DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 2, 2005
Decision: MTHO #226
Tax Collector: City of Tucson
Hearing Date: May 19, 2005

DISCUSSION

Introduction

On November 23, 2004, ***Taxpayer***, Inc. ("Taxpayer") filed a protest of a partial denial by the City of Tucson ("City") of Taxpayer's refund claim. After review, the City concluded on January 18, 2005 that the protest was timely and in the proper form. On January 20, 2005, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before March 7, 2005. On January 27, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before February 26, 2005. On February 4, 2005, the Taxpayer sent an email requesting the matter be reclassified from a redetermination to a hearing. On February 5, 2005, the Hearing Officer reclassified the matter as a hearing. On April 6, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before April 27, 2005. On April 21, 2005, a Notice of Tax Hearing ("Notice") scheduled the matter for hearing on May 19, 2005. Both parties appeared and presented evidence at the May 19, 2005 hearing. On May 23, 2005, the Hearing Officer indicated the record was closed and a written decision would be issued on or before July 5, 2005.

City Position

According to the City, the Taxpayer is a prime contractor who did construction work for ***Customer*** both in the City and outside the City. The Taxpayer originally reported all jobs done in Pima County ("County") as City income and later discovered that some of the jobs were located outside the City. The Taxpayer filed a refund request with the City, which was partially denied by the City.

The City concurred with the Taxpayer that Job Nos. 22034, 22035, and 22040 ("Jobs") were located outside the City. However, the City asserted the Taxpayer invoiced these Jobs showing the customer a breakdown of the taxable amount of each job and the sales tax collected at the combined City/State tax rate. While the Offers to Bid ("Offers") showed a total bid amount, the City noted that customer invoices and the Taxpayer worksheets both showed sales tax separately stated. The City indicated that City Code Section 19-250(a)(1) ("Section 250(a)") provides as follows:

"Remittance of all tax charged and/or collected" applies in this case. The code section reads, "When an added charge is made to cover city (or combined) privilege and use taxes, the person upon whom the tax is imposed shall pay the full amount of the city taxes

due, whether collected by him or not; and in the event he collects more than the amount due, he shall remit the excess to the tax collector."

Further, City Code Section 19-560(c) provides as follows:

"No credit will be allowed or refund paid where it appears that the taxpayer has collected, by separately stated itemization, the amount of the tax, except that a credit or refund will be allowed in such case if the taxpayer can present documentation satisfactory to the tax collector identifying each customer from whom the excess taxes were collected establishing that any taxes refund pursuant to this section will be remitted to those customers within sixty (60) days of receipt of the refund."

Lastly, the City noted that City Regulation 19-250.1 ("Regulation 250.1") states the following:

"If a taxpayer collects taxes in excess of the combined tax from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers."

This City asserted that the Taxpayer has refused to refund the excess tax collected from the customer and as a result the City cannot refund the excess tax.

In response to the Taxpayer's assertion that the contract amounts have been revised to show the correct City tax, the City argued the correction was not acceptable. According to the City, this would qualify as the Taxpayer "enriching" themselves by increasing the contracting amount and decreasing the tax owed with a smaller tax rate than originally collected when the tax was itemized to the customer.

The City indicated that they had included a contracting amount for Job 22035 for January of 2003 of $104,367.00 and another contracting amount of $149,552.70 for the same job for February of 2003. The City acknowledged that the Job 22035 may have been invoiced twice, once before the change orders occurred and then after the change orders. The City asserted they were not provided any documentation to show how one of the invoices was credited.

Taxpayer Position

The Taxpayer requested a refund of taxes in the amount of $4,112.27, plus interest, related to Jobs No. 22034, 22035, and 22040. The Taxpayer argued the amount should be refunded because of the following: The projects were not located in the City, the projects were governed by stipulated-sum contracts, which stated applicable taxes were included in the contract amounts; the City included duplicate amounts of revenues in January and February 2003 for Job No. 22035; and, the Taxpayer has revised the contracts for Jobs No. 22034, 22035, and 22040 showing a corrected City tax amount while the contract total remained the same.

ANALYSIS

Clearly, the Jobs were located outside the City and not subject to City tax. As a result, the issue becomes whether or not the Taxpayer has collected by separately stated itemization, the City tax. We conclude the Taxpayer did collect the City tax from ***Customer***. While the Offers showed a total bid, the customer invoices did show an itemized tax amount. For that reason, we conclude that the Taxpayer had calculated an amount for contracting and then added on the tax amount to arrive at the Offer amounts. While the Taxpayer's other costs may vary from the amounts included in the bids, the tax amount would not vary. Section 560(c) makes it clear that no refund of separately stated tax is authorized unless the Taxpayer establishes that the taxes will be remitted to the customer charged. In this case, the Taxpayer has not established that the taxes would be remitted to the customer charged. Accordingly, the City is not authorized to refund these taxes. We do concur with the Taxpayer that the City did include duplicate amounts of revenues in January and February 2003 for Job No. 22035. We will order the City to revise its refund by refunding the duplicate amount.

FINDINGS OF FACT

1. On November 23, 2004, the Taxpayer filed a protest of a partial denial by the City of Taxpayer's refund claim.

2. After review, the City concluded on January 18, 2005 that the protest was timely and in the proper form.

3. On January 20, 2005, the Hearing Officer ordered the City to file a response to the protest on or before March 7, 2005.

4. The City filed a response on January 24, 2005.

5. On January 27, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before February 26, 2005.

6. On February 4, 2005, the Taxpayer sent an email requesting the matter be reclassified from a redetermination to a hearing.

7. On February 5, 2005, the Hearing Officer reclassified the matter as a hearing.

8. On April 6, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before April 27, 2005.

9. On April 21, 2005, a Notice scheduled the matter for hearing on May 19, 2005.

10. Both parties appeared and presented evidence at the May 19, 2005 hearing.

11. On May 23, 2005, the Hearing Officer indicated the record was closed and a

written decision would be issued on or before July 5, 2005.

12. The Jobs were located outside the City.

13. The Taxpayer showed a total bid amount on its Offers to ***Customer***.

14. The Taxpayer invoiced the Jobs showing the customer a breakdown of the taxable amount of each job and the sales tax collected at the combined City/State tax rate.

15. After its refund claimed was partially denied, the Taxpayer revised its Offers by increasing the contacting amount and decreasing the tax owed.

16. The Taxpayer did not indicate the City tax charged on the Jobs would be refunded to its customers.

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 560(c) provides that no refund of separately stated taxes is authorized unless the Taxpayer establishes the taxes will be remitted to the customer charged.

3. The Taxpayer separately charged City taxes on the Jobs.

4. The Taxpayer has not demonstrated that the City taxes charged on the Jobs would be remitted to the customer.

5. The City included duplicate amounts of revenues for January and February 2003 for Job No. 22035.

6. With the exception of the duplicate revenues for Job No. 22035, the Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the November 23, 2004 protest filed by ***Taxpayer***, Inc. of a partial denial by the City of Tucson of ***Taxpayer***, Inc. refund claim is hereby denied, in part, and granted, in part, consistent with the Discussion, Conclusions, and Findings, herein.

It is further ordered that the City of Tucson shall revise its refund by removing the duplicate amounts included for Job No. 22035.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer