

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision: MTHO #4

Taxpayer: Taxpayer

Tax Collector: Phoenix

Hearing Date: None

DISCUSSION

On July 10, 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 proper form. On July 17, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the issues raised in the protest on or before September 10, 2001. The City filed its response on September 10, 2001. On September 17, 2001, the Hearing Officer ordered Taxpayer to file and reply to the City response on or before October 17, 2001, Taxpayer did not file any reply.

Based on a Joint Audit ("Audit") by the City of Peoria ("Peoria"), Taxpayer received contracting revenue in the amount of \$40,950.00 on March 24, 2000 for a roof job performed within the City. On February 8, 2000, Taxpayer completed an application for a transaction Privilege and Use Tax ("Application") with the City for the activity of construction contracting. On May 1, 2000 the City received the March 2000 tax return from Taxpayer indicating no gross revenue for the month of March. As a result of the Audit, Taxpayer was assessed a tax of \$365.21 on the net taxable receipts of \$25,443.29 for the month of March. In addition, Taxpayer was assessed interest in the amount of \$46.28 and a penalty in the amount of \$35.62 for failure to pay pursuant to City Code Section 14-540(b)(2) ("Section 540(b)(2)"). Taxpayer requested the penalty in the amount of \$35.62 be waived. Taxpayer asserted they had voluntarily approved the Audit and had thought all taxes throughout the state had been taken care of. According to the City, the penalty was appropriate unless Taxpayer can demonstrate that the failure to timely pay the tax was based on Taxpayer having a reasonable basis for believing that the tax did not apply to their business. The City asserted that if Taxpayer believed the State of Arizona would be taking care of their City tax liability, then Taxpayer would have questioned why the need to file City tax returns.

ANALYSIS:

Section 540(b)(2) requires a 10% penalty shall be assessed unless the taxpayer can show that the failure was due to a reasonable cause. Taxpayer Indicated they believed all tax was taken care of through the State.

The Hearing Officer could accept Taxpayer's assertion regarding confusion that the tax was taken care of through the State if Taxpayer had reported the appropriate contracting revenues on the March 2000 tax, return for the City. However, Taxpayer has failed to provide any reason for not reporting these revenues. As a result, the Hearing Officer must conclude that Taxpayer has failed to demonstrate reasonable cause for not timely paying the tax when due. Accordingly, the request to waive the penalty is denied.

FINDINGS OF FACT:

1. On February 8, 2000, Taxpayer completed an application with the City for the activity of construction

contracting.

2. On May 1, 2000, the City received the March 2000 tax return from Taxpayer indicating no gross revenue for the month of March.

3. Based on an Audit by Peoria, Taxpayer received contracting revenue in the amount of \$40,950.00 on March 24, 2000 for a roof job performed within the City.

4. As a result of the Audit, Taxpayer was assessed a tax of \$356.21 on the net taxable receipts of \$25,443.29 for the month of March.

5. On July 10, 2001, Taxpayer filed a protest in which they requested the penalty assessed the recent audit be waived.

6. Taxpayer asserted they had voluntarily approved the Audit and had thought all taxes throughout the state had been taken care of.

7. After review of Taxpayer's protest the City on July 17, 2001 filed findings that the protest was timely and in the proper form.

8. On July 17, 2001, the Hearing Officer ordered the City to file a response to the issues raised in the protest on or before September 10, 2001.

9. The City filed its response on September 10, 2001.

10. On September 17, 2001 the Hearing Officer ordered Taxpayer to file any reply to the City response on or before October 17, 2001.

11. Taxpayer did not file any reply.

12. Taxpayer failed to provide any reason for not reporting the appropriate contracting revenue on the March 2000 tax return for the City.

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 540(b)(2) requires a 10% penalty shall be assessed unless the taxpayer can show that the failure was due to a reasonable cause.

3. Taxpayer has failed to demonstrate reasonable cause for not timely paying the tax when due.

4. The waiver request should be denied.

ORDER:

It is therefore ordered that the July 10, 2001 protest request of Taxpayer to waive the \$35.62 penalty is hereby denied. It is further ordered that this decision is effective immediately,

Jerry Rudibaugh

Municipal Tax Hearing Officer