

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 30, 2004

Decision: MTHO #173

Tax Collector: City of Phoenix

Hearing Date: May 24, 2004

DISCUSSION

Introduction

On January 20, 2004, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Phoenix ("City"). After review, the City concluded on January 22, 2004 that the protest was timely and in the proper form. On January 24, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before March 9, 2004. On March 3, 2004, the City filed a response. On March 6, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before March 29, 2004. On March 15, 2004, a Notice of Tax Hearing ("Notice") was issued setting the matter for hearing commencing on May 24, 2004. On March 23, 2004, the Taxpayer requested an extension until April 12, 2004. On March 24, 2004, the Hearing Officer granted the extension. On April 9, 2004, the Taxpayer filed a reply. Both parties appeared and presented evidence at the May 24, 2004 hearing. On July 15, 2004, the City filed comments/recommendations. On July 23, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before August 13, 2004. The Taxpayer sent an August 6, 2004 email and the City sent an August 9, 2004 email indicating the parties were discussing a possible settlement. On August 10, 2004, the Taxpayer provided the City with copies of the Taxpayer's billing and accounting processes and procedures.

The City and Taxpayer sent a September 15, 2004 email indicating they were still discussing a possible settlement. On September 29, 2004, the City filed recommended adjustments to the assessment. On November 12, 2004, the Taxpayer sent an email indicating agreement with the City's recommended adjustments.

City Position

The City conducted an audit of the Taxpayer for the period August 1998 through December 2002. The City concluded that additional privilege taxes of \$92,172.44 were due and additional use taxes of \$11,898.88 were due. In addition, the City assessed interest of \$31,857.74 up through November 2003.

In response to the Taxpayer's protest, the City argued that the client invoices of the Taxpayer did not list charges for customization. The City indicated that they were unable to verify the amounts that the Taxpayer claims as non-taxable for *Client A* and *Client B*. According to the City, the Taxpayer did not itemize in detail and consistently on the

invoices the amounts that could be recognized as non-taxable items. Based on the above, the City requested the assessment should be upheld.

The City reviewed additional documentation provided by the Taxpayer subsequent to the Hearing. Based on that review, the City concluded that the Taxpayer had provided exemption certificates that showed **Client B** was a qualified nonprofit health organization. As a result, the City recommended the **Client B** revenue be removed from the assessment resulting in a reduction in the tax due of \$5,079.89. The City also reviewed documentation for the **Client A** client and concluded the claims processing amounts should be removed as non-taxable. As a result, the City recommended a tax reduction of \$1,340.28 related to the **Client A** client. Lastly, the City reviewed additional contracts and invoices for the Taxpayer client, **Client C**, and only covered services. Based on all the above, the City recommended the tax assessment be reduced by \$14,248.39.

Taxpayer Position

The Taxpayer protested the tax assessment on the following amounts of net gross income from three of the Taxpayer's "hosted clients": **Client A** - \$863,596.12; **Client B** - \$160,246.00; and, **Client D** - \$80,040.00. The Taxpayer asserted that certain of the services it performed for clients were non-taxable services. In addition, the Taxpayer argued the services provided to **Client B** were exempt because **Client B** was a qualified non profit health organization. Subsequent to the hearing, the Taxpayer provided additional documentation to the City for review. After review of the documentation, the City proposed adjustments to the audit which the Taxpayer concurred.

ANALYSIS

During the audit period, the Taxpayer failed to report gross receipts from the rental of tangible personal property pursuant to City Code Section 14-450 (a) ("Section 450 (a)") and understated purchases subject to the use tax pursuant to City Code Section 14-610 ("Section 610"). As a result, the City's assessment pursuant to Sections 450 (a) and 610 were proper. While the Taxpayer argued that additional deductions should be allowed from the gross receipts from the rental of tangible personal property, the burden of proof was on the Taxpayer to support such claimed deductions. Subsequent to the hearing, the Taxpayer provided documentation to support exemptions/deductions that reduced the taxes due by \$14,248.39 as verified by the City's review of such documentation. The City's proposed reduction in taxes of \$14,248.39 was proper since it was based on documentation not available at the time of the audit. Accordingly, the assessment as revised by the City's September 29, 2004 letter is approved.

FINDINGS OF FACT

1. On January 20, 2004, the Taxpayer filed a protest of a tax assessment made by the City.

2. After review, the City concluded on January 22, 2004 that the appeal was timely and in proper form.
3. On January 24, 2004, the Hearing Officer ordered the City to file a response to the protest on or before March 9, 2004.
4. On March 3, 2004, the City filed a response.
5. On March 6, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before March 29, 2004.
6. On March 15, 2004, a Notice was issued setting the matter for hearing commencing on May 24, 2004.
7. On March 23, 2004, the Taxpayer requested an extension until April 12, 2004.
8. On March 24, 2004, the Hearing Officer granted the extension.
9. On April 9, 2004, the Taxpayer filed a reply.
10. Both parties appeared and presented evidence at the May 24, 2004 hearing.
11. On July 15, 2004, the City filed comments/recommendations.
12. On July 23, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before August 13, 2004.
13. The Taxpayer sent an August 6, 2004 email and the City sent an August 9, 2004 email indicating the parties were discussing a possible settlement.
14. On August 10, 2004, the Hearing Officer ordered the parties to notify the Hearing Officer on or before August 13, 2004 if a settlement had been reached.
15. On August 10, 2004, the Taxpayer provided the City with copies of the Taxpayer's billing and accounting processes and procedures.
16. The City and Taxpayer sent a September 15, 2004 email indicating they were still discussing a possible settlement.
17. On September 29, 2004, the City filed recommended adjustments to the assessment.
18. On November 12, 2004, the Taxpayer sent an email indicating agreement with the City's recommended adjustments.

19. The City conducted an audit of the Taxpayer for the period August 1998 through December 2002.
20. The City concluded that additional privilege taxes of \$92,172.44 and additional use taxes of \$11,898.98 were due.
21. In addition, the City assessed interest of \$31,857.74 up through November 2003.
22. The client invoices of the Taxpayer did not list charges for customization.
23. The Taxpayer did not itemize in detail and consistently on the invoices the amounts that could be recognized as non-taxable items.
24. The Taxpayer provided exemption certificates that showed *Client B* was a qualified nonprofit health organization.
25. The City recommended the *Client B* revenues be removed from the assessment resulting in a reduction in tax due of \$5,089.89.
26. The Taxpayer provided documentation to support the removal of claims processing amounts for the *Client A* client.
27. The City recommended a tax reduction of \$1,340.28 for the *Client A* client.
28. The Taxpayer provided documentation to show that the contracts for *Client C* only covered non-taxable services.
29. The City recommended a tax reduction of \$7,828.22.
30. The Taxpayer was in agreement with the City's assessment as revised pursuant to the City's September 29, 2004 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 failed to report gross receipts from the rental of tangible personal property pursuant to Section 450 (a) and understated purchases subject to the use tax pursuant to Section 610.
3. Based on the information available at the time of the audit, the City's assessment was proper.

4. The burden of proof was on the Taxpayer to support claimed deductions/exemptions.
5. Subsequent to the hearing, the Taxpayer provided documentation to support exemptions/deductions that reduced the taxes due by \$14,248.39.
6. Based on the additional documentation, the City's proposed reduction in taxes due of \$14,248.39 was proper.
7. The Taxpayer's protest should be granted to the extent it is consistent with the City's September 29, 2004 letter.

ORDER

It is therefore ordered that the January 20, 2004 protest by *Taxpayer* of a tax assessment made by the City of Phoenix should be granted to the extent it is consistent with the September 29, 2004 City of Phoenix recommendations.

It is further ordered that the City of Phoenix shall revise the assessment to reflect the City's proposed reduction in taxes due of \$14,248.39 as set forth in the City's September 29, 2004 letter.

It is further ordered that this Decision is effective immediately.