

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: May 15, 2003
Decision: MTHO #99
Tax Collector: City of Tucson
Hearing Date: None

DISCUSSION

Introduction

On January 20, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on January 29, 2003 that the protest was timely and in the proper form. On February 6, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before March 24, 2003. On March 4, 2003, the Taxpayer requested this matter be classified as a hearing. On March 7, 2003 the Hearing Officer re-classified this matter from a redetermination to a hearing. On March 20, 2003, the City filed its response to the protest petition. On March 24, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before April 14, 2003. On March 31, 2003, the Taxpayer filed its reply. On April 7, 2003, the Hearing Officer filed a letter indicating a written decision would be issued on or before May 15, 2003.

The Taxpayer is a corporation that sells natural gas. The City conducted an audit of the Taxpayer for the period April 1999 through September 2002. As a result of the audit, the City assessed the Taxpayer for additional taxes of \$3,533.64 plus interest and penalties. Subsequently, the City waived the penalties.

City Position

The City assessed the Taxpayer as being subject to a two percent utility tax and a two percent public utility tax. According to the City, the Taxpayer is providing and furnishing natural gas to its customers in the City. City Code Section 19-480(a) (“Section 480(a)”) assessed a two percent tax on the gross income of an entity engaged in furnishing natural gas to consumers who reside in the City. As a result, the City argued that the Taxpayer was properly assessed as a utility. While the City also originally assessed the Taxpayer a public utility tax pursuant to City Code Section 19-700 (“Section 700”), the City concluded after review of the protest that the Taxpayer was not a public utility. The City concluded that the Taxpayer was not providing service to the public in general and thus not taxable pursuant to Section 700. Based on the above, the City agreed to revise its assessment to reflect that the Taxpayer was not taxable pursuant to Section 700. Such revision would reduce the amount of taxes due to \$115.71 plus associated interest.

Taxpayer Position

The Taxpayer asserts that it was not formed in the State of Arizona (“State”) as a “public utility”, but as a competitive energy service supplier (“ESP”). According to the Taxpayer, it sells natural gas on a competitive retail basis wherein members of the public are not necessarily entitled as of right to the Taxpayer’s services. Accordingly, the Taxpayer argued it does not meet the definition of a public utility as set forth in Section 700. After review of the City’s proposed revised assessment, the Taxpayer indicated it was agreeable to the proposed revision and would withdraw its request for a hearing.

ANALYSIS

The Taxpayer is in the business of providing and furnishing natural gas to its customers in the City and thus properly assessed a transaction privilege tax pursuant to Section 480(a). Based on the evidence provided, the Taxpayer is not currently providing natural gas wherein members of the public are necessarily entitled as of right to the Taxpayer’s services. As a result, the Taxpayer is not a public utility pursuant to Section 700 and the City’s proposed revised assessment is appropriate.

FINDINGS OF FACT

1. On January 20, 2003, the Taxpayer filed a protest of a tax assessment by the City.
2. After review, the City concluded on January 29, 2003 that the protest was timely and in proper form.
3. On February 6, 2003, the Hearing Officer ordered the City to file a response to the protest on or before March 24, 2003.
4. On March 4, 2003, the Taxpayer requested the matter be reclassified as a hearing.
5. On March 7, 2003, the Hearing Officer re-classified this matter from a redetermination to a hearing.
6. On March 20, 2003, the City filed its response to the protest petition.
7. On March 24, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before April 14, 2003.
8. On March 31, 2003, the Taxpayer filed its reply.
9. On April 7, 2003, the Hearing Officer filed a letter indicating a written decision would be issued on or before May 15, 2003.

10. The Taxpayer is a corporation that sells natural gas.
11. The City conducted an audit of the Taxpayer for the period April 1999 through September 2002.
12. As a result of the audit, the City assessed the Taxpayer for additional taxes of \$3,533.64 plus interest and penalties.
13. Subsequently, the City waived the penalties.
14. After review of the protest petition filed by the Taxpayer, the City concluded that the Taxpayer was not providing service to the public in general.
15. The City agreed to revise its assessment to reduce the amount of taxes due to \$115.71 plus associated interest.
16. The Taxpayer is providing and furnishing natural gas to its customers in the City.
17. Based on the evidence presented, the Taxpayer is not currently providing natural gas wherein members of the public are necessarily entitled as of right to the Taxpayer's services.

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 in the business of providing and furnishing natural gas to its customers in the City and thus properly assessed a transaction privilege tax pursuant to Section 480(a).
3. The Taxpayer is not a public utility pursuant to Section 700.
4. The City's proposed revised assessment is appropriate.
5. Consistent with the Discussion herein, the Taxpayer's protest shall be approved.

ORDER

It is therefore ordered that the January 20, 2003 protest by *the Taxpayer* of a tax assessment made by the City of Tucson should be granted consistent with the Discussion herein.

It is further ordered that the City of Tucson shall revise its assessment consistent with its March 20, 2003 response to the protest.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer