

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 5, 2008
Decision: MTHO # 412
Taxpayer: *ABC Taxpayer*
Tax Collector: City of Mesa
Hearing Date: May 21, 2008

DISCUSSION

Introduction

On January 15, 2008, *ABC Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Mesa (“City”). After review, the City concluded on February 5, 2008 that the protest was timely and in the proper form. On February 7, 2008, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before March 24, 2008. On March 20, 2008, the City filed a response to the protest. On March 24, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before April 14, 2008. On April 4, 2008, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on May 21, 2008. Both parties appeared and presented evidence at the May 21, 2008 hearing. On May 22, 2008, the Hearing Officer granted the City until June 4, 2008 to file any comments/recommendations regarding Taxpayer’s new argument for an exemption for an alternative fuel vehicle; and, Taxpayer would file any reply on or before June 11, 2008. On May 22, 2008, the City filed comments/recommendations. On June 16, 2008, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before July 31, 2008.

City Position

On December 28, 2007, the City issued an assessment against Taxpayer for use tax due in the amount of \$698.44, penalties for failure to file and failure to timely pay totaling \$174.61 and interest up through November 30, 2007 in the amount of \$23.28. According to the City, Taxpayer purchased a 2007 Chevrolet Suburban (“Vehicle”) from *Dealer*, a Chevrolet dealer located in *Outside of Arizona*, on January 29, 2007. The City noted the sales agreement listed Taxpayer as the purchaser of the Vehicle with an address of *123 Apple Street* in the City. The City asserted that there were no taxes of any type charged Taxpayer on the purchase of the Vehicle. The City indicated Taxpayer registered the Vehicle with the Arizona Motor Vehicle Division (“MVD”) on January 30, 2007. According to the City, the Arizona Department of Revenue (“DOR”) assessed Taxpayer

for State use tax in the amount of \$2,235.02 on the Vehicle. Subsequently, the DOR notified the City of the State assessment which resulted in the City's assessment.

The City assessed the use tax pursuant to City Code Section 5-10-610 ("Section 610"). Section 610 provides for a use tax on the storage or use in the City of tangible personal property. Subsection 610(c) sets forth a presumption that all tangible property acquired by a City resident was acquired for storage or use in the City until the taxpayer can prove otherwise. The City noted that both the sales agreement and State registration show Taxpayer's City address for residency. The City asserted the tax credit set forth in City Code Section 5-10-640 ("Section 640") does not include use tax paid to the State. The Section 640 credit applies to an equivalent tax. The City also assessed penalties for failure to file and failure to timely pay pursuant to City Code Section 540 ("Section 540") because Taxpayer had failed to show reasonable cause as to why the tax did not apply to the Vehicle purchase.

Subsequent to the hearing, the City filed a response to a new argument set forth by Taxpayer at the hearing regarding an exemption for an alternative fuel vehicle. The City noted that Section 5-10-660 (kk) ("Section 660(kk)") provides an exemption for the following:

"Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel...." The City noted that the Vehicle in this matter was purchased with a manufacturer installed Vortec 5300 V8 SFI Flex Fuel engine ("Flex Engine"). Since the Vehicle was not manufactured as a diesel fuel vehicle that was later converted to operate on alternative fuel, the City argued that Section 660(kk) did not apply.

Taxpayer Position

Taxpayer argued that the use tax assessed was improper. According to Taxpayer, the vehicle was put into "use" elsewhere and/or used outside the City. Taxpayer asserted he should have received credit for the taxes paid to the State as an equivalent tax paid pursuant to Section 640. Taxpayer indicated the MVD advised him that no additional taxes could be imposed on the purchase of the Vehicle. Taxpayer also disputed the imposition of penalties since he was disputing the underlying tax. At the hearing, Taxpayer argued that the Vehicle purchase was exempt pursuant to Section 660(kk) because the Vehicle operated on alternative fuel. We note Taxpayer did not file a reply to the City's response to the alternative fuel argument.

