

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

Decision Date: December 19, 2011

Decision: MTHO # 665

***Taxpayer:***

Tax Collector: City of Tucson

Hearing Date: November 21, 2011

### **DISCUSSION**

#### **Introduction**

On August 10, 2011, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Tucson (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on November 21, 2011. Appearing telephonically for the City were ***Assistant City Attorney, Tax Audit Administrator, and Senior Tax Auditor***. Appearing for Taxpayer was their ***Representative*** and ***President*** of Taxpayer appeared telephonically. At the conclusion of the November 21, 2011 hearing, the City was requested to provide several pages of audit pages for Taxpayer to review. On December 10, 2011, the Hearing Officer indicated the record was closed and a written decision would be issued on or before January 24, 2012.

### **DECISION**

On June 21, 2011, the City issued a tax audit assessment of Taxpayer. The assessment was for the periods of July 2001, September 2001, July 2002 through September 2002, January 2006, January 2007, January 2008, and July 2010 (“Audit Period”). The assessment was for additional taxes in the amount of \$32,747.30, interest up through May 2011 in the amount of \$16,032.69, and penalties in the amount of \$8,186.84. The assessment was based on an estimate of contracting income for the Audit Period. Subsequently, Taxpayer provided additional documentation to the City for review and consideration. After review of the new information, the City revised the assessment with additional taxes due in the amount of \$3,096.21, and interest up through August 2011 in the amount of \$2,599.34. The City waived the penalties.

The City utilized the internet site for the federal government to obtain information on contracting activity in the City. The City obtained information that Taxpayer had performed construction contracting work on a ***Health Care System*** located in the City. The City indicated that based on the federal government records, Taxpayer received payments of \$249,935.68 for contract ***ABCD***.

Taxpayer argued that contract **ABCD** was a contract between a **Big Department** and the **LLC**, an entity legally separate and apart from Taxpayer. Taxpayer noted that the contract in question was signed on September 15, 2001 while Taxpayer did not incorporate until December 6, 2001. Further, Taxpayer did not apply as a foreign corporation to do business in Arizona until April 9, 2002. Taxpayer argued the City has not produced any contract between Taxpayer and the Department and/or any checks payable to Taxpayer. Taxpayer also noted that the printouts from the **Big Department** show the contractor as **Taxp** with the rest cut off on the printouts.

Clearly, Taxpayer and LLC were separate persons pursuant to City Code Section 100 (“Section 100”). Consequently, each would be responsible for City taxes on any contracting work they performed within the City. Based on the evidence, either Taxpayer or LLC entered into contract **ABCD** with the Department. We do not have sufficient evidence to conclude that Taxpayer was the entity that entered into the contract. In fact, the date of incorporation for Taxpayer supports Taxpayer’s argument that it did not enter into the contract. Based on all the above, the City has not provided sufficient evidence for us to conclude that Taxpayer entered into contract **ABCD**. Taxpayer’s protest should be granted.

### **FINDINGS OF FACT**

1. On August 10, 2011, Taxpayer filed a protest of a tax assessment made by the City.
2. On June 21, 2011, the City issued an audit assessment of Taxpayer.
3. The assessment was for the periods July 2001, September 2001, July 2002 through September 2002, January 2006, January 2007, January 2008, and July 2010 (“Audit Period”).
4. The assessment was for additional taxes in the amount of \$32,747.30, interest up through May 2011 in the amount of \$16,032.69, and penalties totaling \$8,186.84.
5. The assessment was based on an estimate of contracting income for the audit period.
6. Subsequent to the assessment, Taxpayer provided additional documentation for the City to review.
7. After review of the new information, the City revised the assessment with additional taxes due in the amount of \$3,096.21, and interest up through August 2011 in the

amount of \$2,599.34.

8. The City waived the penalties.
9. The City utilized the internet site for the federal government to obtain information on contracting activity in the City.
10. The City obtained information that a taxpayer had performed construction contracting work on the *Health Care System* located in the City.
11. Based on federal government records, a taxpayer received payments of \$249,935.68 for contract *ABCD*.
12. Contract *ABCD* was signed on September 15, 2001.
13. Taxpayer incorporated on December 6, 2001.
14. Taxpayer applied as a foreign corporation to do business in Arizona on April 9, 2002.

### 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. Section 415 imposes a tax on the gross income from the business activity of construction contracting.
3. Taxpayer and LLC were separate persons pursuant to Section 100.
4. The date of incorporation for Taxpayer supports Taxpayer's argument that it did not enter into the contract *ABCD*.
5. We do not have sufficient evidence to conclude that Taxpayer was the entity that entered into Contract *ABCD*.

6. Taxpayer's August 10, 2011 protest should be granted consistent with the Discussion, Findings, and Conclusions, herein.
7. The parties have timely appeal rights to the Arizona Tax Court pursuant to Model City Tax Code Section-575.

### **ORDER**

It is therefore ordered that the August 10, 2011 protest by *Taxpayer* of a tax assessment made by the City of Tucson should be granted consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer