

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 3, 2005
Decision: MTHO #193
Tax Collector: City of Phoenix
Hearing Date: None

DISCUSSION

Introduction

On July 9, 2004, *Taxpayer* ("Taxpayer"), f/k/a *Prior Company* Financial Services Corporation filed a protest of a denial by the City of Phoenix ("City") of a refund request filed by the Taxpayer. After review, the City concluded on July 14, 2004 the protest was timely and in proper form. On July 23, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before September 6, 2004. On August 19, 2004, the Taxpayer requested this matter be reclassified from a hearing to a redetermination. On August 23, 2004, the Hearing Officer reclassified this matter as a redetermination. On August 31, 2004, the City requested an extension of time to file a response to the protest. On September 3, 2004 the Hearing Officer granted the City an extension until September 20, 2004. On September 15, 2004, the City filed a response to the protest. On September 24, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before October 25, 2004. On October 22, 2004, the Taxpayer filed a reply. On November 12, 2004, the Hearing Officer ordered the Taxpayer to provide additional documentation to the City by December 12, 2004, the City to file comments/recommendations by January 11, 2005, and, the Taxpayer to file any reply on or before January 25, 2005. On December 10, 2004, the Taxpayer filed an email requesting an extension until February 15, 2005 to file documentation. On December 10, 2004, the Hearing Officer granted the Taxpayer an extension until February 15, 2005 to file documentation, the City to file comments/recommendations by March 17, 2005, and the Taxpayer to file any reply on or before March 31, 2005. The City filed comments/recommendations on March 17, 2005. On April 18, 2005, the Hearing Officer indicated the Taxpayer had failed to file a reply and as a result the record was being closed and a written decision would be issued on or before June 2, 2005.

City Position

After review of the documentation provided by the Taxpayer with its protest, the City concluded there were a number of deficiencies in the documentation provided. Those deficiencies are summarized as follows:

- The taxpayer did not provide adequate support for the amounts originally reported
- The master list of leases does not match with the revised worksheet listing.

- Numerous errors were noted in the revised worksheets, and no documents (receipts journal, general ledger) were supplied in support of the revenue on the revised worksheets.
- The stated reason for the refund request doesn't adequately explain the differences noted between reported revenue and revised revenue.
- Significant differences were noted between the amounts due per the supplied lease agreements, invoices and billing summaries, and the revenue shown on the revised worksheets. This further suggests the revised worksheets could be materially flawed.
- The taxpayer used the wrong combined tax rate when calculating the January through March 2000 taxable revenue for contract 6730222002; the same error also occurred for most contracts in the months immediately following a tax rate change.
- The apportionment schedules do not help identify Phoenix revenue subject to privilege tax.

Based on the above, the City asserted the Taxpayer did not provide documentation to support the exact amount of reported and revised revenue. Further, the City asserted the revised worksheets contain material errors. As a result, the City recommended the refund request be denied. Subsequently, the Taxpayer provided additional documentation which the City also reviewed. In response to a letter from the City of Tempe which granted the Taxpayer a refund, the City concluded they could not comment on the decision made by the City of Tempe. According to the City, they were unaware of what documentation was provided by the Taxpayer to the City of Tempe. After review of the additional documentation, the City argued that the Taxpayer had still not provided documentation to address the deficiencies previously noted by the City. As a result, the City continued to recommend the refund request be denied.

Taxpayer Position

According to the Taxpayer, it overpaid City transaction privilege taxes in the amount of \$129,842.73 for the period April 1999 through December 2001. The Taxpayer indicated that while preparing its year-end financial close it discovered that the sales tax liability account was running at a considerable debit balance. The Taxpayer determined that poor report design was omitting the credit adjustments attributable to the rebooking of a leased customer account. The Taxpayer asserted the omission resulted in the company reporting sales tax from an invoice multiple times. As a result, the Taxpayer argued it was entitled to a refund of sales tax it overpaid.

In response to the City's September 15, 2004 recommended denial, the Taxpayer provided additional documentation for the City to review. We note that while the Taxpayer was given another opportunity to reply to the City's additional concerns, the Taxpayer chose to not file any reply.

ANALYSIS

Pursuant to Model City Tax Code Section 560 ("Section 560") the City may authorize refunds for excess taxes paid when a timely request for refund is made by the Taxpayer. In this case, the

Taxpayer has made a timely request for a refund for the period April 1999 through December 2001. The burden is on the Taxpayer pursuant to Model City Tax Code Sections 350 and 370 (“Sections 350 and 370”) to maintain and provide suitable books and records to support any refund request. In this case, the City concluded the records provided by the Taxpayer were inadequate or unsuitable and requested additional documentation from the Taxpayer. As a result, we find the burden of proof is then on the Taxpayer to either provide the requested documentation or provide reasons why the requested documentation is not necessary. In this case, the Taxpayer has neither provided documentation requested by the City or provided reasons why such information is not necessary. In fact, the Taxpayer filed no reply to the city’s arguments set forth in the City’s March 17, 2004 letter. Based on the above, we find the Taxpayer has failed to meet its burden of proof and the refund request is denied.

FINDINGS OF FACT

1. On July 9, 2004, the Taxpayer filed a protest of a denial by the City of a refund request filed by the Taxpayer.
2. After review, the City concluded on July 14, 2004 that the protest was timely and in proper form.
3. On July 23, 2004, the Hearing Officer ordered the City to file a response to the protest on or before September 6, 2004.
4. On August 19, 2004, the Taxpayer requested this matter be reclassified from a hearing to a redetermination.
5. On August 23, 2004, the Hearing Officer reclassified this matter as a redetermination.
6. On August 31, 2004, the City requested an extension of time to file a response to the protest.
7. On September 3, 2004, the Hearing Officer granted the City an extension until September 20, 2004.
8. On September 15, 2004, the City filed a response to the protest.
9. On September 24, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before October 25, 2004.
10. On October 22, 2004, the Taxpayer filed a reply.
11. On November 12, 2004, the Hearing Officer ordered the Taxpayer to provide additional documentation to the City by December 12, 2004, the City to file comments/recommendations by January 11, 2005, and the Taxpayer to file any reply on or before January 25, 2005.

12. On December 10, 2004, the Taxpayer filed an email requesting an extension until February 15, 2005 to file documentation.
13. On December 10, 2004, the Hearing Officer granted the Taxpayer an extension until February 15, 2005 to file documentation, the City to file comments/recommendations by March 17, 2005, and the Taxpayer to file any reply on or before March 31, 2005.
14. The City filed comments/recommendations on March 17, 2005.
15. On April 18, 2005, the Hearing Officer indicated the Taxpayer had failed to file a reply and as a result the record was being closed and a written decision would be issued on or before June 2, 2005.
16. The Taxpayer made a timely request for a refund of \$129,842.73 for the period April 1999 through December 2001.

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. Pursuant to Section 560, the City may authorize refunds for excess taxes paid when a timely request for refund is made by the Taxpayer.
3. The Taxpayer filed a timely request for a refund for the period April 1999 through December 2001.
4. The burden is on the Taxpayer pursuant to Sections 350 and 370 to maintain and provide suitable books and records to support any refund request.
5. The City concluded the records provided by the Taxpayer were inadequate or unsuitable and requested additional documentation from the Taxpayer.
6. The burden of proof was on the Taxpayer to either provide the additional documentation or provide reasons why the documentation was not necessary.
7. The Taxpayer failed to meet its burden of proof.
8. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the July 9, 2004 protest filed by *Taxpayer*, f/k/a *Prior Business Name* of a denial by the City of Phoenix of a request for a refund is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer