

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 17, 2016

Decision: MTHO # 892

Taxpayer:

Tax Collector: City of Tucson

Hearing Date: December 11, 2015

DISCUSSION

Introduction

On March 5, 2015, ***Taxpayer*** filed a letter of protest for a tax assessment made by the City of Tucson (“City”). A hearing was held on December 11, 2015. Appearing for the City were the ***Assistant City Attorney, Revenue Administrator, Tax Auditor,*** and the ***Finance Director***. Appearing for Taxpayer was a ***Member***. Both parties presented evidence at the hearing. Subsequent to the hearing, Taxpayer was granted an opportunity to file additional documentation on or before February 1, 2016 for the City’s review. On February 11, 2016, the City filed a letter indicating it had not received any post-hearing documentation from Taxpayer. As a result, on February 18, 2016 the Hearing Officer indicated the record was closed and a written decision would be issued to the parties on or before April 4, 2016. Subsequently, Taxpayer requested the record to be re-opened to provide additional documentation. The record was re-opened on February 27, 2016 in provide Taxpayer additional time to provide documentation. The record was closed and re-opened again on April 6, 2016. The record was closed and re-opened again on May 5, 2016 in order to allow Taxpayer additional time to provide documentation. Lastly, the Hearing Officer closed the record on June 4, 2016 and indicated a written decision would be issued to the parties on or before June 21, 2016.

DECISION

On April 23, 2015, the City issued a tax assessment to Taxpayer for taxes in the amount of \$140,733.58, interest up through March 2015 in the amount of \$18,933.99, and penalties of \$34,981.96. Subsequently, the City revised the assessment on May 27, 2015 with taxes due in the amount of \$53,578.00, interest up through May 2015 in the amount

of \$5,439.40, and penalties of \$12,943.30. The assessment was again revised on July 8, 2015 with taxes due in the amount of \$49,629.01, interest up through June 2015 in the amount of \$5,379.86, and penalties in the amount of \$11,991.78. The City updated the assessment on September 28, 2015 for interest up through September of \$5,780. 54. The audit period was from January 2009 through January 2015. The tax assessment was issued pursuant to City Code Section 19-415 (“Section 415”). Section 415 provides for a tax on the gross income from the business activity of engaging or continuing in the business activity of construction contracting within the City.

Taxpayer protested the City’s assessment on eleven projects which Taxpayer opined it was not the general contractor. Taxpayer asserted it was only the construction manager. Taxpayer provided letters from *a Trust (“TRUST”)* indicating that Taxpayer had been paid for management of new home construction for eleven specific properties. According to the *TRUST* letters, the building permits were issued under Taxpayer’s license but Taxpayer was only a construction manager. Taxpayer opined that it believed the assessed taxes have already been paid by a third party and that if the City assessment was approved the City would collect taxes twice. Taxpayer also argued that the contract amounts assessed by the City were very over-stated.

The City asserted that Taxpayer provided unsigned contracts between Taxpayer and alleged general contractors that could not be verified by the City. The City also noted that while Taxpayer claimed subcontractors and material vendors were instructed to bill tax to the landowner or representative of the owner, the invoices provided by Taxpayer were made out to Taxpayer. The City relied on City Code Section 19-555 (“Section 555”) in making its assessment. Section 555 provides that when a taxpayer does not maintain books and records that the tax collector considers necessary to determine the tax liability, the City is authorized to use estimates to determine the correct tax. It is noted that Taxpayer failed to file any tax reports with the City during the audit period. The City utilized bank deposits provided by Taxpayer and the values listed on the building permits to arrive at an estimate of Taxpayer’s gross contracting income. All the jobs assessed had building permits issued in Taxpayer’s name. The City added an additional 25 percent to the building permit values to arrive at an estimated gross contracting income amount. It is noted that after the original tax assessment, Taxpayer provided additional documentation which provided a basis for the City to revise downward the original assessment. While the City agreed to review additional post-hearing documentation, Taxpayer failed to provide any additional documentation. As noted in the introduction, the Hearing Officer subsequently granted Taxpayer several extensions in order to provide additional documentation. The City reviewed and commented on the additional documentation.

It is clear that Taxpayer was engaged in the business activity of construction contracting in the City during the audit period. There is also no dispute that Taxpayer failed to file tax returns during the audit period. As a result, the City was authorized pursuant to City Code Section 19-545 (“Section 545”) to make an estimate based on a reasonable basis. Section 545 provides it is the responsibility of the taxpayer to prove that the estimate was not reasonable and correct. In this case, it was reasonable for the City to use bank statements

of Taxpayer and building permits issued to Taxpayer to estimate Taxpayer's gross contracting income. We do disagree with the City's adding an additional 25 percent to the building permit amounts. The City has failed to provide proper justification for the 25 percent amount. Subsequent to the hearing, Taxpayer was granted several extensions in order to provide additional documentation. The focus of Taxpayer's arguments revolved around the projects for properties owned by **TRUST**. Taxpayer argued that it was not the general contractor but only a construction manager. As to Taxpayer's arguments that it was not the general contractor for eleven projects, we conclude Taxpayer has failed to meet its burden of proof pursuant to Section 545. There are no contracts to demonstrate Taxpayer was a construction manager. In addition, there was evidence that Taxpayer was named as the general contractor on building permits. Lastly, there were invoices billed directly to Taxpayer by *a builders supply company*, an *excavating & construction company*, a *conduit express company*, a *concrete store*, and a *fence company* for the projects. Based on all the above, we conclude Taxpayer's protest should be denied with the exception of removing the 25 percent increase in the amounts listed on the building permits.

While the City was authorized to assess penalties pursuant to City Code Section 540 ("Section 540"), those penalties may be waived for reasonable cause. In this case, the City imposed penalties for failure to file, failure to pay, and negligence. We conclude that as to the income from the **TRUST** properties, Taxpayer made an honest mistake and had a reasonable basis for believing tax did not apply to that income. Accordingly, we find reasonable cause to waive all penalties associated with income from the **TRUST** properties.

FINDINGS OF FACT

1. On April 23, 2015, the City issued a tax assessment to Taxpayer for additional taxes in the amount of \$140,733.58, interest up through March 2015 in the amount of \$18,933.99, and penalties in the amount of \$34,981.96.
2. Subsequently, the City revised the assessment on May 27, 2015 with taxes due in the amount of \$53,578.00, interest up through May 2015 in the amount of \$5,439.40, and penalties in the amount of \$12,943.30.
3. The assessment was again revised on July 8, 2015 with taxes due of \$49,629.01, interest up through June 2015 in the amount of \$5,379.86, and penalties in the amount of \$11,991.78.

4. The tax assessment was issued pursuant to Section 415 for a tax on the gross income from the business activity of engaging or continuing in the business activity of construction contracting within the City.
5. Taxpayer protested the City's assessment on eleven projects which Taxpayer opined it was not the general contractor.
6. Taxpayer indicated the owner of the properties in which projects were constructed was **TRUST**.
7. Taxpayer had no written contracts with **TRUST**.
8. Taxpayer opined it was paid to act as a management supervisor and not as a general contractor.
9. The building permits for the projects listed Taxpayer as the general contractor.
10. There were invoices to Taxpayer from ***a builders supply company, an excavating & construction company, a conduit express company, a concrete store, and a fence company*** for materials for the projects.
11. The City added an additional twenty five percent to the building permits for the projects.
12. Taxpayer failed to file tax returns during the audit period.

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 engaging or continuing in the business of contracting within the City for a consideration.
3. Taxpayer was in the business of contracting within the City.

4. Section 545 authorizes the City to make a reasonable estimate of taxable income when no tax returns are filed by a taxpayer.
5. Section 545 provides it is the responsibility of the taxpayer to prove an estimate was not reasonable and correct.
6. It was reasonable for the City to use bank statements and building permits issued to Taxpayer to estimate Taxpayer's gross contracting income.
7. The City failed to provide proper justification for adding an additional 25 percent to the amounts on the building permits.
8. The City was authorized to assess penalties pursuant to Section 540.
9. The penalties may be waived for reasonable cause.
10. Taxpayer has demonstrated reasonable cause to waive all penalties associated with income from the **TRUST** properties.
11. Taxpayers protest should be denied, with the exception of the aforementioned penalties, as well as the 25 percent increase to the amounts on the building permits, consistent with the Discussion, Findings, and Conclusions, herein.
12. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the March 5, 2015 protest by **Taxpayer** of a tax assessment made by the City of Tucson is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Tucson shall revise its assessment by removing the 25 percent increase to the amounts on the building permits.

It is further ordered that the City of Tucson shall remove all penalties associated with income from the **TRUST** properties.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer