

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 30, 2003
Decision: MTHO #108
Tax Collector: City of Tucson
Hearing Date: None

DISCUSSION

Introduction

On March 4, 2003, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Tucson ("City"). After review, the City concluded on March 6, 2003 that the protest was timely and in the proper form. On March 17, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before May 1, 2003. On April 15, 2003, the City filed its response. On April 18, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before May 9, 2003. On April 24, 2003, the City filed a letter indicating the City and Taxpayer were now in agreement.

The Taxpayer is in the business of fiberglass repair and fabrication and pool and spa repairs and lining. The City performed an audit for the period October 1, 1998 through September 30, 2002 and assessed the Taxpayer additional taxes and interest and penalties totaling \$1,168.38.

City Position

The Taxpayer had reported all income under the retail category. The City concluded the income should have been reported under the contracting activity. The City had originally disallowed all reported deductions because the Taxpayer did not provide any documentation to the auditor. After the City issued their assessment, the Taxpayer provided additional documentation. After review of the additional documentation, the City concluded that some of the sales were properly classified as retail sales and some should be classified as contracting. The City also concluded that some of the contracting was performed at out-of-City locations and thus not taxable by the City. Further, the City concluded some of the sales were exempt from taxation. As a result, the City redetermined the assessment to a revised tax due of \$269. 89 plus interest and penalties. The City also indicated they would be willing to waive the penalty.

Taxpayer Position

The Taxpayer protested the original assessment asserting that the City had included some exempt sales. The Taxpayer had requested a hearing in order to provide documents to show assessment was too high. Subsequently, the Taxpayer provided the City with additional documentation causing the City to revise its assessment. The Taxpayer agreed with the City's assessment as revised.

ANALYSIS

The City originally disallowed reported deductions of the Taxpayer because of the lack of documentation. The burden to maintain such documentation is on the Taxpayer. As a result, the City's disallowance was proper. After the Taxpayer produced additional information, it was reasonable and proper for the City to review the information and make revisions where appropriate. Accordingly, the City's revised assessment including waiver of penalties is hereby approved.

FINDINGS OF FACT

1. On March 4, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on March 6, 2003 that the protest was timely and in proper form.
3. On March 17, 2003, the Hearing Officer ordered the City to file a response to the protest on or before May 1, 2003.
4. On April 15, 2003, the City filed its response.
5. On April 18, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before May 9, 2003.
6. On April 24, 2003, the City filed a letter indicating the City and Taxpayer were now in agreement.
7. The Taxpayer is in the business of fiberglass repair and fabrication and pool and spa repairs and lining.
8. The City performed an audit for the period October 1, 1998 through September 30, 2002 and assessed the Taxpayer additional taxes and interest and penalties totaling \$1,168.38.
9. During the audit period, the Taxpayer had income from both retail and contracting activity.
10. The City originally disallowed all reported deductions because the Taxpayer did not provide any documentation to the auditor.
11. After the City issued their assessment, the Taxpayer provided additional documentation.
12. After review of the additional documentation, the City concluded some deductions were proper.

13. The City redetermined the assessment to a revised tax due of \$269.89 plus interest and penalties.

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. Retail sales activity and contracting activity are both taxable pursuant to the City Code.
3. The Taxpayer is responsible for providing documentation to support deductions..
4. The City disallowance of deductions was appropriate when the Taxpayer failed to supply documentation.
5. The City's revision of the tax assessment was proper after the Taxpayer provided additional documentation.
6. A penalty for failure to pay the tax timely is appropriate unless the Taxpayer can demonstrate the failure is due to reasonable cause and not willful neglect.
7. The Taxpayer has demonstrated reasonable cause for failing to pay the taxes in a timely manner.
8. The penalties should be waived.
9. The Taxpayer's protest should be granted consistent with the discussion herein.

ORDER

It is therefore ordered that the March 4, 2003 protest by *Taxpayer* should be granted consistent with the discussion herein.

It is further ordered that the City of Tucson shall revise its assessment to \$269.89 of tax and \$54.78 of interest and to reflect that the Taxpayer has paid the amount-in-full.

It is further ordered that all penalties are waived.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer