

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 2, 2004
Decision: MTHO #171
Tax Collector: City of Tucson
Hearing Date: None

DISCUSSION

Introduction

On December 31, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on January 8, 2004 that the protest was timely and in the proper form. On January 16, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to provide a response to the protest on or before March 1, 2004. On January 20, 2004, the City filed a response. On January 24, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before February 16, 2004. On March 1, 2004, a Notice of Tax Hearing (“Notice”) was issued setting the matter for hearing commencing on April 23, 2004. Both parties appeared and presented evidence at the April 23, 2004 hearing. On April 26, 2004, the Hearing Officer ordered the Taxpayer additional documentation to the City, the City to file any comments by May 7, 2004, and the Taxpayer to file any reply on or before May 14, 2004. On May 18, 2004, the Hearing Officer indicated no documentation had been filed by the Taxpayer and as a result the record was closed and a written decision would be issued on or before July 2, 2004.

City Position

The City conducted an audit of the Taxpayer for the period July 1, 1998 through April 30, 2002. The City assessed the Taxpayer \$7,073.87 for taxes on contracting income. In addition, the City assessed the Taxpayer for penalties in the amount of \$1,365.56 which were subsequently waived by the City. The Taxpayer was also assessed interest on the taxes due.

The City asserted that the warranty work done by the Taxpayer for *Customer A* Industries (“*Customer A*”) was taxable pursuant to City Code Regulation 19-415.2 (b) (1) (“Regulation 415.2”). *Customer A* hired the Taxpayer to make repairs to or replace defective gas station equipment. Regulation 415.2 states that “when an item is attached or installed on real property it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.” According to the City, *Customer A* does not have any City privilege license and did not provide the Taxpayer with a valid prime contractor’s license. As a result, the City argued that the Taxpayer’s request to be treated as a nontaxable subcontractor must be denied. The City also noted that since the audit the Taxpayer has been charging *Customer A* for a tax on contracting work.

The City requested documentation from the Taxpayer to demonstrate that a job at _____ was outside the City. The Taxpayer never provided the requested documentation. As a result, the City recommended the job be held to be taxable.

In response to the Taxpayer's assertion that they had additional exemption certificates, the City agreed to review any provided. Since none were provided, the City recommended no change in the amount of exempt income. Based on all the above, the City requested the Taxpayer's protest be denied.

Taxpayer Position

The Taxpayer protested three issues from the audit. The Taxpayer asserted they believed the work they were doing for *Customer A* was subcontracting work. The Taxpayer found out during the audit process that *Customer A* did not hold a valid City privilege license. However, the Taxpayer argued they should not be penalized because they thought they were handling it correctly. The Taxpayer also argued that sales to *Customer B* ("*Customer B*") should not be taxable. According to the Taxpayer, one of the sales taxed by the City was located in the City of Phoenix. The Taxpayer indicated they would supply documentation after the hearing to demonstrate the job at _____ was not in the City. Lastly, the Taxpayer asserted they had found tax exempt certificates on three additional companies. While the Taxpayer indicated these certificates would be provided at the hearing, none were ever provided.

ANALYSIS

Clearly, the Taxpayer had underreported contracting income during the audit period. While the Taxpayer had an honest belief that *Customer A* was responsible for taxes on the jobs performed by the Taxpayer, the City determined that *Customer A* had no City privilege license number and had not paid taxes on the jobs. Further, the Taxpayer had failed to obtain any prime contractor's certificate from *Customer A*. As a result, the Taxpayer is liable for the tax pursuant to Section 415.

Based on a review of the Taxpayer's records, a job at _____ was located in the City. While the Taxpayer disputed the job being in the City, the Taxpayer failed to provide any additional documentation either at the hearing or post-hearing. Similarly, the Taxpayer argued they had additional exemption certificates. None of the alleged additional certificates was provided either at the hearing or post-hearing. Because of the Taxpayer's failure to provide documentation to support its claims for the _____ job and for the exemption certificates, we must deny those claims. Based on all the above, the Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On December 31, 2003, the Taxpayer filed a protest of a tax assessment made by the City.

2. After review, the City concluded on January 8, 2004 that the protest was timely and in proper form.
3. On January 16, 2004, the Hearing Officer ordered the City to provide a response to the protest on or before March 31, 2004.
4. On January 20, 2004, the City filed a response.
5. On January 24, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before February 16, 2004.
6. On March 1, 2004, a Notice was issued setting the matter for hearing commencing on April 23, 2004.
7. Both parties appeared and presented evidence at the April 23, 2004 Hearing.
8. The City conducted an audit of the Taxpayer for the period July 1, 1998 through April 30, 2002.
9. The City assessed the Taxpayer \$7,073.87 for taxes on contracting income.
10. The City assessed the Taxpayer for penalties in the amount of \$1,365.56 which were subsequently waived by the City.
11. The Taxpayer was also assessed interest on the tax assessment.
12. The Taxpayer performed contracting work for *Customer A*.
13. *Customer A* has no City privilege license and did not provide the Taxpayer with a valid prime contractor's license.
14. Since the audit, the Taxpayer has been charging *Customer A* for a tax on contracting work.
15. The Taxpayer failed to provide documentation to demonstrate that a job at _____ was outside the City.
16. The Taxpayer failed to provide additional exemption certificates.

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 19-415 imposes a tax on contracting income.
3. The Taxpayer had underreported their contracting income during the audit period.

4. The Taxpayer performed contracting work for *Customer A* during the audit period.
5. The Taxpayer failed to provide documentation to demonstrate the job at _____ was not in the City.
6. The Taxpayer failed to provide additional exemption certificates.
7. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the December 31, 2003 protest of *Taxpayer* of a tax assessment made by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer