

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 3, 2003

Decision: MTHO #126

Tax Collector: City of Tucson

Hearing Date: September 19, 2003

DISCUSSION

Introduction

On April 15, 2003, *Taxpayer* ("Taxpayer") filed a protest of tax assessments made on License #XXXXXX and License #YYYYYY by the City of Tucson ("City"). After review, the City concluded on June 6, 2003, that the protest was timely and in the proper form. On June 21, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before August 2, 2003. On July 24, 2003, the City sent a request to the Taxpayer for copies of signed job contracts. On July 30, 2003, the City filed its response to the protest. On August 2, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before August 25, 2003. On August 12, 2003 a Notice of Tax Hearing ("Notice") was issued that scheduled the matter for hearing commencing on September 19, 2003. On September 15, 2003, the City provided a copy of questioned out-of-city jobs to the Taxpayer, per telephone request. Both parties appeared and presented evidence at the September 19, 2003 hearing. On September 20, 2003, the Hearing Officer issued a letter indicating the record was now closed and a written decision would be issued on or before November 3, 2003.

The Taxpayer is in the business of manufacturing and installing steel security doors. The City conducted an audit for the period November 1998 through September 2002. There were two assessments made as the Taxpayer initially operated as a sole proprietorship (License #XXXXXX) and subsequently incorporated on January 12, 2001 (License # YYYYYY). The City assessed License #XXXXXX for taxes due in the amount of \$8,148.02, penalties in the amount of \$1,629.62, plus interest. The City assessed License #YYYYYY for taxes due of \$4,541.56, penalties of \$1,322.76, plus interest.

City Position

During the audit period, the Taxpayer reported no taxable income to the City. According to the City the Taxpayer had reported significant subcontracting income and out-of-City income. The City reviewed the documentation that the Taxpayer made available. The City asserted that the Taxpayer was unable to provide invoices along with their corresponding job contracts to properly document the claimed deductions. Since the City could not verify the deductions, the deductions were disallowed and the audit was finalized. Subsequent to the audit, the Taxpayer

provided some new records, which the City reviewed. The City concluded that additional records were needed and notified the Taxpayer of the records needed. According to the City, no additional records were provided.

The City also assessed the Taxpayer for penalties for failing to timely pay the taxes and for negligence. As part of the audit, the City noted that some copies of invoices showed the Taxpayer itemized and collected tax but failed to remit the tax to the City.

Taxpayer Position

The Taxpayer asserted that it had found many deductions that the City had not allowed. The Taxpayer provided the City with copies of records claiming most contracting was for out-of-City jobs. Accordingly, the Taxpayer requested the assessments be adjusted to include additional deductions.

ANALYSIS

There was no dispute as to the amount of gross income for the audit period. The only dispute was whether or not the City allowed sufficient deductions. Clearly, the burden of proof is on the Taxpayer to provide documentation to support claimed deductions. In spite of several requests from the City, the Taxpayer was unable to provide the necessary documentation. As a result, the Hearing Officer concludes the Taxpayer's protest on the deductions should be denied. In addition, the City is authorized to impose a penalty for failing to timely pay taxes as well as an additional penalty for negligence. In this case the Hearing Officer concludes there was evidence of negligence on behalf of the Taxpayer since they charged and collected taxes from customers but failed to remit the taxes to the City. Further, the Taxpayer failed to demonstrate reasonable cause for failing to timely pay the taxes. As a result, the Hearing Officer concludes the penalties were appropriate under the circumstances.

FINDINGS OF FACT

1. On April 15, 2003, the Taxpayer filed a protest of tax assessments made on License #XXXXXX and License #YYYYYY by the City.
2. After review, the City concluded on June 6, 2003 that the protest was timely and in proper form.
3. On June 21, 2003, the Hearing Officer ordered the City to file a response to the protest on or before August 5, 2003.
4. On July 24, 2003, the City sent a request to the Taxpayer for copies of signed job contracts.

5. On July 30, 2003, the City filed its response to the protest.
6. On August 2, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before August 25, 2003.
7. On August 12, 2003, a Notice was issued that scheduled the matter for hearing commencing on September 19, 2003.
8. On September 15, 2003, the City provided a copy of questioned out-of-City jobs to the Taxpayer, per a telephone request.
9. Both parties appeared and presented evidence at the September 19, 2003 hearing.
10. On September 20, 2003, the Hearing Officer issued a letter indicating the record was closed and a written decision would be issued on or before November 3, 2003.
11. The Taxpayer is in the business of manufacturing and installing steel security doors.
12. The City conducted an audit for the period November 1998 through September 2002.
13. There were two assessments made as the Taxpayer initially operated as a sole proprietorship (License #XXXXXX) and subsequently incorporated on January 12, 2001 (License #YYYYYY).
14. The City assessed License #XXXXXX for taxes due in the amount of \$8,148.02, penalties in the amount of \$1,629.62, plus interest.
15. The City assessed License #YYYYYY for taxes due in the amount of \$4,541.56, penalties of \$1,322.76, plus interest.
16. During the audit period the Taxpayer reported no taxable income to the City.
17. The Taxpayer was unable to provide invoices along with corresponding job contracts to properly document claimed deductions.
18. The City assessed the Taxpayer for penalties for failing to timely pay taxes and for negligence.
19. As part of the audit, the City noted that some copies of invoices showed the Taxpayer itemized and collected tax but failed to remit the tax to the City.

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. The Taxpayer had underreported taxable income pursuant to City Code Section 19-415.
3. The Taxpayer has failed to provide documentation to demonstrate that additional deductions should be allowed.
4. Section 540 (b)(2) imposes a penalty for failure to pay the tax timely unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
5. Section 540 (b) authorizes the City to impose an additional penalty when failure to pay the tax is due to negligence.
6. The Taxpayer's failure to remit taxes collected constitutes negligence.
7. Under the circumstances discussed herein, the Taxpayer did not demonstrate reasonable cause for failure to timely pay taxes during the audit period.
8. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the April 15, 2003 protest of *Taxpayer* of tax assessments made on License #XXXXXX and License #YYYYYY by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer