

**Jerry Rudibaugh**  
**Municipal Tax Hearing Officer**  
**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: April 16, 2002  
Decision: MTHO #16  
Tax Collector: City of Peoria  
Hearing Date: None

**DISCUSSION**

**Introduction**

On October 15, 2001, *XYZ Development* (“XYZ” or “Taxpayer”) filed a protest of the City of Peoria (“City”) tax assessment. After review, the City filed its October 31, 2001 finding that the protest was timely and in the proper form. On November 2, 2001, the Municipal Tax Officer (“Hearing Officer”) ordered the City to file its response to the protest on or before December 26, 2001. The Hearing Officer ordered the Taxpayer to file its reply on or before January 28, 2002. The Taxpayer failed to file a reply by the deadline date. On February 11, 2002, the Hearing Officer granted the Taxpayer an extension until March 13, 2002 to file a reply. On March 1, 2002, the Taxpayer filed a reply.

*XYZ* is a California contractor that applied for a City privilege tax license on September 29, 1999. Subsequently, *XYZ* constructed a \_\_\_\_\_ restaurant within the City limits. The Taxpayer filed and paid taxes to the State of Arizona (“State”) on the construction income. However, the Taxpayer was not aware there was a City tax on construction income and failed to collect or pay any City tax. The City conducted an audit of the Taxpayer for the period January 1998 to May 2001 and assessed taxes in the amount of \$4,582.44 for construction income pursuant to City Code Section 9-415 (“Section 415”) along with interest of \$948.65 and penalties totaling \$1,145.61 for failure to file tax reports pursuant to City Code Section 9-540 (b)(1) (“Section 540(b)(1)”) and failure to pay taxes pursuant to City Code Section 9-540 (b)(2) (“Section 540 (b)(2)”).

**City Position**

The City requested the assessment be upheld. The City asserted that the tax law was properly legislated and published and ignorance of the law is no excuse. According to the City, the Taxpayer either knew or should have known there was a privilege tax associated with a privilege tax license. As to the Taxpayer’s assertion that the City was negligent for failing to do an audit until 18 months after the completion of the project, the City argued they had no duty to perform any audit within 18 months. In fact, the City argued there was no time limit for an audit pursuant to City Code Section 550 (c) (“Section 550 (c)”) since the Taxpayer failed to file a return for any month.

## **Taxpayer Position**

The Taxpayer asserts he was not aware of the tax and did not charge the restaurant owner any tax. Further, the Taxpayer argued that the City was negligent in not bringing the tax to his attention until a year and a half after the completion of the construction. As a result, the Taxpayer indicated he cannot go back to the owner of the restaurant and collect the tax. The Taxpayer requested the tax be reduced to \$2000.00 and the penalties and interest be abated.

## **ANALYSIS**

It is clear that the Taxpayer performed construction within the City that was taxable pursuant to Section 415. The Taxpayer's primary complaint was that the City did not inform him in a timely manner so that he could pass the tax on to the owner of the restaurant that he had constructed. For that reason, the Taxpayer requested the assessment be reduced. The Hearing Officer disagrees with the Taxpayer. The Taxpayer collected and paid State tax and applied for a privilege license with the City. The Hearing Officer concludes that if the Taxpayer had conducted proper due diligence, he would have been able to ascertain that there was a City tax on his business activity. Further, the Hearing Officer concludes that the Taxpayer has failed to demonstrate good cause for failing to report the taxes in a timely manner. Taxpayer failed to report the taxes in a timely manner because they failed to conduct proper due diligence. The Hearing Officer concludes the Taxpayer had reasonable cause not to pay the taxes at that time. Therefore the penalty for failure to pay the taxes in a timely manner should be waived. Based on the above, the Taxpayer's protest is denied with exception of the penalty for failing to pay the taxes in a timely manner.

## **FINDINGS OF FACT**

1. On October 15, 2001, *XYZ* filed a protest of the City tax assessment.
2. On October 31, 2001 the City filed a finding that the protest was timely and in the proper form.
3. In its protest letter, the Taxpayer requested its protest be processed as a redetermination.
4. On November 2, 2001, the Hearing Officer ordered the City to file its response to the protest on or before December 26, 2001.
5. The City filed its response on December 26, 2001.
6. The Hearing Officer ordered the Taxpayer to file its reply on or before January 28, 2002.
7. The Taxpayer failed to file a reply by the deadline date.
8. The Hearing Officer granted the Taxpayer an extension until March 13, 2002 to file a

reply.

9. On March 1, 2002, the Taxpayer filed a reply.
10. **XYZ** is a California contractor that applied for a City privilege tax license on September 29, 1999.
11. On or about November 1, 1999, **XYZ** began construction on a \_\_\_\_\_ restaurant within the City limits.
12. The Taxpayer collected and paid State taxes on the construction of the \_\_\_\_\_ restaurant but failed to collect or pay any City taxes.
13. The City conducted an audit of the Taxpayer commencing on June 6, 2001 for the period January 1998 through May 2001.
14. The City assessed taxes totaling \$4,582.44 for construction income along with associated interest and penalties totaling \$1,145.61 for failure to file and failure to pay taxes.

#### **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. Section 415 imposes a tax on construction 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. The Taxpayer has not shown reasonable cause for failing to report and failing to pay the tax on the construction income within the City.
6. The Taxpayer has shown reasonable cause for failing to pay the tax in a timely manner.
7. The Taxpayer's protest should be denied with the exception of the penalty for failure to pay the taxes in a timely manner.

**ORDER**

It is therefore ordered that the October 15,2001 protest filed by *XYZ Development* is denied with the exception of the penalty for failure to pay the taxes in a timely manner.

It is further ordered that the City of Peoria shall adjust the assessment for *XYZ Development* by waiving the penalty for failure to pay the taxes in a timely manner.

It is further ordered that this decision is effective immediately.

Dated: April 16, 2002

Jerry Rudibaugh  
Municipal Tax Hearing Officer