

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: February 24, 2004  
Decision: MTHO #145  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On October 7, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on October 17, 2003 that the protest was timely and in proper form. On October 20, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file any response to the protest on or before December 4, 2003. On November 18, 2003, the City filed a response to the protest. On November 24, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before December 24, 2003. On December 10, 2003, the Taxpayer filed a reply that included additional documentation. On December 15, 2003, the Hearing Officer ordered the City to review the additional documentation and provide any comments/recommendations on or before December 29, 2003. After reviewing the additional documentation, the City filed revised recommendations on December 29, 2003. On January 5, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before January 20, 2004. On February 3, 2004, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before March 19, 2004.

**City Position**

The Taxpayer is in the business of construction contracting. According to the City, the Taxpayer performed three construction jobs during the audit period. The City argued that for two of the jobs, *Job A* and *Job B*, the Taxpayer did not have any records of the last payment received. As a result, the City assigned the last payment to be the remaining amount of the contract. After review of the additional documentation provided by the Taxpayer on December 9, 2003, the City concluded the additional documentation provided evidence to support the Taxpayer’s arguments. Accordingly, the City recommended the Taxpayer’s protest be granted and the assessment be adjusted.

**Taxpayer Position**

The Taxpayer protested the amount of gross income included by the City for the *Job A* construction job and for the *Job B* construction job. According to the Taxpayer, the *Job A* job ran under budget and the remaining contract amount of \$361,245.52 was not received. In

addition, the Taxpayer asserts the City included \$30,087.42 of gross income for the *Job B* contract that were not part of the construction costs. After receiving the City's response to the Taxpayer's protest, the Taxpayer provided additional documentation to support their position.

### **ANALYSIS**

The City included all the amounts from the Taxpayer's contracts with *Job A* and *Job B* in the Taxpayer's gross income. The City's assessment was proper since the Taxpayer failed to provide proper documentation to demonstrate otherwise. It was also appropriate for the City to review the additional documentation provided by the Taxpayer in conjunction with their tax protest. Based on the additional documentation, the City is in agreement with the Taxpayer that the assessment should be revised consistent with the documentation provided by the Taxpayer. As a result, the Taxpayer's protest should be granted to the extent it is consistent with the City's revised recommendation.

### **FINDINGS OF FACT**

1. On October 7, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on October 17, 2003 that the protest was timely and in the proper form.
3. On October 20, 2003, the Hearing Officer classified this matter as a redetermination and ordered the City to file any response to the protest on or before December 4, 2003.
4. On November 18, 2003, the City filed a response to the protest.
5. On November 24, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before December 24, 2003.
6. On December 23, 2003, the Taxpayer filed a reply that included additional documentation.
7. On December 15, 2003, the Hearing Officer ordered the City to review the additional documentation and provided any comments/ recommendations on or before December 29, 2003.
8. After reviewing the additional documentation, the City filed revised recommendations on December 29, 2003.
9. On January 5, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before January 20, 2004.

10. On February 3, 2004, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before March 19, 2004.
11. The Taxpayer is in the business of construction contracting.
12. The Taxpayer performed three construction jobs during the audit period.
13. The Taxpayer did not have sufficient records for two of the jobs, **Job A** and **Job B**, to support any adjustments in gross income requested by the Taxpayer.
14. On December 9, 2003, in reply to the City, the Taxpayer provided additional documentation in support of reducing the gross income for the **Job A** and **Job B** jobs by \$361,245.52 and \$30,087.42, respectively.
15. After review of the Taxpayer's additional documentation, the City, in its December 29, 2003 response, concurred with the Taxpayer.

#### **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 14-415 imposes a tax on construction income within the City.
3. The Taxpayer had construction gross income during the audit period from the **Job A** and **Job B** construction jobs.
4. Without sufficient documentation from the Taxpayer, it was proper for the City to include the entire contract amounts in gross income for the **Job A** and **Job B** construction jobs.
5. After receiving additional documentation from the Taxpayer to demonstrate that certain amounts should not have been included as taxable income, it was proper for the City to recommend the assessment be adjusted.
6. To the extent it is consistent with the City's December 29, 2003 letter, the Taxpayer's protest should be granted.

#### **ORDER**

It is therefore ordered that the October 7, 2003 protest of **Taxpayer** is hereby granted to the extent it is consistent with the City of Phoenix's December 29, 2003 letter.

It is further ordered that the City of Phoenix shall revise the assessment consistent with the City of Phoenix's December 29, 2003 letter.

It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer