

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

Decision Date: May 28, 2013

Decision: MTHO # 772

Taxpayer: *Great Roofers, LLC*

Tax Collector: City of Tucson

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On January 15, 2013, a letter of protest was filed by *Great Roofers, LLC* (“Taxpayer”) of a tax assessment made by the City of Tucson (“City”). At the request of Taxpayer, this matter was classified as a redetermination. After submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on May 23, 2013 and indicated a written decision would be issued on or before July 8, 2013.

### **DECISION**

On January 10, 2013, the City issued a tax assessment to Taxpayer for the period of December 2008 through November 2012. The assessment was for additional taxes in the amount of \$10,117.98, interest up through December 2012 in the amount of \$667.34, and penalties of \$2,272.38. Subsequently, the City waived penalties in the amount of \$1,028.94. The City indicated that Taxpayer was in the contracting business during the audit period. According to the City, Taxpayer failed to file tax returns for the months of March 2009 through February 2010 and March 2012 through November 2012. The City had requested Taxpayer provide the missing tax returns as well as accounting records in order for the City to complete the audit. Taxpayer failed to provide any records. As a result, the City utilized Taxpayer’s reported months in order to arrive at an average income amount to estimate Taxpayer’s unreported months.

Taxpayer protested that the tax assessment should be for less than \$3000.00 for the audit period. Taxpayer requested a review be scheduled in order to establish the actual tax liability.

There is no dispute that Taxpayer received contracting income during the audit period which was taxable pursuant to City Code Section 19-415 (“Section 415”). City Code Section 19-545 (“Section 545”) provides that when a taxpayer fails to file returns, the City is authorized to make an estimate of taxes due based on information in the City’s

possession or which comes into the City's possession. In this case, Taxpayer failed to file tax forms with the City for numerous months. As a result, the City was authorized to make an estimate of the taxes that were due. We conclude the City's use of gross income from the months Taxpayer actually reported was a reasonable basis to make an estimate for the months that were unreported. Taxpayer had the burden pursuant to section 545 to prove the estimate was not reasonable by providing documentation to demonstrate such. Taxpayer failed to meet its burden of proof pursuant to Section 545. As a result, we approve the City's assessment. We note that the City on several occasions requested Taxpayer provide additional documentation but none was forthcoming. In addition, our April 19, 2013 letter granted Taxpayer until May 20, 2013 in which to provide additional documentation. Taxpayer failed to even respond to that letter.

City Code Section 12-540 ("Section 540") authorizes the City to impose penalties and to assess interest on the taxes due. In this case, the City imposed penalties for failure to file, failure to pay, and for negligence. "Negligence" is characterized in Section 540 as inadvertence, thoughtlessness, inattention, or the like rather than an honest mistake. Section 540 provides that penalties may be waived for reasonable cause. Taxpayer has failed to provide any reasonable cause to have the penalties waived. The City has waived \$1,028.94 of penalties as they were assessed for months in which Taxpayer had filed tax returns.

Based on all the above, we conclude that Taxpayer's January 15, 2013 protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

### **FINDINGS OF FACT**

1. On May 28, 2013, Taxpayer filed a protest of a tax assessment made by the City.
2. At the request of Taxpayer, this matter was classified as a redetermination.
3. Taxpayer was assessed additional taxes in the amount of \$10,117.98, interest up through December 2012 in the amount of \$667.34, and penalties of \$2,272.38.
4. Subsequently, the City waived \$1,028.94 of the penalties.
5. The assessment period was for the period of December 2008 through November 2012.
6. Taxpayer failed to file tax returns for the months of March 2009 through February 2010 and March 2012 through November 2012.

7. Taxpayer performed contracting work in the City during the audit period.
8. The City estimated Taxpayer's gross income for the unreported months by utilizing an average income amount from the months that were reported by Taxpayer.
9. Taxpayer failed to file numerous tax returns with the City during the audit period.
10. On several occasions, the City requested Taxpayer provide additional documentation but none was forthcoming.
11. Our April 19, 2013 letter granted Taxpayer until May 20, 2013 in which to provide additional documentation.
12. Taxpayer failed to respond to our April 19, 2013 letter.

### **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 upon every person engaging in the business of contracting within the City.
3. Taxpayer's gross income from the contracting activity during the audit period was taxable pursuant to Section 415.
4. Since Taxpayer had failed to file tax returns, the City was authorized pursuant to Section 545 to make a reasonable estimate of Taxpayer's taxable income.
5. The City's method of estimating Taxpayer's taxable income was reasonable.
6. Taxpayer failed to prove the City's estimate of taxable income was not reasonable.
7. Section 540 authorized the City to assess penalties and interest.
8. There was reasonable cause to waive the penalties that were assessed during the months Taxpayer had filed tax returns.

9. Taxpayer has failed to provide reasonable cause to have the remaining penalties waived.
10. Based on all the above, Taxpayer's protest should be denied, consistent with the Discussion, Conclusions, and Findings, herein.
11. The parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section-575.

### **ORDER**

It is therefore ordered that the January 15, 2013 protest by *Great Roofers, LLC* of a tax assessment made by the City of Tucson is hereby denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

*Municipal Tax Hearing Officer*