

## DECISION OF MUNICIPAL TAX HEARING OFFICER

May 25, 2016

*Taxpayer's CPA*  
*Address of Taxpayer's CPA*

*Taxpayer*  
MTHO #893

*Dear Taxpayer's CPA:*

We have reviewed the arguments presented by *Taxpayer* in its protest and by the City of Scottsdale (Tax Collector or City) in its Response to the Protest and at the hearing held on May 6, 2016. The review period covered was May 2010 through April 2014. Taxpayer did not appear at the hearing and the hearing was held in Taxpayer's absence.

A letter dated May 7, 2016 was sent allowing Taxpayer until May 23, 2016 to submit written evidence into the record accompanied by a written explanation that established good cause for Taxpayer's absence at the hearing. Taxpayer did not timely respond. The record was therefore closed and this matter is ready for ruling. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

### Taxpayer's Protest

Taxpayer disagrees with the assessment. Taxpayer was not able to provide appropriate documentation to the auditor in a timely manner. Taxpayer has now been able to obtain the appropriate documents and therefore requests further review.

### Tax Collector's Response

Taxpayer is in the business of selling motor vehicles. Taxpayer claimed deductions for out-of-state sales. The Tax Collector disallowed claimed out-of-state sales that were not properly documented. Out-of-state sales that were properly documented were allowed. Taxpayer has not provided any records or other evidence to support any additional modifications to the proposed assessment.

### Discussion

Taxpayer is in the business of selling motor vehicles. The Tax Collector issued an assessment to Taxpayer for the period May 2010 through April 2014 and disallowed out-of-state sales claimed by Taxpayer for lack of necessary documentation. Taxpayer protested contending that it now had the appropriate documentation and requested further review. The matter was placed in abeyance pending review by the City of additional documentation provided by Taxpayer.

Based on additional information submitted by Taxpayer the Tax Collector issued modified proposed assessments dated November 12, 2014 and July 2, 2015 allowing additional deductions. Taxpayer has not provided any additional documentation after the July 2, 2015 modification and Taxpayer did not appear at the hearing.

Retail sales, including motor vehicles, are subject to the City privilege tax pursuant Scottsdale Tax Code (STC) § 460. STC § 465(l) provides an exemption for

[s]ales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

Taxpayer has to substantiate the necessary elements of subsection (l) in order to claim the deduction. Taxpayer must establish that the sale of the motor vehicle was to a nonresident, that the motor vehicle was intended to be used outside the state and that Taxpayer shipped or delivered the motor vehicle to a destination outside the state. If any element is not established for a sale, that sale is not entitled to the deduction.

Taxpayer has the burden to show it is entitled to an exemption or deduction from taxation. The Tax Collector testified that a deduction was allowed in the modified proposed assessments for all out-of-state sales that were properly documented. Taxpayer did not provide any additional documentation or appear at the hearing to provide substantiation for any additional sales. The second modified proposed assessment issued by the City is presumed correct and it is Taxpayer's burden to overcome that presumption with substantial credible and relevant evidence that establishes that the assessment was erroneous. Taxpayer here has not produced any evidence, documents or other information sufficient to overcome the presumption of correctness of the July 2, 2015 modified proposed assessment. Based on the record here we conclude that the City's modified privilege tax assessment dated July 2, 2015 against Taxpayer was proper. Taxpayer's protest is thus granted in part consistent with the Tax Collector's revised assessment.

#### Findings of Fact

1. Taxpayer is in the business of selling motor vehicles.
2. The Tax Collector conducted an audit assessment of Taxpayer for the period May 2010 through April 2014 and issued an assessment that disallowed deductions for certain out-of-state sales.
3. Taxpayer protested the assessment contending that while it was not able to provide appropriate documentation to the auditor in a timely manner, Taxpayer has now obtained appropriate documents and requested further review.
4. The matter was held in abeyance to allow the parties time to review the documents.
5. Based on additional information submitted by Taxpayer, the Tax Collector issued two modified proposed assessments dated November 12, 2014 and July 2, 2015 that allowed deductions for additional sales.
6. Taxpayer did not submit any additional documentation after the July 2, 2015 modified proposed assessment.
7. A hearing in this matter was scheduled for and held on May 6, 2015.
8. Taxpayer did not attend the hearing.
9. Taxpayer did not submit an explanation for its absence at the hearing or submit written evidence to be included in the record.
10. Taxpayer has not provided any other information, documents or evidence to support its protest.

## Conclusions of Law

1. STC § 460 imposes the City privilege tax on every person engaging or continuing in the business of selling tangible personal property at retail.
2. Taxpayer's sales of motor vehicles are subject to the City privilege tax.
3. STC § 465(l) provides a deduction for sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
4. The Tax Collector may issue an assessment if he is not satisfied with the return and payment of the amount of tax required or if no returns were filed. STC § 545(a).
5. Taxpayer has the burden to show it is entitled to an exemption or deduction from taxation. *Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
6. The Tax Collector properly issued the revised assessments based on information submitted by Taxpayer after its protest.
7. The presumption is that an assessment of additional tax is correct and the burden is on the taxpayer to overcome the presumption. *See, Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
8. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. *U.S. v. McMullin*, 948 F.2d 1188 (10<sup>th</sup> Cir.,1991); *Anastasato v. C.I.R.*, 794 F.2d 884 (3<sup>rd</sup> Cir.,1986).
9. A general denial of liability is not sufficient to overcome the presumption that the assessment is correct. *Avco Delta Corp. Canada Ltd. v. U.S.*, 540 F.2d 258 (7<sup>th</sup> Cir., 1976).
10. The second revised assessment dated July 2, 2015 is presumed correct and Taxpayer has not overcome the presumption of correctness.
11. The Tax Collector's July 2, 2015 revised assessment to Taxpayer is upheld.

Ruling

Taxpayer's protest of an assessment made by the City of Phoenix for the period May 2010 through April 2014 is upheld in part and denied in part consistent with the Tax Collector's revised assessment dated July 2, 2015.

The Tax Collector's July 2, 2015 revised assessment to Taxpayer for the period May 2010 through April 2014 is upheld.

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

Sincerely,

*Hearing Officer*

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c: *Sr. Tax Auditor*  
Municipal Tax Hearing Office