

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: April 29, 2003  
Decision: MTHO #84  
Tax Collector: City of Tucson  
Hearing Date: February 26, 2003

**DISCUSSION**

**Introduction**

On November 8, 2002, *Taxpayer* (“Taxpayer”) filed a protest of a denial by the City of Tucson (“City”) of a request for a refund of taxes paid. After review, the City concluded on November 20, 2002, that the protest was timely and in the proper form. On December 2, 2002, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before January 16, 2003. The City filed a response on January 13, 2003. On January 17, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before February 7, 2003. A Notice of Tax Hearing (“Notice”) was issued on February 6, 2003 setting the matter for hearing commencing on February 26, 2003. The City and Taxpayer both appeared and presented evidence at the February 26, 2003 hearing. Because the Taxpayer did not receive a copy, prior to the hearing, of the City’s January 13, 2003 response, the Hearing Officer issued a March 3, 2003 letter granting the Taxpayer until March 12, 2003 to reply to the City. The Taxpayer filed a reply on March 11, 2003. The Hearing Officer issued a March 17, 2003 letter closing the record and indicating a written decision would be issued on or before May 1, 2003.

In June of 2001, the Taxpayer paid the City \$6,930.01 for transaction privilege tax. In August of 2001, the Taxpayer filed an amended return for June of 2001 showing zero tax due and requesting a refund. Subsequently, the City denied the refund request.

**City Position**

The Taxpayer is engaged in performing construction contracting within the City. The City asserted that the Taxpayer improves real property and is subject to the two percent tax imposed by Section 19-415 (“Section 415”) on construction contracting performed on real property within the City. While the purchase of the materials used in the contracting may be exempt, the labor portion of the contracting is not exempt. According to the City, the exemption certificate provided by the Taxpayer is for retail sales of income producing capital equipment and not contracting. The City also argued that the insulation replacement was for an expendable material on real property and therefore a taxable construction contracting activity. As a result, the City recommended the refund request be denied.

## **Taxpayer Position**

The Taxpayer asserted they were exempt from the tax because of the nature of the business and the service provided. The Taxpayer indicated the work performed pursuant to their service contract is to repair insulation that was previously installed on mechanical systems at the generating station of *Customer* (“*Customer*”). According to the Taxpayer they are repairing equipment that is used directly in the production of transmitting electrical power. If the equipment used directly in producing electrical power by *Customer* has to be repaired or replaced, the insulation must be removed to make the repair. The Taxpayer removes the mechanical fasteners securing the insulation to the equipment and then reattaches the insulation after the equipment repair is completed. The equipment will not operate properly without the insulation. Based on the above, the Taxpayer argued its service is tax-exempt and a refund granted.

## **ANALYSIS**

The issue in this case is whether or not the Taxpayer is a taxable construction contractor or in the business of repairing/replacing tangible personal property used directly in producing electrical power. Based on the evidence, the Hearing Officer concludes the Taxpayer is in the business of repairing/replacing insulation that is secured to tangible personal property that is used directly in producing electrical power. As a result, the Hearing Officer concludes that the Taxpayer’s income from *Customer* is exempt from the City transaction privilege tax. Accordingly, the Taxpayer’s protest should be granted.

## **FINDINGS OF FACT**

1. On November 8, 2002, the Taxpayer filed a protest of a denial by the City for a refund of taxes paid.
2. After review, the City concluded on November 20, 2002 that the protest was timely and in the proper form.
3. On December 2, 2002, the Hearing Officer ordered the City to file a response to the protest on or before January 16, 2003.
4. The City filed a response on January 13, 2003.
5. On January 17, 2003, the Hearing Officer ordered the Taxpayer file to file any reply to the City on or before February 7, 2003.
6. A Notice was issued on February 6, 2003 setting the matter for hearing commencing on February 26, 2003.

7. The City and Taxpayer both appeared and presented evidence at the February 26, 2003 hearing.
8. On March 3, 2003, the Hearing Officer granted the Taxpayer until March 12, 2003 to reply to the City's January 13, 2003 response.
9. In June of 2001, the Taxpayer paid the City \$6,930.01 for transaction privilege tax.
10. In August of 2001, the Taxpayer filed an amended return for June of 2001 showing zero tax due and requesting a refund.
11. Subsequently, the City denied the refund request.
12. The Taxpayer has a contract to repair the insulation attached to equipment used directly by *Customer* to produce electrical power.
13. The Taxpayer removes the mechanical fasteners securing the insulation to the equipment and then re-attaches the insulation after the equipment repair is completed.
14. The equipment used directly by *Customer* in producing electrical power is tangible personal property.
15. The equipment will not operate properly without the insulation being attached.
16. The insulation is not expendable material.

### **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 is not a construction contractor pursuant to City Code Section 19-100.
3. The Taxpayer is in the business of repairing/replacing tangible personal property used directly in producing electrical power.
4. The Taxpayer's income from its service contract with *Customer* is exempt from the City's transaction privilege tax.
5. The Taxpayer's refund request should be granted.

**ORDER**

It is therefore ordered that the November 8, 2002 protest of *Taxpayer* of a denial by the City of Tucson of a request for a refund of taxes is hereby granted.

It is further ordered that the City of Tucson shall refund to *Taxpayer* taxes in the amount of \$6,930.01.

It is further ordered that this decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer