

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision: MTHO #5
Taxpayer: Taxpayer
Tax Collector: Phoenix
Hearing Date: None

DISCUSSION

On August 6, 2001, . . . (Taxpayer) filed a protest of the City of Phoenix ("City") tax assessment. After review of the protest, the City determined that the protest was timely and in the proper form. Taxpayer did not request a hearing -and accordingly the matter was processed as a redetermination. On August 20, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to provide their before October 4, 2001. On September 19, 2001, the City response to the issues on or filed its response to the protest. On September 24, 2001, the Hearing Officer ordered Taxpayer to file any reply to the City response on or before October 24, 2001. Taxpayer filed its reply on October 23, 2001.

Taxpayer is a manufacturer of industrial parts cleaning equipment. Taxpayer maintained a service facility within the City between March 1999 and December 2000. Taxpayer completed an application for a Transaction Privilege and Use Tax License ("License") with the City in December of 2000 and filed tax returns for October, November, and December of 2000. Taxpayer cancelled the License effective on December 31, 2000. Because no tax returns had been filed for the period March 1999 through September 2000, the account was turned over to the Tax Audit Department ("Department"). The Department contacted Taxpayer in February 2001 and requested information regarding the business activity of Taxpayer for the March 1999-September 2000 time period. The Department contacted Taxpayer on several other occasions, but the information was never provided. Subsequently, the employee which the Department had been contacting left the employment of Taxpayer. At that time, the Department prepared a revenue estimate for the period March 1999 through September 2000 by utilizing the amount reported by Taxpayer for October and November of 2000.

On April 24, 2001, the Department sent a revenue estimate in the amount of \$132,786.28 for the March 1999-September 2000 period. Taxpayer was given until May 4, 2001 to provide any disagreement with the Department's assessment. The Department received no response and finalized its assessment on June 13, 2001. The Department estimated gross receipts in the amount of \$147,166.23 for the, time period March 1999 through December of 2000. The tax on this amount was \$2,177.03 of which Taxpayer had paid \$258.84 for a total amount due of \$1918.19 plus interest.

On August 6, 2001 Taxpayer filed a protest of the City's assessment. Taxpayer asserted that it had reviewed its documentation and determined the actual gross receipts were \$72,7684.36 and not \$147,166.23 as estimated by the City. According to Taxpayer's calculations, the proper tax

liability was \$1,310.12. In addition, Taxpayer indicated it had made a payment in November 2000 of \$62.36 for which it had received no credit by the Department.

In response, the Department asserted that City Code Section 14-545(a)(2) ("Section 545 (a)(2)") permits the Department to use estimates to determine the tax liability when returns have not been filed. Further, City Code Section 14-545(b) ("Section 545 (b)") requires the estimates to be reasonable. The Department prepared its estimate by averaging the amounts reported in October and November of 2000 as adjusted for inflation. The Department opined that its estimate was made on a reasonable basis and it is the taxpayer's responsibility to provide sufficient documentation to prove the Department's estimate is not reasonable and correct. The Department indicated it could find no record of the alleged \$62.36 payment.

On October 23, 2001, Taxpayer filed a reply to the Department. Taxpayer included a copy of the cancelled check in the amount of \$62.36. Taxpayer also provided copies of invoices to support its assertion that \$72,784.36 was the actual amount of gross receipts for the period in question.

ANALYSIS:

Since Taxpayer failed to file tax returns and make payments for the period March 1999 through September 2000, it was appropriate for the City to make an estimate of the amount of tax due pursuant to Section 545(a)(2). Further, since Taxpayer failed to supply any records it was reasonable for the City to make an estimate based on the tax returns filed for October, November, and December 2000 pursuant to Section 545(b).

Subsequent to the City's estimate, Taxpayer has provided invoices purporting to document the actual sales for the period March 1999 through December 2000. While the Hearing Officer agrees that actual invoices are more reliable and accurate than estimates, we must assess the reliability of those invoices. We note that the invoices provided by Taxpayer for October 2000 total \$5,880.00 and that amount does match the amount previously reported by Taxpayer on its October 2000 tax return. Taxpayer provided invoices for the month of November totaling \$5,580.00 and that amount is significantly less than the amount of \$8,499.95 previously reported by Taxpayer on its November 2000 tax return. Further, Taxpayer has failed to provide any explanation of this discrepancy. The discrepancy for October and November 2000 combined is $(\$5,880.00 + \$8,499.95)$ (amounts reported) minus $(\$5,880.00 + \$5,580.00)$ (invoices provided) or \$2,919.95. The error rate for those two months is $\$2,919.95 \div (\$5,880.00 + \$5,580.00)$ or 25.48%. Because of this unexplained discrepancy, the Hearing Officer could deny the protest of Taxpayer for failing to provide sufficient documentation to prove the invoices provided are the total gross receipts for the period involved. However, the Hearing Officer does conclude the invoices provide sufficient reliability to demonstrate the City's estimate is not reasonable. The Hearing Officer further concludes that the \$72,784.00 total provided by Taxpayer should be increased by the 25.48% error rate to arrive at a total amount of gross receipts for the period March 1999 through December 2000 of $\$72,784.00 \times 1.2548$ or \$91,329.36. The Hearing Officer also concludes that Taxpayer has provided sufficient documentation to prove they paid an additional \$62.36.

FINDINGS OF FACT:

1. Taxpayer is a manufacturer of industrial parts cleaning equipment.
2. Taxpayer maintained a service facility within the City between March 1999 and December 2000.
3. Taxpayer obtained a License in December 2000 and filed tax returns for October, November, and December of 2000.
4. Taxpayer reported gross receipts for October, November, and December 2000 in the amount of \$5,880.00, \$8,499.95, and \$0.00 respectively.
5. Taxpayer cancelled the License effective on December 31, 2000.
6. Because no tax returns had been filed for the period March 1999 through September 2000, the account was turned over to the Department.
7. The Department contacted Taxpayer in February 2001 and requested information regarding the business activity of Taxpayer for the March 1999-September 2000 time period.
8. Taxpayer failed to provide the Department any information regarding its business activity.
9. The Department prepared a revenue estimate for the period March 1999 through September 2000 by utilizing the amount reported by Taxpayer for October and November of 2000.
10. On April 24, 2001, the Department sent a revenue estimate to Taxpayer in the amount of \$132,786.28 for the period March 1999 through September 2000.
11. The Department received no response from Taxpayer and on June 13, 2001 the Department finalized its estimated gross receipts in the amount of \$147,166.23 for the period March 1999 through December of 2000.
12. On August 6, 2001, Taxpayer filed a protest of the City tax assessment.
13. The City determined the protest was timely and in the proper form.
14. On August 20, 2001, the Hearing Officer ordered the City to provide their response to the issues on or before October 4, 2001.
15. On September 19, 2001, the City filed its response to the protest.
16. On September 24, 2001, the Hearing Officer ordered Taxpayer to file any reply to the City on or before October 24, 2001.

17. Taxpayer filed its reply on October 23, 2001.
18. Taxpayer failed to file tax returns for the period March 1999 through September 2000.
19. Taxpayer made a \$62.36 payment in November 2000 for which it received no credit from the Department.
20. Taxpayer included copies of invoices with its reply to support its assertion that \$72,784.36 was the actual amount of gross receipts for the period March 1999 through December 2000.
21. Taxpayer provided invoices for October and November 2000 totaling gross revenues of \$5,880.00 and \$5,580.00, respectively.
22. There was an error rate of 25.48% between the amounts reported by Taxpayer on its tax returns for October and November 2000 versus the invoices provided for those months.
23. Taxpayer failed to provide any explanation for the 25.48% discrepancy.
24. Correcting the \$72,784.36 amount for the 25.48% error rate results in gross revenues for the period March 1999 through December 2000 in the amount of \$91,329.36.

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 545 (a)(2) permits the Department to use estimates to determine the tax liability when returns have not been filed.
3. Section 545(b) requires the Department estimates to be reasonable.
4. The Department's use of the amounts actually reported by Taxpayer as adjusted for inflation was a reasonable basis in which to estimate Taxpayer's gross receipts for the audit period.
5. Actual invoices are more reliable and accurate than estimates.
6. The actual invoices should be corrected for any error rate.

ORDER:

It is therefore ordered that the August 6, 2001 protest of Taxpayer is granted to the extent that gross revenues for the period March 1999 through December 2000 are revised from \$147,166.23 down to \$91,329.36.

It is further ordered that Taxpayer shall receive credit for a \$62.36 payment made in November 2000.

It is further ordered that the City of Phoenix shall amend its tax assessment consistent with the aforementioned ordering paragraphs.

It is further ordered that this decision is effective immediately.

Respectfully submitted November 29, 2001.

Jerry Rudibaugh
Municipal Tax Hearing Officer