

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 15, 2005

Decision: MTHO #265

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On September 15, 2005, *Taxpayer* (“Taxpayer”) filed a protest of a denial of a refund claim by the City of Phoenix (“City”). After review, the City concluded on September 21, 2005 that the protest was timely and in the proper form. On September 24, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) classified the matter as a redetermination and ordered the City to file any response on or before November 8, 2005. On September 30, 2005, the City filed a response to the protest. On October 3, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 2, 2005. On November 7, 2005, the Hearing Officer indicated no reply had been filed and as a result the record was being closed and a written decision would be issued on or before December 22, 2005.

City Position

The City indicated that the refund request was dated August 25, 2004. According to the City, the “Schedule of Exempt Sales” on which the tax was paid in error indicated the oldest invoice date was August 23, 2000, and the most recent invoice date was August 15, 2004. As a result, the City asserted the refund period in question was August 2000 through January 2004.

The City noted that the Taxpayer has stated it was their practice to bill and collect sales tax until a valid exemption certificate was obtained. The Taxpayer indicated that once an exemption certificate was received, the Taxpayer’s customer received a credit for taxes. The City asserted that a customer of the Taxpayer had informed the City that it was not charged tax by the Taxpayer and it had not provided an exemption certificate. Based on the above, the City concluded that it was unable to confirm the Taxpayer’s assertion regarding their tax billing and refund practices.

According to the City, the refund request asks for a refund of taxes paid for ten months during the period in question. The City noted that no taxes were reported and paid to the City for seven of the ten months. The City indicated they had reviewed the sales detail provided by the Taxpayer which revealed that tax accrued is adjusted for credits prior to an amount being reported. The City asserted that the adjustments did not always have an original document number to trace to other monthly accrual reports. The City argued that without the original document number it was not possible to verify that the tax was not adjusted off more than once.

The City indicated they had been provided with a summary of invoices, copies of the invoices and an exemption certificate given to the Taxpayer in September 2004 by XYZ (“XYZ”). According to the City, the exemption certificate, dated August 23, 2004, was generic in its documentation of property to be purchased tax exempt and covered the period of August 23, 2000 through December 31, 2005. The exemption was claimed pursuant to ARS Section 42-5061 (B) (3) (“Section 5061”) which provides as follows:

- Tangible personal property sold to persons engaged in business classified under the telecommunications classification and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media which are components of carrier systems.

The City has the same definition in City Code Section 14-110 (“Section 110”).

Based on a review of the invoices in question, the City was not able to conclude the items purchased would fall under the exemption. The City noted that many of the items appeared to be computer type equipment that may have various uses. As a result, the City was unable to confirm the Taxpayer’s assertion that the exemption certificate was properly applicable to the invoices in question. The City requested the denial of the refund be upheld.

Taxpayer Position

The Taxpayer had filed a refund claim for the period March 2000 through September 2000. The Taxpayer asserted that a significant amount of tax was collected during this period that related to exempt customers. The Taxpayer indicated that upon receipt of an exemption certificate, the Taxpayer would credit those customers and offset future liability to the City. As a result, the Taxpayer did not make cash payments during a large portion of the refund period.

In September 2004, the Taxpayer received an exemption certificate from XYZ regarding sales back to August 2000. The Taxpayer asserted that the vast majority of its sales are to telecommunications companies purchasing telecommunications equipment exempt pursuant to Section 110. The Taxpayer indicated that it had accepted, in good faith, exemption certificates and credited the tax back to its customers. As a result the Taxpayer protested \$15,309.39 of the tax refund claim denied by the City.

ANALYSIS

City Code Section 560 (“Section 560”) provides that refunds are limited by the statute of limitations (“SOL”) set forth in City Code Section 550 (“Section 550”). Section 550 provides for a four year SOL. As a result, we concur with the City that the refund period can only go back as far as August 2000. Accordingly, the refunds requested for the period March 2000 through July 2000 are barred by the SOL. As a result, the only two months eligible for a refund would be August and September 2000.

Clearly, Section 110 does provide for an exemption for tangible personal property sold to persons engaged in business classified under the telecommunications classification. It is provided in City Code Section 360 (“Section 360”) that the Taxpayer must provide adequate proof and documentation. It is further provided in City Regulation 360.2 (“Regulation 360”) that an exemption certificate is sufficient if provided at the time of the transaction. In this case, the exemption certificate from *XYZ* was provided approximately four years after the sales occurred. While we do not find this would automatically invalidate the exemption request, we do find there would be a higher burden on the Taxpayer to provide additional documentation. The City provided a list of concerns in the City’s September 30, 2005, response to the protest. While the Taxpayer was given the opportunity to reply to those concerns, the Taxpayer did not provide any reply. As a result, we conclude those concerns were valid and that the Taxpayer’s request for an exemption for *XYZ* must be denied for failure to provide adequate proof and documentation.

FINDINGS OF FACT

1. On September 15, 2005, the Taxpayer filed a protest of a denial of a refund claim by the City.
2. After review, the City concluded on September 21, 2005, that the protest was timely and in the proper form.
3. On September 24, 2005, the Hearing Officer classified the matter as a redetermination and ordered the City to file any response on or before November 8, 2005.
4. On September 30, 2005, the City filed a response to the protest
5. On October 3, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 2, 2005.
6. On November 7, 2005, the Hearing Officer indicated no reply had been filed and as a result the record was being closed and a written decision would be issued on or before December 22, 2005.
7. The Taxpayer had filed a refund claim for the period March 2000 through September 2000.
8. On August 3, 2005, the City denied the Taxpayer’s refund claim.
9. *XYZ* is a telecommunications company.
10. During the period March 2000 through September 2000, *XYZ* purchased tangible personal property from the Taxpayer and was charged City tax on the purchases.

11. In September 2004, XYZ provided the Taxpayer an exemption certificate for the period of August 23, 2000 through December 31, 2005.
12. During the period of March 2000 through September 2000, the Taxpayer would charge customers for City tax and subsequently receive a claim of exemption after the tax had been billed and reported.
13. Once an exemption certificate was received, the Taxpayer would credit the customer for the taxes.
14. After review of the exemption certificate provided by XYZ, the City expressed the following concerns: the certificate was dated after the purchases were made; the certificate was generic in its description of property to be purchased exempt; and, the City was unable to confirm the items that were purchased would fall under the exemption.
15. The Taxpayer failed to reply to the City's concerns.

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 560 provides that refunds are limited by the SOL set forth in Section 550.
3. Section 550 provides for an SOL of four years.
4. The Taxpayer's refund is limited back to August of 2000.
5. Section 110 provides for an exemption for tangible personal property sold to persons engaged in business classified under the telecommunications classification.
6. Section 360 provides that the Taxpayer must provide adequate proof and documentation to support claimed exemptions.
7. Regulation 360 provides that an exemption certificate is sufficient if provided at the time of the transaction.
8. The Taxpayer failed to provide adequate proof and documentation to support its claimed exemptions.
9. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the September 15, 2005, protest of *Taxpayer* of a denial of a refund claim by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer