DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: May 20, 2005
Decision: MTHO #166, 167, and 170
Taxpayer: ***Taxpayer***, Inc.
Tax Collectors: Cities of Mesa, Scottsdale and Chandler
Hearing Dates: December 7, 2004, January 24, 2005 and April 8, 2005 (Oral Arguments)

DISCUSSION

Introduction

On December 10, 2003, ***Taxpayer***, Inc. ("Taxpayer") filed a protest of denial of refund claims by the Cities of Mesa, Scottsdale, and Chandler (Collectively, referred to as "Cities"). After review, the City of Mesa concluded on December 19, 2003 that the protest was not timely and on December 30, 2003 the City of Scottsdale and the City of Chandler concluded the protests were not timely. On January 5, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the Taxpayer to provide a response to the City of Mesa timeliness issue on or before February 19, 2004. On January 7, 2004, the Hearing Officer ordered the Taxpayer to provide a response to the City of Scottsdale timeliness issue on or before February 23, 2004. On January 11, 2004, the Hearing Officer ordered the Taxpayer to provide a response to the City of Chandler timeliness issue on or before February 26, 2004. On February 26, 2004, the Taxpayer filed a consolidated response to the timeliness issue of the Cities. On March 3, 2004, the Hearing Officer ordered the Cities to file a consolidated response to the Taxpayer's protests on or before April 19, 2004. On April 7, 2004, the Cities requested an extension for their consolidated response. On April 12, 2004 the Hearing Officer granted the Cities an extension until May 19, 2004. On May 18, 2004 the Cities requested another extension for their consolidated response. On May 18, 2004, the Hearing Officer granted the Cities an extension until May 26, 2004. On May 26, 2004, the Cities filed their consolidated response. On June 1, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before June 22, 2004. On June 4, 2004, the Hearing Officer granted the Taxpayer an extension until July 13, 2004 to file its reply. On July 13, 2004, the Taxpayer filed its reply. On July 26, 2004, the Hearing Officer ordered the parties to provide possible hearing dates and locations on or before August 6, 2004. On August 4, 2004, the parties requested an extension to file possible dates and locations. On August 10, 2004, the Hearing Officer granted the parties an extension until August 11, 2004. A Notice of Hearing ("Notice") was issued setting the matter for hearing commencing on December 7, 2004. Both parties appeared and presented evidence at the December 7, 2004 hearing. On December 10, 2004, the Hearing Officer ordered the hearing to reconvene on January 24, 2005. Both parties appeared and presented evidence at the January 24, 2005 hearing. On February 1, 2005, the Hearing Officer indicated the parties had agreed to file simultaneous opening briefs on February 28, 2005 and reply briefs on March 30, 2005, and have oral arguments on April 8, 2005. The parties filed simultaneous opening briefs on February 28, 2005 and reply briefs on March 30, 2005. Both

parties provided oral arguments on April 8, 2005. On April 11, 2005, the Hearing Officer closed the record and indicated a written decision would be issued on or before May 23, 2005.

City Position

The Taxpayer has failed to meet the requirements of Model City Tax Code ("MCTC") Section 560 (c) ("Section 560 (c)") for a refund. Section 560 (c) provides that "no credit will be allowed or refund paid," unless the Taxpayer satisfies the following conditions:

> . . . if the taxpayer can present documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded pursuant to this Section will be remitted to those customers within sixty (60) days of receipt of the refund. (emphasis added)

According to the Cities, it is clear from the record that the Taxpayer has not satisfied the Tax Collectors by its documentation and that the Taxpayer has not demonstrated that the Tax Collectors have acted arbitrarily or capriciously with respect to these requirements. The Cities asserted that the Taxpayer failed to "present documentation satisfactory to the Tax Collectors identifying each customer from whom the excess taxes were collected" and proving that any taxes which are to be refunded "will be remitted to those customers within sixty (60) days of receipt of the refund." According to the Cities, the general rule is that the municipality will retain tax revenues which were paid by the ultimate consumer with the exception that the tax may be refunded to the extent it can be proven the specific customers who bore the burden of the tax will actually receive the refund.

In response to the Taxpayer's argument that Section 560 calls for a "two-step" refund application process, the Cities argued that the requirements of Section 560 (c) are simply additional conditions a taxpayer must satisfy if a refund claim is subject to Section 560. The Cities disputed the Taxpayer's argument that the federal law governing cable television providers precludes the Taxpayer from providing customer names and addresses to the Cities. The Cities argued that the federal cable TV "privacy" statute cited by the Taxpayer provides an exception for the disclosure of subscribers identifying information for a "legitimate business activity" related to cable service to the subscribers. The Cities asserted that the Taxpayer witnesses admitted that Taxpayer's current refund effort is a "legitimate business activity" related to its cable service to the subscribers who would purportedly obtain refunds. Furthermore, the Taxpayer never even bothered to ask federal authorities if the exception applied to the refund effort. The Cities disputed the Taxpayer's argument that disclosure is only permitted when "necessary to provide cable service to customers." The Cities asserted that the statute clearly states in the disjunctive that disclosure is permitted if necessary either to "render cable service" or to "conduct a legitimate business activity related to a cable service." The Cities also disputed the argument that the Taxpayer's own Privacy Notice precludes disclosure because it does not inform customers that it may disclose personally identifiable information to tax collectors when collecting refunds. The Cities argued that the Taxpayer's Privacy Notice received broad general categories of purposes for which disclosures can be made:

> . . . it is our policy to use it [personally identifiable information] only in providing our cable television, internet and telephone services – from

> sales and installation, to operations, administration, advertising, marketing, support, network provision, maintenance, communications with you, billing, collection and in other ways related to our services.

According to the City, these purposes are clearly broad enough to include disclosures for the limited purpose of obtaining tax refunds for the benefit of the Taxpayer's customers.

The Cities asserted that the Taxpayer is attempting to rewrite Section 560 (c) to avoid complying with the requirement to provide actual customer information. According to the Cities, the Taxpayer has argued that Section 560 (c) only requires the Taxpayer to establish that it has the information and could disclose its customer's identities if it wanted to. The Cities argued that Section 560 (c) requires the Taxpayer to "present documentation satisfying to the Tax Collector identifying each customer. . . ." In this case, the Cities asserted the Taxpayer has failed to meet its burden of satisfying Section 560 (c) because no documentation was provided. In response to the Taxpayer's argument that the Cities do not "need" the information, the Cities argued that they are not required to demonstrate a specific "need" since the information is mandated by Section 560 (c). The Cities noted that Section 560 (c) prescribes the procedure that the Taxpayer must follow to appeal from a determination of the Tax Collector regarding a refund request with which the Taxpayer disagrees:

> The determination of the Tax Collector that no refund or credit is to be paid or allowed pursuant to this Section [560] may be appealed by the taxpayer under the provisions of [MCTC §] 570. (emphasis added)

The Cities argued that Section 560 (e) does not require the use of the term "denial" with respect to a refund request as a predicate to the trigger of the appeal remedy. The Cities asserted that the Taxpayer's remedy for any determination by the Tax Collector not to "pay" or not to "allow" a tax refund is to file a timely appeal under MCTC Section 570 ("Section 570"). The Cities argued that Section 570 requires an appeal to be filed within 45 days of the determination of the Tax Collector:

> . . . a taxpayer may contest the applicability or amount of tax, penalty or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing . . . as set forth below:
>
> > (A) Within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector . . . that a request for refund or credit has been denied . . .

It is further provided in Section 570 (b) (1) (A) that this 45 day petition/appeal procedure is the sole manner in which to contest the matter:

> The provisions of this Section are exclusive, and no petition seeking any correction, abatement or refund shall be considered unless the petition is timely and properly filed under this Section. (emphasis added)

The Cities argued that the Taxpayer has failed to file a timely contest/petition following an adverse determination of the Tax Collector and as a result is jurisdictionally barred from pursuing its refund claim.

The Cities asserted the Taxpayer's claim for attorney fees and costs is meritless and beyond the scope of this proceeding. First, the Taxpayer should not prevail on any issue. Even if the Taxpayer were the prevailing party, the Cities argued no award of fees or costs would be appropriate because the Cities position was more than substantially "justified". Lastly, the Cities argued it is neither necessary nor appropriate for the Hearing Officer to address the claim for fees and costs as MCTC Section 578 (c) provides that any taxpayer claim for fees and costs shall be presented to and determined by the Taxpayer Resolution Officer after the conclusion of any administrative hearing.

Taxpayer Position

The Taxpayer argued that it filed a complete refund request on January 17, 2003 with each of the Cities. According to the Taxpayer, Section 560 creates a two-step process that defers a determination of what customer details a taxpayer is to present until after the refund request is filed. The Taxpayer argued that pursuant to Section 560 (b) (4) an initial refund claim submitted by a taxpayer must identify only four items:

(1) the specific grounds upon which the claim is based;
(2) the dollar amount of the refund requested;
(3) the specific tax periods involved; and,
(4) the name, address and tax identification number of the claimant.

The Taxpayer asserted that its January 2003 submissions provided the four items listed in Section 560 (b) (4) and as a result its refund claim was properly filed in January 2003. According to the Taxpayer, it then engaged the Cities in discussions about proceeding uniformly in the second step of the refund process under Subsection c of Section 560, which applies when the tax was separately itemized and collected from customers. The Taxpayer asserted that it cooperated with the Cities for nearly ten months, during which the Cities made progressively more unreasonable demands for information and continued to refuse to rule on the Taxpayer's refund requests. The Taxpayer was concerned that the Cities stonewalling and exploiting of ambiguities they read into the MCTC would indefinitely prevent the Taxpayer from adjudicating its right to a tax refund. As a result, the Taxpayer sent a letter to each of the Cities notifying them that if they did not give the Taxpayer a decision on its proposal for remitting tax refunds to its customers by October 31, 2003, the Taxpayer would deem its January 2003 refund requests as being denied on that date. Since the October 30, 2003 responses from the Cities did not rule on the refund requests, the Taxpayer concluded the requests had been effectively denied and the Taxpayer filed protest petitions.

The Taxpayer asserted that its refund requests are not jurisdictionally barred. The MCTC provides that a petition for hearing may be filed pursuant to the procedure in Section 570 from "[t]he determination of the Tax Collector that no refund or credit is to be paid or allowed . . . ." Section 570 (b) (1)(A) requires any petition for hearing to be filed within 45 days of receipt of a "notice of a determination" by the Tax Collector that a request for refund or credit has been "denied." The Taxpayer argued the Cities' February 2003 response did not deny the Taxpayer's refund requests. At no point did the Cities advise the Taxpayer that a "determination" had been made and that the 45-day period in which to file a petition for hearing had begun to run. Even if the Cities' February 2003 responses were denials, the Taxpayer asserted it was entitled to a

refund of the full amount because it filed a January 2004 protective refund request and timely filed a petition for hearing from the Cities' first responses to those requests. In addition, the Taxpayer argued it was entitled to a refund because the Cities drafted and executed in both July 2003 and July 2004 statute of limitations waivers keeping the limitations period open from June 1, 1999 for both the audit assessment and refunds.

The Taxpayer argued that its December 2003 petitions were timely and appropriately filed in response to the Cities' constructive denials. The Taxpayer asserted that the MCTC does not explicitly state that a taxpayer cannot petition for a hearing until it receives an explicit denial. According to the Taxpayer, the MCTC must be interpreted in a manner to preserve the taxpayer's Due Process right to a plain, speedy, and efficient remedy. For that reason, the Taxpayer argued that it must be allowed the option to petition for a hearing after waiting a long period of time without receiving an explicit notice of denial. The Taxpayer asserted that for months it had sought a definitive determination from the Cities on its refund requests. After not receiving a timely determination, the Taxpayer concluded the Cities had constructively denied the requests and on December 10, 2003, the Taxpayer filed petitions for hearing. The Taxpayer further argued that where there is no explicit denial, there is no trigger to begin the 45-day limitation period provided in MCTC Section 570 (b) (1) (A).

The Taxpayer asserted that the Cities responses on February 19, 2003 and February 21, 2003 did not include a notice of denial for the refund requests. According to the Taxpayer, the Cities stated the refund requests were "incomplete or unacceptable" and that the Cities did "not consider [then] a valid claim for refund and are returning [them] herewith." The letters went on to invite the Taxpayer "to submit a complete and accurate claim for refund at your discretion" and to provide details on what customer information the Cities would require from the Taxpayer to satisfy Section 560 (c). The Taxpayer indicated that it believed the Cities were initiating the ongoing, joint second step in the process that is required by Section 560 (c). After months of discussions with the Cities, the Taxpayer argued that its December 10, 2003 protest was a timely protest of a constructive denial based on the cumulative effect of the Cities' delays and unreasonable requests for information. The Taxpayer noted that the City of Avondale ("Avondale") sent a February 21, 2003 letter to the Taxpayer that was substantially the same letter the Cities argue is a notice of denial. In a February 6, 2004 letter to the Hearing Officer, Avondale asserted its February 21, 2003 letter was not a denial and that Avondale had not ruled on the refund request because the Taxpayer needed to submit additional information.

In response to the Cities argument on the amounts to be refunded, the Taxpayer argued that once it provided the additional appropriate documentation, the tax collectors must refund to the Taxpayer the full amount claimed and the Taxpayer must then remit the refunded monies to its customers within 60 days. The Taxpayer asserted that remittances that are not received and accepted by customers become unclaimed property for disposition under the Arizona Unclaimed Property Act, ARS Section 44-301 et seq. The Taxpayer argued that the Cities refusal to make a full refund violates the Taxpayer's constitutional right to a refund. According to the Taxpayer, Section 560 (c) requires a refund equal to the amount that the Taxpayer will remit and not what customers might ultimately accept. Further, the Taxpayer argued that the Cities have no right to demand that the Taxpayer agree to carry out and bear the expense of a notification procedure implemented as part of a settlement agreement with the City of Tempe.

According to the Taxpayer, ARS Section 42-2064 and MCTC Section 578, generally require reimbursement of reasonable fees and other costs if the taxpayer is the prevailing party in an administrative proceeding. Section 578 provides that the taxpayer is considered a prevailing party if both of the following are true:

(a) "the Tax Collector's position was not substantially justified" and (b) "the taxpayer prevails as to the most significant issue or set of issues."

The Taxpayer asserted that the Cities' position is not substantially justified. The Taxpayer argued that the Cities intentionally provided the Taxpayer with equivocal responses to its refund requests and then the Cities argued that the Taxpayer had failed to timely file its protest petitions based in part, on an interpretation of MCTC 560 that is contrary to their own previous interpretation. Secondly, the Taxpayer argued that the Cities had demanded that the Taxpayer provide unnecessary information, impossible to obtain or illegal to provide. Lastly, the Taxpayer indicated the Cities asserted, by relying on readily distinguishable authority that the Taxpayer's refund requests were jurisdictionally barred. As a result, the Taxpayer argued that it had prevailed on the most significant issue or set of issues and is entitled to reimbursement of reasonable fees and costs since It neither unduly and unreasonably protracted the final resolution of this matter nor prevailed due to an intervening change in applicable law. The Taxpayer asserted that the Hearing Officer is to determine whether the Taxpayer is the "prevailing party" and whether either of the two limited exceptions authorizing denial of reimbursements exists.

ANALYSIS

Did the Taxpayer File A Complete Refund Request in January 2003?

The record is clear that the Taxpayer met the requirements of Section 560 (b) (4) in its January 17, 2003 refund claim with each of the Cities. The Taxpayer identified (1) the specific grounds upon which the claim was based; (2) the dollar amount of the refund requested; (3) the specific tax periods involved; and, (4) the name, address and tax identification number of the claimant. The record is also clear that the Taxpayer did not meet the requirements of Section 560 (c) in its January 17, 2003 refund claim. The Taxpayer did not satisfy the requirement of presenting documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded would be remitted to those customers within 60 days of receipt of the refund.

The issue before us is whether or not the Taxpayer needed to comply with Section 560 (c) in order to have a valid refund claim pursuant to Section 560 (b) (4). We think not. Section (b) (4) sets forth the requirement for a valid claim and the Taxpayer complied with those requirements. The filing of a valid claim then fixes the limitation period for the refund while the Taxpayer attempts to comply with presenting "documentation satisfactory to the Tax Collector. . . ." It also would be a waste of time and money for a taxpayer to initially try to guess what documents are necessary to satisfy the Tax Collector on refunds to its customers when the Tax Collector may deny the initial claim filed for other reasons. Lastly, if the Tax Collectors had intended these could be no valid refund claim filed until Section 560 (c) was met, they simply could have

clearly included language in Section 560 (c). They did not and the Taxpayer's January 17, 2003 refund claim is valid.

Was the Taxpayer's Refund Claim Denied?

The language of Section 560 (e) provides that a taxpayer may file an appeal when "The determination of the Tax Collector that no refund or credit is to be paid or allowed . . . ."

Did the Tax Collectors in their February 2003 letters to the Taxpayer provide notice to the Taxpayer that the Tax Collectors had made a determination that no refund or credit was to be paid or allowed. In reviewing those letters, it is clear that the Tax Collectors did not consider the Taxpayer to have filed a valid refund claim because the Taxpayer had not complied with the requirements of Section 560 (c). Further, the Tax Collectors were encouraging the Taxpayer to refile the claim with documentation to meet the requirements of Section 560 (c). The following was extracted from the February 2003 Tax Collectors' letters:

> Accordingly, we do not consider this a valid claim for refund and are returning it herewith. You may submit a complete and accurate claim for refund at your discretion.

While the Cities have argued that the Taxpayer acknowledged in their March 6, 2003 letters that the refund request had been rejected out of hand, it is clear from the entire reading of that letter that the understanding of the Taxpayer was that the Cities had not accepted the claims as being filed. Further, it is obvious from the communications that flowed back and forth between the Cities and Taxpayer that both parties were discussing what information was necessary to meet the requirements of Section 560 (c). Certainly, if the Cities had believed a determination had been made by the Tax Collectors in February 2003 that no refunds were going to be made, the Cities would not have wasted their time and energy in discussing what additional information was needed.

Next, we must decide whether there was a constructive denial of the refund claims as argued by the Taxpayer. Unfortunately, Section 560 provides no deadline for a Tax Collector to make a determination on whether a refund is to be paid or not. Further, the only appeal rights for a taxpayer under Section 560 are after the Tax Collector has made a determination that no refund is to be paid. As a result, a simple reading of Section 560 would mean that a Tax Collector could hold a refund forever and a taxpayer would have no appeal rights. Clearly, such a result will not pass fundamental fairness and/or due process. So in this case, was there such an egregious delay by the Tax Collectors that would require us to conclude there had been a constructive denial? We can not say for certainty that a lack of a clearly stated determination by the Tax Collectors after nine months would result in a constructive denial. However, we don't need to reach that conclusion. In response to the Taxpayer's December 10, 2003 protest petitions, each of the Cities indicated they had denied the Taxpayer's refund requests. This is the first instance we can find in the record where the Tax Collectors have notified the Taxpayer that the refund claims had been denied.

Since the Taxpayer had not previously been notified the claims had been denied, the forty-five day period set forth in Section 570 would not have begun to run. Accordingly, we conclude that the Cities denied the Taxpayer's refund requests sometime before December 10, 2003 and

because of the lack of notice to the Taxpayer the forty-five day period did not begin to fun resulting in the protest petitions being timely petitions pursuant to Section 570.

Has the Taxpayer Met the Requirements of Section 560 (c)?

First, it is clear that Section 560 (c) applies because the Taxpayer did collect the tax from its customers by a separately stated itemization. As a result, there can be no refund paid unless the Taxpayer "can present documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded pursuant to this Section will be remitted to those customers within sixty (60) days of receipt of the refund."

The record reflects that the Taxpayer has provided an enormous amount of information to the Tax Collectors. However, the Tax Collectors have argued they still have not received information that lists customer names and addresses. It is clear that the Taxpayer has such available information but has refused to provide it to the Tax Collectors because of federal privacy concerns. We concur with the Cities that Section 560 (c) grants the Tax Collectors broad authority by requiring documents "satisfactory to the Tax Collector." While the Taxpayer has argued that the Tax Collectors do not need information identifying the customer names and addresses, we do not find it is unreasonable for the Tax Collectors to request such information. As to the Taxpayer's privacy concerns, we find the Taxpayer has made little effort to resolve those concerns. There was no evidence of any attempt to utilize an exception to the disclosure requirements. While the Taxpayer has argued the "legitimate business activity related to a cable service" does not apply, we find the Cities arguments that the exception applies is persuasive. However, because of the concerns expressed by the Taxpayer we will not order the information be provided. Instead, we will order the Taxpayer to establish the same refund procedures with these Tax Collectors as it did with the City of Tempe.

Is the Refund Based on The Amounts Actually Refunded to Customers or Potential Amount of Refunds?

The Taxpayer has argued that it is clear from Section 560 (c) that the Tax Collector must refund the full amount claimed and then the Taxpayer must transmit the refunded money to its customers. According to the Taxpayer, any monies not actually refunded to customers would become abandoned property pursuant to Arizona's Unclaimed Property Act. The Taxpayer emphasized that Section 560 (c) contained both the terms "any taxes refunded" and "will be remitted" to customers. According to the Taxpayer the definition of refund means the return of money of a person who overpaid while the definition of remit means to transmit money. The Taxpayer argued the use of these two different terms must be taken into account in construing Section 560 (c). The City argued that Section 560 (c) is written that the revenues are to be retained by the Cities is the general rule with refunds constituting the exception. As a result, the Taxpayer is only entitled to refunds for customers to whom the Taxpayer can actually accomplish such refunds. Further, the City asserted that leaving non-refundable taxes with the municipality where persons originally paying the taxes resided makes more sense than turning it over to the State for State-wide use.

In reviewing the arguments of the Taxpayer, we find ourselves agreeing with the Taxpayer that we must take into account the use of both the terms "refunded" and "remitted" as used in Section 560 (c). We also find ourselves in agreement with the Cities argument that it makes more send for non-refundable taxes be returned to the Cities instead of the State. After careful consideration of these respective arguments, we find the most reasonable interpretation of Section 560 (c) is that the Taxpayer is entitled to refunds for all customers in which the Taxpayer can remit refunds to a valid current address. For those customers that refuse those refunds for whatever reason, those refunds would then become abandoned property pursuant to Arizona's Unclaimed Property Act. Based on the record, it is clear to the Hearing Officer that the Cities were in no hurry to process the refund claims and have benefited by such delay since the number of valid current addresses for customer will only decline. Accordingly, we believe fairness dictates that the Cities should be responsible for the costs of notification and remitting of the refunds.

Reimbursement of Fees and Costs

MCTC 578 (c) and ARS Section 42-2064 provide that any taxpayer claim for fees and costs shall be presented to and determined by the Taxpayer Problem Resolution Officer. While we agree the Hearing Officer does not make the determination on a claim for fees and costs, we do find it appropriate for the Hearing Officer to provide guidance that may be helpful to the Taxpayer Problem Resolution Officer's determination. This should reduce the review time needed by the Taxpayer Resolution Officer. Accordingly, based on the review of the record in this case, the Hearing Officer concludes as follows: We find there were several significant issues in this case with the Taxpayer prevailing on the issues of whether there was a refund request filed in January 2003 and whether the Taxpayer filed a timely protest. We find the Cities prevailed on the issues of whether the Taxpayer has fully complied with Section 560 (c) and on the amounts to be refunded to the Taxpayer. We do not find the Cities presented reasonable arguments on the issues of whether there was a refund request filed in January 2003 and whether the Taxpayer filed a timely protest. We do find the Cities presented reasonable arguments on the issues of whether the Taxpayer fully complied with Section 560 (c) and on the amounts to be refunded to the Taxpayer.

FINDINGS OF FACT

1. On December 10, 2003, the Taxpayer filed a protest of denial of refund claims by the Cities.

2. After review, the City of Mesa concluded on December 19, 2003 that the protest was not timely and on December 30, 2003 the City of Scottsdale and the City of Chandler concluded the protests were not timely.

3. On January 5, 2004, the Hearing Officer ordered the Taxpayer to provide a response to the City of Mesa timeliness issue on or before February 19, 2004.

4. On January 7, 2004, the Hearing Officer ordered the Taxpayer to provide a response to the City of Scottsdale timeliness issue on or before February 23, 2004.

5. On January 19, 2004, the Hearing Officer ordered the Taxpayer to provide a response to the City of Chandler timeliness issue on or before February 26, 2004.

6. On February 26, 2004, the Taxpayer filed a consolidated response to the timeliness issue of the Cities.

7. On March 3, 2004, the Hearing Officer ordered the Cities to file a consolidated response to the Taxpayer's protests on or before April 19, 2004.

8. On April 7, 2004, the Cities requested an extension for their consolidated response.

9. On April 12, 2004, the Hearing Officer granted the Cities an extension until May 19, 2004.

10. On May 18, 2004, the Cities requested another extension for their consolidated response.

11. On May 18, 2004, the Hearing Officer granted the Cities an extension, until May 26, 2004.

12. On May 26, 2004, the Cities filed their consolidated response.

13. On June 1, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before June 22, 2004.

14. On June 4, 2004, the Hearing Officer granted the Taxpayer an extension until July 13, 2004 to file its reply.

15. On July 13, 2004, the Taxpayer filed its reply.

16. On July 26, 2004, the Hearing Officer ordered the parties to provide possible hearing dates and locations on or before August 6, 2004.

17. On August 4, 2004 the parties requested an extension to file possible hearing dates and locations.

18. On August 10, 2004, the Hearing Officer granted the parties an extension until August 11, 2004.

19. A Notice was issued setting the matter for hearing commencing on December 7, 2004.

20. Both parties appeared and presented evidence at the December 7, 2004 hearing.

21. On December 10, 2004, the Hearing Officer ordered the hearing to reconvene on January 24, 2005.

22. Both parties appeared and presented evidence at the January 24, 2005 hearing.

23. On February 1, 2005, the Hearing Officer indicated the parties had agreed to file simultaneous opening briefs on February 28, 2005, simultaneous reply briefs on March 30, 2005, and have oral arguments on April 8, 2005.

24. The parties filed simultaneous opening briefs on February 28, 2005 and reply briefs on March 30, 2005.

25. Both parties provided oral arguments on April 8, 2005.

26. On April 11, 2005, the Hearing Officer closed the record and indicated a written decision would be issued on or before May 23, 2005.

27. On January 17, 2003, the Taxpayer filed refund requests with each of the Cities.

28. In its January 17, 2003 refund claim with each of the Cities, the Taxpayer identified the specific grounds upon which the claim was based; the dollar amount of the refund request; the specific tax periods involved; and, the name, address and tax identification umber of the claimant.

29. The Taxpayer did not meet the requirements of Section 560 (c) in its January 17, 2003 refund claim.

30. The Tax Collectors did not consider the Taxpayer to have filed a valid refund claim in January 2003 because the Taxpayer did not meet the requirements of Section 560 (c).

31. A response to the Taxpayer's refund request was provided by the City of Chandler, City of Mesa, and City of Scottsdale on February 19, 2003, February 21, 2003, and February 21, 2003, respectively.

32. After receiving the responses from the Cities to its refund request, the Taxpayer had on-going discussions with the Cities regarding the information that needed to be provided by the Taxpayer to comply with Section 560 (c).

33. On September 11, 2003, the Taxpayer sent a letter to the Cities indicating that if the Taxpayer did not hear back from each of the Cities by October 31, 2003 either approving or denying the refund request, the Taxpayer would treat the silence as a denial of the refund request.

34. In response to the Taxpayer's December 10, 2003 protest petitions, each of the Cities indicated they had denied the Taxpayer's refund requests.

35. The responses by the Cities to the Taxpayer's 2003 protest petitions was the first time each of the Cities provided notice to the Taxpayer that its refund requests had been denied.

36. During the refund period, the Taxpayer collected tax from its customers by a separately stated itemization.

37. The record reflects the Taxpayer has provided an enormous amount of information to the Tax Collectors.

38. The Taxpayer has not provided the Tax Collectors with a list of customer names and addresses.

39. According to the Taxpayer, the list of customer names and addresses has not been provided because of federal privacy concerns.

40. While the record does not provide us with the number of customers, it is clear that the Taxpayer will not have current valid addresses for all its customers during the refund period.

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 met the requirements of Section 560 (b) (4) in its January 17, 2003 refund claim with each of the Cities.

3. The Taxpayer has not met the requirement of presenting documentation satisfactory to the Tax Collector identifying each customer from when the excess taxes were collected and establishing that any taxes refunded would be remitted to those customers within 60 days of receipt of the refund.

4. The Taxpayer did not need to comply with Section 560 (c) to have a valid refund claim pursuant to Section 560 (b) (4).

5. The Cities February 2003 responses to the Taxpayer did not provide notice to the Taxpayer that the refund request had been denied.

6. The Cities denied the Taxpayer's refund requests sometime after December 10, 2003.

7. Because the Tax Collectors failed to notify the Taxpayer the refund requests were denied, the forty-five day period did not begin to run.

8. The Taxpayer's protest petitions were timely filed pursuant to Section 570.

9. We do not find the Tax Collectors request for information identifying customer names and addresses is unreasonable pursuant to Section 560 (c).

10. Section 560 (c) contains both the terms "any taxes refunded" and "will be remitted" to customers.

11. The most reasonable interpretation of Section 560 (c) is that the Taxpayer is entitled to refunds for all customers in which the Taxpayer can remit refunds to a valid address.

12. If any of the aforementioned customers refuse the refund for whatever reason, the refunds would become abandoned property pursuant to Arizona's Unclaimed Property Act.

13. The Cities should be responsible for the costs of notification and remitting of the refunds.

14. Both the Taxpayer and the Cities prevailed on several significant issues in this case.

15. The Taxpayer's refund claim should be granted consistent with the discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the December 10, 2003 protests of ***Taxpayer***, Inc. of denials of refund claims by the Cities of Mesa, Scottsdale, and Chandler is hereby granted in part and denied in part consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that within thirty days of the date of this Decision, ***Taxpayer***, Inc. and the Cities of Mesa, Scottsdale, and Chandler shall establish the same procedures for refunds that was established with the City of Tempe.

It is further ordered that ***Taxpayer***, Inc. is entitled to refunds for all customers in which ***Taxpayer***, Inc., can provide valid current addresses.

It is further ordered that for all the aforementioned customers that refuse their refund for whatever reason, those refunds would then become abandoned property pursuant to Arizona's Unclaimed Property Act.

It is further ordered that the Cities of Mesa, Scottsdale, and Chandler shall be responsible for the costs of notification and remitting of the refunds.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer