

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 18, 2005

Decision: MTHO #210

Tax Collector: City of Tucson

Hearing Date: None

DISCUSSION

Introduction

On July 22, 2004, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on September 20, 2004 that the protest was timely and in the proper form. On September 24, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before November 8, 2004. The City filed a response on November 4, 2004. On November 12, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before December 3, 2004. On December 15, 2004, the Hearing Officer indicated the record was being closed as no reply had been received from the Taxpayer and a written decision would be issued on or before January 31, 2005.

City Position

The City conducted an audit of the Taxpayer for the period January 2000 through December 2003. The City determined the Taxpayer had speculative builder income pursuant to City Code Section 19-416 (“Section 416”). The City concluded the Taxpayer had underreported gross income for the audit period. As a result, the City assessed the Taxpayer for additional taxes due of \$5,158.36 plus interest up through May 2004, in the amount of \$2,171.51. The City assessed penalties of \$1,614.58 which were subsequently waived by the City.

After completion of the audit assessment, the City received additional documentation from the Taxpayer which showed that eleven houses originally treated as taxable speculative home sales were actually sold by another party. Further, the City determined that the Taxpayer was the prime contractor for each of the eleven homes. As a result, the City revised the assessment by removing the eleven homes from the speculative builder sales and adding the prime contracting income for the same eleven homes. As a result, the tax assessment was reduced to \$2,545.01 plus interest, up through October 2004, in the amount of \$1,202.34.

Taxpayer Position

The Taxpayer requested a redetermination of the original audit based on additional accounting information being provided to the City. It is noted that the Hearing Officer concluded the Taxpayer was in agreement with the City's November 4, 2004 revised assessment since the Taxpayer did not file a reply.

ANALYSIS

There was no dispute that the Taxpayer had underreported the amount of speculative builder income during the audit period. The only dispute was the amount of the underreported income. During the audit, the City was not provided documentation to determine which homes the Taxpayer developed and sold. As a result, the City's original assessment was proper based on the documentation provided by the Taxpayer. Subsequent to the audit, the Taxpayer provided additional documentation to show which houses were actually sold by the Taxpayer. It was appropriate for the City to review the additional documentation and recommend revisions to the audit to reflect what activity actually had occurred during the audit period. We approve the City's recommended revisions to the original audit.

FINDINGS OF FACT

1. On July 22, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on September 20, 2004 that the protest was timely and in proper form.
3. On September 24, 2004, the Hearing Officer ordered the City to file a response to the protest on or before November 8, 2004.
4. The City filed a response on November 4, 2004.
5. On November 12, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before December 3, 2004.
6. On December 15, 2004, the Hearing Officer indicated the record was being closed as no reply had been received from the Taxpayer and a written decision be issued on or before January 31, 2005.
7. The City conducted an audit of the Taxpayer for the period January 2000 through December 2003.
8. The City concluded the Taxpayer had underreported gross income for the audit

- period.
9. The City assessed the Taxpayer for additional taxes due of \$5,158.36 plus interest, up through May 2004, in the amount of \$2,171.51.
 10. The City assessed penalties of \$1,614.58 which were subsequently waived by the City.
 11. After completion of the audit, the City received additional documentation from the Taxpayer which showed that eleven houses originally treated as taxable speculative home sales were actually sold by another party.
 12. The City determined the Taxpayer was the prime contractor for each of the eleven homes.
 13. The City revised the assessment by removing the eleven homes from the speculative builder sales and adding the prime contracting income for the same eleven homes.
 14. The City recommended reducing the tax assessment to \$2,545.01 plus interest, up through October 2004, in the amount of \$1,202.34.

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. During the audit period, the Taxpayer had underreported speculative builder income.
3. The City's original assessment was proper based on the documentation provided by the Taxpayer.
4. Subsequent to the audit assessment, it was proper for the City to review additional documentation provided by the Taxpayer to more accurately reflect what taxable activity occurred during the audit period.
5. The City's recommended revisions to the original audit should be approved.
6. The Taxpayer's protest should be granted to the extent of the City's recommended revisions.

ORDER

It is therefore ordered that the July 22, 2004 protest of *Taxpayer* of a tax assessment made by the City of Tucson should be granted to the extent the protest is consistent with the City's November 4, 2004 recommended revisions.

It is further ordered that the City of Tucson shall revise the assessment to include the revisions contained in the City's November 4, 2004 response to the protest.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer