

DECISION OF MUNICIPAL TAX HEARING OFFICER

November 5, 2013

Taxpayer's Name
Taxpayer's Address

Taxpayer
MTHO #796

Dear Taxpayer:

We have reviewed the arguments presented by *Taxpayer* in its protest and by the City of Phoenix (Tax Collector or City) in its Response to the Protest and at the hearing held on October 16, 2013. The review period covered was October 2008 through December 2010. Taxpayer did not appear at the hearing and the hearing was held in Taxpayer's absence.

A letter was sent allowing Taxpayer time to submit written evidence into the record accompanied by a written explanation that established good cause for its absence at the hearing. Taxpayer did not timely respond. The record is therefore closed and this matter is ready for ruling. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer believed that no taxes were due because all privilege taxes were already paid throughout the course of the construction on the project. Taxpayer requested a hearing to review discrepancies of the audit information.

Tax Collector's Response

Taxpayer is a construction contractor. The City issued Taxpayer a building permit for the remodeling of an existing vacant building into a new banquet hall facility. A Certificate of Occupancy was thereafter issued. Taxpayer did not file or remit any transaction privilege taxes for the project. Taxpayer did not respond to the City's intent to audit letter. The Tax Collector issue an assessment based on the valuation of the project stated on the building permit. Taxpayer has not provided any records or other evidence to show that the assessment was not correct.

Discussion

Taxpayer obtained a building permit for a remodeling project and a Certificate of Occupancy was thereafter issued by the City. Taxpayer did not file privilege tax returns or pay privilege taxes attributable to the project. The Tax Collector sent Taxpayer an intent to audit letter and it was not returned by the Post Office. Taxpayer did not respond to the letter.

The Tax Collector audited Taxpayer and based the assessment on the valuation of the project stated on the building permit. The building permit valuation was increased by a factor of 1.35. Taxpayer protested the assessment but has not provided any other information, documents or evidence.

The Tax Collector's audit of Taxpayer was based on the building permit valuation included in the building permit for the project. The Tax Collector testified at the hearing that the factor was developed based on other audits where the Tax Collector was able to compare the building permit valuation to the actual contract and the revenues received. Taxpayer had not filed any privilege tax returns or responded to the City's audit intent letter. It was therefore appropriate for the Tax Collector to base the assessment on the building permit valuation increased by the 1.35 factor.

The assessment issued by the City is presumed correct and it is Taxpayer's burden to overcome that presumption with substantial credible and relevant evidence that establishes that the assessment was erroneous. A general denial of liability is not sufficient to overcome the presumption. Taxpayer here has not produced any evidence, documents or other information to overcome the presumption of correctness. Based on the record here we conclude that the City's privilege tax assessment against Taxpayer was proper and that Taxpayer's protest should be denied.

Findings of Fact

1. During the period October 2008 through December 2010 Taxpayer was engaged in business as a construction contractor.
2. The City issued Taxpayer a building permit for the remodeling of an existing vacant building into a new banquet hall facility.
3. A Certificate of Occupancy was issued by the City on August 31, 2010.
4. Taxpayer did not file any City privilege tax returns or pay privilege taxes on the project.
5. The Tax Collector sent Taxpayer an intent to audit letter on July 12, 2012. The letter was not returned by the United States Postal Service as undeliverable.
6. Taxpayer did not respond to the intent to audit letter.
7. The Tax Collector audited Taxpayer for the period October 2008 through December 2010 and issued an assessment based on the valuation Taxpayer listed on the building permit.
8. For purposes of the assessment, the Tax Collector increased the building permit value by a factor of 1.35 based in its comparison of building permit values to actual contracts and revenues received in other audits.
9. Taxpayer protested the assessment stating that there were discrepancies in the audit information and no taxes should be due because all privilege taxes were already paid throughout the course of the construction on the project.
10. Taxpayer has not provided any other information, documents or evidence to support its protest.
11. The Tax Collector timely submitted its response to Taxpayer's protest.
12. Taxpayer did not submit a reply to the Tax Collector's response.
13. A hearing was scheduled in this matter for October 16, 2013.
14. Taxpayer did not attend the hearing.

15. Taxpayer did not submit an explanation for its absence at the hearing or submit written evidence to be included in the record.

Conclusions of Law

1. The City privilege tax is imposed on persons engaging in certain business activities. Phoenix Tax Code (PTC), Chapter 14.
2. The privilege tax is measured by the person's gross income from the taxable business activity. PTC § 14-400(a)(1).
3. Taxpayer did not file returns or provide the required records for the audit period showing Taxpayer's income attributable to its activities in the City.
4. The Tax Collector was authorized to estimate Taxpayer's income to determine the correct tax. PTC § 14-555(e).
5. The Tax Collector's estimate is required to be made on a reasonable basis. PTC § 14-545(b).
6. The Tax Collector's estimate based on the building permit valuation increased by the 1.35 factor was reasonable.
7. 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 required by the Tax Code or satisfactory to the Tax Collector. PTC § 14-545(b).
8. Taxpayer did not prove that the Tax Collector's estimate of gross receipts was not reasonable and correct.
9. The presumption is that an assessment of additional tax is correct and the burden is on the taxpayer to overcome the presumption. *See, Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
10. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. *U.S. v. McMullin*, 948 F.2d 1188 (10th Cir.,1991); *Anastasato v. C.I.R.*, 794 F.2d 884 (3rd Cir.,1986).
11. A general denial of liability is not sufficient to overcome the presumption that the assessment is correct. *Avco Delta Corp. Canada Ltd. v. U.S.*, 540 F.2d 258 (7th Cir., 1976).
12. Taxpayer has not overcome the presumption of correctness of the assessment.
13. The Tax Collector's assessment to Taxpayer was proper.

Ruling

Taxpayer's protest of an assessment made by the City of Phoenix for the period October 2008 through December 2010 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period October 2008 through December 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: *Assistant City Attorney*
Municipal Tax Hearing Office