

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 30, 2008

Decision: MTHO # 398

Taxpayer: *ABC Taxpayer*

Tax Collector: City of Flagstaff

Hearing Date: May 16, 2008

DISCUSSION

Introduction

On November 5, 2007, *ABC Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Flagstaff (“City”). After review, the City concluded on November 14, 2007 that the protest was timely and in the proper form. On November 24, 2007, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before January 8, 2008. On January 10, 2008, the City requested a sixty day extension for its response. On January 11, 2008, the Hearing Officer granted the City an extension until March 10, 2008 in which to file a response. On March 10, 2008, the City filed a response to the protest. On March 12, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before April 2, 2008. On April 15, 2008, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on May 16, 2008. Both parties appeared and presented evidence at the May 16, 2008 hearing. On May 19, 2008, the Hearing Officer indicated that Taxpayer had agreed to provide additional documentation to the City on or before May 30, 2008; the City would review the documentation and provide any comments/recommendations on or before June 13, 2008; and Taxpayer would provide any reply on or before June 20, 2008. On June 10, 2008, the City filed a revised assessment. On June 25, 2008, 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 August 9, 2008.

City Position

The City conducted an audit of Taxpayer for the period October 2002 through March 2007. The City concluded that Taxpayer had underreported contracting income for the audit period. As a result, the City assessed Taxpayer for additional taxes due in the amount of \$6,913.13, penalties for late filing and late payment totaling \$1,728.29 and interest up through May 2007 in the amount of \$626.26. Subsequently, Taxpayer provided additional documentation and after review, the City issued a revised assessment on September 25, 2007 which reduced the taxes due to \$5,388.35, penalties were reduced to \$1,347.10 and interest was reduced to \$531.29.

The City indicated Taxpayer filed quarterly tax returns throughout the audit period and on each return Taxpayer reported exempt subcontracting income in the same amount as the reported gross income. The City determined there was \$2,209,133.00 in gross income during the audit period versus \$1,458,064.00 reported by Taxpayer. The City allowed deductions for subcontracting and out-of-City transactions totaling \$1,661,559.00. The City noted that City Code Section 3-05-003-0360 (“Section 360”) states that deductions and exemption are conditional upon adequate proof and documentation being provided by a taxpayer. The City indicated it would allow all deduction that could be substantiated by either a written statement from the general contractor or any other valid documentation that Taxpayer could provide. Subsequent to the hearing, Taxpayer provided additional documentation which was reviewed by the City. As a result, the City adjusted tax due to \$2,851.46, the penalties were reduced to \$712.88 and interest was reduced to \$266.44. The City adjusted the assessment based on a list of building permits provided by Taxpayer.

Taxpayer Position

Taxpayer protested the amount of the City assessment. Taxpayer argued that the City had erroneously counted income as taxable prime contracting that was either subcontracting income or had been double counted in the assessment. After the protest was filed, Taxpayer did provide additional documentation to support its argument. We note Taxpayer did not file a reply to the City’s June 10, 2008 revised assessment.

ANALYSIS

During the audit period, Taxpayer had contracting income pursuant to Section 415. Section 415 defines a subcontractor as a construction contractor performing work for either (1) a construction contractor that has provided the subcontractor with a written declaration that he is liable for tax and provided the subcontractor with his City Privilege License number or (2) an owner-builder who has provided the subcontractor with a written declaration that the owner-builder will be liable for the tax. Section 360 provides that all deductions and exemptions are conditional upon adequate proof and documentation being provided by the Taxpayer. In this case, Taxpayer claimed additional deductions for subcontracting. Subsequent to the hearing, Taxpayer did provide additional documentation that was reviewed by the City. We conclude that the City’s adjustments for the assessment were proper based on the new documentation provided by Taxpayer. As to additional adjustments for subcontracting deductions, we find Taxpayer has failed to provide adequate proof and documentation to meet the requirements of Section 415 and 360. Accordingly, Taxpayer’s request for additional deductions is denied.

FINDINGS OF FACT

1. On November 5, 2007, Taxpayer filed a protest of a tax assessment made by the City.

2. After review, the City concluded on November 14, 2007 that the protest was timely and in the proper form.
3. On November 24, 2007, the Hearing Officer ordered the City to file a response to the protest on or before January 8, 2008.
4. On January 10, 2008, the City requested a sixty day extension for its response.
5. On January 11, 2008, the Hearing Officer granted the City an extension until March 12, 2008 in which to file a response to the protest.
6. March 10, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before April 2, 2008.
7. On April 15, 2008, a Notice schedule the matter for hearing commencing on May 16, 2008.
8. Both parties appeared at the May 16, 2008 hearing and presented evidence.
9. On May 19, 2008, the Hearing Officer indicated Taxpayer had agreed to provide additional documentation to the City on or before May 30, 2008; the City would review the documentation and provide any comments/recommendations on or before June 13, 2008; and Taxpayer would provide any reply on or before June 20, 2008.
10. On June 10, 2008, the City filed a revised assessment.
11. On June 25, 2008, the Hearing Officer indicated no reply had been filed and as a result the record was now closed and a written decision would be issued on or before August 9, 2008.
12. The City conducted an audit of Taxpayer for the period October 2002 through March 2007.
13. The City concluded Taxpayer had underreported contracting income for the audit period.
14. The City assessed Taxpayer for additional taxes due in the amount of \$6,913.13, penalties for late filing and late payment totaling \$1,728.29 and interest up through May 2007 in the amount of \$623.26.
15. The City reviewed additional documentation provided by Taxpayer and as a result reduced the taxes due to \$5,388.35, penalties were reduced to \$1,347.10 and interest was reduced to \$531.29.
16. Taxpayer filed quarterly tax returns throughout the audit period and on each

return reported exempt subcontracting income in the same amount as the reported gross income.

17. The City determined there was \$2,209,133.00 in gross income during the audit period versus \$1,458,064.00 reported by Taxpayer.

18. The City allowed deductions for subcontracting and out-of-City transactions totaling 1,661,559.00.

19. Subsequent to the hearing, Taxpayer provided additional documentation which was reviewed by the City.

20. After review of the documentation, the City adjusted the tax due to \$2,851.46, the penalties were reduced to \$712.88 and interest was reduced to \$266.44.

21. Taxpayer did not file a reply to the City's June 10, 2008 revised assessment.

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, Taxpayer had underreported contracting income pursuant to Section 415.
3. Section 360 provides that all deductions and exemptions are conditional upon adequate proof and documentation being provided by the taxpayer.
4. It was proper for the City to review additional documentation that was provided after the hearing and to make adjustments to the assessment as a result of the new documentation.
5. Taxpayer failed to provide adequate proof and documentation pursuant to Sections 415 and 360 for any additional adjustments.
6. Taxpayer's protest should be partly granted and partially denied, consistent with the Discussion, Findings, and Conclusion, herein.

ORDER

It is therefore ordered that the November 5, 2007 protest by *ABC Taxpayer* of a tax assessment made by the City of Flagstaff is hereby partially granted and partially denied,

consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Flagstaff shall revise its assessment consistent with the City's June 10, 2008 letter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer