

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: September 30, 2005

Decision: MTHO #240

Tax Collector: City of Phoenix

Hearing Date: August 8, 2005

### **DISCUSSION**

#### **Introduction**

On April 20, 2005, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on April 22, 2005 that the protest was timely and in the proper form. On April 27, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to provide a response to the protest on or before June 13, 2005. On May 11, 2005, the City filed a response to the protest. On May 31, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 21, 2005. On June 7, 2005, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on August 8, 2005. The City appeared and presented evidence at the August 8, 2005 hearing. The Taxpayer failed to appear at the hearing. On August 9, 2005, the Hearing Officer granted the Taxpayer until September 7, 2005 to provide good cause for failing to appear at the hearing. On September 12, 2005, the Hearing Officer indicated the Taxpayer had failed to provide good cause, that the record was now closed, and a written decision would be issued on or before October 27, 2005.

#### **City Position**

The Taxpayer purchased a 2005 Porsche Carrera from a dealer in Kansas. At the time of purchase, the Taxpayer did not pay any city or state tax. At the time the vehicle was registered in the State of Arizona (“State”), the Department of Revenue (“DOR”) assessed the Taxpayer for State use tax. Subsequently, the City assessed the Taxpayer for City use tax in the amount of \$1,863.94. The City also assessed the Taxpayer for a penalty for failure to timely pay in the amount of \$169.45. The City recommended the penalty be waived.

The City assessed the use tax pursuant to City Code Section 14-610 (“Section 610”) which provides as follows: “[i]t shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the City is acquired for storage or use in this City, until the contrary is established by the taxpayer.” The City asserted that the Taxpayer resided at \_\_\_\_\_ in the City which created the nexus for the use tax in the City. The City provided a copy of the purchase contract between the Taxpayer and the Kansas dealer which showed the Taxpayer’s address to be in the City. The City provided a copy of the purchase contract between the Taxpayer and the Kansas dealer which showed the Taxpayer’s address to be in the City. The City provided a copy of the odometer disclosure statement which showed the Taxpayer’s

address to be in the City. The City also provided a copy of the Arizona Motor Vehicle Division Title and Registration Application (“MVD Application”) in which the Taxpayer certified his address was in the City. In response to the Taxpayer, the City argued there was no evidence to support the claim that the vehicle was intended for use in the City of Flagstaff. Based on all the above, the City requested the assessment be upheld.

### **Taxpayer Position**

The Taxpayer argued that while the MVD Application listed his address in the City, this was an error by the MVD clerk. The Taxpayer asserted the vehicle was intended for use in the City of Flagstaff. The Taxpayer argued that it would not be legal, ethical, or correct that a clerical error should result in a windfall for the City. The Taxpayer also noted that the penalty assessed in this matter was incorrectly assessed while awaiting a decision on the underlying tax.

### **ANALYSIS**

The City is authorized pursuant to Section 610 to impose a tax on the purchase of vehicles brought into the City for use or storage. Section 610 also provides a presumption that a person residing in the City has acquired the vehicle for storage or use in the City, until the contrary is established by the Taxpayer. Based on the evidence, it is clear that the Taxpayer resides in the City. The Taxpayer failed to provide evidence to rebut the presumption that the vehicle was acquired for storage or use in the City. As a result, the Taxpayer’s protest of the use tax is denied. Any penalties should be waived since they were assessed while the underlying tax was under appeal.

### **FINDINGS OF FACT**

1. On April 20, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on April 22, 2005 that the protest was timely and in the proper form.
3. On April 27, 2005, the Hearing Officer ordered the City to provide a response to the protest on or before June 13, 2005.
4. On May 11, 2005, the City filed a response to the protest.
5. On May 31, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 21, 2005.
6. On June 7, 2005, a Notice scheduled the matter for hearing commencing on August 8, 2005.

7. The City appeared and presented evidence at the August 8, 2005.
8. The Taxpayer failed to appear at the hearing.
9. On August 9, 2005, the Hearing Officer granted the Taxpayer until September 7, 2005 to provide good cause for failing to appear at the hearing.
10. On September 12, 2005, the Hearing Officer indicated the Taxpayer had failed to provide good cause, that the record was now closed, and a written decision would be issued on or before October 27, 2005.
11. The Taxpayer purchased a 2005 Porsche Carrera from a dealer in Kansas.
12. At the time of purchase, the Taxpayer did not pay any city or state tax.
13. At the time the vehicle was registered in the State, the DOR assessed the Taxpayer for State use tax.
14. Subsequently, the City assessed the Taxpayer for City use tax in the amount of \$1,863.94.
15. The City also assessed the Taxpayer for a penalty for failure to timely pay in the amount of \$169.45.
16. The City recommended the penalty be waived.
17. The vehicle purchase contract showed the Taxpayer's address to be in the City.
18. The odometer disclosure statement showed the Taxpayer's address to be in the City.
19. The Taxpayer certified in the MVD Application that his address was in the City.
20. There was no evidence that the Taxpayer's address was in the City of Flagstaff.
21. The penalty was assessed while the Taxpayer was in the process of appealing the underlying 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. The City is authorized pursuant to Section 610 to impose a tax on the purchase of vehicles brought into the City for use or storage.
3. Section 610 provides a presumption that a person residing in the City as acquired the vehicle for storage or use in the City.
4. The Taxpayer resides in the City.
5. The Taxpayer failed to provide evidence to rebut the presumption that the vehicle was acquired for storage or use in the City.
6. With the exception of the penalties, the Taxpayer's protest should be denied.
7. All penalties should be waived.

**ORDER**

It is therefore ordered that the April 20, 2005 protest of *Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied with the exception of the penalties.

It is further ordered that the City of Phoenix shall waive all penalties imposed.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer