

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

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: April 8, 2003  
Decision: MTHO #85  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On November 25, 2002, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessed made by the City of Phoenix (“City”). After review, the City concluded on December 4, 2002, that the protest was timely and in the proper form. On December 9, 2002, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response on or before January 25, 2003. At the request of the Taxpayer, the matter was processed as a redetermination. On December 19, 2002, the City filed a response. On January 8, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before February 7, 2003. The Taxpayer did not file any reply. On February 25, 2003, the Hearing Officer filed a letter indicating a written decision would be issued on or before April 11, 2003.

The Taxpayer is in the business of selling office furniture at retail. The City conducted an audit for the period November 1998 through April 2002. As a result of the audit, the City assessed the Taxpayer additional taxes in the amount of \$59,521.27 plus interest in the amount of \$6,705.42. The Taxpayer protested \$28,419.62 of the assessment.

**City Position**

During the course of the audit, sales invoices were discovered documenting a large sale of office furniture to *ABC* Corporation (“*ABC*”) in the City of Chandler. The Taxpayer explained that the sale was done through *XYZ* Construction (“*XYZ*”), which was doing a remodeling project for *ABC*, and that the sales were for re-sale. *XYZ* had provided the Taxpayer with an exemption certificate claiming an exemption for “Tangible personal property to be incorporated into taxable construction contracting for hire.” The Taxpayer also provided a copy of the final invoice from *XYZ* to *ABC* showing collection of a contracting tax. The City did not find there was sufficient evidence to support the exemption. According to the City, the invoices of the Taxpayer indicated the tangible personal property was being sold and shipped to *ABC*. Further, the City argued that the tangible personal property sold by the Taxpayer is stand-alone office furniture. According to the City, the furniture is placed inside buyer’s offices and does not become “incorporated” into the structure. The City asserted that the claimed exemption was for a person regularly engaged in the business of selling tangible personal property and *XYZ* is not regularly engaged in the business of selling office furniture. While the Taxpayer argued that the City has already received the tax on the sale of furniture to *ABC*, the City asserts any taxes paid would have been to the

City of Chandler under the guise of construction contracting. The City concluded that the sale of furniture was to *ABC* and that payment was made to *XYZ* as a convenience for the customer. For that reason, the City believes the assessment was proper and should be upheld.

### **Taxpayer Position**

The Taxpayer protested \$28,419.62 of the assessment, which was related to a sale of furniture to *XYZ* for resale to *ABC*. The Taxpayer asserted that they received an exemption certificate from *XYZ*, which described the purchase as “tangible personal property to be incorporated into taxable construction contracting for hire. According to the Taxpayer, *XYZ* charged *ABC* for sales tax, which was then remitted to the City. The Taxpayer argued that if the City assessment were upheld, the Taxpayer would have to ask *XYZ* for payment who then would have to take a credit against future tax payments to the City. The Taxpayer asserted that the City is just creating additional work for all parties involved.

### **ANALYSIS**

While the Taxpayer did have an exemption certificate from *XYZ*, we don’t find that the Taxpayer’s reliance upon the exemption to be reasonable under the circumstances. The Taxpayer did not refute the City’s argument that the tangible personal property sold was stand-alone office furniture and not construction materials. Additionally, the fact that the bill indicated the property was being sold to *ABC* should have been enough for the Taxpayer to question the claim these were materials used in the normal course of construction. Based on the above, we find the City’s denial of the exemption certificate was proper. Accordingly, the Taxpayer’s protest is denied.

### **FINDINGS OF FACT**

1. On November 25, 2002, the Taxpayer filed a protest of a tax assessment by the City.
2. After review, the City concluded on December 4, 2002 that the protest was timely and in proper form.
3. On December 19, 2002, the Hearing Officer ordered the City to file a response on or before January 23, 2003.
4. At the request of the Taxpayer, the matter was processed as a redetermination.
5. On December 19, 2002, the City filed a response.
6. On January 8, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before February 7, 2003.
7. The Taxpayer did not file any reply.
8. On February 25, 2003, the Hearing Officer filed a letter indicating a written decision would be issued on or before April 11, 2003.

9. The Taxpayer is in the business of selling office furniture at retail.
10. The City conducted an audit for the period November 1998 through April 2002.
11. As a result of the audit, the City assessed the Taxpayer additional taxes in the amount of \$59,521.27 plus interest in the amount of \$6,705.42.
12. The Taxpayer protested \$28,419.62 of the assessment.
13. **XYZ** was doing a remodeling project for **ABC** and **XYZ** purchased stand-alone office furniture from the Taxpayer to include in the remodeling project.
14. **XYZ** provided the Taxpayer with an exemption certificate claiming an exemption for “tangible personal property to be incorporated into taxable construction contracting for hire.”
15. **XYZ** is not regularly engaged in the business of selling office furniture.

### **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 business of selling office furniture at retail is taxable pursuant to City Code Section 14-460.
3. The exemption for re-sale in Section 14-465(a) of the City Code is for “sale of tangible personal property” to a person regularly engaged in the business of selling such property.
4. **XYZ** is not regularly engaged in the business of selling office furniture.
5. It was not reasonable for the Taxpayer to rely upon the exemption certificate from **XYZ** under the circumstances.
6. The Taxpayer’s protest should be denied.

### **ORDER**

It is therefore ordered that the November 25, 2002 protest filed by **Taxpayer** is hereby denied.

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

Jerry Rudibaugh  
Municipal Tax Hearing Officer