

DECISION OF MUNICIPAL TAX HEARING OFFICER

October 19, 2011

Taxpayers

Taxpayer's Address

Taxpayer
MTHO #702

Dear Taxpayers:

We have reviewed the evidence presented by *the Taxpayer* and the City of Tucson (Tax Collector or City) at the hearing on July 25, 2012. Taxpayer did not submit post-hearing information. The refund period covered was May 2008 through February 2011. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer is a construction contractor. Taxpayer paid the City privilege tax for several years on its construction contracting income. Taxpayer also paid the retail sales tax to its vendors on all of its purchases of materials incorporated into the jobs. Paying the retail sales tax should allow Taxpayer to not owe the privilege tax on construction contracting. Taxpayer is protesting the City not allowing a refund for the taxes it paid on its purchases.

Tax Collector's Response

Taxpayer was a construction contractor subject to tax on its taxable receipts. Tucson City Code (TCC) § 19-415(a)(4) and (b) lists the allowable deductions and exemptions for construction contractors. TCC § 415 does not allow a credit for tax paid on the purchase of materials incorporated into the jobs. Taxpayer can request a refund from the vendor for the taxes paid on its purchases. However, a credit cannot be applied against the tax otherwise due on Taxpayer's construction contracting activities.

Discussion

Taxpayer is a construction contractor taxable under TCC § 19-415. Taxpayer paid the City privilege tax on its construction contracting income and also paid the retail sales tax to its vendors on its purchases of materials incorporated into the jobs. Because Taxpayer paid the retail tax on its material purchases, Taxpayer requested a refund of the privilege taxes it had paid. In essence Taxpayer was asking for a credit against its taxes for the retail tax it had paid to its vendors. The Tax Collector denied Taxpayer's refund claim.

Taxpayer is taxable under TCC § 19-415. TCC § 19-415, paragraphs (a)(1) through (4) and subsection (b) provide exclusions, deductions and exemptions applicable to the construction contracting classification. Those provisions do not allow a credit against the tax on construction contractors for the retail sales tax the construction contractor pays to the vendor on its purchases of materials. The exemptions, deductions and credits are limited to the specific activity or

transaction described and do not extend to include any other activity or transaction subject to the tax.

A taxpayer must show he is entitled to a deduction or credit. Taxpayer has not cited any authority that would allow the credit it seeks. Taxpayer here has not met its burden to show that it is entitled to a credit for taxes paid on the materials it purchased.

Based on the record, Taxpayer is not entitled to any credit for taxes it paid to vendors on the purchase of materials incorporated into the jobs. Taxpayer's protest of the Tax Collector's denial of its refund claim for the period May 2008 through February 2011 is denied.

Findings of Fact

1. Taxpayer is a construction contractor.
2. Taxpayer paid the City privilege tax on its construction contracting income and also paid the retail sales tax to its vendors on its purchases of materials incorporated into the jobs.
3. Taxpayer requested a credit against its construction contracting taxes for the retail tax it had paid to its vendors.
4. The Tax Collector denied Taxpayer's refund claim and did not allow Taxpayer a credit for privilege taxes Taxpayer paid to the vendor on its purchases of materials and supplies.
5. Taxpayer timely protested the refund denial.

Conclusions of Law

1. Taxpayer was a construction contractor subject to the City's privilege tax under TCC § 19-415.
2. Tax statutes are construed strictly against a party who claims an exemption or a credit. *Davis v. Arizona Department of Revenue*, 197 Ariz. 527, 529-30, 4 P.3d 1070, 1072-73 (App. 2000).
3. The burden is on the taxpayer to show he is entitled to a deduction or exemption from tax. *See Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
4. TCC § 19-400(d) provides that all exemptions, deductions and credits set for in the article shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.
5. Exemptions, deductions and credits for construction contractors must be found in TCC § 19-415.
6. TCC § 19-415 does not authorize a credit for amounts identified as tax paid by a construction contractor to its material suppliers.
7. TCC § 19-465(11) allows retailers selling materials to a construction contractor an exclusion for tangible personal property sold that is to be incorporated into the structure as a part of the construction contracting activity.

8. The exclusion provided by TCC § 19-465 only applies to the retail classification and do not apply to other classifications, including the construction contractor classification. TCC § 19-400(d) and TCC § 19-465.
9. There is no authority that would allow the Hearing Office to authorize the credit sought by Taxpayer.
10. The City's denial of Taxpayer's refund request for the period May 2008 through February 2011 was proper.

Ruling

Taxpayer's protest of the Tax Collector's denial of its refund claim for the period May 2008 through February 2011 is denied.

The Tax Collector's denial of Taxpayer's refund claim for the period May 2008 through February 2011 is upheld.

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

Sincerely,

Hearing Officer

HO/7100.doc/10/03

c: ***Tax Audit Administrator***
Municipal Tax Hearing Office

Taxpayers
Taxpayer's Address