

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 25, 2003
Decision: MTHO #110
Tax Collector: City of Phoenix
Hearing Date: June 19, 2003

DISCUSSION

Introduction

On March 27, 2003, *ABC Corporation*, doing business as *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on March 28, 2003 that the protest was timely and in the proper form. On April 11, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response on or before May 26, 2003. On May 15, 2003, the City filed a response to the Taxpayer’s protest. On May 22, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before June 12, 2003. On May 27, 2003, a Notice of Tax Hearing (“Notice”) was filed setting the matter for hearing commencing on June 16, 2003. On June 10, 2003 the Taxpayer filed a reply. On June 11, 2003, another Notice was filed re-scheduling the hearing for June 19, 2003. Both parties appeared and presented evidence at the June 19, 2003 hearing. On June 21, 2003, the Hearing Officer filed a letter indicating a written Decision would be issued on or before August 4, 2003.

The City performed an audit of the Taxpayer for the period March 1999 through September 2002. The City assessed the Taxpayer for additional taxes in the amount of \$12,734.87, plus interest, for un-reported rental of tangible personal property, disallowed rental for re-rental deductions, and un-reported use tax purchases.

City Position

The protested portion of the assessment was based on disallowance of the exemptions for the following seven customers.

1. **Agency 1:** The City asserted this is a Federal agency and there is no exemption in the City Code for the rental of tangible personal property to the Federal government. According to the City, the Taxpayer cannot in good faith accept a claim of exemption when no exemption exists.
2. **Agency 2:** The City asserted this is also a Federal agency and thus no exemption exists. According to the City, the Taxpayer cannot in good faith accept a claim of exemption when no exemption exists.

3. **Club:** The City asserted that the Club requested a one-time exemption but were inadvertently made permanently exempt by the Taxpayer. In addition, the Club also claimed exemption for “Food, drink or condiments purchased by a restaurant business” and the Taxpayer does not sell such items.
4. **Health Co:** The City indicated that **Health Co** claimed exemption as a “qualifying health care organization”. **Health Co** had explained on Form 5000 that the nature of its business was “Housing for Low Income Seniors”. According to the City, the nature of **Health Co**’s business does not fit the definition of “Qualifying Hospital” because there is no nursing care or health related services. As a result, the City concluded the information on Form 5000 does not support an exemption for **Health Co**.
5. **Roofing Co:** **Roofing Co** is a construction company that claimed an exemption for “Tangible personal property to be incorporated into a taxable construction project”. According to the City, the invoices for **Roofing Co** showed they rented shop towels, floor mats and uniforms. The City argued that these items cannot be considered as being roofing materials. For that reason, the City disallowed this claimed exemption.
6. **Church:** The City asserted that the Form 5000 for the Church was incomplete. According to the City, there was no City license number, the nature of the Church’s business was not stated, and there was no customer’s signature. As a result, the City disallowed the claimed exemption for the Church.
7. **Food Co:** According to the City, **Food Co** operates food service facilities for other entities such as businesses or schools. **Food Co** has eighteen facilities in Arizona which do business with the Taxpayer. Seven exemption requests were provided to the Taxpayer by **Food Co**. The City asserted that none of the exemption certificates were properly completed. The certificates did not have either a State or City license number, or the precise nature of the purchaser’s business, or the description and use of the property purchased/rented. Since the forms did not have the information required by the City, the forms were not acceptable to the City.

The City also opposed the Taxpayer’s protest of the interest accrued. The City argued that pursuant to City Code Section 14-540 (a) (“Section 540”) interest on tax found to be due cannot be waived or abated.

Taxpayer Position

The Taxpayer protested the assessment of tax in the amount of \$9,922.70, plus interest, which was assessed for disallowed rental for re-rental transactions and rentals to a qualifying hospital. The Taxpayer asserted that Code Regulation 14-360.1 (“Regulation 360”) provides that a claim of rental for re-rent is valid if the evidence is sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a rental in the ordinary course of his business activity. The Taxpayer argued that the tax exemption certificates submitted by its customers to the Taxpayer were accepted in good faith and were based upon the Taxpayer’s reasonable knowledge of the customers’ use of the product.

After review of the City’s response in this matter, the Taxpayer agreed with the City’s disallowed exemption for the **Agency 1**, **Agency 2**, the Club, **Roofing Co**, and the Church. The

Taxpayer continued to protest the disallowances for *Health Co* and *Food Co*. The Taxpayer obtained an updated Form 5000 whereby *Health Co* stated that it is an exempt qualifying health care organization. As to *Food Co*, the Taxpayer asserted that in good faith it accepted exemption certificates from *Food Co*. According to the Taxpayer, *Food Co* has provided exemption certificates indicating some of the linens are being re-rented. The Taxpayer argued that it reasonably believed that *Food Co*'s agreements with its customers include a provision relating to the re-rental or release of the items to *Food Co*'s customers.

ANALYSIS

The burden of proof is on the Taxpayer to demonstrate that an exemption was properly given. In this case, the Taxpayer has agreed with the City that the claimed exemption for the *Agency 1*, *Agency 2*, the Club, *Roofing Co*, and the Church were not proper. The Taxpayer's claimed exemption for *Health Co* was originally not reasonable because the Taxpayer failed to obtain sufficient information to persuade a reasonably prudent businessman that the sales were exempt. At the Hearing, the Taxpayer provided additional information from *Health Co* that would have persuaded a reasonably prudent businessman that *Health Co* was an exempt qualifying health care organization. As to the sales to *Food Co*, we are not convinced that a reasonably prudent businessman would have been persuaded that linen would be re-rented by a business operating a food services business. Further, the Taxpayer failed to obtain all the necessary information on the exemption certificates obtained from *Food Co*. As a result, the Hearing Officer must conclude that the Taxpayer has failed to meet its burden of proof of demonstrating the sales to *Food Co* were exempt sales. As to the protest of the interest, the Hearing Officer only has the authority to waive or abate interest if the underlying tax is disallowed. In this case, the only interest that can be waived or abated is that associated with the tax on the sales to *Health Co*.

FINDINGS OF FACT

1. On March 27, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on March 28, 2003 that the protest was timely and in the proper form.
3. On April 11, 2003, the Hearing Officer ordered the City to file a response to the protest on or before May 26, 2003.
4. The City filed a response on May 15, 2003.
5. On May 22, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before June 12, 2003.
6. On May 27, 2003, a Notice was filed setting the matter for hearing commencing on June 16, 2003.

7. On June 10, 2003, the Taxpayer filed a reply.
8. On June 11, 2003, another Notice was filed re-scheduling the hearing for June 19, 2003.
9. Both parties appeared and presented evidence at the June 19, 2003 hearing.
10. On June 21, 2003, the Hearing Officer filed a letter indicating a written Decision would be issued on or before August 4, 2003.
11. The City performed an audit of the Taxpayer for the period March 1999 through September 2002.
12. The City assessed the Taxpayer for additional taxes in the amount of \$12,734.87, plus interest, for un-reported rental of tangible personal property, disallowed rental for re-rental deductions, and unreported use tax purchases.
13. The Taxpayer protested the assessment of tax in the amount of \$9,922.70, plus interest, which was assessed for disallowed rental for re-rental transactions and rentals to a qualifying hospital.
14. After review of the City's response in this matter, the Taxpayer agreed with the City's disallowed exemption for the *Agency 1*, *Agency 2*, the Club, *Roofing Co*, and the Church.
15. The Taxpayer obtained an updated Form 5000 whereby *Health Co* stated that it is an exempt qualifying health care organization.
16. *Food Co* operates food service facilities for other entities such as businesses or schools
17. *Food Co* provided exemption certificates indicating some of the linens are being re-rented.
18. The exemption certificates provided by *Food Co* did not have either a State or City license number, or the precise nature of the purchaser's business, or the description and use of the property purchased/rented.

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. The Taxpayer was in the business of renting tangible personal property.

3. Regulation 360 provides that a claim of rental for re-rental is valid if the evidence is sufficient to persuade a reasonably prudent businessman that the time is being acquired for rental in the ordinary course of business.
4. A reasonably prudent businessman would not have been persuaded that **Food Co** was re-renting items such as linens without having exemption certificates properly completed.
5. A reasonably prudent businessman would have been persuaded that **Health Co** was an exempt qualifying health care organization after obtaining properly completed exemption certificates.
6. Pursuant to Section 540, interest on tax to be found due cannot be waived or abated by the Hearing Officer.
7. The Taxpayer's protest should be granted on its protest of the denial of the **Health Co** exemption.
8. With the exception of the **Health Co** protest, the Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the March 27, 2003 protest by **ABC Corporation** doing business as **Taxpayer** of a City of Phoenix tax assessment is hereby denied with the exception of the protest of sales to the **Health Co**.

It is further ordered that the City of Phoenix shall revise its assessment to reflect the sales to **Health Co** were exempt sales.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer