

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 26, 2003

Decision: MTHO #55

Tax Collector: Cities of Phoenix, Flagstaff, Chandler, and Mesa

Hearing Date: January 8, 2003

DISCUSSION

Introduction

On July 31, 2002, *Taxpayer* filed a protest of tax assessments made by the Cities of Phoenix, Flagstaff, Chandler, and Mesa. After review, the various Cities concluded during the period August 8 through August 28, 2002, that the protest was timely and in the proper form. On September 3, 2002, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the Cities to file a response to the protest on or before October 18, 2002. On October 2, 2002, the Taxpayer filed a request to withdraw its protest to the City of Mesa as the City of Mesa had revised its assessment and no taxes were due. On October 14, 2002, the City of Phoenix filed a request for additional time to file the joint response of the Cities. On October 18, 2002, the Hearing Officer granted the Cities extension until November 18, 2002. On November 15, 2002, the Cities filed a joint response to the protest. On November 21, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before December 12, 2002. The Taxpayer did not file any reply. On December 5, 2002, a Notice was issued setting this matter for hearing on January 8, 2003. The hearing was held on January 8, 2003 and the Taxpayer and the Cities of Chandler, Flagstaff; and Phoenix all appeared and presented evidence. On January 13, 2003, the Hearing Officer ordered the Taxpayer to provide additional documentation to the Cities of Chandler and Flagstaff on or before February 7, 2003. The Cities were to file any response on or before February 21, 2003 and the Taxpayer was to file any reply on or before February 28, 2003. Subsequently, the Taxpayer provided additional documentation to the Cities of Flagstaff and Chandler. On February 21, 2003, the City of Flagstaff filed a letter indicating no adjustment was being made, as they needed additional information. On February 24, 2003, the City of Chandler filed a request for an extension until March 14, 2003, as they needed additional documentation from the Taxpayer. On March 3, 2003, the Hearing Officer granted Chandler’s extension until March 14, 2003 and the Taxpayer’s reply until March 21, 2003. After review of additional documentation from the Taxpayer, the City of Chandler on April 17, 2003 filed a letter indicating they were rescinding their entire assessment. On April 17, 2003, the City of Flagstaff requested more information from the Taxpayer. On April 21, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the Cities of Chandler and Flagstaff on or before April 28, 2003. On April 28, 2003, the Taxpayer requested a continuance in order to provide more information to the Cities. On May 5, 2003, the Hearing Officer granted the Taxpayer a continuance until May 12, 2003. On May 12, 2003, the Taxpayer provided more information to the City of Flagstaff. On May 18, 2003, the Hearing Officer ordered the City of Flagstaff to file any responsive comments on or before May 29, 2003. The City of Flagstaff filed comments/recommendations on May 29, 2003.

The Arizona Department of Revenue (“DOR”) selected the Taxpayer for audit. The Taxpayer was offered a Joint Audit, which included ten Arizona Cities. The Taxpayer accepted the Joint Audit and all Cities except for Chandler, Flagstaff, Mesa, and Phoenix had zero assessments or credits. The original assessments for the Cities of Chandler, Flagstaff, Mesa, and Phoenix were \$1,740.24, \$1,987.61, \$733.72, and \$7,057.14, respectively. Subsequently, the City of Mesa revised its assessment to zero and the Taxpayer withdrew the protest of the Mesa assessment.

Cities Position

The assessments were based on revenue received by the Taxpayer for contracting work performed during the audit period. The contracting income was subject to tax pursuant to Model Tax Code Section 14415 (“Section 415”). On October 9, 2002, the City of Phoenix received documentation from the DOR that one job held taxable was actually exempt subcontracting work. As a result, the City of Phoenix adjusted its assessment to a credit of \$817.93. Initially, the Taxpayer did not provide adequate documentation to allow either the City of Flagstaff or the City of Chandler to make any adjustments. After several exchanges of documentation, the City of Chandler agreed that gross receipts in the City’s initial assessment included exempt subcontracting income. As a result, on April 17, 2003, the City of Chandler rescinded its assessment. Similarly, the City of Flagstaff subsequently agreed that its initial assessment included contracting income that was for a project outside the City of Flagstaff. As a result, the City of Flagstaff revised its assessment to reflect a refund for the Taxpayer.

Taxpayer Position

In its protest petition, the Taxpayer protested the tax assessments of the Cities of Flagstaff, Chandler, Phoenix, and Mesa. According to the Taxpayer, each of the Cities had included exempt income as part of their assessment. Subsequently, the City of Mesa revised their assessment and the Taxpayer withdrew that portion of its protest. The Taxpayer was also in agreement with the City of Phoenix after that City revised their assessment to reflect a credit. The Taxpayer continued to argue that gross receipts in the City of Chandler assessment included exempt subcontracting income. The Taxpayer also continued to argue that gross receipts included in the City of Flagstaff assessment included income from a construction job outside of the City of Flagstaff.

ANALYSIS

Based on the information available to the Cities, the initial assessments for contracting income were proper. Subsequently, the Taxpayer provided additional documentation to the respective Cities to demonstrate some exempt income had been included in their assessments. Based on the Cities review of the additional documentation, it was proper for the Cities to revise their assessments to reflect their review of the additional documentation. As a result, the Taxpayer’s protest should be granted consistent with the revised assessments of the various Cities.

FINDINGS OF FACT

1. On July 31, 2002, the Taxpayer filed a protest of tax assessments made by the Cities of Phoenix, Flagstaff, Chandler and Mesa.
2. After review, the various Cities concluded during the period August 8 through August 28, 2002 that the protest was timely and in proper form.
3. On September 3, 2002, the Hearing Officer ordered the Cities to file a response to the protest on or before October 18, 2002.
4. On October 2, 2002, the Taxpayer filed a request to withdraw its protest to the City of Mesa as the City of Mesa had revised its assessment and no taxes were due.
5. On October 14, 2002, the City of Phoenix filed a request for additional time to file the joint response of the Cities.
6. On October 18, 2002, the Hearing Officer granted the Cities extension until November 18, 2002.
7. On November 15, 2002, the Cities filed a joint response to the protest.
8. On November 21, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before December 12, 2002.
9. The Taxpayer did not file any reply.
10. On December 5, 2002, a Notice was issued setting this matter for hearing on January 8, 2003.
11. The hearing was held on January 8, 2003 and the Taxpayer and the Cities of Chandler, Flagstaff, and Phoenix all appeared and presented evidence.
12. On January 13, 2003, the Hearing Officer ordered the Taxpayer to provide additional documentation to the Cities of Chandler and Flagstaff on or before February 7, 2003.
13. The Cities were to file any response on or before February 21, 2003 and the Taxpayer was to file any reply on or before February 28, 2003.
14. Subsequently, the Taxpayer provided additional documentation to the Cities of Flagstaff and Chandler.
15. On February 21, 2003, the City of Flagstaff filed a letter indicating no adjustment was being made, as they needed additional information.
16. On February 24, 2003, the City of Chandler filed a request for an extension until March

- 14, 2003, as they needed additional documentation from the Taxpayer.
17. On March 3, 2003, the Hearing Officer granted Chandler's extension until March 14, 2003 and the Taxpayer's reply until March 21, 2003.
 18. After review of additional documentation from the Taxpayer, the City of Chandler on April 17, 2003 filed a letter indicating they were rescinding their entire assessment.
 19. On April 17, 2003, the City of Flagstaff requested more information from the Taxpayer.
 20. On April 21, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the Cities of Chandler and Flagstaff on or before April 28, 2003.
 21. On April 28, 2003, the Taxpayer requested a continuance in order to provide more information to the Cities.
 22. On May 5, 2003, the Hearing Officer granted the Taxpayer a continuance until May 12, 2003.
 23. On May 12, 2003, the Taxpayer provided more information to the City of Flagstaff.
 24. On May 18, 2003, the Hearing Officer ordered the City of Flagstaff to file any responsive comments on or before May 29, 2003.
 25. The City of Flagstaff filed comments/recommendations on May 29, 2003.
 26. DOR selected the Taxpayer for audit.
 27. The Taxpayer was offered a Joint Audit, which included ten Arizona Cities.
 28. The Taxpayer accepted the Joint Audit and all Cities except for Chandler, Flagstaff, Mesa, and Phoenix had zero assessments or credits.
 29. The original assessments for the Cities of Chandler, Flagstaff, Mesa, and Phoenix were \$1,740.24, \$1,987.61, \$733.72, and \$7,057.14, respectively.
 30. Subsequently, the City of Mesa revised its assessment to zero and the Taxpayer withdrew its protest of the Mesa assessment.
 31. The assessments were based on revenue received by the Taxpayer for contracting work performed during the audit period.
 32. On October 9, 2002, the City of Phoenix received documentation from the DOR that showed that one job held taxable was actually exempt subcontracting work.
 33. As a result, the City of Phoenix adjusted its assessment to a credit of \$817.93.

34. The Taxpayer provided documentation to the City of Chandler to demonstrate the City's initial assessment included exempt subcontracting income.
35. After review of the Taxpayer's documentation, the City of Chandler agreed the initial assessment included exempt subcontracting income.
36. The Taxpayer provided additional documentation to the City of Flagstaff to demonstrate that the City's initial assessment included contracting income for a project outside the City of Flagstaff.
37. After review of the Taxpayer's documentation, the City of Flagstaff agreed the initial assessment included contracting income that was for a project outside the City of Flagstaff

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. The Taxpayer had contracting income subject to tax pursuant to Section 415.
3. The Taxpayer withdrew its protest of the City of Mesa revised assessment.
4. It was proper for the Cities of Phoenix, Chandler, and Flagstaff to revise their assessments after additional documentation was provided by the Taxpayer.
5. The Taxpayer's protest should be granted consistent with the revised assessments of the Cities of Phoenix, Chandler, and Flagstaff.

ORDER

It is therefore ordered that the July 31, 2002 protest by *Taxpayer* of tax assessments made by the Cities of Phoenix, Chandler, and Flagstaff should be granted consistent with the Discussion herein.

It is further ordered that the Cities of Phoenix, Chandler, and Flagstaff shall revise their initial assessments consistent with their recommended revisions set forth herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer