

## DECISION OF MUNICIPAL TAX HEARING OFFICER

May 31, 2011

*Taxpayer's Names*

*Business Name*

*Business Address*

Mesa, AZ 85205

*Taxpayer*

MTHO # 616

*Dear Taxpayers:*

We have reviewed the evidence submitted for redetermination by *Taxpayers* and the City of Mesa (Tax Collector or City).<sup>1</sup> The review period covered was October 2003 through August 2010. Taxpayers' protest, Tax Collector's response, and our findings and ruling follow.

### Taxpayer's Protest

Taxpayers protested any and all sales tax that was assessed. Taxpayers paid any and all taxes on any items sold during the audit period.

### Tax Collector's Response

Taxpayers obtained a City privilege tax license in October of 1991. The license application described the business activities as cactus sales. Taxpayers were requested to provide records to determine gross income and allowable deductions. The Tax Collector made several requests but Taxpayers failed to provide any records. The Tax Collector therefore based its assessment on an estimate of income. Taxpayers have not presented records or other documents to show that the Tax Collector's estimate of gross receipts was not reasonable and correct.

### Discussion

Taxpayers obtained a City privilege tax license in October of 1991. The license application described the business activities as cactus sales. Taxpayers have provided no documents to establish their gross receipts or any deductions during the audit period of October 2003 through August 2010. During that period, Taxpayers reported privilege taxes in the total amount of \$59.12.

The Tax Collector sent Taxpayers an intent to audit letter and attempted to schedule an audit appointment with Taxpayers. The Tax Collector sent Taxpayers a letter dated August 16, 2010 re-scheduling a prior appointment to September 29, 2010 and requested that certain records be provided for examination, including a chart of accounts, general ledger, bank statements and federal and state income tax returns.

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<sup>1</sup> Taxpayers did not submit a Reply Memorandum.

On September 19, 2010 Taxpayers requested the appointment to be again re-scheduled. The Tax Collector stated that no further re-scheduling of the audit appointment was possible, but that Taxpayers could still submit the requested records before the September 29, 2010 appointment date. Taxpayers did not show for the appointment and did not submit any documents or other information.

The Tax Collector did not find another similar business within the city that could be used to estimate Taxpayers' gross receipts. The Tax Collector had obtained information that Taxpayers' monthly rent expense for their business location was \$1,080.00. The Tax Collector issued a jeopardy assessment under the retail classification and estimated Taxpayers' monthly income at four times their rental expense. Taxpayers protested the assessment stating that all privilege taxes had been paid. Taxpayers have not provided any additional information showing that Taxpayers have in fact reported all of their receipts and paid all taxes due.

Taxpayers subject to the City privilege tax are required to maintain suitable records and such other books and accounts as may be necessary to determine the amount of tax for which such person is liable. MTC § 5-10-350(a). Further, Regulation § 5-10-350.1(g) requires taxpayers to maintain books and records that indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income.

The Tax Collector may require taxpayers to provide and may examine any books, records, or other documents of taxpayers who might be liable for any privilege tax. MTC § 5-10-555(a). Taxpayers did not provide the necessary records to permit the Tax Collector to ascertain Taxpayers' gross receipts and any applicable deductions or exemptions.

If a taxpayer does not maintain or provide books and records the Tax Collector considers necessary to determine the taxpayer's tax liability, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. MTC § 5-10-555(e). Because Taxpayer did not have the required records, the Tax Collector was authorized to use estimates to determine the correct tax.

MTC § 5-10-545(b) requires that any estimate made by the Tax Collector be made on a reasonable basis. Here, Taxpayers made no books and records available to the Tax Collector. The Tax Collector did not find another similar business within the city for purposes of a comparison. Under the circumstances, the Tax Collector's method of estimating Taxpayers' receipts was reasonable.

It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct by providing sufficient documentation of the type and form satisfactory to the Tax Collector. Taxpayers have submitted no documentation and have failed to prove that the Tax Collector's estimate was not reasonable and correct.

#### Findings of Fact

1. Taxpayers obtained a City privilege tax license in October 1991.
2. Taxpayers' application for the license listed the business activity as cactus sales.
3. The Tax Collector conducted an audit assessment of Taxpayer for the period October 2003 through August 2010.
4. During the audit process the Tax Collector asked Taxpayer to provide records to determine Taxpayers' gross receipts and available deductions and exemptions.

5. The records requested by the Tax Collector included a chart of accounts, general ledger, bank statements, state privilege tax returns and federal and state income tax returns.
6. The Tax Collector made three attempts to schedule an audit appointment with Taxpayers.
7. Taxpayers did not meet with the Tax Collector and did not provide any records or other information relating to Taxpayers' gross receipts or available deductions or exemptions.
8. During the period October 2003 through August 2010 Taxpayers reported total privilege taxes due of \$59.12.
9. The Tax Collector did not find another similar business within the city that could be used to estimate Taxpayers' gross receipts.
10. The Tax Collector obtained information that Taxpayers' monthly rental expense for their business property was \$1,080.00.
11. The Tax Collector issued a jeopardy assessment dated November 17, 2010 for the period October 2003 through August 2010 for additional city privilege tax of \$5,421.09, penalties of \$1,327.49 and interest through October 31, 2010 of \$ 1,198.40.
12. The Tax Collector based Taxpayers' gross receipts for each month on an amount equal to four times Taxpayers' monthly rental expense.
13. Taxpayers protested the assessment stating that all privilege taxes had been paid.
14. Taxpayers have not submitted any additional documents addressing the Tax Collector's estimate of Taxpayer's gross receipts for the audit period.

#### Conclusions of Law

1. The City imposes a privilege tax on selling tangible personal property at retail. MTC § 5-10-460.
2. Taxpayers were in the business of selling tangible personal property at retail.
3. Every person subject to the City privilege tax is required to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which such person is liable. MTC § 5-10-350(a).
4. Taxpayers are required to maintain books and records that indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income. Regulation § 5-10-350.1(g).
5. The Tax Collector may require taxpayers to provide and may examine any books, records, or other documents of taxpayers that in the Tax Collector's opinion might be liable for any privilege tax. MTC § 5-10-555(a).
6. Taxpayer did not maintain or provide necessary records to permit the Tax Collector to ascertain the amount of tax for which Taxpayers were liable.
7. If a taxpayer does not maintain or provide books and records the Tax Collector considers necessary to determine the taxpayer's tax liability, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. MTC § 5-10-555(e).
8. The Tax Collector was authorized here to use estimates to determine the correct tax owed by Taxpayers.

9. The Tax Collector's estimate is required to be made on a reasonable basis. MTC § 5-10-545(b).
10. The Tax Collector's method of estimating Taxpayers' gross receipts was reasonable. MTC § 5-10-545(b).
11. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct by providing sufficient documentation of the type and form satisfactory to the Tax Collector. MTC § 5-10-545(b).
12. Taxpayers failed to prove that the Tax Collector's estimate was not reasonable and correct.
13. The Tax Collector's privilege tax assessment against Taxpayers for the period October 2003 through August 2010 was proper.

### Ruling

Taxpayers' protest of an assessment made by the City of Mesa for the period October 2003 through August 2010 is denied.

The Tax Collector's Notice of Assessment to Taxpayer dated November 17, 2010 for the period October 2003 through August 2010 is upheld.

The Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

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c: Audit Administrator  
Municipal Tax Hearing Office