

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 23, 2003

Decision: MTHO #127

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On May 21, 2003, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Phoenix ("City"). After review, the City concluded on June 20, 2003, that the protest was timely and in the proper form. On June 25, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before August 11, 2003 and classified this matter as a redetermination. The City filed a response on July 3, 2003. On July 11, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before August 11, 2003. On August 20, 2003 the Hearing Officer filed a letter indicating no reply had been filed and the record was closed with a written decision to be issued on or before October 6, 2003.

The City became aware that the Taxpayer was involved in the construction of a new *Store* at _____ ("*Property*") located in the City. The City records indicated that the Taxpayer obtained a Privilege License from the City on May 2, 2002 with a liability date of January 7, 2002. The Taxpayer has not filed any returns or paid any tax since being licensed. As a result, the City issued a tax assessment for the period January 2002 through August 2002 in the amount of \$74,213.52 plus interest through March 2003 in the amount of \$7,050.31. In addition, the City assessed penalties for failing to timely file and failing to timely pay in the amounts of \$11,132.00 and \$7,421.36, respectively.

City Position

The Taxpayer was initially contacted on September 24, 2002 regarding the unreported construction revenue for the *Property*. During the period September 24, 2002 through January 15, 2003, the auditor spoke with the Taxpayer or left voice messages numerous times in an effort to obtain the contract with *Store* and AIA documents. While the Taxpayer promised to send the information, it was never sent to the City. Since no documentation was provided, the City estimated taxes due on February 28, 2003. Subsequently, the Taxpayer called the auditor on March 14, 2003 to say the estimate was incorrect. The Taxpayer sent the City additional documentation) however, the City informed the Taxpayer they still needed the AIA draws. The City did not receive the information requested and the auditor finalized the estimate on March 31, 2003.

Subsequently, the Taxpayer provided the AIA draws with its May 21, 2003 protest. The City reviewed the AIA draws provided by the Taxpayer and as a result recommended the tax due be revised from \$74,213.52 to \$38,118.32 plus interest. The penalties were reduced to \$5,717.76 for failing to timely file and \$3,811.84 for failing to timely pay. The City recommended the penalties be upheld since the Taxpayer was unable to confirm that any taxes had been paid to Cave Creek. In addition, the City asserted that the fact the Taxpayer initially obtained a permit and license in the City makes it clear that he was aware of the tax liability to the City.

Taxpayer Position

The Taxpayer asserted that they initially thought the *Property* was located in Cave Creek and did not learn the project was located in the City until called by the City. The Taxpayer protested the total assessment amount of \$99,817.19 was excessive because the Taxpayer received no consideration for misunderstanding the property was located in the City and because no payments have been received by the Taxpayer on the project since June 18, 2002. The Taxpayer included the AIA draws with its May 21, 2003 protest. Based on the above, the Taxpayer requested the assessment be revised.

ANALYSIS

The Taxpayer performed construction contracting for *Store* on the *Property* located in the City. The Taxpayer failed to report the contracting revenue to the City as required by City Code Section 14-415 (“Section 415”). Since the Taxpayer failed to provide the necessary documentation to the City, it was proper for the City to make an estimate of the contracting revenue for the Taxpayer. After the Taxpayer provided new documentation with its protest, it was proper for the City to review the documentation and recommend a revision of the tax due based on more accurate information. As a result, we shall grant the Taxpayer’s protest to the extent it is consistent with the City’s revised assessment.

The Taxpayer did not timely pay taxes or timely file tax returns. For those reasons, the City is authorized pursuant to City Code Section 14-540(b) (“Section 540(b)”) to assess penalties. Those penalties can be waived if the Taxpayer can demonstrate reasonable cause for failing to timely file returns and failing to timely pay taxes. We can understand the Taxpayer being confused as to the municipality the *Property* was located. However, even after applying for a City Privilege License from the City on May 2, 2002, the Taxpayer still did not file any returns or pay any taxes. Further, there was no evidence presented to demonstrate that the Taxpayer had erroneously paid the taxes to another municipality. Based on the above, the Taxpayer has failed to demonstrate reasonable cause for failing to timely file tax reports or failing to timely pay taxes. Accordingly, the request to waive the penalties is denied.

FINDINGS OF FACT

1. On May 21, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on June 20, 2003 that the protest was timely and in proper form.

3. On June 25, 2003, the Hearing Officer ordered the City to file a response to the protest on or before August 11, 2003 and classified this matter as a redetermination.
4. The City filed a response to the protest on July 3, 2003.
5. On July 11, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before August 11, 2003.
6. On August 20, 2003, the Hearing Officer filed a letter indicating no reply had been filed and the record was closed with a written decision to be issued on or before October 6, 2003.
7. The City became aware that the Taxpayer was involved in the construction of a new **Store** on the Property located in the City.
8. The City records indicated that the Taxpayer obtained a Privilege License from the City on May 2, 2002 with a liability date of January 7, 2002.
9. The Taxpayer has not filed any returns or paid any tax since being licensed.
10. The City issued a tax assessment for the period January 2002 through August 2002 in the amount of \$74,213.52 plus interest through March 2003 in the amount of \$7,050.31.
11. The City also assessed penalties for failing to timely file and failing to timely pay in the amounts of \$11,132.00 and \$7,421.36, respectively.
12. The Taxpayer was initially contacted on September 24, 2002 regarding the unreported construction revenue for the Property.
13. During the period September 24, 2002 through January 15, 2003, the auditor spoke with the Taxpayer or left voice messages numerous times in an effort to obtain the contract with **Store** and AIA documents.
14. The information was never sent to the City.
15. On February 28, 2003, the City estimated the taxes due.
16. On March 14, 2003, the Taxpayer called the auditor to say the estimate was incorrect.
17. The Taxpayer sent the City additional documentation, however, the City informed the Taxpayer they still needed the AIA draws.
18. The City did not receive the information requested and the auditor finalized the estimate on March 31, 2003.
19. The Taxpayer included the AIA draws with its May 21, 2003 protest.

20. The City reviewed the AIA draws and recommended the tax assessment be revised from \$74,213.52 to \$38,118.32.
21. The penalties were reduced to \$5,717.76 for failing to timely file and \$3,811.84 for failing to timely pay.

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 unreported construction-contracting revenue pursuant to Section 415.
3. Since the Taxpayer failed to provide the necessary documentation to the City, it was proper for the City to make an estimate of the contracting revenue for the Taxpayer.
4. After the Taxpayer provided new documentation with its protest, it was proper for the City to review the documentation and recommend a revision of the tax due based on more accurate information.
5. The City is authorized to assess penalties for failing to timely file tax returns and failing to timely pay taxes pursuant to Section 540(b).
6. The Taxpayer has failed to demonstrate reasonable cause for failing to timely file tax returns or failing to timely pay taxes.
7. The Taxpayer's request to waive the penalties is denied.
8. The Taxpayer's protest is granted to the extent it is consistent with the City's July 3, 2003 recommended revision.

ORDER

It is therefore ordered that the May 21, 2003 protest of *Taxpayer* of a tax assessment made by the City of Phoenix is hereby granted in part consistent with the Discussion herein.

It is further ordered that the City of Phoenix shall revise the tax assessment and related interest and penalties consistent with the City's July 3, 2003 recommended revision.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer