

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 9, 2003

Decision: MTHO #80

Tax Collector: Cities of Glendale/Phoenix/Prescott/Tempe

Hearing Date: None

DISCUSSION

Introduction

On October 29, 2003, *Taxpayer* filed a protest of tax assessments made by the Cities of Glendale, Phoenix, Prescott, and Tempe (Collectively, hereafter referred to as "Cities"). During the period from November 7, 2002 through November 25, 2002, each of the Cities reviewed the protest and concluded it was timely and in the proper form. On December 6, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the Cities to file a response to the protest on or before January 20, 2003. On January 7, 2003, the Cities filed a request to stay their response date since the Taxpayer had requested this matter be stayed pending a decision from the Arizona Department of Revenue ("DOR"). On January 27, 2003, the Hearing Officer stayed the Cities response date and ordered the Taxpayer to provide an updated status report on or before March 27, 2003. On March 27, 2003, the Taxpayer filed a letter indicating it had reached an agreement with the DOR. On March 28, 2003, the Hearing Officer ordered the Cities to file a response to the Taxpayer's protest on or before April 28, 2003. On April 28, 2003, the Cities filed their response. On April 30, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before May 30, 2003. The Taxpayer failed to file any reply. On June 3, 2003, the Hearing Officer filed a letter indicating a written Decision would be issued on or before July 18, 2003.

The DOR performed an audit on the Taxpayer for the period September 1997 through June 2001. The tax assessment for Glendale, Phoenix, Prescott, and Tempe was \$1,660.24, \$1,334.24, \$2,173.58, and \$551.63, respectively. All the Cities included interest on the assessments and Phoenix and Prescott assessed penalties in the amount of \$133.44 and \$217.37, respectively.

Cities Position

Model City Tax Code Section 460 ("Section 460") imposes a tax on the business activity of retail sales. In this case, the Taxpayer was assessed additional taxable sales as a result of claimed deductions that were disallowed by the Cities. Model City Tax Code Section 465(bb) ("Section 465") exempts "sales of materials that are purchased by or for publicly funded libraries including school district libraries, . . . for use by the public as follows: (1) printed or photographic materials (2) electronic digital media materials," According to the Cities, computer systems are neither printed or photographic materials nor electronic digital media materials. The Cities argued that the Taxpayer has failed to provide appropriate documentation to demonstrate the sales to

publicly funded libraries were exempt. For that reason, the Cities asserted the sales were properly taxed and the assessment should be upheld.

The DOR waived the penalties and interest assessed because the Taxpayer had relied on erroneous written advice provided by the DOR. The Cities asserted their penalties and interest should not be abated because none of the Cities provided any erroneous written advice to the Taxpayer.

Taxpayer Position

The tax assessments of the Cities are a direct result of the DOR assessment of tax on the sales of computer hardware and software to publicly funded libraries. The Taxpayer asserted that “electronic” materials sold to publicly funded libraries are exempt pursuant to ARS Section 42-5061(A)(49). According to the Taxpayer, computer software would be included as “electronic” materials and thus exempt from the tax. The DOR eliminated its penalties and interest because the Taxpayer relied on an information letter from the DOR. Subsequently, the DOR decided its information letter was incorrect. The Taxpayer requested the Cities also abate interest and penalties because of the Taxpayer’s reliance on the DOR information letter.

ANALYSIS

During the audit period, the Taxpayer was engaged in the taxable business activity of retail sales. While the Taxpayer claimed sales of computer systems to publicly funded libraries were exempt, the Taxpayer failed to provide documentation to support its claimed exemption. Accordingly, the Cities tax assessment is upheld. Further, since none of the Cities provided erroneous written advice to the Taxpayer, there is no basis to waive the interest assessed. As to the penalties, the Hearing Officer concludes the Taxpayer has provided reasonable cause for claiming the exemption based on the written advice from the DOR. As a result, the Hearing Officer grants the Taxpayer’s request to waive all penalties.

FINDINGS OF FACT

1. On October 29, 2002, the Taxpayer filed a protest of tax assessments made by the Cities.
2. During the period from November 7, 2003 through November 25, 2002, each of the Cities reviewed the protest and concluded it was timely and in the proper form.
3. On December 6, 2002, the Hearing Officer ordered the Cities to file a response to the protest on or before January 20, 2003.
4. On January 7, 2003, the Cities filed a request to stay their response date since the Taxpayer had requested this matter be stayed pending a decision from the DOR.
5. On January 27, 2003, the Hearing Officer stayed the Cities response date and ordered the

- Taxpayer to provide an updated status report on or before March 27, 2003.
6. On March 27, 2003, the Taxpayer filed a letter indicating it had reached an agreement with the DOR.
 7. On March 28, 2003, the Hearing Officer ordered the Cities to file a response on or before April 28, 2003.
 8. On April 28, 2003, the Cities filed their response.
 9. On April 30, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before May 30, 2003.
 10. The Taxpayer failed to file any reply.
 - ii. On June 30, 2003, the Hearing Officer filed a letter indicating a written Decision would be issued on or before July 18, 2003.
 12. The DOR performed an audit on the Taxpayer for the period September 1997 through June 2001.
 13. The tax assessment for Glendale, Phoenix, Prescott, and Tempe was \$1,660.24, \$1,334.23, \$2,173.58, and \$551.63, respectively.
 14. All the Cities included interest on the assessments and Phoenix and Prescott assessed penalties in the amount of \$133.44 and \$217.37, respectively.
 15. Based on written advice from the DOR, the Taxpayer claimed sales of computer systems to publicly funded libraries were exempt.
 16. There was no evidence of any erroneous written advice being provided to the Taxpayer from any of the Cities.

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 460 imposes a tax on the business activity of retail sales.
3. During the audit period, the Taxpayer was engaged in the business activity of retail sales.
4. The Taxpayer failed to provide documentation to support its claim that sales of computer systems to publicly funded libraries were exempt.

5. The Taxpayer has demonstrated reasonable cause for claiming the exemption based on erroneous written advice provided by the DOR.
6. The Taxpayer's request to waive all penalties assessed by the Cities should be granted.

ORDER

It is therefore ordered that the October 29, 2002 protest of *Taxpayer* of tax assessments made by the Cities of Glendale, Phoenix, Prescott, and Tempe should be denied with the exception of any penalties assessed.

It is further ordered that the Cities of Phoenix and Prescott shall waive all penalties assessed in this matter.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer