

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 30, 2008
Decision: MTHO # 408
Taxpayer: *ABC Taxpayer*
Tax Collector: City of Litchfield Park
Hearing Date: April 9, 2008

DISCUSSION

Introduction

On August 20, 2007, a protest was filed by *ABC Taxpayer* (“Taxpayer”) of a tax assessment made by the City of Litchfield Park (“City”). After review, the City concluded on September 9, 2007 that the protest was timely but not in the proper form. On January 11, 2008, the Municipal Tax Hearing Officer (“Hearing Officer”) concluded the form was proper and ordered the City to file a response to the protest on or before February 25, 2008. On February 22, 2008, the City filed a response to the protest. On February 27, 2008, the Hearing Officer ordered Taxpayer to file a reply on or before March 19, 2008. On March 7, 2008, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on April 9, 2008. Both parties appeared and presented evidence at the April 9, 2008 hearing. On April 10, 2008, the Hearing Officer indicated Taxpayer had agreed to provide additional documentation for the City to review; the City would review the documentation and provide any comments/recommendations on or before May 9, 2008; and, Taxpayer would provide any reply on or before May 23, 2008. On May 19, 2008, the Hearing Officer extended the City’s deadline until June 2, 2008. On May 26, 2008, the City filed an amended assessment. On May 29, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before June 12, 2008. On June 19, 2008, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before August 4, 2008.

City Position

The City conducted an audit of Taxpayer for the period January 1, 2006 through May 30, 2007. The City concluded that Taxpayer had unreported restaurant income pursuant to City Code Section 8A-455 (“Section 455”). As a result, the City assessed Taxpayer for additional taxes in the amount of \$7,386.84; penalties for failure to file, failure to pay and failure to provide records totaling \$3,519.61; and, interest up through June 2007 in the amount of \$443.95.

The City indicated they had contacted Taxpayer over fifteen times in order to schedule and conduct the audit. The City asserted they requested on several occasions that

Taxpayer provide the following records: bank statements; monthly sales journals; cash register tapes for selected dates; copies of income tax returns; worksheets; and, purchases. According to the City none of the records were ever supplied. The City noted that City Code Section 8A-350 (“Section 350”) provides that it is the duty of each taxpayer to keep and preserve suitable records as may be necessary to determine the tax liability. The City indicated that City Code Section 8A-555 (“Section 555”) authorizes the City to use estimates to determine the tax liability when a taxpayer fails to maintain or provide books and records the City considers necessary to determine the tax liability of a taxpayer. The City noted that City Code Section 8A-545 (“Section 545”) provides any City estimate must be made on a reasonable basis and that it is the responsibility of Taxpayer to prove the estimate is not reasonable. Since Taxpayer failed to provide the necessary books and records, the City estimated Taxpayer’s gross income based on similar businesses.

Subsequent to the hearing, Taxpayer provided some books and records. Based on a review of those books and records, the City amended the audit period to include the period January 2006 through December 2007. The City’s amended assessment was for taxes due in the amount of \$5,372.11, penalties totaling \$2,686.06 and interest up through May 2008 in the amount of \$560.14.

Taxpayer Position

Taxpayer did not dispute that it owed taxes. Taxpayer did dispute the amount of taxes assessed. Taxpayer asserted the City’s estimated gross sales amount of \$369,345.17 was excessive. According to Taxpayer, the actual gross sales were \$159,170.62. After the hearing, Taxpayer provided some books and records in support of its argument. We note that Taxpayer did not file any reply to the City’s amended assessment.

ANALYSIS

There was no dispute that Taxpayer failed to file tax reports and pay City taxes during the audit period. There was no dispute that during the audit process, Taxpayer failed to provide books and records the City deemed necessary to determine the tax liability of Taxpayer. There was also no dispute that Taxpayer had unreported restaurant income pursuant to Section 455 during the audit period. As a result, the City was authorized pursuant to Section 555 to use an estimate to determine the tax liability of Taxpayer. We conclude the City’s use of similar businesses was a reasonable method of estimating the tax liability pursuant to Section 545. As noted in Section 545, the burden of proof was on Taxpayer to demonstrate any City estimate was not reasonable. Taxpayer failed to meet that burden of proof. Subsequent to the hearing, Taxpayer did provide some books and records to support its claim that the City’s estimate of gross income was too high. It was proper for the City to review the actual books and records of Taxpayer and to recommend adjustments based on that review. Accordingly, we approve the City’s May 5, 2008 amended assessment.

FINDINGS OF FACT

1. On August 20, 2007, a protest was filed by Taxpayer of a tax assessment made by the City.
2. After review, the City concluded on September 9, 2007 that the protest was timely but not in the proper form.
3. On January 11, 2008, the Hearing Officer concluded the form was proper and ordered the City file a response to the protest on or before the protest.
4. On February 22, 2008, the City filed a response to the protest.
5. On February 27, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before March 19, 2008.
6. On March 7, 2008, a Notice scheduled the matter for hearing commencing on April 9, 2008.
7. Both parties appeared and presented evidence at the April 9, 2008 hearing.
8. On April 10, 2008, the Hearing Officer indicated Taxpayer had agreed to provide additional documentation for the City to review; the City would review the documentation and provide any comments/recommendations on or before May 9, 2008; and, Taxpayer would file any reply on or before May 23, 2008.
9. On May 19, 2008, the Hearing Officer extended the City's deadline until June 2, 2008.
10. On May 26, 2008, the City filed an amended assessment.
11. On May 29, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before June 12, 2008.
12. On June 19, 2008, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before August 4, 2008.
13. The City audited Taxpayer for the period January 1, 2006 through May 30, 2007.
14. Taxpayer had unreported restaurant income during the audit period.
15. The City assessed Taxpayer for additional taxes due in the amount of \$7,386.85; penalties for failure to file, failure to pay taxes and failure to provide records totaling \$3,519.61; and, interest up through June 2007 in the amount of \$443.95.

16. The City contacted Taxpayer over fifteen times in order to schedule and conduct the audit.
17. The City requested on several occasions that Taxpayer provide the following records: bank statements; monthly sales journals; cash register tapes for selected dates; copies of income tax returns; worksheets; and purchases.
18. Taxpayer failed to provide any of the records requested by the City.
19. The City estimated Taxpayer's gross income for the audit period based on similar businesses.
20. The City reviewed books and records provided by the Taxpayer after the hearing on this matter.
21. As a result of the City's review of Taxpayer's books and records, the City amended the audit period to include the period January 2006 through December 2007.
22. The City issued an amended assessment for taxes due in the amount of \$5,372.11, penalties totaling \$2,686.06 and interest up through May 2008 in the amount of \$560.14.

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. Taxpayer failed to file tax reports and failed to pay City taxes during the audit period.
3. Taxpayer failed to provide book and records the City deemed necessary to determine the appropriate tax liability pursuant to Section 350.
4. During the audit period, Taxpayer had unreported restaurant income pursuant to Section 455.
5. The City was authorized pursuant to Section 555 to use an estimate to determine the tax liability of Taxpayer.
6. The City's method of using similar businesses to make an estimate was reasonable.
7. Taxpayer failed to meet its burden of proof pursuant to Section 545 to demonstrate the City's estimate was not reasonable.

8. It was proper for the City to review additional documentation that was provided after the hearing and to make adjustments to the assessment as a result of the new documentation.
9. Taxpayer's protest should be partly granted and partially denied, consistent with the Discussion, Findings, and Conclusion, herein.

ORDER

It is therefore ordered that the August 20, 2007 protest by *ABC Taxpayer* of a tax assessment by the City of Litchfield Park is hereby partially granted and partially denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Litchfield Park shall revise its assessment consistent with the revisions set forth in the City's May 26, 2008 letter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer