

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: August 2, 2004

Decision: MTHO #153

Tax Collector: City of Bullhead City

Hearing Date: February 27, 2004

DISCUSSION

Introduction

On August 20, 2002, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Bullhead City ("City"). After review, the City concluded on January 2, 2003 that the protest was timely and in the proper form. On November 17, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before January 2, 2004. On December 4, 2003, the City filed additional documents. On December 16, 2003, the City filed a response. On December 19, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before January 9, 2004. On January 13, 2004, a Notice of Tax Hearing ("Notice") was issued setting the matter for hearing commencing on February 27, 2004. Both parties appeared and presented evidence at the February 27, 2004 hearing. On March 4, 2004, the Hearing Officer ordered the City to provide additional documents to the Taxpayer on or before March 12, 2004 and the Taxpayer would provide comments regarding the documents on or before March 26, 2004. The City sent a March 17, 2004 email requesting an extension until April 2, 2004. On March 22, 2004, the Hearing Officer granted the City an extension until April 2, 2004. On March 30, 2004, the City filed additional documents. On May 19, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before June 9, 2004. On June 14, 2004, the Hearing Officer indicated no reply had been received from the Taxpayer and as a result a written decision would be issued on or before July 29, 2004. On June 16, 2004, the Taxpayer requested an extension until June 18, 2004. On June 17, 2004, the Hearing Officer granted the Taxpayer an extension until June 18, 2004. On June 17, 2004, the Taxpayer filed a reply. On June 19, 2004, the Hearing Officer closed the record and on June 21, 2004, the Hearing Officer indicated a written decision would be issued on or before August 3, 2004.

The City performed an audit of the Taxpayer for the period October 1998 through June 2001. The Taxpayer was assessed taxes in the amount of \$4,296.86 for underreported contracting income. The City also assessed a penalty of \$429.69 for failing to timely pay taxes and assessed interest up through July 2002 in the amount of \$1,170.42.

City Position

The City indicated they reviewed all the information provided by the Taxpayer. According to the City, *ABC Homes* is *XYZ Inc.*, DBA *ABC Real Estate & Development*. That entity does not

have a transaction privilege license and the Taxpayer has not obtained a written declaration that *ABC Homes* is liable for the tax as required by City Code Section 3.16-415 (c) (“Section 415 (c)”). As a result, the City asserts the Taxpayer is liable for the construction revenue. The City included six *ABC Home* jobs in the audit totaling gross revenue of \$333,531.75. According to the City, they used contract amounts provided by the Taxpayer for two of the jobs, three amounts were determined from building permit valuations, as no other information was available, and for one job the City utilized the actual payments from *ABC Homes* to the Taxpayer. According to the City, none of the jobs done by Mr. *V* were included in the audit. The City agreed that for two other jobs, the Taxpayer was only a construction manager and the City had adjusted the audit to reflect that determination.

Taxpayer Position

The Taxpayer protested the assessment for several reasons. First, the Taxpayer asserted that the City did not review all the information provided. The Taxpayer argued that all the contracts with *ABC Homes* should be taxable to *ABC Homes* and not the Taxpayer. The Taxpayer indicated that he had to enter into the contracts with *ABC Homes* because a scam artist, Bill *V*, had used the Taxpayer’s privilege license number without the Taxpayer’s permission. The Taxpayer also argued that he was assessed for several contracts that had been entered into by Bill *V*. The Taxpayer indicated that at the time he entered into the contracts with *ABC Homes* he did not know of the requirements to obtain a written declaration from *ABC Homes* along with their privilege license number. The Taxpayer argued that the work done for *ABC Homes* did not include sales tax as part of the contract and that *ABC Homes* was responsible for any sales tax. Even if it is determined that the Taxpayer is responsible for the taxes, the Taxpayer argued he only received \$216,559.55 and not \$333,531.75 as alleged by the City

ANALYSIS

It was clear from the evidence that the Taxpayer had underreported contractor income during the audit period. Further, we have no reason to dispute the Taxpayer’s claim that he did not know he needed to get written declaration from *ABC Homes* along with their privilege license number in order to not be liable for the construction contracting activity. We also have no reason to dispute the Taxpayer’s claim that he had a dispute with Mr. *V*. With that all said, we conclude that it was the Taxpayer’s responsibility to know the law regarding obtaining a written declaration and privilege license number if he did not want to be responsible for the tax. There was testimony that the Taxpayer had been in the construction business for over fifteen years. It is unclear what amounts, if any, should be attributed to Mr. *V* and not the Taxpayer. We do find that the documents reviewed by the City showed that the Taxpayer was the contractor for six *ABC Home* jobs. Further, we find that in those cases in which there was not a contract amount, it was reasonable for the City to utilize building permit valuations. Based on all the above, we find the City’s assessment on the six *ABC Home* jobs to be reasonable and we approve the amount assessed.

As to the two jobs in which the Taxpayer acted as a construction manager, we find those jobs would be taxable but only to the extent of monies received by the Taxpayer. It is unclear from

the record if the City has already made that adjustment. Lastly, we find that the Taxpayer has demonstrated reasonable cause for failing to timely pay the taxes under the circumstances. As a result, we shall waive the penalty of \$429.69.

FINDINGS OF FACT

1. On August 20, 2002, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on January 2, 2003 that the protest was timely and in proper form.
3. On November 17, 2003, the Hearing Officer ordered the City to file a response to the protest on or before January 2, 2004.
4. On December 4, 2003, the City filed additional documents.
5. On December 16, 2003, the City filed a response.
6. On December 19, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before January 9, 2004.
7. On January 13, 2004, a Notice was issued setting the matter for hearing commencing on February 27, 2004.
8. Both parties appeared and presented evidence at the February 27, 2004 hearing.
9. On March 4, 2004, the Hearing Officer ordered the City to provide additional documents to the Taxpayer on or before March 12, 2004 and the Taxpayer would provide comments regarding the documents on or before March 26, 2004.
10. The City sent a March 17, 2004 email requesting an extension until April 2, 2004.
11. On March 22, 2004, the Hearing Officer granted the City an extension until April 2, 2004.
12. On March 30, 2004, the City filed additional documents.
13. On May 19, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before June 9, 2004.
14. On June 14, 2004, the Hearing Officer indicated no reply had been received from the Taxpayer and as a result a written decision would be issued on or before July 29, 2004.
15. On June 16, 2004, the Taxpayer requested an extension until June 18, 2004.

16. On June 17, 2004, the Hearing Officer granted the Taxpayer an extension until June 18, 2004.
17. On June 17, 2004, the Taxpayer filed a reply.
18. On June 19, 2004, the Hearing Officer closed the record and on June 21, 2004, the Hearing Officer indicated a written decision would be issued on or before August 3, 2004.
19. The City performed an audit of the Taxpayer for the period October 1998 through June 2001.
20. The Taxpayer was assessed taxes in the amount of \$4,296.86 for underreported contracting income.
21. The City also assessed a penalty of \$429.69 for failing to timely pay taxes and assessed interest up through July 2002 in the amount of \$1,170.42.
22. *ABC* Homes is *XYZ* Inc., DBA *ABC* Real Estate & Development.
23. *ABC* Homes does not have a transaction privilege license.
24. The Taxpayer never received any written declaration that *ABC* Homes was liable for the privilege license tax.
25. The Taxpayer never obtained a privilege tax number from *ABC* Homes.
26. The City used contract amounts provided by the Taxpayer for two of the *ABC* Homes jobs, three job amounts were determined from building permit valuations, and for one job the city utilized the actual payments from *ABC* Homes to the Taxpayer.
27. During the audit period, the Taxpayer had a dispute with Mr. *V* regarding the used of his business license number.
28. For two other jobs, the Taxpayer was only a construction manager.

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 City Code imposes a tax on contracting income.
3. The Taxpayer had underreported contracting income during the audit period.

4. Section 415 (c) authorizes a subcontractor to not be liable for the privilege tax when they obtain a written declaration that another entity is liable for the tax and provided the subcontractor with a privilege license number.
5. The Taxpayer failed to comply with Section 415 (c).
6. The City utilized a reasonable method to estimate the gross revenue from the six *ABC* Home jobs.
7. The Taxpayer has demonstrated reasonable cause for failing to timely pay all the taxes.
8. The penalty should be waived.
9. With the exception of the penalty, the Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the August 20, 2002 protest of *Taxpayer* of a tax assessment made by the City of Bullhead City is hereby denied with the exception of the penalty.

It is further ordered that to the extent the City of Bullhead City has not already done so, the two jobs in which the *Taxpayer* acted, as a construction manager should be taxes based on the amount of income received by *Taxpayer*.

It is further ordered that the City of Bullhead City shall remove the penalty of \$429.69.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer