

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 15, 2005

Decision: MTHO #249

Tax Collector: City of Tucson

Hearing Date: None

DISCUSSION

Introduction

On January 14, 2005, *Taxpayer* Contracting (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on January 21, 2005 that the protest was timely and in the proper form. On July 22, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) classified the matter as a redetermination and ordered the City to file a response to the protest on or before September 5, 2005. On August 23, 2005, the City filed a response to the protest. On August 27, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before September 26, 2005. On October 3, 2005, the Hearing Officer indicated no reply had been filed and as a result a written decision would be issued on or before November 17, 2005.

City Position

The Taxpayer is involved in prime contracting, sub-contracting and retail sales which are mainly associated with petroleum fueling systems. The City participated in a joint audit of the Taxpayer conducted by the Arizona Department of Revenue (“DOR”). The DOR concluded that the Taxpayer owed taxes of \$1,515.93 to the City because the Taxpayer had misclassified certain construction projects as retail. In addition, interest was assessed pursuant to City Code Section 19-540 (a) (“Section 540 (a)”) in the amount of \$711.46 up through November of 2004. The Taxpayer was assessed penalties for failing to timely pay and for negligence totaling \$303.18. The penalties were subsequently waived by the City.

According to the City, the Taxpayer was not licensed with the City prior to the audit and did not report any income from contracting jobs done in the City. The Taxpayer had paid all of the contracting tax to the City of Phoenix because the Taxpayer was located in the City of Phoenix. The City concluded that since the contracting jobs took place in the City, the Taxpayer owes the tax to the City. The City asserted that the City is required by Section 540 (a) to assess interest on tax owed in an audit. Based on the above, the City requested the assessment to be upheld.

Taxpayer Position

The Taxpayer indicated they were in agreement with the DOR audit results. According to the Taxpayer, they had misclassified certain construction projects as retail based on information provided to the Taxpayer while attending a seminar sponsored by the DOR. As a result, the Taxpayer requested all penalties and interest amounts be waived.

ANALYSIS

There was no dispute that the Taxpayer had failed to report contracting income to the City during the audit period. In fact, the Taxpayer did not protest the assessment of tax by the City. The Taxpayer did protest any penalties assessed, however, the City has waived all penalties. The Taxpayer also protested the interest that was assessed on the underlying tax. Section 540 (a) makes it clear that interest may not be abated by the Hearing Officer except as it might relate to a tax that was abated. Since there was no abatement of tax, the interest may not be waived. Accordingly, the Taxpayer's protest must be denied.

FINDINGS OF FACT

1. On January 14, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on January 21, 2005 that the protest was timely and in the proper form.
3. On July 22, 2005, the Hearing Officer classified the matter as a redetermination and ordered the City to file a response to the protest on or before September 5, 2005.
4. On August 23, 2005, the City filed a response to the protest.
5. On August 27, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before September 26, 2005.
6. On October 3, 2005, the Hearing Officer indicated no reply had been filed and as a result a written decision would be issued on or before November 17, 2005.
7. The Taxpayer is involved in prime contracting, sub-contracting and retail sales which are mainly associated with petroleum fueling systems.
8. The City participated in a joint audit of the Taxpayer conducted by the DOR.
9. The DOR concluded that the Taxpayer owed taxes of \$1,515.93 to the City because the Taxpayer had misclassified certain construction projects as retail.

10. Interest was assessed pursuant to Section 540 (a) in the amount of \$711.46 up through November 2004.
11. The Taxpayer was assessed penalties for failing to timely pay and for negligence totaling \$303.18.
12. The penalties were subsequently waived by the City.
13. The Taxpayer was not licensed with the City prior to the audit and did not report any income from contracting jobs done in the City.
14. The Taxpayer had paid all of the contracting tax to the City of Phoenix because the Taxpayer was located in the City of Phoenix.
15. The Taxpayer had misclassified certain construction projects as retail based on information provided to the Taxpayer while attending a seminar sponsored by the DOR.

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. During the audit period the Taxpayer failed to report income from contracting jobs that occurred within the City.
3. The Taxpayer did not protest the assessment of tax by the City.
4. All penalties have been waived by the City.
5. Pursuant to Section 540 (a), the City must assess interest on all taxes imposed by the audit.
6. Pursuant to Section 540 (a), the Hearing Officer may not abate any interest except as it might relate to a tax that was abated.
7. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the January 14, 2005 protest of *Taxpayer* Contracting of a tax assessment made by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer