

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 1, 2004

Decision: MTHO #183

Tax Collector: City of Tucson

Hearing Date: September 17, 2004

DISCUSSION

Introduction

On March 4, 2004, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Tucson ("City"). After review, the City concluded on March 30, 2004, that the protest was timely and in the proper form. On April 5, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before May 20, 2004. On May 14, 2004, the City requested an extension until June 30, 2004 in order to review additional documentation provided by the Taxpayer. On May 20, 2004, the Hearing Officer granted the City an extension until June 30, 2004. On June 29, 2004, the City filed its response to the protest. On July 2, 2004, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before July 23, 2004. On August 2, 2004, a Notice of Tax Hearing ("Notice") was issued scheduling this matter for hearing commencing on September 17, 2004. The City appeared and presented evidence at the September 17, 2004 hearing while the Taxpayer failed to appear. On September 18, 2004 the Hearing Officer granted the Taxpayer until October 18, 2004 in which to present good cause for failing to appear at the hearing. The Taxpayer failed to present any good cause.

City Position

The City commenced an audit of the Taxpayer in August 2003 for the period of July 1999 through June 2, 2003. The Taxpayer's business activities consisted of water features, fountains, rock waterfalls, tables and benches, pond maintenance supplies and service, garden art accessories and landscape design. The Taxpayer did not have records for the entire audit period. As a result, the City prepared an estimated assessment based on tax returns. After filing a protest in this matter, the Taxpayer provided additional documentation for the City to review. After review of the documentation, the City issued an assessment for tax due in the amount of \$1,221.40 plus interest through May 31, 2004 in the amount of \$467.55 and a ten percent negligence penalty in the amount of \$127.54.

Based on the additional documentation, the City reviewed the actual sales invoices for four test months. All Out of City contracting deductions were allowed. Out of State retail deductions were disallowed because it appeared that the customers were present at the business location for the transactions. Deductions for sales to the U.S. Government, retail labor or service, sales for resale,

discounts or refunds, sales to *Customer A*, delivery, warranty, and rent for re-rent were allowed. Deductions for Bad Debts were not allowed because the Taxpayer reports on a cash basis. Deductions for gift certificates were also not allowed.

Taxpayer Position

The Taxpayer disputed the assessment because it was based on an estimate made by the City.

ANALYSIS

After review of the actual sales invoices for a four-month sample period, the City concluded the Taxpayer had overstated deductions. By far the largest disallowed deduction was for out-of-State retail sales. Based on the City's review, the customers were present at the business location for the transactions.

Based on their review, the City also determined the Taxpayer had collected excess taxes. The Taxpayer was given several opportunities to respond to the City's determinations but failed to provide any response. Accordingly, we find the City's audit assessment was unrefuted. The Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On March 4, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded that the protest was timely and in proper form.
3. On April 5, 2004, the Hearing Officer ordered the City to file a response to the protest on or before May 20, 2004.
4. On May 14, 2004, the City requested an extension until June 30, 2004 in order to review additional documentation provided by the Taxpayer.
5. On May 20, 2004, the Hearing Officer granted the City an extension until June 30, 2004.
6. On June 29, 2004, the City filed its response to the protest.
7. On July 2, 2004, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before July 23, 2004.
8. On August 2, 2004, a Notice was issued scheduling this matter for hearing commencing on September 17, 2004.
9. The City appeared and presented evidence at the September 17, 2004 hearing while the Taxpayer failed to appear.

10. On September 18, 2004, the Hearing Officer granted the Taxpayer until October 18, 2004 in which to present good cause for failing to appear at the September 17, 2004 hearing.
11. The Taxpayer failed to present any good cause.
12. The City commenced an audit of the Taxpayer in August 2003 for the period July 1999 through June 2003.
13. The Taxpayer's business activities consisted of water features, fountains, rock waterfalls, tables and benches, pond maintenance supplies and service, garden art accessories and landscape design.
14. The Taxpayer did not have records for the entire audit period.
15. The City prepared an estimated assessment based on tax returns.
16. After filing a protest in this matter, the Taxpayer provided additional documentation for the City to review.
17. After review of the documentation, the City issued an assessment for tax due in the amount of \$1,221.40 plus interest through May 31, 2004 in the amount of \$467.55 and a ten percent negligence penalty in the amount of \$127.54.
18. The Taxpayer failed to respond to the City's adjusted assessment set forth in the City's June 29, 2004 letter.

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. At the time of the audit period, the City was authorized to make a reasonable estimate since the Taxpayer failed to provide necessary documentation.
3. Subsequent to the audit assessment, it was proper for the City to adjust the assessment to reflect documentation provided by the Taxpayer.
4. The Taxpayer failed to respond to the City's June 29, 2004 adjusted assessment.
5. The burden of proof was on the Taxpayer to demonstrate all claimed deductions were proper.
6. The Taxpayer failed to meet its burden of proof.

7. The Taxpayer's March 4, 2004 protest should be denied.

ORDER

It is therefore ordered that the March 4, 2004 protest by *Taxpayer* of a tax assessment made by the City of Tucson is hereby denied.

It is further ordered that the City of Tucson shall revise its assessment to reflect the recommendations/analysis contained in the City's June 29, 2004 letter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer