision shall be effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer