

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 31, 2007

Decision: MTHO #323

Taxpayer: *Taxpayer ABC*

Tax Collector: City of Phoenix

Hearing Date: December 11, 2006

DISCUSSION

Introduction

On August 24, 2006, *Taxpayer ABC* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on September 19, 2006, that the protest was timely and in the proper form. On September 25, 2006, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before November 9, 2006. On September 29, 2006, the City filed a response. On October 6, 2006, the Hearing Officer ordered Taxpayer to file any reply on or before October 27, 2006. On November 8, 2006, a Notice of Tax Hearing (“Hearing”) scheduled the matter for hearing commencing on December 11, 2006. Both parties appeared and presented evidence at the December 11, 2006 hearing. On December 12, 2006, the Hearing Officer granted Taxpayer until December 27, 2006 to provide additional documentation in support of the protest. On January 10, 2007, the City indicated no additional documentation had been provided by Taxpayer. On January 16, 2007, the Hearing Officer indicated the record was closed and a written decision would be issued on or before March 2, 2007.

City Position

The City performed an audit of the Taxpayer for the period December 2000 through May 2006 because Taxpayer had failed to file returns for that period. As a result of the audit, the City assessed Taxpayer for additional taxes in the amount of \$2,650.26, penalties of \$639.76, and interest up through July 2006 in the amount of \$230.13. The City attempted on several occasions to contact Taxpayer but received no reply. For that reason, the City made an estimate utilizing the Consumer Price Index (“CPI”) and the past filing history of Taxpayer. The City asserted Taxpayer did not provide documentation to support its claim that income received from January 1, 2006 was related to subcontracting income. The City noted that City Code Section 14-415(c)(1) (“Section 415(c)”) defines the term “subcontracting” and the type of documentation necessary to claim the deduction. According to the City, they were unable to recommend any adjustments to the assessment. At the hearing, the City agreed to review additional documentation provided by Taxpayer on or before December 27, 2006. Since there was no post-hearing documentation provided, the City argued the assessment was proper and should be

upheld.

Taxpayer Position

Taxpayer disputed the assessment amount. Taxpayer asserted that all the revenues after January 1, 2006 were from exempt subcontracting income. At the hearing, Taxpayer provided a copy of an Arizona Form 5005 (“Form 5005”) which was dated November 16, 2006. The Form 5005 listed *Construction Company 123* as the prime contractor and Taxpayer as the subcontractor. We note the Form 5005 contained no reference to any project(s). Taxpayer agreed at the hearing to provide additional documentation to support its claim of being an exempt.

ANALYSIS

There was no dispute that Taxpayer had unreported construction contracting during the audit period. Section 415 (c) does provide a possible exemption for ”subcontractors”. The burden of proof for an exemption is on the person claiming the exemption. The Form 5005 provided by Taxpayer was not complete. There was no information regarding which project(s) or time frame the Form 5005 was to reference. In addition, the Form 5005 was dated after the audit period. The Form 5005 indicated that if it was incomplete or erroneous, the subcontractor would have the burden of proving it was not subject to transaction privilege tax as a taxable prime contractor. Taxpayer agreed at the hearing to provide additional supporting documentation, however, none was provided. As a result, we must conclude Taxpayer has failed to meet its burden of proving it was entitled to an exemption as a subcontractor.

Because Taxpayer failed to file reports or provide books and records, the City was authorized pursuant to City Code Section 14-545 (“Section 545”) to estimate Taxpayer’s income amount. We find the City’s methodology of utilizing Taxpayer’s past reporting history with CPI adjustments to be a reasonable method. Since Taxpayer failed to timely file reports or timely pay taxes, we conclude the City was authorized pursuant to City Code Section 540(b) (“Section 540(b)”) to assess penalties. While the penalties may be waived for reasonable cause, Taxpayer failed to demonstrate any reasonable cause for not timely filing reports or timely paying taxes. Accordingly, the penalties are upheld. Based on all the above, Taxpayer’s protest should be denied.

FINDINGS OF FACT

1. On August 24, 2006, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on September 19, 2006, that the protest was timely and in the proper form.

3. On September 25, 2006, the Hearing Officer ordered the City to file any response on or before November 9, 2006.
4. On September 29, 2006, the City filed a response to the protest.
5. On October 6, 2006, the Hearing Officer ordered the Taxpayer to file a reply on or before October 27, 2006.
6. On November 8, 2006, a Notice scheduled the matter for hearing commencing on December 11, 2006.
7. Both parties appeared and presented evidence at the December 11, 2006 hearing.
8. On December 12, 2006, the Hearing Officer granted Taxpayer until December 27, 2006 to provide additional documentation in support of the protest.
9. On January 10, 2007, the City indicated no additional documentation had been provided by Taxpayer.
10. On January 16, 2007, the Hearing Officer indicated the record was closed and a written decision would be issued on or before March 2, 2007.
11. The City performed an audit of Taxpayer for the period December 2000 through May 2006 because Taxpayer had failed to file returns for that period.
12. As a result of the audit, the City assessed Taxpayer for taxes in the amount of \$2,650.26, interest up through July 2006 in the amount of \$230.13, and penalties in the amount of \$639.76 for failing to timely file reports and failing to timely pay taxes.
13. The City attempted on several occasions to contact Taxpayer but received no reply.
14. The City made an estimate of Taxpayer's income by utilizing the CPI and the past filing history of Taxpayer.
15. At the hearing, Taxpayer provided an incomplete Form 5005, dated November 16, 2006.

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, Taxpayer had unreported contracting income.
3. Because Taxpayer failed to file reports or to provide books and records, the City was authorized pursuant to Section 545 to prepare an estimated assessment.
4. The City's estimate methodology was reasonable.
5. Taxpayer did not provide reliable documentation to support its claim that income received after January 1, 2006 was related to exempt subcontracting income.
6. Since Taxpayer failed to timely pay taxes or timely file reports, the City was authorized pursuant to Section 540(b) to assess penalties.
7. Taxpayer failed to demonstrate reasonable cause to have the penalties waived.
8. Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the August 24, 2006 protest of *Taxpayer ABC* of a tax assessment made by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer