

*Taxpayer*  
*Taxpayer's Address*

*Taxpayer*  
MTHO # 675

*Dear Taxpayer:*

We have reviewed the evidence and arguments presented by *Taxpayer* and the City of Tucson (Tax Collector or City) at the hearing on October 21, 2011 and in post-hearing memoranda. The review period covered was March 2011. Taxpayers' protest, Tax Collector's response, and our findings and ruling follow.

#### Taxpayers' Protest

Taxpayer was assessed City of Tucson use tax on the purchase of a car from a private party who was not engaged in the business of selling tangible personal property. Taxpayer is therefore not subject to City use tax. Any State of Arizona use tax was paid in error. Taxpayer also requests a refund of any state use taxes paid.<sup>1</sup>

#### Tax Collector's Response

Taxpayer's purchase of the car was completed on a Texas dealership invoice. The invoice showed the car's purchase price and also separately included charges for Arizona use tax, a dealer inventory tax, documentary fees and charges for transfer of title and registration to the car. The car was registered to a Tucson Arizona address and delivered to that Tucson address. Taxpayer then drove the car from Tucson to California. Taxpayer stored and/or used the car in the City. Taxpayer may have intended to purchase the car from a private individual, but once the dealership became involved, the sale was from a retailer and subject to tax.

#### Discussion

Taxpayer purchased a car in Texas on March 1, 2011. Taxpayer believed he was purchasing the car from a private individual. However, Taxpayer's purchase was completed through a Texas car dealer. The dealer used its Motor Vehicle Buyer's Order form (Order). While the Order showed an individual as the seller, the dealer separately included charges for Dealer's Inventory Tax, State Motor Vehicle Sales Tax, government license and registration fee, government certificate of title fee and documentary fees. Taxpayer's address listed on the Order was *12345 W. Some Where*, Tucson, AZ 85719. The Order listed the Salesperson as "HOUSE DEAL".

The car was delivered by the dealer to the Tucson address listed on the Order. The car was registered in Arizona at the Tucson address. The Tax Collector received information that Taxpayer had purchased a car in Texas, which was registered to a Tucson address. Based on this information the Tax Collector assessed Taxpayer City use tax in the amount of \$910.00. Taxpayer protested the assessment stating that he purchased the car from a private individual and not a retailer. Taxpayer also stated the car is being used in California.

---

<sup>1</sup> The Arizona State use tax is administered by the Arizona Department of Revenue, a state agency separate from the City of Tucson. Neither the City nor the Hearing Officer has jurisdiction to address the state use tax issue that is under the Department's jurisdiction.

The City use tax is imposed on purchases from a retailer. The first question is whether under the facts of this case Taxpayer purchased the car from a private individual or from the dealer. The Order stated that the Dealer's Inventory Tax charge is intended to reimburse the dealer for ad valorem taxes on its motor vehicle inventory. This indicates that the dealer did obtain title to the car sufficient to require it to report the car for Texas inventory tax purposes. The other charges included on the Order support the conclusion that the dealer took the car into its inventory and thus transferred title to Taxpayer. "Sale" means any transfer of title or possession, or both. Taxpayer therefore purchased the car from a retailer.

The use tax applies to tangible personal property stored or used in the City. The second question is whether there was sufficient use or storage of the car in Tucson for the use tax to apply. The car was registered in Arizona to an Arizona address, and continues to be registered in Arizona. The car was delivered by the dealer to a Tucson address where Taxpayer's son was living. Taxpayer then picked up the car and drove it to California. Even though car was in Arizona for a day or less, there was a sufficient taxable moment after the car was delivered to the Tucson address and before Taxpayer drove the car to California. At that moment, the tax on storage and use—retention and exercise of a right of ownership, was effective. *See, Southern Pac Co v. Gallagher*, 306 U.S. 167, 59 S.Ct. 389 (1939).

Based on the available facts and documentation provided, the vehicle was purchased from a retailer in Texas and was stored or used in the City. Taxpayer has not shown that he paid a City excise tax to any other jurisdiction on the purchase of the car. Taxpayer is subject to the City use tax and Taxpayer's protest of the City's use tax assessment is therefore denied.

#### Findings of Fact

1. Taxpayer purchased a car in Texas on March 1, 2011.
2. The sale of the car was completed using a Texas dealer.
3. The dealer used its Motor Vehicle Buyer's Order form (Order).
4. Taxpayer's address listed on the Order was ***12345 Some Where***, Tucson, AZ 85719.
5. The seller was listed as ***Red Applehead***, a reporter for a Texas radio station.
6. The Order listed the Salesperson as "HOUSE DEAL".
7. The Order separately included charges for Dealer's Inventory Tax of \$82.21, State Motor Vehicle Sales Tax of \$3003.00, government license and registration fee of \$68.75, government certificate of title fee of \$945.00 and documentary fees of \$125.00.
8. The Order stated that the Dealer's Inventory Tax charge is intended to reimburse the dealer for ad valorem taxes on its motor vehicle inventory.
9. The State Sales Tax charge of \$3003.00 was for State of Arizona use tax.
10. Taxpayer's son was a student living in Tucson, Arizona.
11. The car was shipped to the Tucson Arizona address shown on the Order.
12. Taxpayer came to Tucson, Arizona to pick up the car and drove it to California.
13. The car was in Tucson, Arizona for one day or less.
14. The car was registered in Arizona to the Tucson address and continues to be registered at that address.

15. Taxpayer has provided no documentation to show that a city excise tax was paid to any other jurisdiction
16. The Tax Collector was advised that Taxpayer purchased a vehicle for use in the City of Tucson and that Taxpayer registered the vehicle with the State and paid the State portion of the use tax.
17. Based on this information the Tax Collector assessed Taxpayer City use tax in the amount of \$910.00.
18. Taxpayer protested the assessment stating that he does not owe the City of Tucson's use tax because he purchased the vehicle from a person who was not engaged in the business of selling tangible personal property.
19. Taxpayer also stated the car is being used in California.

### Conclusions of Law

1. The City use tax is imposed on any person who acquires from a retailer tangible personal property stored or used in the City. Tucson City Code (TCC) §§ 19-610 and 19-620.
2. "Retailer" includes any person selling, renting, licensing for use, or leasing tangible personal property under circumstances, which would render such transactions subject to the taxes imposed in Division 4, if such transactions had occurred within this City. TCC § 19-600.
3. The Texas dealer was a retailer under the City use tax.
4. "Use (of Tangible Personal Property)" means consumption or exercise of any other right or power over tangible personal property incident to the ownership thereof except the holding for the sale, rental, lease, or license for use of such property in the regular course of business. TCC § 19-600.
5. The car was delivered to Tucson Arizona and was then driven to California by Taxpayer. The car was used by Taxpayer in the City.
6. There was a sufficient taxable moment for the City use tax to apply after the car was delivered to the Tucson address and before Taxpayer drove the car to California. *Southern Pac Co v. Gallagher, supra.*
7. Taxpayer's purchase of the car was accomplished through the services of a retailer in Texas.
8. The retailer included the car in its inventory for Texas ad valorem property tax purposes.
9. The retailer arranged for the transfer of title to the car to Taxpayer.
10. "Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. TCC § 19-100.
11. Based on the record presented, the Texas car dealer's activities included the transfer of title to and/or possession of the car to Taxpayer.
12. Taxpayer purchased the car from a retailer.
13. A credit against the use tax is allowed for the payment of an equivalent excise tax on tangible personal property, which is acquired to be stored or used within this City. TCC § 19-640.
14. No evidence has been presented that Taxpayer paid a City excise tax to any other jurisdiction.

15. The City's assessment of use tax against Taxpayer was proper.

Ruling

Taxpayer's protest of an assessment of use tax made by the City of Tucson for the period March 2011 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period March 2011 is upheld

Both parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

HO/7140.doc/10/03

c: Tax Audit Administrator  
Municipal Tax Hearing Office