

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 29, 2007

Decision: MTHO #321

Taxpayer: *Taxpayer ABC*

Tax Collector: City of Phoenix

Hearing Date: January 8, 2007

DISCUSSION

Introduction

On September 2, 2006, *Taxpayer ABC* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on September 7, 2006 that the protest was timely and in the proper form. On September 16, 2006, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before October 30, 2006. On October 27, 2006, the City filed a response. On October 31, 2006, the Hearing Officer ordered Taxpayer to file any reply on or before November 21, 2006. On November 7, 2006, Taxpayer filed a reply. On December 13, 2006, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on January 8, 2007. Both parties appeared and presented evidence at the January 8, 2007 hearing. On January 9, 2007, the Hearing Officer indicated the record was closed and a written decision would be issued on or before February 23, 2007.

City Position

The City assessed Taxpayer for use taxes in the amount of \$6,720.00 plus interest in the amount of \$550.86. The assessment resulted from Taxpayer’s purchase of an aircraft from out-of-State. The City also assessed Taxpayer for late filing penalties in the amount of \$1,680.00 which were subsequently waived for reasonable cause. The City noted that City Code Section 14-620(a) (“Section 620(a)”) states that any person who acquires tangible personal property from a retailer, whether or not such retailer is located in the City, when such person stores or uses said property within the City shall be deemed liable for the use tax. According to the City, the Arizona Department of Transportation (“DOT”) reported to the City that an aircraft, *VIN #12345*, had been registered to Taxpayer in the State on April 30, 2005. The registration and storage address showed a City address, *AZ Airport*. The City asserted that the act of registering the vehicle was a taxable use of the vehicle. The City indicated that if Taxpayer had provided documentation showing an equivalent local jurisdictional tax had been paid, the City would have allowed a credit.

In response to Taxpayer, the City argued the time the aircraft was hangered in *Out-of-State Airport*, was for the preparation for use of the aircraft. The City asserted Taxpayer’s

test flight in *Out-of-State Airport* and flight from *Out-of-State Airport* to the *AZ Airport* were also part of the preparation for use. According to the City, the first actual use of the aircraft was for its intended use in the State. Based on the above, the City requested the use tax be upheld.

Taxpayer Position

Taxpayer protested the City use tax assessed on the purchase of an aircraft with *VIN #12345*. According to Taxpayer, the aircraft was purchased from *Aircraft Dealer* on March 14, 2005 and stored in *Aircraft Dealer* until April 19, 2005. Taxpayer asserted aircraft insurance was purchased on March 16, 2005 from *Insurance Group*. As part of the Bill of Sale, Taxpayer required *Aircraft Dealer* to complete a list of eleven repairs on or about April 14, 2005. Those repairs were subsequently completed and on April 18, 2006, Taxpayer flew an acceptance flight that lasted approximately one hour. The acceptance flight was successful and on April 19, 2005, Taxpayer flew the aircraft to the *AZ Airport*. Taxpayer noted the aircraft was purchased for personal use and not for business use. Taxpayer argued that the aircraft was exempt from the City use tax pursuant to Section 660(1)(a) since it was stored in *Out-of-State Airport* for over one month and its first use was in *Out-of-State Airport* on April 18, 2005. Taxpayer asserted the aircraft had additional uses on April 19, 2005 prior to its use and storage at the *AZ Airport*. Based on all the above, Taxpayer argued the sale was exempt from the City use tax.

ANALYSIS

It is clear that Taxpayer purchased an aircraft from out-of-State on March 14, 2005 subject to certain repairs being made in a timely manner. There was no City or equivalent City tax paid on the sale of the aircraft. It is also clear that Taxpayer's intended use and storage of the aircraft was to be at the *AZ Airport*. Section 620(a) authorizes the City to impose a use tax on the sale of tangible personal property from a retailer when the purchaser stores or uses the property within the City. Section 660(a) provides an exemption for the use tax if a non-resident of the City acquired the property for his own use and if the first actual use of the property was outside the City. The record was clear that Taxpayer was a non-resident of the City and the aircraft was acquired for personal use. The only real question for the exemption to apply was whether or not the first actual use of the property was outside the City. Because we are dealing with an exemption, the burden of proof is on the one claiming the exemption (Taxpayer). In this case, we are not convinced the "first actual use" was in someplace other than the *AZ Airport*. The initial storage time at *Out-of-State Airport* was to allow *Aircraft Dealer* to make repairs necessary to complete the sale. The one hour test flight by Taxpayer was to convince him that the repairs had been completed. We do not find the sale was actually concluded until the repairs had been completed to the satisfaction of Taxpayer. The March 14, 2005 Bill of Sale makes it clear that Taxpayer's \$12,000.00 deposit would be refunded if the necessary repairs were not completed. As a result, we agree with the City that the time and use from March 14, 2005 through the test flight was "preparation for use." The only remaining question would be whether or not the flight from *Out-of-State Airport* to the

AZ Airport would constitute the “first actual use.” We think not. If the transporting of any tangible personal property, purchased out-of-State, into the State was the “first actual use,” it would completely eliminate any use tax pursuant to Section 620(a). Such a reading would not pass a common sense test. Based on all the above, we must conclude that the first actual use/storage of the aircraft was at the *AZ Airport*. Accordingly, we shall deny Taxpayer’s protest.

FINDINGS OF FACT

1. On September 2, 2006, Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on September 7, 2006, that the protest was timely and in the proper form.
3. On September 16, 2006, the Hearing Officer ordered the City to file a response to the protest on or before October 30, 2006.
4. On October 27, 2006, the City filed a response.
5. On October 31, 2006, the Hearing Officer ordered Taxpayer to file any reply on or before November 21, 2006.
6. On November 7, 2006, Taxpayer filed a reply.
7. On December 13, 2006, a Notice scheduled the matter for hearing commencing on January 8, 2007.
8. Both parties appeared and presented evidence at the January 8, 2007 hearing.
9. On January 9, 2007, the Hearing Officer indicated the record was closed and a written decision would be issued on or before February 23, 2007.
10. The City assessed Taxpayer for use taxes in the amount of \$6,720.00 plus interest in the amount of \$550.86.
11. The assessment resulted from Taxpayer’s purchase of an aircraft from out-of-State.
12. The City assessed Taxpayer for late filing penalties in the amount of \$1,680.00 which were subsequently waived by the City for reasonable cause.
13. DOT reported to the City that an aircraft, *VIN # 12345*, had been registered to Taxpayer in the State on April 30, 2005.
14. The registration and storage address showed a City address, *AZ Airport*.

15. There was no evidence that Taxpayer had paid a City tax or the equivalent City tax on the aircraft purchase.
16. Taxpayer purchased the aircraft from *Aircraft Dealer* on March 14, 2005.
17. Taxpayer purchased aircraft insurance from *Insurance Group* on March 16, 2005.
18. As part of the Bill of Sale, Taxpayer required *Aircraft Dealer* to complete a list of eleven repairs on or about April 14, 2005.
19. The eleven repairs were completed and on April 18, 2006, Taxpayer flew an acceptance flight that lasted approximately one hour.
20. Taxpayer purchased the aircraft for personal use and not for business.
21. On April 19, 2006, Taxpayer flew the aircraft from *Out-of-State Airport* to the *AZ Airport* for storage and use.

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. Section 620(a) authorizes the City to impose a use tax on the sale of tangible personal property from a retailer when the purchaser stores or uses the property within the City.
3. Section 660(a) provides an exemption for the use tax if a non-resident of the City acquired the property for his own use and if the first actual use of the property was outside of the City.
4. Taxpayer was a non-resident of the City and the aircraft was purchased for personal use.
5. The time and use from March 14, 2005 through the test flight on April 18, 2005 was “preparation for use” of the aircraft.
6. The transporting of the aircraft from *Out-of-State Airport* to the *AZ Airport* was also “preparation for use”.
7. The first actual use/storage of the aircraft was at the *AZ Airport*.
8. Taxpayer’s protest should be denied.

ORDER

It is therefore ordered that the September 2, 2006 protest of *Taxpayer ABC* of a tax assessment made by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer