

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 5, 2010

Decision: MTHO # 476

Taxpayer: *Taxpayer*

Tax Collector: City of Mesa

Hearing Date: October 8, 2009

DISCUSSION

Introduction

On October 14, 2008, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Mesa (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on October 8, 2009. Appearing for the City were Assistant City Attorney, Tax Administrator, Tax Audit Supervisor, and Tax Auditor. Taxpayer failed to make an appearance. At the conclusion of the October 8, 2009 hearing, the record was left open and the Hearing Officer granted Taxpayer until November 9, 2009 in which to submit additional evidence. On November 30, 2009, the Hearing Officer indicated the Taxpayer had failed to submit any additional evidence and as a result the record was closed and a written decision would be issued on or before January 14, 2010.

DECISION

Taxpayer was in the contracting business. The City conducted an audit of Taxpayer for the period January 2003 through June 2007. As a result, the City assessed Taxpayer for additional taxes in the amount of \$66,221.00, interest up through August 2008 in the amount of \$9,666.90, and penalties totaling \$42,026.87. Taxpayer protested the assessment stating it would not be liable for design and construction income from out-of-State work. Taxpayer also protested the amount of income the City included for the following customers: *Company A*; *Company B*; and, *Company C*. The City reviewed the documentation provided by Taxpayer with its protest and concluded there was not sufficient documentation to make any adjustments to the assessment. At the City’s request, Taxpayer subsequently provided additional records for the City to review. As a result of the City’s review of the additional records, the City recommended the income estimated for Taxpayer’s customer *Company C* be reduced from \$474,878.47 to \$176,411.00. The City also recommended the amounts included in the assessment for the following be removed: sales design amount of \$863,972.16; construction in the amount of \$826,243.05; reimbursement in the amount of \$33,848.79; and, misc. in the amount of \$47,279.33. The City concluded these amounts were for out-of State contracting and design services and should be removed from the assessment. The City concluded

Taxpayer failed to provide sufficient documentation for any adjustments for *Company A* or *Company B*. Based on the above adjustments, the City recommended the assessment be revised to additional taxes due in the amount of \$40,581.32, interest up through June 2009 in the amount of \$7,686.61, and penalties totaling \$25,773.27.

There was no dispute that Taxpayer had contracting income during the audit period. While Taxpayer reported gross income of \$429,531.00, the City's initial assessment concluded Taxpayer had gross income of \$6,828,531.62. City Code Section 5-10-545 ("Section 545") authorizes the City to examine the records of Taxpayer to redetermine the amount of taxes when they are not satisfied with a return and the proper amount of taxes to be paid. In this case, the City utilized records provided by Taxpayer and records obtained from Taxpayer's customers in order to estimate the amount of gross income and taxes due for the audit period. Section 545 requires any estimate made by the City to be made on a reasonable basis. We conclude the City's use of records from Taxpayer and from Taxpayer's customers to be a reasonable basis to estimate Taxpayer's gross income and taxes due. Section 545 provides that it is the responsibility of Taxpayer to prove the City's estimate was not reasonable. Subsequent to the protest, Taxpayer did provide additional records for the City to review. As a result of that review, it was proper for the City to recommend proposed adjustments to the assessment. The City did not find justification to make any adjustments for the *Company A* or for *Company C*. While Taxpayer was given the opportunity to provide any reply to the City, Taxpayer failed to appear at the hearing and failed to file any reply after the hearing. Since the burden of proof was on Taxpayer to prove the City's estimate was not reasonable, we conclude Taxpayer has failed to meet its burden of proof. As a result, the City's revised assessment pursuant to the City's October 8, 2009 memo is hereby approved. Taxpayer's protest should be denied with the exception of the City's revisions set forth in the October 8, 2009 memo.

FINDINGS OF FACT

1. On October 14, 2008, Taxpayer filed a protest of a tax assessment made by the City.
2. The City conducted an audit assessment of Taxpayer for the period of January 2003 through June 2007.
3. The City assessed Taxpayer for additional taxes in the amount of \$66,221.00, interest up through August 2008 in the amount of \$9,666.90, and penalties totaling \$42,026.87.
4. Taxpayer was in the contracting business during the audit period.

5. The City estimated Taxpayer's contracting income for the audit period by using records obtained from Taxpayer and from records obtained from Taxpayer's customers.
6. Taxpayer protested the amount of income included by the City in the assessment.
7. At the request of the City, Taxpayer provided additional records for the City to review.
8. After review of the additional records, the City recommended the income estimated for Taxpayer's customer *Company C* be reduced from \$474,878.47 to \$176,411.00.
9. As a result of the review of the additional records, the City also recommended the amounts included in the assessment for the following be removed: sales design in the amount of \$863,972.16; construction in the amount of \$826,243.05; reimbursement in the amount of \$33,848.79; and, misc. in the amount of \$47,279.33.
10. As a result of the City's adjustments, the City recommended the assessment be revised to additional taxes due in the amount of \$40,581.32, interest up through June 2009 in the amount of 7,686.61, and penalties in the amount of \$25,773.27.
11. Taxpayer failed to appear at the October 8, 2009 hearing and failed to file any post-hearing reply.

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 was in the contracting business pursuant to Section 415 during the audit period.
3. The City was authorized pursuant to Section 545 to estimate Taxpayer's taxable income for the audit period.
4. Section 545 requires any estimate made by the City must be on a reasonable basis.
5. The City's use of records from Taxpayer and from Taxpayer's customers to estimate Taxpayer's taxable income was a reasonable basis.

6. Section 545 provides it is the responsibility of a taxpayer to prove the City's estimate was not reasonable.
7. Taxpayer provided additional documentation for the City's review to demonstrate adjustments should be made to the City's assessment.
8. Taxpayer failed to meet its burden of proving the City should make any additional adjustments to the City's assessment.
9. Taxpayer's protest should be denied with the exception of the adjustments set forth in the City's October 8, 2009 memo, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the October 14, 2008 protest by *Taxpayer* of a tax assessment made by the City of Mesa is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Mesa shall amend the assessment consistent with the City's October 8, 2009 memo.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer