

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 6, 2013

Decision: MTHO # 797

Taxpayer:

Tax Collector: City of Tucson

Hearing Date: October 2, 2013

DISCUSSION

Introduction

On March 8, 2013, ***Taxpayer*** filed a letter of protest for a tax assessment made by the City of Tucson (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on October 2, 2013. Appearing for the City were ***representatives*** from the City Attorney’s Office; the ***Revenue Administrator***; the ***Finance Manager***; and a ***Senior Auditor***. Taxpayer failed to make an appearance. On October 3, 2013, the Hearing Officer granted Taxpayer until November 1, 2013 in which to file any additional documentation. Taxpayer failed to respond. On November 4, 2013, the Hearing Officer closed the record and indicated a written decision would be issued to the parties on or before December 19, 2013.

DECISION

On February 12, 2013, the City issued an assessment to Taxpayer for additional taxes in the amount of \$1,313.92, interest up through January 2013 in the amount of \$177.46, and penalties totaling \$302.48. Subsequently, the City waived \$103.90 of the penalties. The audit period was from February 2007 through December 2012. The assessment was based on unreported contracting income pursuant to City Code Section 19-415 (“Section 415”).

The City contacted Taxpayer in June of 2011 regarding unfiled tax returns for the months of June 2009 through December 2012. Taxpayer promised the City it would provide missing monthly income figures and job location addresses to document many of its contracting jobs were out-of-City jobs and thus not taxable by the City. The City contacted Taxpayer on several occasions regarding information that Taxpayer had promised to supply. After approximately 18 months of waiting for documentation from

Taxpayer, the City issued a tentative assessment on January 18, 2013 and a final assessment on February 12, 2013. Because of the lack of documentation, the City utilized the average of Taxpayer's reported taxable income to estimate the taxable income for the unreported months.

Taxpayer filed a protest of the assessment alleging the gross receipts were inaccurate. Taxpayer indicated it would provide additional documentation to the City within thirty days.

There was no dispute that Taxpayer received contracting income during the audit period which was taxable pursuant to 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 assessment of taxes due based on information in 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 provide documentation and thus 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 October 3, 2013 letter granted Taxpayer until November 1, 2013 in which to provide additional documentation. Taxpayer failed to even respond to that letter.

City Code Section 19-540 ("Section 540") authorizes the City to impose penalties and to assess interest on the taxes due. Section 540 provides that penalties may be waived for reasonable cause. Taxpayer has failed to provide any reasonable cause to have any of the \$198.58 penalties to be waived.

Based on all the above, we conclude that the protest of Taxpayer should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On February 12, 2013, the City issued an assessment to Taxpayer in the amount of \$1,313.92, interest up through January 2013 in the amount of \$177.46, and penalties totaling \$302.48.
2. Subsequently, the City waived \$103.90 of the penalties.
3. The audit period for the assessment was for the period from February 2007 through December 2012.

4. On March 8, 2013, Taxpayer filed a protest of the assessment.
5. The assessment was based on unreported contracting income pursuant to Section 415.
6. The City contacted Taxpayer in June of 2011 regarding unfiled tax returns for the months of June 2009 through December 2012.
7. Taxpayer promised the City it would provide missing monthly income figures and job location addresses to document many of its contracting jobs were out-of-City jobs and thus not taxable by the City.
8. The City contacted Taxpayer on several more occasions regarding the information that Taxpayer had promised to supply.
9. After approximately 18 months of waiting for documentation from Taxpayer, the City issued a tentative assessment on January 18, 2013 and a final assessment on February 12, 2013.
10. Because of the lack of documentation, the City utilized the average of Taxpayer's reported monthly taxable income to estimate the income for the months not reported.
11. Taxpayer filed a protest of the assessment alleging the gross receipts were inaccurate.
12. Taxpayer indicated it would provide additional documentation within thirty days.

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 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 pursuant to Section 545.
7. City Code Section 19-360 ("Section 360") provides that all deductions, exclusions, and exemptions claimed by a taxpayer are conditional upon taxpayer providing adequate proof and documentation by taxpayer.
8. Taxpayer failed to meet its burden of proof pursuant to Section 360 for all claimed deductions, exclusions, and exemptions.
9. Section 540 authorizes the City to assess penalties.
10. Penalties assessed pursuant to Section 540 may be waived for good cause.
11. Based on the facts of this case, Taxpayer failed to demonstrate good cause to have penalties waived.
12. Taxpayers protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.
13. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the March 8, 2013 protest by *Taxpayer* 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