ANALYSIS

Taxpayer was a City resident that purchased tangible personal property (Vehicle) for storage or use in the City pursuant to Section 610. While Taxpayer argued the Vehicle

was first used outside the State, we find such use was by a previous owner. Clearly, Taxpayers' first use was in the City. The Section 640 credit applies to an equivalent tax such as a tax by another city. The State tax is not an equivalent tax to the City tax. The Section 660(kk) exemption only applies when a manufactured diesel fuel vehicle is subsequently converted to operate on alternative fuel. Section 660(kk) does not apply to the purchase of this Vehicle since it had a manufacturer installed Flex Engine. Based on all the above, Taxpayers' protest of the use tax assessment is denied.

Since Taxpayer failed to file a return or timely pay the taxes, the City was authorized to assess penalties pursuant to Section 540. Those penalties may be waived when a taxpayer demonstrates reasonable cause for failing to file and failing to timely pay. Section 540 provides that "reasonable cause" means that a taxpayer had a reasonable basis for believing that the tax did not apply to the storage or use of the taxpayer's tangible personal property. While we disagree with Taxpayers' arguments on the underlying tax, we do find he had a reasonable basis for believing the use tax did not apply. We reached that conclusion by considering all of Taxpayers' arguments which as a whole would provide a reasonable basis for believing the use tax did not apply. Accordingly, we shall waive the penalties in this matter. We note that Section 540 does not permit the waiver of any interest assessed.

FINDINGS OF FACT

1. On January 15, 2008, a protest was filed by Taxpayer of a tax assessment made by the City.
2. After review, the City concluded on February 5, 2008 that the protest was timely and in the proper form.
3. On February 7, 2008, the Hearing Officer ordered the City to file a response to the protest on or before March 24, 2008.
4. On March 20, 2008, the City filed a response to the protest.
5. On March 24, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before April 14, 2008.
6. On April 4, 2008, a Notice scheduled the matter for hearing commencing on May 21, 2008.
7. Both parties appeared and presented evidence at the May 21, 2008 hearing.
8. On May 22, 2008, the Hearing Officer indicated the City was granted until June 4, 2008 to file any comments/recommendations regarding Taxpayer's new argument for an exemption for an alternative fuel vehicle; and, Taxpayer would file any reply on or before June 11, 2008.

9. On May 22, 2008, the City filed comments/recommendations.
10. On June 16, 2008, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before July 31, 2008.
11. On December 28, 2007, the City issued an assessment against Taxpayer for use tax due in the amount of \$698.44, penalties for failure to file and failure to timely pay totaling \$174.61, and interest up through November 30, 2007 in the amount of \$23.28.
12. Taxpayer purchased a Vehicle from *Dealer*, a Chevrolet dealer located in *Outside of Arizona*, on January 29, 2007.
13. The sales agreement listed Taxpayer as the purchaser of the Vehicle with an address of *123 Apple Street* in the City.
14. Taxpayer registered the Vehicle with the MVD on January 30, 2007.
15. There were no taxes of any type charged Taxpayer on the purchase of the Vehicle.
16. The DOR assessed Taxpayer for State Use Tax in the amount of \$2,235.02 on the Vehicle.
17. The DOR notified the City of the State assessment which resulted in the City's assessment.
18. The State registration shows Taxpayer's City address as the residence.
19. The Vehicle was purchased with a manufacturer installed Flex Engine.

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. Taxpayer was a City resident that purchased tangible personal property for storage or use in the City pursuant to Section 610.
3. Taxpayer failed to meet the burden of proof of demonstrating the purchase of the Vehicle was subject to a credit or exemption.

4. The City was authorized to assess penalties pursuant to Section 540.
5. Taxpayer demonstrated reasonable cause to have the penalties waived pursuant to Section 540.
6. Taxpayer's protest should be partly granted and partially denied, consistent with the Discussion, Findings, and Conclusion, herein.

ORDER

It is therefore ordered that the January 15, 2008 protest by *ABC Taxpayer* of a tax assessment by the City of Mesa is hereby partially granted and partially denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Mesa shall revise its assessment by waiving all penalties in this matter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer