

**Jerry Rudibaugh**  
**Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: August 25, 2003  
Decision: MTHO #109  
Tax Collector: City of Phoenix  
Hearing Date: May 20, 2003

**DISCUSSION**

**Introduction**

On February 24, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on March 12, 2003 that the protest was timely and in the proper form. On March 17, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before May 1, 2003. The City filed a response on April 4, 2003. On April 11, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before May 6, 2003. On April 14, 2003, a Notice of Tax Hearing (“Notice”) was issued setting this matter for hearing on May 20, 2003. On April 15, 2003, the Taxpayer requested permission to appear by telephone. On April 21, 2003, the Taxpayer’s request to appear by telephone was granted. On May 2, 2003, the Taxpayer filed a reply to the City. Both the City and Taxpayer appeared at the hearing on May 20, 2003 and presented evidence. On June 3, 2003, the Hearing Officer filed a letter ordering the City to file a post-hearing memorandum on or before July 1, 2003 and the Taxpayer to file a reply on or before July 15, 2003. On July 7, 2003, the City filed a letter indicating they were in agreement with the Taxpayer as to the taxability of the transactions at issue. On July 12, 2003, the Hearing Officer filed a letter indicating a written decision would be issued on or before August 26, 2003.

The Taxpayer is a full service hotel. The City conducted an audit for the period July 1999 through December 2001. During this period, the Taxpayer reported both residential and transient rental. The definition of “transient” is contained in City Code Section 14-447 (“Section 447”):

“Transient” means any person who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel for which lodging or use of lodging space a charge is made.

The residential revenues were made up from transactions with *ABC Airlines* (“Airlines”). The City reviewed the contracts between the Taxpayer and the Airlines and reclassified lodging from residential to transient. As a result of the audit, the Taxpayer was assessed additional taxes in the amount of \$26,643.45.

**City Position**

The City argued that in order for the transaction between the Taxpayer and the Airlines to be considered residential revenue, the contracts must set forth the specific number of rooms that the

Airlines will be obligated to pay for the length of the contract period. According to the City, the contracts did not clearly state the above requirement and hence the City classified the revenues as transient. Subsequent to the hearing, the City filed a letter indicating it now agrees with the Taxpayer's position.

### **Taxpayer Position**

The Taxpayer protested the City's reclassification of residential revenues to transient revenues on the contracts with the Airlines. The Taxpayer argued that the City erred in their determination with respect to the disallowance of an exemption from transient lodging tax with respect to certain rooms provided by the Taxpayer to the Airlines. The Taxpayer requested the City's determination on this matter be reversed.

### **ANALYSIS**

Based on the evidence presented and the City's July 7, 2003 letter, the City erred in reclassifying lodging from residential to transient. As a result, the Taxpayer's protest should be granted.

### **FINDINGS OF FACT**

1. On February 24, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on March 12, 2003 that the protest was timely and in proper form.
3. On March 17, 2003, the Hearing Officer ordered the City to file a response to the protest on or before May 1, 2003.
4. The City filed a response on April 4, 2003.
5. On April 11, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before May 6, 2003.
6. On April 15, 2003, the Taxpayer requested permission to appear by telephone.
7. On April 21, 2003, the Taxpayer's request to appear by telephone was granted.
8. On May 2, 2003, the Taxpayer filed a reply to the City.
9. Both the City and Taxpayer appeared at the May 2, 2003 hearing and presented evidence.
10. On June 3, 2003, the Hearing Officer filed a letter ordering the City to file a post-hearing memorandum on or before July 1, 2003 and the Taxpayer to file a reply on or before July 15, 2003.
11. On July 7, 2003, the City filed a letter indicating they were in agreement with the

Taxpayer as to the taxability of the transactions at issue.

12. On July 12, 2003, the Hearing Officer filed a letter indicating a written decision would be issued on or before August 26, 2003.
13. The Taxpayer is a lull service hotel.
14. The City conducted an audit of the Taxpayer for the period July 1999 through December 2001.
15. During the audit period, the Taxpayer reported both residential and transient rental.
16. The residential revenues resulted from contracts between the Taxpayer and the Airlines.
17. The City reclassified the residential revenues to transient revenues.
18. The Taxpayer protested the City's reclassification.
19. Subsequent to the hearing in this matter, the City agreed with the Taxpayer's original classification of residential revenues.

#### **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 447 defines transient.
3. The City erred in reclassifying lodging from residential to transient.
4. The Taxpayer's protest should be granted.

#### **ORDER**

It is therefore ordered that the February 24, 2003 protest by *Taxpayer* of a tax assessment made by the City of Phoenix is hereby granted.

It is further ordered that the City of Phoenix shall revise its tax assessment reversing its reclassifying of residential revenues to transient revenues.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer