

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 25, 2002

Decision: MTHO #14

Taxpayer: Taxpayer

Tax Collector: City of Phoenix

Hearing Dates: November 13, 2001; December 4, 2001; and January 25, 2002

DISCUSSION

Introduction

On April 11, 2001, Taxpayer filed a protest of the City of Phoenix ("City") tax assessment. After review of the protest, the City determined the protest was timely and in the proper form. On April 18, 2001, the City Auditor Department ("Department") ordered the City to file a response to the issues raised in the protest by June 4, 2001. The Department processed the protest as a redetermination. The City filed its response on May 10, 2001. On May 16, 2001, the Taxpayer filed a request for a hearing. On October 12, 2001, the Municipal Tax Hearing Office scheduled the matter for a hearing on November 13, 2001. The City and the Taxpayer both appeared and presented evidence at the November 13, 2001 hearing. At the hearing, the Taxpayer requested additional time to provide information to the City. The request was granted and the hearing was continued until December 4, 2001. The Taxpayer failed to provide the information or appear at the December 4, 2001 hearing. The Taxpayer showed up at the City with additional information on December 13, 2001. The City recommended a continuance be granted in order to allow the Taxpayer additional time to provide records for the City to review. The Hearing Officer re-opened the hearing and gave the Taxpayer until January 25, 2002 to provide additional records. The hearing was reconvened on January 25, 2002 and the City and Taxpayer both appeared and presented evidence.

Taxpayer has been a construction contractor since 1994. Taxpayer estimated that approximately 90% of his work was in the City of Scottsdale. Most of his remaining work was in the City of Glendale with a few jobs each year in the City. In March 2000, the Taxpayer was contacted by the City regarding an audit of his records. The City explained that they needed the Taxpayer's records in order to verify his income and the work performed within the City. The Taxpayer informed the City that the Arizona Department of Revenue ("DOR") had taken all of his records. When the City contacted the DOR, they were told the DOR did not have the records. The City reviewed the DOR audit file and were able to conclude that the Taxpayer received income from City customers during the period of January 1997 through September 1998. The City contacted the Taxpayer again on September 20, 2000 to restate their need to conduct the audit and to request a date to begin. The Taxpayer did not respond. On October 10, 2000, the City sent an Administrative Request for Records ("Request") to the Taxpayer and requested records by December 11, 2000. The Taxpayer again failed to respond. Because records were not provided, the City prepared an estimate based on the DOR audit. In addition to the tax liability, the City assessed interest and penalties for failure to file timely, pursuant to Section 14-540(b)(1) ("Section 540(b)(1)"), failure to pay timely pursuant to Section 14-540(b)(2) ("Section 540(b)(2)") and for failure to furnish information to the administrative request pursuant to Section 14-555(c) ("Section 555(c)").

At the November 13, 2001 hearing, a request by the Taxpayer to provide additional records for review by the City was granted. The Hearing Officer sent out a November 19, 2001 confirmation letter specifying the records the Taxpayer had agreed to provide in order to assist the City in identifying the gross income of the Taxpayer for each of the years 1997 through 2000, the source of the income, and, the amount, if any, of income for contracting within the City. The Taxpayer was to provide the information to the City on December 4, 2001. The Taxpayer failed to provide the information on December 4, 2001 but showed up at the City on December 13, 2001 with a bag full of unorganized records. As a result, the City recommended the Taxpayer be granted an additional continuance in order to provide records for the City to review.

On December 28, 2001, the Hearing Officer re-opened the hearing and gave the Taxpayer until January 25, 2002 to provide the records previously set forth in the November 19, 2001 letter of the Hearing Officer. At the re-opened hearing date of January 25, 2002, the Taxpayer was given until February 1, 2002 to provide additional records for the City's review, the City was to provide any comments/response on or before February 15, 2002, and the Taxpayer was to file any reply on or before February 25, 2002. The Taxpayer provided some of the records on January 30, 2002 and the City filed a response on February 12, 2002. The Taxpayer failed to provide a reply.

City Position

On several occasions, the City requested records from the Taxpayer in order to perform an audit for the period February 1997 through November 2000. The City asserted that the Taxpayer never provided any records. As a result, the City utilized DOR's file to determine the Taxpayer's contracting income with the City for the period February 1997 through September 1998. Since DOR ended its audit as of September 1998, the City estimated the Taxpayer's contracting income within the City for the period October 1998 through November 2000. The City argued that since the Taxpayer had failed to provide records, the City is authorized to estimate the tax liability in the absence of such records. The City asserted that it had utilized a reasonable basis in arriving at its estimate and as a result it should be upheld. The City also requested the penalties be upheld since the Taxpayer failed to provide a reasonable basis for failure to file timely, failure to pay timely, or failure to furnish information requested. The City did review the additional information provided by the Taxpayer on January 30, 2002 and concluded there was not sufficient information to justify any recommended adjustment to the Hearing Officer.

Taxpayer Position

The Taxpayer asserts that his license was suspended in 1999 and he did not renew his license. According to the Taxpayer, he did not work in the construction business in 1999 and 2000. The Taxpayer asserts his income for 1999 and 2000 was from a home care business in his house.

Further, the Taxpayer argued that he could not provide his records because the DOR took his records when they performed their audit. Based on the above, the Taxpayer requested an adjustment to the assessment.

ANALYSIS

It is the responsibility of the Taxpayer pursuant to the City Code to maintain necessary books and records. The City on several occasions requested the Taxpayer provide the necessary books and records. The Taxpayer never provided the requested books and records. As a result, the City is authorized pursuant to City Code Section 14-555(e) ("Section 555(e)") to utilize estimates when the Taxpayer fails to provide necessary books and records. The City utilized the audit file of DOR to estimate the Taxpayer's contracting income. While the DOR audit did not utilize the same period as the City audit, the City was able to use those amounts to estimate the additional time periods. While the Taxpayer argued that he did not perform any contracting business after his license was revoked in 1999, the Schedule C's provided by the Taxpayer for 1999 and 2000 still show contracting income for the Taxpayer for those years. Based on all the above, the Hearing Officer concludes the City utilized a reasonable method of estimation and the Taxpayer has failed to provide sufficient information to refute the City's estimation. Lastly, the Hearing Officer concludes that the Taxpayer has failed to provide reasonable cause for failing to timely file returns, failing to timely pay taxes, and for failing to furnish information in a timely manner. The Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On April 11, 2001, Taxpayer filed a protest of the tax assessment of the City.
2. On April 18, 2001, the Department ordered the City to file a response to the protest by June 4, 2001.
3. The Department processed the protest as a redetermination.
4. The City filed its response on May 10, 2001.
5. On May 16, 2001, the Taxpayer filed a request for a hearing.
6. On October 12, 2001, the Municipal Tax Hearing Office scheduled the matter for hearing commencing on November 13, 2001.
7. Both the City and Taxpayer appeared at the November 13, 2001 hearing and presented evidence.
8. At the request of the Taxpayer at the November 13, 2001 hearing, the hearing was continued until December 4, 2001 so that the Taxpayer could provide additional information to the City for review.
9. On November 19, 2001, the Hearing Officer sent a letter to the Taxpayer specifying the records the Taxpayer had agreed to provide.
10. The Taxpayer failed to appear at the December 4, 2001 hearing and the record was closed.
11. The Taxpayer showed up at the City on December 13, 2001 with a bag full of unorganized records.
12. The City recommended the Taxpayer be granted additional time in order to provide records for the City to review.
13. On December 28, 2001, the Hearing Officer re-opened the hearing and gave the Taxpayer until January 25, 2002 to provide the records previously set forth in the November 19, 2001 letter from the Hearing Officer.
14. At the re-opened hearing date of January 25, 2002, the Taxpayer was given until February 1, 2002 to provide additional records for the City to review, the City was to file comments/response on or before February 15, 2002, and the Taxpayer was to file any reply on or before February 25, 2002.
15. The Taxpayer provided some of the records on January 30, 2002.
16. The City filed its response on February 12, 2002.
17. The Taxpayer failed to file a reply.
18. The DOR performed an audit of the Taxpayer for the period January 24, 1997 through September 30, 1998.
19. The DOR asked the Taxpayer for invoices and the Taxpayer informed the DOR that he had not kept any of the 1997 invoices.
20. The Taxpayer informed the DOR that most of his business activity for 1997 had been in the City.

21. The DOR did not keep any of the Taxpayer's records.
22. The City conducted an audit for the period February 1997 through November 2000.
23. On several occasions, the City requested records from the Taxpayer in order to conduct their audit.
24. The Taxpayer failed to provide most of the records requested by the City.
25. The City utilized the DOR audit findings in order to arrive at an estimated tax assessment for the Taxpayer for the period February 1997 through November 2000.
26. Taxpayer has been a construction contractor since 1994.
27. The Taxpayer estimated that 90 percent of his work was in the City of Scottsdale.
28. The Taxpayer's contractor's license was suspended in 1999 and never renewed.
29. The hearing was continued on several occasions at the request of the Taxpayer in order to provide him additional time to provide information to the City for review.
30. The Taxpayer received some income from a home care business in his house.
31. The Taxpayer provided Schedule C's for his Federal 1999 and 2000 tax returns, which indicated his principal business was construction, and as a handyman, respectively.

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. City Code Section 14-415(a) imposes a tax on contracting income within the City.
3. Section 540 (b)(1) imposes a penalty for failure to file a timely return unless taxpayer shows that the failure is due to reasonable cause and not willful neglect.
4. Section 540 (b)(2) imposes a penalty for failure to pay the tax when due unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
5. Section 555(c) imposes a penalty for failure to furnish information unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
6. Section 555(e) authorizes the City to utilize estimates when the taxpayer has failed to maintain or provide necessary books and records.
7. The City utilized a reasonable method of estimation in determining the Taxpayer's tax assessment.
8. The Taxpayer has failed to provide a reasonable cause for failing to file timely returns, for failing to pay the tax in a timely manner, and for failing to furnish information in a timely manner.
9. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the April 11, 2001 protest of Taxpayer shall be denied.

It is further ordered that this decision is effective immediately.

Dated: April 25, 2002

Jerry Rudibaugh

Municipal Tax Hearing Officer