

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 20, 2005

Decision: MTHO #248

Taxpayer:

Tax Collector: City of Tempe

Hearing Date: November 14, 2005

DISCUSSION

Introduction

On June 29, 2005, *Taxpayer* filed a protest of a tax assessment made by the City of Tempe ("City"). After review, the City concluded on July 6, 2005, that the protest was in the proper form but not timely. On July 14, 2005, the Taxpayer filed an addendum to its protest. On July 18, 2005, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the Taxpayer to file any response to the timeliness issue on or before August 1, 2005. On August 4, 2005, the Hearing Officer concluded the Taxpayer had provided a response on the timeliness issue sufficient to grant a hearing. On August 4, 2005, the Hearing Officer ordered the City to file any response to the protest on or before September 19, 2005. On September 16, 2005, the City filed a response to the protest. On September 21, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before October 12, 2005. On September 27, 2005, a Notice of Tax Hearing ("Notice") scheduled the matter for hearing commencing on November 14, 2005. Both parties appeared and presented evidence at the November 14, 2005, hearing. On November 15, 2005, the Hearing Officer indicated the record was closed and a written decision would be issued on or before January 3, 2006.

City Position

According to the City, the Taxpayer sells and installs toppers and campers onto pickups at their business location in the City. The Arizona Department of Revenue ("DOR") conducted a multijurisdictional privilege and use tax audit of the Taxpayer for the period of February 1, 2001 through August 31, 2004. The DOR disallowed deductions for certain Out-of-State sales claimed by the Taxpayer. Based on information provided by the DOR, the City issued an assessment for taxes due of \$5,413.15, and interest up through April 30, 2005, in the amount of \$1,454.39.

The City noted that City Code Section 16-100 ("Section 100") defines Out-of-State sale as follows:

"Out-of-State sale means the sale of tangible personal property and job printing if all of the following occur:

1. The order is placed from without the State of Arizona; and

2. The order is placed by other than a resident of the State to be determined in a manner similar to “resides within the City”; and
3. The property is delivered to the buyer at a location outside the State; and
4. The property is purchased for use outside the State.”

The City asserted that all four criteria must be met for a sale to qualify as an Out-of-State sale. The City argued that the business practices of the Taxpayer are such that both order placement and delivery of the campers occur at the Taxpayer’s location in the City. According to the City, a customer must have their truck brought to the City location in order to have the topper or camper installed. The City also argued that a commitment to purchase is not made until the customer physically brings the truck to the Taxpayer’s City location to complete the purchase. Based on the above, the City requested its assessment be upheld.

Taxpayer Position

The Taxpayer protested the disallowance of deductions for claimed Out-of-State sales. The Taxpayer asserted they had documentation that demonstrates that 100 per cent of the sales in question were made to customers who had Out-of-State driver’s licenses and Out-of-State addresses. According to the Taxpayer, a delivery fee was charged and the units were delivered to an Out-of-State location by paid personnel. The Taxpayer also provided tax exemption certificates signed by the customers. The Taxpayer acknowledged that the toppers and campers were installed on the customer’s vehicle at the Taxpayer’s City location. Based on all the above, the Taxpayer requested the claimed exempt Out-of-State sales to be allowed and the assessment be reversed.

ANALYSIS

The burden of proof is on the Taxpayer to demonstrate certain sales are eligible for an exemption. In this case, the Taxpayer would need to show that all four of the criteria listed in Section 100 have been met for each of the sales in question. The Taxpayer provided evidence that the orders were placed from without the State either by telephone or by email. The Taxpayer provided evidence that the purchaser’s had a legal address from without the State and had a non-State driver’s license. The Taxpayer provided evidence that the topper/camper was purchased for use outside the State. The only question remaining was whether or not the topper/camper was delivered to a buyer at a location outside the State. Based on the evidence, the topper/camper was installed on the customer’s vehicle at the City location. The installation would have included attaching the topper/camper onto the customer’s vehicle. The Taxpayer would then drive the vehicle with the attached topper/camper to a location outside the State where the customer would then take the vehicle. The Taxpayer argued that delivery occurred when the vehicle was turned over to the customer while the City argued that delivery occurred when the topper/camper was physically attached to the customer’s vehicle at the

Taxpayer's City location. We concur with the City. We find that delivery of the topper/camper is complete once it has been attached to the customer's vehicle. At that point, it would be almost impossible to reverse the transaction. If the topper/camper were simply loaded onto the customer's vehicle, we would find the delivery would occur when the vehicle was turned over to the customer.

FINDINGS OF FACT

1. On June 29, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on July 6, 2005 that the protest was in the proper form but not timely.
3. On July 14, 2005, the Taxpayer filed an addendum to its protest.
4. On July 18, 2005, the Hearing Officer ordered the Taxpayer to file any response to the timeliness issue on or before August 1, 2005.
5. On August 4, 2005, the Hearing Officer concluded the Taxpayer had provided a response on the timeliness issue sufficient to grant a hearing.
6. On August 4, 2005, the Hearing Officer ordered the City to file any response to the protest on or before September 19, 2005.
7. On September 16, 2005, the City filed a response to the protest.
8. On September 21, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before October 12, 2005.
9. On September 27, 2005, a Notice scheduled the matter for hearing commencing on November 14, 2005.
10. Both parties appeared and presented evidence at the November 14, 2005, hearing.
11. On November 15, 2005, the Hearing Officer indicated the record was closed and a written decision would be issued on or before January 3, 2006.
12. The Taxpayer sells and installs toppers and campers on to pickups at their business.
13. The DOR conducted a multijurisdictional privilege and use tax audit of the Taxpayer for the period of February 1, 2001, through August 31, 2004.
14. The DOR disallowed deductions for certain Out-of-State sales claimed by the

Taxpayer.

15. Based on information provided by the DOR, the City issued an assessment for taxes due of \$5,413.15 and interest up through April 30, 2005, in the amount of \$1,454.39.
16. The Taxpayer provided documentation to demonstrate that the sales in question were made to customers who had Out-of-State driver's licenses and Out-of-State addresses.
17. The toppers and campers for the sales in question were physically attached to the customer's vehicle at the Taxpayer's City location and then driven Out-of-State by the Taxpayer and turned over to the customer.

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 burden of proof is on the Taxpayer to demonstrate that certain sales are eligible for an exemption.
3. The Taxpayer would need to demonstrate that all four criteria listed in Section 100 were met for each of the sales in question to be eligible for an exemption.
4. The toppers/campers that were installed on the customer's vehicle at the Taxpayer's City location were delivered in the City.
5. The Taxpayer has failed to meet its burden of proof that the sales in question were Out-of-State sales pursuant to Section 100.
6. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the June 29, 2005 protest of *Taxpayers* tax assessment made by the City of Tempe is hereby denied.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer