Decision Date: July 2, 2007
Decision: MTHO #324
Taxpayer: ***Taxpayer***
Tax Collector: City of Mesa
Hearing Date: February 14, 2007

DISCUSSION

Introduction

On September 8, 2006, ***Taxpayer*** ("Taxpayer") filed a protest of a tax assessment made by the City of Mesa ("City"). After review, the City concluded on September 26, 2006 that the protest was timely and in the proper form. On October 2, 2006, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before November 16, 2006. On October 30, 2006, the City sent an email requesting an extension until November 30, 2006 to file their response. On October 31, 2006, the Hearing Officer granted the City an extension until November 30, 2006. On November 27, 2006, the City filed a response to the protest. On November 30, 2006, the Hearing Officer ordered Taxpayer to file any reply on or before December 21, 2006. On December 13, 2006, Taxpayer filed a reply. On December 15, 2006, a Notice of Tax Hearing ("Notice") scheduled the matter for Hearing commencing on February 14, 2007. Both parties appeared and presented evidence at the February 14, 2007 hearing. On February 15, 2007, the Hearing Officer indicated that the parties had agreed to the following schedule: the City would file a response brief on or before April 16, 2007; and, Taxpayer would file a reply brief on or before May 31, 2007. On April 10, 2007, the City sent an email requesting an extension until April 23, 2007 to file their brief. On April 11, 2007, Taxpayer sent an email opposing the City's request. On April 11, 2007, the Hearing Officer granted the City an extension until April 23, 2007 to file a response brief and Taxpayer an extension until June 7, 2007 to file a reply brief, and ordered the City to make any adjustments required by City Code Section 570(b)(8) ("Section 570(b)(8)") within 53 days. On April 23, 2007, the City filed a response brief. On June 7, 2007, Taxpayer filed a reply brief. On June12, 2007, the Hearing Officer indicated that the record was closed and a written decision would be issued on or before July 27, 2007.

City Position

The City performed an audit of Taxpayer for the period of January 1, 2002 through December 31, 2005. During the audit period, Taxpayer was in the business of selling recreational vehicles in the City. As a result of the audit, the City assessed Taxpayer for taxes due in the amount of $34,394.01, interest up through May 31, 2006 in the amount of $11,109.91, and a ten percent penalty totaling $3,670.25 for failure to timely pay taxes. The City noted that prior to the issuance of the assessment, Taxpayer paid $7,821.70 in tax on agreed upon items. After applying the payment to the assessment, the City indicated a net balance of $41,352.47 remained.

The City disputed Taxpayer's claim that the City erroneously assessed tax on sixteen sales that qualify as exempt out-of-State sales. The City noted that Taxpayer conceded at the hearing that the sale to ***Customer A*** was taxable which reduced the disputed number of sales to fifteen. The

City asserted that City Code Section 5-10-460 ("Section 460") imposes a tax on the activity of selling vehicles at retail. The City indicated that City Code Section 5-10-465(b) ("Section 465(b)") contains an exemption for the gross receipts derived from "out-of-State sales."

According to the City, an out-of-State sale must demonstrate the following three elements: the sale of tangible personal property where the order is placed by other than a resident of the State; the property is delivered to the buyer at a location outside the State, and the property is purchased for use outside of the State. The City further noted that City Code Section 5-10-100 ("Section 100") provides that "other than a resident of the state" is determined in a manner similar to "reside within the City." The definition of "resides within the City" includes "in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City." The City indicated that City Regulation 5-10-350.1 ("Regulation 350.1") requires that for the exemption to apply, there must be "evidence that would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by regulation." The City acknowledged that historically, the City would accept an Arizona Department of Revenue Form 5000 ("ADOR 5000"), a City exemption certificate, or another city's exemption certificate to document the exemption. The City noted that City Regulation 5-10- 360.2 (Regulation 360.2") codifies that the minimum acceptable proof and documentation shall be the completion- at the time of the transaction- of an exemption certificate.

Of the remaining fifteen sales in dispute, the City asserted there was a disagreement over one transaction where the delivery location is at issue; there was disagreement over two transactions where both the use by and residency of an entity are at issue; and, there was disagreement over twelve transactions where the residency and use by an individual are at issue. The following are summary reasons for the City's disallowance of each of the transactions in dispute:

Transaction No. 3 – Sale to ***Customer B*** – The City indicated this sale was disallowed because Taxpayer failed to maintain a completed delivery affidavit. The City asserted that the sale would have been allowed as an exempt sale if Taxpayer had kept the delivery affidavit.

Transactions Nos. 1, 2, and 6 – Sales to ***Customer C***, ***Customer D***, and ***Customer E*** – The City asserted that for each of these sales Taxpayer had information in its files, such as local business numbers, or checks drawn on local banks, that would place a reasonably prudent businessman on notice to inquire into the significance of these factors. The City indicated that for ***Customer C*** and ***Customer E***, Taxpayer was given an Arizona telephone number at the time of sale which should have raised questions. The City argued that if Taxpayer had questioned the ***Customer C*** sale, they would have determined that ***Customer C*** had an Apache Junction address and wintered every year in Apache Junction. If Taxpayer would have questioned the ***Customer E*** transaction, it would have determined the vehicle was serviced in the City seven weeks after it was delivered to New Mexico. As to the ***Customer D*** transaction, the City asserted that if Taxpayer had questioned why the down payment check had a City of Tempe address, they could have determined ***Customer D*** owned the Tempe property since 1985.

Transaction No. 8 – Sale to ***Customer F*** – The City argued that Taxpayer should have asked additional questions of ***Customer F*** because the purchaser's down payment was made by check which showed a Sun City West address. The City indicated that the Illinois address of ***Customer F*** only listed a P.O. Box and no physical address.

Transaction No. 13 – Sale to ***Customer G*** – The City indicated Taxpayer's sales documentation showed that the buyer had a home in Casa Grande as well as an Arizona telephone number. The City asserted that this information should have caused Taxpayer to ask additional questions.

Transaction No. 9 – Sale to ***Customer H*** – The City indicated Taxpayer was aware **Customer H** had an Arizona phone number and had regular employment in Arizona. The City argued Taxpayer was put on notice to question the buyer's claim of being a non-resident of the State.

Transaction No. 14 – Sale to ***Customer I*** – According to the City, Taxpayer was aware ***Customer I*** had a local telephone number, a local address, and local employment. The City asserted Taxpayer's failure to ask additional questions shows a lack of good faith.

Transaction No. 12 – Sale to ***Customer J*** – The City indicated Taxpayer had documentation to show this vehicle was titled in Arizona and the buyer had an Apache Junction address. The City argued Taxpayer could not have accepted an exemption certificate in good faith.

Transaction Nos. 10 and 11 – Sales to ***Customer K*** and ***Customer L*** – According to the City, both ***Customer K*** and ***Customer L*** had home and business Arizona telephone numbers. In addition, both ***Customer K*** and ***Customer L*** each had an Oregon driver's license issued on the same date for the same address. The ***Customer K*** sale had a sales date of August 13, 2003 and ***Customer L*** **s**ale had a sales date of August 5, 2003 and yet both reflected a sales date of August 29, 2003 on the City exemption certificate. The City argued Taxpayer should have been on notice to inquire on how these transactions were related.

Transaction No. 16 – Sale to ***Customer M*** – The City noted that Taxpayer had documentation showing ***Customer M*** had an Arizona driver's license issued to a Lake Havasu City address and ***Customer M*** used a check drawn on an account with the Lake Havasu City address to pay the down payment. The City indicated that ***Customer M 's*** only tie to South Dakota was a driver's license that was issued only days before the sale and contained only a post office box number for a South Dakota address. The City noted the same post office box number was also used by customer ***Customer G.***

Transaction No. 4 – Sale to ***Customer N*** – According to the City, the ***Customer N*** entered into a sales contract on November 24, 2002. The documentation indicated the ***Customer N*** resided in Phoenix, the husband and wife were employed in Phoenix and Scottsdale, respectively, and the ***Customer N*** had Arizona checking and savings accounts. The City noted that on January 15, 2003, Taxpayer rewrote the contract to indicate a Montana address and switched to an out-of-State delivery. ***Customer N*** also provided a Montana driver's license issued on December 30, 2002.

Transaction Nos. 5 and 15 – Sales to ***Customer O*** and ***Customer P*** – The City asserted both

contracts were originally written as sales to undisputed Arizona residents. The first sale was to ***Customer Z*** on December 6, 2002. The second sale was to ***Customer Y*** on March 4, 2004. The ***Customer Z 's*** had a Payson address and the ***Customer Y' s*** had a Gilbert address. Subsequently, both contracts were rewritten to show sales to Montana LLC's. The City indicated each of the buyers were given instructions on how to set up the LLC and informed through correspondence from a Montana attorney they could operate the motor vehicle in their state of residency and also informed the vehicle would never have to come to Montana. The City asserted the set ups were accomplished with the full knowledge of Taxpayer. The City argued that each of the transactions should be treated as an artificial contrived transaction pursuant to City Code Section 5-10-220 ("Section 220") which would allow the City to disregard the transaction. The City also argued the sales would not qualify as exempt because the vehicles were not being purchased for use outside the State.

Taxpayer Position

Taxpayer asserted that the City's claimed additional privilege tax related to a total of twenty nine retail sales. Taxpayer conceded fourteen of those sales and protested the remaining fifteen sales. Taxpayer argued that each of the protested sales qualified as out-of-State exempt sales. According to Taxpayer, the City has acknowledged that they have historically accepted an exemption certificate to document out-of-State sales. Taxpayer indicated they provided complete exemption certificates for each of the protested sales. Taxpayer asserted that the City disallowed each of the protested sales because of the presence of factors known to Taxpayer at the time of the transaction.

Taxpayer argued that the City's reliance on information was misplaced and the fifteen protested sales were exempt sales. Taxpayer's summary arguments for each sale are as follows:

Transaction Nos. 5 and 15 – Sales to ***Customer O*** and ***Customer P*** – In reply to the City, Taxpayer argued that neither the City Code nor its regulations draw any distinction between sale to an individual as compared to a sale to an LLC. According to Taxpayer, the City may not properly argue a sale to a Montana LLC is taxable as an artificially contrived tax avoidance device without such a provision in the City Code/Regulations.

Transactions Nos. 2, 6, 8, and 9 – Sales to ***Customer D***, ***Customer E***, ***Customer F*** , and ***Customer H*** – According to Taxpayer, the City's argument would result in the term "purchased for use outside the State" meaning the recreational vehicle may never be used in the State. Taxpayer asserted that under the City's reasoning, a California customer could not drive through Arizona to go to New Mexico as the vehicle would not be solely "purchased for use outside the State."

Transaction Nos. 2, 8, 14, and 16 – Sales to ***Customer D***, ***Customer F***, ***Customer I***, and ***Customer M*** – Taxpayer indicated that the City had expressed concerns over each of these sales because the customer's down payment was per a check on an Arizona bank. Taxpayer asserted that a customer's bank account offers no reliable evidence that a sale was not a tax exempt out-of-State sale.

Transaction No. 4 – Sale to ***Customer N*** – Taxpayer indicated that the City argued the sale was taxable because there was no evidence that ***Customer N*** was a Montana resident at the time of sale. According to Taxpayer, both of the ***Customer N*** had attested on the exemption certificate and the Customer Survey that they were not Arizona residents.

Transaction No. 5 – Sale to ***Customer O*** – According to Taxpayer, the City had argued this sale should be deemed taxable because the customer purchased a service contract from Taxpayer. Taxpayer asserted the argument was ludicrous as the customer could obtain service under the contract anywhere in the continental United States.

Transaction Nos. 11 and 16 – Sales to ***Customer L*** and ***Customer M*** – Taxpayer indicated the City had concluded these were not out-of-State sales because these customers had Arizona driver's licenses. Taxpayer argued that the City's reliance upon an Arizona driver's license was misplaced because a person need not be an Arizona resident to qualify for and obtain an Arizona driver's license.

Transaction Nos. 1, 6, 9, 11, 13, and 14 – Sales to ***Customer C***, ***Customer E***, ***Customer H*** , ***Customer K*** , ***Customer L*** , ***Customer G*** , and ***Customer I*** – Taxpayer asserted the City's reliance upon an Arizona telephone number was misplaced. Taxpayer argued that an Arizona telephone number did not provide a reasonable basis to conclude the sales were not exempt as out-of-State.

Transaction Nos. 2, 6, 8, 9, 10, 11, 12, 13, and 16 – Sales to ***Customer D***, ***Customer E***, ***Customer F*** , ***Customer H*** , ***Customer K*** , ***Customer L*** , ***Customer J*** , ***Customer G*** and ***Customer M*** – Taxpayer disputed the City's conclusion that a customer was an Arizona resident if they owned property in Arizona. Taxpayer asserted that a customer did not need to be an Arizona resident to own property in Arizona. According to Taxpayer, it was just as likely that the property owned was the customer's winter residence in Arizona.

Transaction Nos. 9 and 14 – Sales to ***Customer H*** and ***Customer I*** – Taxpayer acknowledged that ***Customer H***'s credit application indicated the customer was employed in Arizona. Taxpayer asserted ***Customer H*** was a retired "snowbird" that winters in Apache Junction and worked for her homeowner's association on a seasonable basis. Taxpayer also acknowledged that ***Customer I*** was employed in Arizona. According to Taxpayer, ***Customer I*** was on a temporary 18 month job assignment in Arizona which would not disqualify the sale as a tax exempt out-of-State sale.

Transaction No. 1 – Sale to ***Customer C*** – Taxpayer disputed the City's conclusion that because this customer was renting property in Apache Junction the sale did not qualify as a tax exempt out-of-State sale. Taxpayer argued that the customer had a winter vacation property in Apache Junction but was not a legal resident in Arizona.

Taxpayer argued there was no evidence Taxpayer had acted in bad faith in accepting and relying upon the out-of-State exemption certificates that were signed by each of the customers. Taxpayer noted that the Arizona Form 5000 states that it is the customer's responsibility to provide truthful information within the certificate and that Taxpayer is entitled to accept and rely upon the certificate. Taxpayer asserted it is improper to burden Taxpayer with a duty to conduct an

inquisition of its customers. According to Taxpayer, if the City now believes a particular sale does not qualify as an out-of-State sale, the City should pursue collection from the customer. Based on all the above, Taxpayer argued the fifteen sales should be ruled to be tax exempt out-of-State sales.

ANALYSIS

The only remaining issue in this matter is whether or not fifteen retail sales of recreational vehicles by Taxpayer qualify as tax exempt out-of-Sate sales. Section 100 defines a sale to be an out-of-State sale if the following occur:

1. 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

2. The property is delivered to the buyer at a location outside the state; and

3. The property is purchased for use outside the state.

Section 100 defines "resides within the City" as meaning the legal address for individuals to be determinative of residence. In this case, the sales of the RV's by Taxpayer were taxable retail sales pursuant to Section 460 unless Taxpayer could prove pursuant to Section 460(b) that the sales were not retail sales. Section 465(b) contains an exemption for out-of-State sales. City Code Section 360 ("Section 360") requires Taxpayer to have adequate proof and documentation for all claimed exemptions. Lastly, Regulation 360.2 provides that an exemption certificate is the minimum acceptable proof and the information provided must validate the claimed exemption. Consistent with the presentation by the parties, we will perform a transaction by transaction analysis of the disputed sales. We start with the premise that the burden of proof is on Taxpayer to demonstrate they are entitled to an out-of-State exemption pursuant to Sections 465(b) and 360.

Transaction Nos. 5 and 15 – ***Customer O*** and ***Customer P*** – For each of these transactions, the LLC members (***Customer Z*** 's and ***Customer Y*** 's) purchased their RV's with City tax included and within several months the ***Customer Z'***s and ***Customer Y'***s had the contracts rewritten as non-taxable sales to the Montana LLC's. We can find no reason for the switch to the Montana LLC's other than to avoid taxes. There was no evidence of any business reason for the switch. We are also not convinced that the RV's were purchased by members that were residents of Arizona that were not going to use the vehicles in the State. Even though the ***Customer Z'***s and ***Customer Y'***s may have claimed these sales were exempt, Taxpayer had sufficient knowledge to question the claimed exemption and to protect themselves by contracting with the ***Customer Z'***s and ***Customer Y'***s to pay the tax if the exemptions were denied. Based on the above, Transactions Nos. 5 and 15 are disallowed as exempt out-of-State sales.

Transaction No. 3 – ***Customer B***– The only issue with this transaction was whether or not there was credible evidence of an out-of-State delivery. After review of the exemption certificate signed by ***Customer B***, we are unable to conclude there was credible evidence to demonstrate the RV was delivered to the buyer outside of the State. Accordingly, we must deny the claimed

exempt out-of-State sale.

Transaction No. 1 – ***Customer C*** – The City had argued that because the customer had included an Arizona telephone number in the sales documentation, Taxpayer should have been on notice that the sale might not qualify as an out-of-State sale. We must disagree with the City's conclusion. We find it was reasonable for Taxpayer to rely on the completed exemption form and that an Arizona telephone number would not provide a reasonable basis for Taxpayer to ask additional questions. Based on the above, we conclude that the ***Customer C*** sale should be allowed as an exempt out-of-State sale.

Transaction No. 2 – ***Customer D*** – Taxpayer relied on the completed exemption certificate signed by ***Customer D*** as well as an Oregon driver's license and an Oregon legal address. We do not find the fact that the customer's down payment was per a check drawn on an Arizona bank to be sufficient to cause Taxpayer to ignore the exemption certificate and do further investigation. We conclude this sale should be allowed as an exempt out-of-State sale.

Transaction No. 4- ***Customer N*** - At the time of the time of the original sales contract on November 24, 2002, the documentation clearly demonstrated this was not an exempt out-of-State sale. The question is whether or not at the time the contract was rewritten on January 15, 2003 was there sufficient documentation to demonstrate it was now an out-of-State sale. We believe there was sufficient evidence to support an out-of-State address and the customers certified on the exemption certificate they qualified for an out-of-State exemption. While the City expressed concern because ***Customer N*** didn't have a Montana driver's license, we find there was sufficient evidence for a reasonably prudent businessman to conclude ***Customer N*** was a resident of Montana along with her husband. Based on the above, this transaction should be allowed as an exempt out-of-State sale.

Transaction No. 6 – ***Customer E*** – At the time of sale, Taxpayer had a State and City exemption certificate that was filled out and signed by the customer. The customer had included a California address and drivers license. The customer had also certified that delivery was made out-of-State. The City opined that an Arizona telephone number on the sales documentation should have led Taxpayer to investigate further. We must disagree. As pointed out by Taxpayer, there are various reasons why a person may have an Arizona telephone number without being an Arizona resident. We conclude a reasonably prudent businessman acting in good faith would have accepted the documentation from the customer.

Transaction No. 8 – ***Customer F***– At the time of sale, Taxpayer relied on the completed State and City exemption certificates. While the customer claimed an Illinois address, we note it was only a P.O. Box No. and not a physical address. The City concluded that Taxpayer should have further investigated the customer because of the P.O. Box No., the customer's down payment was on a check with an Arizona address and the exemption certificate showed a local Arizona address. Based on the overall facts, we agree with the City. We conclude that a reasonably prudent businessman would have at least questioned whether the RV was going to be used in Arizona. Based on all the above, we do not find Taxpayer has met their burden of proof of demonstrating there was an exempt out-of-State sale.

Transaction No. 9 – ***Customer H*** – At the time of sale, Taxpayer relied on completed State and City exemption forms, out-of-State delivery affidavit and Florida drivers license. The City concluded Taxpayer should have further investigated because the sales documentation included an Arizona telephone number, the credit application included an Arizona address, and the buyer was employed in Arizona. Based on all the facts, we agree with the City for the same reasons set forth for in Transaction No. 8 above.

Transaction No. 10 – ***Customer K*** – At the time of the sale, Taxpayer relied on State and City exemption forms, out-of-state delivery affidavit, and Oregon driver's license. The City concluded Taxpayer should have investigated further because the sales documentation included an Arizona telephone number, an Arizona address, and the insurance coverage was based on an Arizona address. The City also noted the date of sale was August 13, 2003 and the Oregon driver's license was dated August 21, 2003. The Oregon address for ***Customer K*** was the same Oregon address provided for customer ***Customer L***. For the same reasons set forth in Transaction No. 8 above, we find that Taxpayer has failed to meet its burden of proof of demonstrating this was an exempt out-of-State sale.

Transaction No. 11 – ***Customer L*** – At the time of sale, Taxpayer relied on State and City exemption forms, out-of-State delivery affidavits, an Oregon driver's license. The City concluded Taxpayer should have further investigated because the sales documentation included Arizona telephone numbers for both home and work. We note that the Oregon driver's was dated the same date as the Oregon's driver's license for ***Customer K*** and had the same Oregon address. Further, the ***Customer L*** and ***Customer K*** sales were both dated August 5, 2003, both had the same Arizona work number, and both were delivered in Blythe CA on the same date. Based on the facts, we must conclude that a reasonably prudent businessman would have at least questioned whether the RV was going to be used in Arizona. For the same reasons set forth in Transaction Nos. 8 and 10, we find Taxpayer has failed to meet its burden of proof of demonstrating this was an exempt out-of-State sale.

Transaction Nos. 12 – ***Customer J*** – At the time of sale, Taxpayer relied on State and City exemption certificates, an out-of-State delivery affidavit, and an Arkansas driver's license. The City concluded Taxpayer should have investigated further because the title and registration for the RV listed an Arizona address, the credit application listed an Arizona phone number, and the title was sent to the Arizona address. We note that the Arkansas address was for an RV park in Arkansas. We concur with the City. There was clearly sufficient documentation at the time of sale that would have required a reasonably prudent businessman to have at least questioned whether the RV was going to be used in Arizona. For the same reasons set forth in Transaction No. 8, we find Taxpayer has failed to meet its burden of proof of demonstrating this was an exempt out-of-State sale.

Transaction No. 13 – ***Customer G*** – At the time of sale, Taxpayer relied on State and City exemption certificates, an out-of-State delivery affidavit, and a South Dakota driver's license. The City concluded that Taxpayer should have investigated further because the customer had an Arizona telephone number and there was evidence that the customer had an Arizona address. We note that the date of sale was November 1, 2003 and Taxpayer had documentation from Bank of the West dated October 30, 2003 that indicated that the customer had an Arizona address and the

South Dakota address of the customer was for a mail drop. Based on the facts, we conclude a reasonably prudent businessman would have at least question whether the RV was going to be used in Arizona. For the same reasons set forth in Transaction No. 8, we find Taxpayer has failed to meet its burden of proof of demonstrating this was an exempt out-of-State sale.

Transaction No. 14 – ***Customer I*** – At the time of sale, Taxpayer relied on State and City exemption certificates, an out-of-State delivery affidavit, a Washington driver's license, and an insurance quote listing a Washington address. The City concluded Taxpayer should have investigated further because the customer had an Arizona telephone number, the customer made the down payment with a check showing an Arizona address, and the customer's credit application showed the customer having an Arizona employer. Based on all the facts, we conclude a reasonably prudent businessman would have at least questioned whether the RV was going to be used in Arizona. For the same reasons set forth in Transaction No. 8, we find Taxpayer has failed to meet its burden of proof of demonstrating this was an exempt out-of-State sale.

Transaction No. 15 – ***Customer M*** – At the time of sale, Taxpayer relied on State and City exemption certificates, an out-of-State delivery affidavit, a South Dakota driver's license, and an insurance quote listing a South Dakota address. The City concluded Taxpayer should have investigated further because the customer made the down payment on a check showing an Arizona address and Arizona phone number, and the customer had an Arizona driver's license. We note the South Dakota address was for a mail drop and was the same address that customer ***Customer G*** utilized. We also note that the South Dakota driver's license was issued shortly before the RV sale. Based on the facts, we conclude a reasonably prudent businessman would have at least questioned whether the RV was going to be used in Arizona. For the same reasons set forth in Transaction No. 8, we find Taxpayer has failed to meet its burden of proof of demonstrating this was an exempt out-of-State sale.

In our Transaction by Transaction analysis, we have rejected Taxpayer's assertion that they should be entitled to accept and rely upon exemption certificates signed by customers without any further questions. The burden of proof is not on the City to disprove a claimed exemption but on Taxpayer to provide adequate proof and documentation for all claimed exemptions. Included in that burden of proof is proof that the RV is to be used outside the State. We want to make it clear that use outside the State does not mean a buyer could accept delivery outside the State and then drive the RV back into the State as a winter visitor to the State. Such a result would negate the requirement to have the RV delivered out-of-State. In reviewing all the transactions, we note the following concerns: there were several customers with the same out-of-State addresses; there were several customers that had taxable transactions changed to tax exempt transactions by subsequently applying for an out-of-State driver's license/address; and, there were several customers that applied for out-of-State driver's licenses shortly before they purchased an RV from Taxpayer. We conclude there were too many questionable transactions for Taxpayer to not have been aware of them and thus be subsequently obliged to conduct further investigation. While we don't expect Taxpayer to act as a policeman when a customer claims an out-of-State exemption, we also don't expect them to ignore obvious signs of State residency/in State use in order to secure additional sales. Furthermore, we note that Taxpayer accepted blatantly inconsistent information, the use of post office boxes as out-of-State residencies and spurious

claims of out-of-State residency that were clearly assembled shortly around the time of purchase. Lastly, we don't find it appropriate for Taxpayer to simply accept and rely on all certificates and then attempt to pass the burden of proof onto the City, and thereby force the City to find the customers and pursue collection of the tax from Taxpayer's customers.

FINDINGS OF FACT

1) On September 8, 2006, the Taxpayer filed a protest of a tax assessment made by the City.

2) After review, the City concluded on September 26, 2006 that the protest was timely and in the proper form.

3) On October 2, 2006, the Hearing Officer ordered the City to file a response to the protest on or before November 16, 2006.

4) On October 30, 2006, the City sent an email requesting an extension until November 30, 2006 to file their response.

5) On October 31, 2006, the Hearing Officer granted the City an extension until November 30, 2006.

6) On November 27, 2006, the City filed a response to the protest.

7) On November 30, 2006, the Hearing Officer ordered Taxpayer to file any reply on or before December 21, 2006.

8) On December 13, 2006, Taxpayer filed a reply.

9) On December 15, 2006, a Notice scheduled the matter for hearing commencing on February 14, 2007.

10) Both parties appeared and presented evidence at the February 14, 2007 hearing.

11) On February 15, 2007, the Hearing Officer indicated the parties had agreed to the following briefing schedule: the City would file a response brief on or before April 16, 2007; and, Taxpayer would file a reply brief on or before May 31, 2007.

12) On April 10, 2007, the City sent an email requesting an extension until April 23, 2007 to file their brief.

13) On April 11, 2007, Taxpayer sent an email opposing the City's request.

14) On April 11, 2007, the Hearing Officer granted the City an extension until April 23, 2007 to file a response brief and Taxpayer an extension until June 7, 2007 to file a reply brief, and ordered the City to make any adjustments required by Section 570(b)(8) within 53 days.

15) On April 23, 2007, the City filed a response brief.

16) On June 7, 2007, Taxpayer filed a reply brief.

17) On June 12, 2007, the Hearing Officer indicated the record was closed and a written decision would be issued on or before July 27, 2007.

18) The City performed an audit of Taxpayer for the period of January 1, 2002 through December 31, 2005.

19) During the audit period, Taxpayer was in the business of selling recreational vehicles in the City.

20) As a result of the audit, the City assessed Taxpayer for taxes due in the amount of $34,394.01, interest up through May 31, 2006 in the amount of $11,109.91, and a ten percent penalty totaling $3,670.25 for failure to timely pay taxes.

21) Prior to the issuance of the assessment, Taxpayer paid $7,821.70 leaving a balance due of $41,352.47.

22) Historically, the City has accepted a completed exemption form to document an out-of-State exempt sale.

23) While Taxpayer had completed exemption forms for the fifteen sales in dispute, the City disallowed the claimed out-of-State exemptions because of conflicting information.

24) Transactions Nos. 5 and 15 were both initially purchased with City tax but subsequently rewritten as out-of-State sales to Montana LLC's.

25) Taxpayer allowed the ***Customer F*** sale as an out-of-State sale based, at least in part, on an out-of-State P.O. Box No. as the customer's residence.

26) Taxpayer allowed the ***Customer K*** and ***Customer L*** sales as out-of-State sales based on both having the same Oregon address as their residence.

27) Taxpayer allowed the ***Customer J*** sale as an out-of-State sale based on an address for an RV park in Arkansas being the customer's residence.

28) Taxpayer allowed the ***Customer G*** and ***Customer M*** sales as out-of-State sales based on a mail drop in South Dakota being the customer's residence.

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) Retail sales by Taxpayer of RV's were taxable pursuant to Section 460.

3) Section 465(b) contains an exemption for out-of-State sales.

4) Section 360 requires Taxpayer to have adequate proof and documentation for all claimed exemptions.

5) Regulation 360.2 provides an exemption certificate is the minimum proof required and that the information provided must validate the claimed exemption.

6) Section 100 defines out-of-State sales.

7) Taxpayer has met their burden of proof that Transaction Nos. 1, 2, 4, and 6 (sales to ***Customer C***, ***Customer D***, ***Customer N***, and ***Customer E***) were exempt out-of-State sales.

8) Taxpayer failed to meet their burden of proof for Transaction Nos. 5, 15, 3, 8, 9, 10, 11, 12, 13, 14, and 15 (sales to ***Customer O***, ***Customer P***, ***Customer B***, ***Customer F*** , ***Customer H*** , ***Customer K*** , ***Customer L*** , ***Customer J***, ***Customer G***, ***Customer I*** , and ***Customer M***) were out-of-State exempt sales.

9) Taxpayer's protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the September 8, 2006 protest by ***Taxpayer*** of a tax assessment by the City of Mesa is hereby partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Mesa should revise the assessment by reclassifying Transaction Nos. 1, 2, 4, and 6 (sales to ***Customer C***, ***Customer D***, ***Customer N***, and ***Customer E***) as exempt out-of-State sales.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer