

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 10, 2003
Decision: MTHO #104
Tax Collector: City of Phoenix
Hearing Date: None

DISCUSSION

Introduction

On February 14, 2003, *Taxpayer* filed a protest of a denial by the City of Phoenix (“City”) of a request for a refund of taxes paid. After review of the protest, the City concluded on February 14, 2003 that the protest was timely and in the proper form. On February 24, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before April 10, 2003. On April 10, 2003, the City filed a request for an extension of two weeks. On April 11, 2003, the Hearing Officer granted the extension request until April 24, 2003. The City filed a response on April 25, 2003. On April 30, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before May 30, 2003. Subsequently, the Hearing Officer received a copy of a May 23, 2003 letter from the Taxpayer to the City. On June 7, 2003, the Hearing Officer filed a letter indicating a written Decision would be issued on or before July 22, 2003.

The Taxpayer is in the business of rental of tangible personal property and has been remitting taxes to the City on the rental of income-producing capital equipment. Those taxes were erroneously paid to the City. On September 18, 2002, the Taxpayer filed a refund request for \$66,312.11 for the period of August 1998 through July 2002. On November 14, 2002, the Taxpayer filed a second refund request for \$16,321.08 for the period of August 1996 through July 1998. The second refund request was denied and the Taxpayer filed its February 14, 2003 protest letter.

City Position

City Tax Code Section 14-560 (“Section 560”) states in part “when a written claim for refund is submitted, credit shall be allowed or refund paid only for those excess taxes, penalties, or interest paid within the limitation period provided in Section 14-550”. City Tax Code Section 14-550 (“Section 550”) allows the City to “assess additional tax due at any time within four years after the date on which the return is required to be filed, or within four years after the date on which the return is filed.” Section 550 goes on to provide an exception to the general four year period by providing a six year limitation period when a taxpayer has failed to report in excess of twenty-five percent of the taxable amount stated on the return. The City argued that there is no

provision to extend the statute of limitations when amounts are reported that were not subject to taxation. Based on the above, the City requested the denial of the refund request be affirmed.

Taxpayer Position

The Taxpayer asserted that they had erroneously paid taxes in the amount of \$16,321.08 to the City during the period of August 1996 through July 1998. The Taxpayer argued that since Section 550 provides for a six-year period in which the City may assess additional tax, it would be patently unfair to not provide the Taxpayer the same period of time for a refund. The Taxpayer further argued that to not allow the same six-year period would appear to violate equal protection privileges of the Taxpayer.

ANALYSIS

Based on the evidence presented, the Taxpayer overpaid taxes in the amount of \$16,321.08 to the City during the period of August 1996 through July 1998. Section 560 authorizes the City to make refunds. The only issue is whether or not the Taxpayer is barred from a refund in this case because of the statute of limitations. Section 560 refers back to Section 550 as the controlling section for the statute of limitations. Section 550 sets forth a general statute of limitation period of four years. There is an exception to the four year statute of limitation where a taxpayer has failed to report in excess of twenty-five percent of the taxable amount stated on the return. The Hearing Officer concludes that the Taxpayer's request for a refund does not fall within the exception and thus the four-year statute of limitation applies in this case. As a result, the Hearing Officer concludes the Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On February 14, 2003, the Taxpayer filed a protest of a denial by the City of a request for a refund of taxes paid.
2. After review of the protest, the City concluded on February 14, 2003 that the protest was timely and in proper form.
3. On February 24, 2003, the Hearing Officer ordered the City to file a response to the protest on or before April 10, 2003.
4. On April 10, 2003, the City filed a request for an extension of two weeks.
5. On April 11, 2003, the Hearing Officer granted the extension request until April 24, 2003.
6. The City filed a response on April 25, 2003.
7. On April 30, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before May 30, 2003.

8. Subsequently, the Hearing Officer received a copy of a May 23, 2003 letter from the Taxpayer to the City.
9. On June 7, 2003, the Hearing Officer filed a letter indicating a written Decision would be issued on or before July 22, 2003.
10. The Taxpayer is in the business of rental of tangible personal property and has been remitting taxes to the City on the rental of income-producing capital equipment.
11. Those taxes were erroneously paid to the City.
12. On September 18, 2002, the Taxpayer filed a refund request for \$66,312.11 for the period of August 1998 through July 2002.
13. On November 14, 2002, the Taxpayer filed a second refund request for \$16,321.08 for the period of August 1996 through July 1998.
14. The second refund request was denied and the Taxpayer filed its February 14, 2003 protest letter.

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 erroneously paid taxes to the City in the amount of \$16,321.08 for the period of August 1996 through July 1998.
3. Section 560 authorizes a refund of excess taxes paid with a limitation period set forth in Section 550.
4. Section 550 provides for a general statute of limitations of four-years.
5. Section 550 provides for an exception to the four-year statute of limitations when a taxpayer has failed to report in excess of twenty-five percent of the taxable amount stated on the return.
6. The Taxpayer's request for a refund does not fall within the exception rule set forth in Section 550.
7. The Taxpayer's request for a refund is controlled by the four-year statute of limitations set forth in Section 550.
8. The Taxpayer's refund request should be denied.

ORDER

It is therefore ordered that the February 14, 2003 protest of *Taxpayer* is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer