

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 29, 2016

Decision: MTHO # 899

Taxpayer:

Tax Collector: Town of Fountain Hills

Hearing Date: October 24, 2016

DISCUSSION

Introduction

On August 26, 2015, *Taxpayer* filed a letter of protest for a tax assessment made by the Town of Fountain Hills (“Town”). A hearing was held on October 24, 2016. Appearing for the Town were the *Finance Director*, and *2 Town Tax Auditors*. Appearing for Taxpayer, were their *representation and a member*. On October 25, 2016, the Hearing Officer indicated the record was closed and that a written decision would be issued to the parties on or before December 8, 2016.

DECISION

On July 7, 2015, the Town issued an estimated tax assessment to Taxpayer for taxes in the amount of \$10,240.84, interest up through July 2015 in the amount of \$726.12, and penalties of \$993.48. The assessment period was from March 2011 through May 2014. The tax assessment was issued pursuant to Town Code Section 8A-415 (“Section 415”). Section 415 provides for a tax on the gross income from the business activity of engaging or continuing in the business of construction contracting located within the Town for a consideration.

The Town determined that Taxpayer had four unreported taxable contracting projects during the audit period. Because of lack of proper documentation from Taxpayer, the Town estimated the income from each of the projects. 1) The Town utilized a Construction Management Contract for an addition to real property located at **123456789 – Property #1 (“Property #1”)** to estimate a project cost of \$115,000.00 and a management fee of \$16,237.00 for a total construction income of \$131,237.00. That amount was then increased by 125 percent to reflect any change orders to the project for a total amount of \$164,046.00; 2) The Town utilized the building permit value of

\$100,000.00 for a remodel at **123456789 Blvd.** (“**Property #2**”) as a beginning to estimate construction income. The Town increased the building permit value by 254.84 percent to arrive at an estimated contract amount of \$254,840.00. The estimated contract amount was then increased by 125 percent to reflect any change orders for a total estimated contract amount of \$318,550.00; 3) The Town utilized a construction contract which showed an estimated project cost for miscellaneous work at **123456789 Blvd.** (“**Property #3**”) of \$51,090.00. The Town increased that value by 125 percent to reflect change orders for a total estimated project cost of \$63,862.00 4) The Town utilized a building permit valuation for another project at **123456789 Blvd.** (“**Property #4**”) to arrive at an initial contract estimate of \$30,000.00. The building permit value was then increased by 254.84 percent to arrive at an estimated contract amount. That amount was then increased by 125 percent to reflect any change orders to arrive at a total estimated project cost of \$95,565.00.

Taxpayer protested the estimated assessments for each of the four projects. Taxpayer argued that for **Property #1** project that it acted as a construction manager and was paid a total of \$16,237.00 as set forth in the Management Contract. Taxpayer asserted that all subcontractors were paid directly by the homeowners as set forth in Article 5 of the Management Contract. Taxpayer provided bank statements for the project period to demonstrate no payments were made to subcontractors.

While Taxpayer originally disputed the \$51,090.00 contract amount for work for **Property #3**, it subsequently conceded that amount. However, Taxpayer continued to protest the change orders and provided a February 2, 2016 email from **Property #3** indicating there were no extra charges from Taxpayer.

Taxpayer asserted that the contract amount for **Property #2** was \$30,000.00. Taxpayer provided a September 9, 2015 memo from the owner **Property #2** indicating Taxpayer had made tenant improvements in the amount of \$30,000.00 and that there had been no change orders.

Taxpayer argued the contract amount for **Property #4** was \$5,000.00. Taxpayer provided a September 8, 2015 memo from the owner of **Property #4** indicating there were tenant improvements made totaling \$5,000.00. Further there were no change orders.

First, we conclude that Taxpayer failed to provide proper documents requested by the Town and as a result, the Town was authorized to provide a reasonable estimate of income for each of the projects. After review of the testimony and Management Contract as well as the General Conditions, we concur with the Town’s conclusion that Taxpayer acted as the general contractor for the **Property #1** project. The documents refer to Taxpayer as the contractor and as others as subcontractors. Further, the scope of work grants Taxpayer the sole responsibility for the project. As a result, we concur with the Town’s estimated project cost of \$115,000.00 plus \$16,237.00 as Taxpayer’s income from **the Project #1** project. While the subcontractor’s may have been paid directly by the owner, we concur with the Town that Taxpayer “constructively” received all the income. The Management Contract provides that all change orders must be in writing.

We have seen no evidence of any change orders to the original contract and as a result conclude that the total income for the **Project #1** project was \$131,237.00. Accordingly, the Town's inclusion of additional income of \$32,809.25 for change orders is hereby denied.

There was no dispute that Taxpayer received \$51,090.00 in contracting income from the **Property #3** project. We have seen no evidence of any change orders to the original contract. Accordingly, the Town's inclusion of \$12,772.00 for change orders in hereby denied.

As noted above, the Town utilized the building permit value of \$100,000.00 as a starting point for the work done for **Project #2**. While Taxpayer argued the contract amount was \$30,000.00, we have seen no evidence of such contract. As a result, we accept the Town's starting point of \$100,000.00 from the building permit. While the Town increased the building permit value by 254.84 percent, we have seen no evidence to support such an increase. Similarly, we have seen no evidence to support any change orders. Based on the above, we approve the Town's assessment on the value of \$100,000.00 but deny the increase to the building permit value and deny inclusion for any change orders.

As noted above, the Town utilized the building permit value of \$30,000.00 as a starting point for work done for **Property #4**. While Taxpayer argued the contract amount was \$5,000.00, we have seen no evidence of such contract. As a result, we accept the Town's starting point of \$30,000.00 from the building permit. While the Town increased the building permit value by 254.84 percent, we have seen no evidence to support such an increase. Similarly, we have seen no evidence to support any change orders. Based on the above, we approve the Town's assessment on the value of \$30,000.00 but deny the increase to the building permit value and deny inclusion of any change orders.

Based on the Discussion, Findings, and Conclusions, herein, Taxpayer's protest is hereby partly denied, and partly granted.

FINDINGS OF FACT

1. On August 26, 2015, Taxpayer filed a letter of protest for a tax assessment made by the Town.
2. On July 7, 2015, the Town issued an estimated tax assessment to Taxpayer in the amount of taxes of \$10,240.84, interest up through July 2015 in the amount of

\$726.12, and penalties of \$993.48.

3. The assessment period was from March 2011 through May 2014.
4. The Town determined that Taxpayer had four unreported taxable contracting projects during the audit period.
5. The Town utilized a Management Contract for an addition to the **Property #1** real property to estimate a project cost of \$115,000.00 and a management fee of \$16,237.00 to estimate a total construction income of \$131,237.00.
6. The **Property #1** Project cost was increased by 125 percent to estimate any change orders to the project for a total amount of \$164,000.00.
7. The Town utilized the building permit value of \$100,000.00 for a remodel for **Property #2** as a beginning to estimate construction income.
8. The Town increased the building permit value for **Property #2** by 254.84 percent an estimated contract amount of \$254,840.00.
9. The Town increased the estimated contract amount for **Property #2** by 125 percent to reflect any change orders to arrive at a total estimated contract amount of \$318,550.00.
10. The Town utilized a construction contract which showed an estimated project work for **Property #3** of \$51,090.00.
11. The Town increased the estimate for **Property #3** by 125 percent to reflect any change orders to arrive at a total estimated project cost of \$63,862.00.
12. The Town utilized a building permit value of \$30,000.00 for a remodel for **Property #4** to arrive at an initial contract estimate of \$30,000.00.
13. The Town increased the building permit value for **Property #4** by 254.84 percent to estimate contract amount of \$76,452.00.
14. The Town increased the estimated contract amount for **Property #4** by 125 percent to reflect any change orders to arrive at a total estimated contract amount of \$95,565.00.

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 Town for a consideration.
3. If a taxpayer fails to file reports and/or provide proper documentation, the Town is authorized to make a reasonable estimate of the taxable income.
4. Taxpayer acted as the general contractor on the *Property #1* project.
5. Taxpayer constructively received all the construction income for the *Property #1* project.
6. There was no evidence of any change orders for the *Property #1* project.
7. Taxpayer received \$51,090.00 in contracting income from the *Property #1* project.
8. There was no evidence of any change orders for the *Property #1* project.
9. It was reasonable for the Town to utilize the building permit value of \$100,000.00 as a starting point for the work done on *Property #2*.
10. There was no evidence to support increasing the building permit value for *Property #2* by 254.84 percent.
11. There was no evidence to support any change orders for the *Property #2* project.
12. It was reasonable for the Town to utilize the building permit value of \$30,000.00 as a starting point for the work done for *Property #4*.
13. There was no evidence to support increasing the building permit value for *Property #4* by 254.84 percent.
14. There was no evidence to support any change orders for the *Property #4* project.

15. Taxpayers protest should be partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.
16. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the August 26, 2015 protest by *Taxpayer* of a tax assessment made by the Town of Fountain Hills is hereby partly denied, and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is furthered ordered that the Town of Fountain Hills shall revise the assessment by removing all change orders from the *Property #1* project.

It is furthered ordered that the Town of Fountain Hills shall remove all change orders from the *Property #3* project.

It is furthered ordered that the Town of Fountain Hills shall remove the increase of 254.84 percent and all change orders from the *Property #2* project.

It is furthered ordered that the Town of Fountain Hills shall remove the 254.84 percent increase and change orders from the *Property #4* project.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer