

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: October 28, 2009

Decision: MTHO # 478

Taxpayer: *Taxpayer*

Tax Collector: City of Mesa

Hearing Date: September 15, 2009

### **DISCUSSION**

#### **Introduction**

On November 24, 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 September 15, 2009. Appearing for the City were *Tax Administrator*, *Tax Audit Supervisor*, and *Tax Auditor*. At the conclusion of the September 15, 2009 hearing, the Hearing Officer granted Taxpayer an opportunity to file additional information. Taxpayer failed to file a response and as a result, the Hearing Officer closed the record on October 19, 2009 and indicated a written decision would be issued on or before December 4, 2009.

### **DECISION**

Taxpayer is in the air conditioning/heating contracting business. The City conducted a desk audit review of Taxpayer for the period June 2002 through July 2007. The City issued an assessment for additional taxes in the amount of \$6,906.78, interest up through July 2008 in the amount of \$1,612.48, and penalties totaling \$1,269.69. The City accepted the gross receipts as reported by Taxpayer. However, the City disallowed claimed deductions in the amount of \$431,887.61. Taxpayer disputed the amount of deductions disallowed by the City and requested additional time to provide supporting documents. While Taxpayer was given additional time, no documentation was ever provided. The City disallowed all of the retail service labor, out of state sales, and out of City contracting deductions because of lack of supporting documentation. The City also disallowed subcontracting deductions with the exception of a small amount that was documented. We note that City Code Section 5-10-360 (“Section 360”) provides that all claimed deductions and exemptions are conditional upon adequate proof and documentation being provided by the taxpayer. Despite being granted several opportunities, Taxpayer has failed to meet its burden of proof by providing documentation to support its claimed deductions. As a result, we conclude Taxpayer’s protest should be denied.

Since Taxpayer failed to timely file tax returns or timely pay taxes, the City was

authorized pursuant to City Code Section 5-10-540 (“Section 540”) to impose penalties. Section 540 provides the penalties may be waived when a taxpayer demonstrates reasonable cause. Taxpayer failed to demonstrate reasonable cause and the penalties are approved.

### **FINDINGS OF FACT**

1. On November 24, 2008, Taxpayer filed a protest of a tax assessment made by the City.
2. On August 12, 2008, the City completed a desk audit assessment of Taxpayer for the period of June 2002 through July 2007.
3. The City assessed Taxpayer for additional taxes in the amount of \$6,906.78, interest up through July 2008 in the amount of \$1,612.48, and penalties totaling \$1,269.69.
4. Taxpayer was in the air conditioning/heating contracting business.
5. The City accepted Taxpayer’s gross receipts as reported.
6. The City disallowed Taxpayer’s claimed deductions in the amount of \$431,887.61.
7. The City disallowed all of the retail service labor, out of state sales, and out of City contracting deductions because of lack of supporting documents.
8. The City also disallowed subcontracting deductions with the exception of a small amount that was documented.
9. The City granted Taxpayer additional time to provide supporting documentation.
10. Taxpayer failed to provide any additional supporting documentation.
11. Taxpayer failed to timely file tax reports or timely pay taxes.

### **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. City Code Section 5-10-415 imposes a tax on the business of contracting in the City.
3. Section 360 places the burden of proof on Taxpayer to provide adequate proof and documentation to support all claimed deductions and exemptions.
4. Taxpayer failed to meet its burden of proof by providing documentation to support its claimed deductions.
5. Since Taxpayer failed to timely file reports or timely pay taxes, the City was authorized pursuant to Section 540 to assess penalties.
6. Taxpayer has not demonstrated reasonable cause for failing to file and failing to timely pay taxes.
7. None the penalties in this matter should be waived.
8. Taxpayer's protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

### **ORDER**

It is therefore ordered that the November 24, 2008 protest by *Taxpayer* of a tax assessment made by the City of Mesa is hereby denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer