

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: April 19, 2004  
Decision: MTHO #147  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On October 1, 2003, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Phoenix ("City"). After review, the City concluded on October 27, 2003 that the protest was timely and in proper form. On October 29, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") granted the Taxpayer an extension until December 15, 2003 to clarify the protest. The Taxpayer filed an undated letter of clarification to correct the form of the protest. On November 10, 2003, the Hearing Officer ordered the City to file a response to the protest on or before December 29, 2003. The City filed a response on December 12, 2003. On December 19, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before January 9, 2004. On January 16, 2004, a Notice of Tax Hearing ("Notice") was issued setting the matter for hearing commencing on March 4, 2004. On March 3, 2004, the Taxpayer informed the City that he was not going to attend the March 4, 2004 hearing. On March 4, 2004, the Hearing Officer reclassified the matter from a hearing to a redetermination and indicated a written decision would be issued on or before April 19, 2004.

**City Position**

The City performed an audit of the Taxpayer for the period March 1999 through July 2002. The City concluded that the Taxpayer overstated deductions during the audit period and as a result assessed the Taxpayer for additional taxes in the amount of \$988.68 plus interest.

According to the City, the Taxpayer kept a file of exemption certificates. The Taxpayer also maintained a summary index card at the cash register on which was written the date, the type of exempt revenue, and the amount of revenue per occurrence. However, the City was unable to determine which customers made which purchases, or if all purchases that were exempted as "resale" were in fact made by businesses that had completed exemption certificates. The City argued that pursuant to City Tax Code Section 14-360(a) ("Section 360(a)") all deductions are conditional upon the-provision of-adequate proof and-documentation. The City did allow one sale for resale for which the Taxpayer maintained records that traced the customer to the sale. The City argued that-the Taxpayer failed to provide proper documentation to support any-other sales for resale exemptions. The City asserted that the audit took extra time to complete because the records retained by the Taxpayer were in a form that hindered the audit. The City argued that City Tax Code Section 14-450(a) ("Section 450") does not provide relief from interest for

taxpayers who maintain records in a manner that results in excessive audit time. Lastly, the City indicated there were no penalties assessed.

### **Taxpayer Position**

The Taxpayer asserted that to disallow all of his "sales for resale" is unfair and ridiculous. According to the Taxpayer, he has the interior designers fill out the exemption form and the Taxpayer maintains them in an accordion style folder. The Taxpayer indicated that he keeps track of the exempt sales on a summary index card under his cash register. The Taxpayer asserted that no one gets a said with no tax unless they have an exemption filled out. According to the Taxpayer, he did not know that he also had to maintain the resale number on the summary card. The Taxpayer argued that he could understand paying a reasonable fine for improper logging of the information but to disallow all of the sales defies common sense. The Taxpayer protested taxes assessed in the amount of \$571.95 on sales made to interior designers. The Taxpayer also protested the interest assessed on the tax. According to the Taxpayer, the City took over one year to complete the audit and during that time the interest was compounding on a daily basis.

### **ANALYSIS**

The burden of proof is on the Taxpayer to demonstrate that the sales were exempt sales for resale. In this case, we find that the Taxpayer has demonstrated there were some exempt sales for resale. Unfortunately, the Taxpayer's record keeping was not complete enough to tie the proposed exempt sales for resale to the exemption certificates. As a result, we are left with the dilemma that the Taxpayer has demonstrated there were some exempt sale for resale to interior designers but there was not sufficient documentation to demonstrate all the proposed exempt sales were proper. Because we find the Taxpayer was attempting to maintain the necessary supporting documentation, we do not find a 100 percent disallowance would be fair and reasonable under the circumstances. Based on all the evidence, the Hearing Officer concludes there was sufficient documentation to support allowance of 50 percent of the claimed exempt sales for resale. Accordingly, we find the tax assessment should be reduced by \$571.95 times 50 percent or \$285.97 plus associated interest.

### **FINDINGS OF FACT**

1. On October 1, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on October 27, 2003 that the protest was timely and in the proper form.
3. On October 29, 2003, the Hearing Officer granted the Taxpayer an extension until December 15, 2003 to clarify the protest.
4. The Taxpayer filed an undated letter of clarification to correct the form of the protest.

5. On November 10, 2003, the Hearing Officer ordered the City to file a response to the protest on or before December 29, 2003.
6. The City filed a response on December 12, 2003.
7. On December 19, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before January 9, 2004.
8. On January 16, 2004, a Notice was issued setting the matter for hearing commencing on March 4, 2004.
9. On March 3, 2004, the Taxpayer informed the City that he was not going to attend the March 4, 2004 hearing.
10. On March 4, 2004, the Hearing Officer reclassified the matter from a hearing to a redetermination and indicated a written decision would be issued on or before April 19, 2004.
11. The City performed an audit of the Taxpayer for the period March 1999 through July 2002.
12. The City concluded that the Taxpayer overstated deductions during the audit period and as a result assessed the Taxpayer for additional taxes in the amount of \$988.68 plus interest.
13. The Taxpayer kept a file of exemption certificates.
14. The Taxpayer maintained a summary index card at the cash register on which was written the date, the type of exempt revenue, and the amount of revenue per occurrence.
15. The City was unable to determine which customers made which purchases, or if all purchases that were exempted as "resale" were in fact made by businesses that had completed exemption certificates.
16. The City did allow one sale for resale for which the Taxpayer maintained records that traced the customer to the sale.
17. The audit took extra time to complete because the records retained by the Taxpayer were in a form that hindered the audit.
18. The Taxpayer had the interior designers fill out the exemption form and the Taxpayer maintained them in an accordion style folder.
19. The Taxpayer did not know that he had to maintain the resale number on the summary card.

## 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 360(a) provides that all exemptions and credits are conditional upon adequate proof and documentation.
3. The Taxpayer had sufficient documentation to demonstrate that sales to his interior designer customers were exempt sales for resale.
4. The Taxpayer did not maintain sufficient documentation to demonstrate the amount of sales made to exempt interior designers.
5. Under the circumstances presented herein, we find that the taxpayer provided sufficient documentation to support fifty percent of the sales to interior designers were exempt sales.
6. The Taxpayer's protest should be granted to the extent the tax assessment should be reduced by \$285.97 plus associated interest.

## ORDER

It is therefore ordered that the October 1, 2003 protest of *Taxpayer* of a tax assessment made by the City of Phoenix should be partially granted consistent with the Discussion herein.

It is further ordered that the City of Phoenix shall reduce the tax assessment by \$285.97 plus associated interest.

It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer