

MUNICIPAL TAX HEARING OFFICER

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 20, 2003

Decision: MTHO #93

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On September 9, 2002, *Taxpayer* filed a request for redetermination of refund of sales tax collected and paid for qualified exempt items ("Request") under City of Phoenix ("City") Tax Code. After review, of the Request the City concluded on December 13, 2002, that the protest was timely and in the proper form. On December 16, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") issued a letter classifying the matter as a Redetermination and ordering the City to file a response on or before January 30, 2003. On January 8, 2003, the City filed its response. On January 17, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before February 17, 2003. The Taxpayer filed a reply on February 13, 2003. On February 25, 2003, the City filed a letter indicating they now agreed with the Taxpayer based on the additional information provided by the Taxpayer.

City Position

Income producing capital equipment is exempt pursuant to City Code Tax Section 14-465 ("Section 465") from the transaction privilege tax when the machinery or equipment is used directly in manufacturing. City Code Tax Section 14-110 ("Section 110") provides that the exemption in Section 465 does not include expendable materials. According to the City, the Taxpayer did not provide information or evidence in its Request that the "expendable inserts" were used directly in manufacturing as part of income producing equipment. As a result, the City concluded the refund request should be denied. After receiving the additional information contained in the Taxpayer's reply, they agreed that the "expendable inserts" were part of income producing capital equipment and part of the manufacturing process. For that reason, the City now agrees the "inserts" are exempt pursuant to Section 465.

Taxpayer Position

The Taxpayer argued that various carbide metal manufacturing items called "inserts" qualify for an exemption for the City tax pursuant to Sections 465 and 110. According to the Taxpayer, the "inserts" are used directly in exempt manufacturing machines. For that reason, the Taxpayer asserted the "inserts" were expendables used directly with manufacturing machinery and thus exempt.

ANALYSIS

Section 465 provides that the transaction privilege tax does not apply to machinery or equipment used directly in manufacturing. Section 110 provides that tangible personal property defined as income producing capital equipment does not include expendable materials. Section 110 further

provides that expendable materials do not include expendables that are used directly in exempt manufacturing machines. Since both the Taxpayer and City agree that the “inserts” are used directly in exempt manufacturing machines, the “inserts” are exempt from the City tax pursuant to Sections 110 and 465. The Taxpayer’s request for a refund should be granted:

FINDINGS OF FACT

1. On September 9, 2002, the Taxpayer filed a Request.
2. After review of the Request, the City concluded on December 13, 2002 that the protest was timely and in the proper form.
3. On December 16, 2002, the Hearing Officer issued a letter classifying the matter as a Redetermination and ordering the City to file a response on or before January 30, 2003.
4. On January 8, 2003, the City filed its response.
5. On January 17, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before February 17, 2003.
6. The Taxpayer filed a reply on February 13, 2003.
7. On February 25, 2003, the City filed a letter indicating they now agreed with the Taxpayer based on the additional information provided by the Taxpayer.
8. The “inserts” are expendable materials.
9. The “inserts” are used directly in exempt manufacturing machines.

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 465 provides that the transaction privilege tax does not apply to machinery or equipment used directly in manufacturing.
3. Section 110 provides that tangible personal property defined as income producing capital equipment does not include expendables.
4. Section 110 further provides that expendable materials do not include expendables that are used directly in exempt manufacturing machines.
5. “Inserts” are used directly in exempt manufacturing machines and thus exempt pursuant to Section 465.
6. The Taxpayer’s protest should be granted.

ORDER

It is therefore ordered that the September 9, 2002 protest of *Taxpayer* is hereby granted.

It is further ordered that the City of Phoenix shall refund taxes paid in the amount of \$2,069.33.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer