

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 20, 2002
Decision: MTHO #56
Tax Collector: City of Mesa
Hearing Date: November 13, 2002

DISCUSSION

Introduction

On July 24, 2002, ABC Plumbing, Inc. (“ABC” or “Taxpayer”) filed a letter of protest of a tax assessment made by the City of Mesa (“City”). After review, the City concluded on August 1, 2002, that the protest was timely and in proper form. On August 14, 2002, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to respond on or before September 30, 2002. The City filed a response on September 24, 2002. On September 26, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before October 10, 2002. The Taxpayer filed a reply on October 10, 2002. A hearing was scheduled commencing on November 13, 2002. The City and Taxpayer both appeared and presented evidence at the November 13, 2002 hearing. On November 14, 2002, the Hearing Officer filed a letter indicating a written ruling would be issued on or before December 30, 2002.

The Taxpayer has been in the plumbing contractor business for approximately fifteen years. The Taxpayer installed the plumbing as part of the tenant improvements at the XYZ restaurant (“Restaurant”) located in the City. The owner of the building in which the restaurant was located was MNO Development LLC (“MNO”). The City assessed the Taxpayer for construction contractor income pursuant to Section 5-10-415 (“Section 415”).

City Position

The City disputes the Taxpayer’s claim that they were a subcontractor on the work done at the Restaurant. In order to be a subcontractor not liable for the construction tax, the City argued that pursuant to Section 5-10-415 (c) (“Section 415 (c)”) of the City Code the Taxpayer would have to either (1) provide a written declaration from a contractor that is liable for the tax; or, (2) provide a written declaration from an owner-builder that is liable for the tax. In this case, the Taxpayer has provided no written declaration from either a contractor or an owner-builder. Further, the City argued that all of the documentation regarding the Restaurant job refers to the Taxpayer as a “contractor”. In response to the Taxpayer’s argument that they didn’t include tax in their bid, the City asserted it did not matter because the tax is a fixed liability to the construction contractor.

Taxpayer Position

The Taxpayer acknowledged that a tax was owed to the City for the plumbing construction work done on the Restaurant. However, the Taxpayer argued that the owner should be liable for the tax and not the Taxpayer. The Taxpayer asserted they were not the general contractor on the job and did not have a general contractor's license. According to the Taxpayer, the owner told them that the owner was the general contractor. Further, the Taxpayer testified that the signature on the Standard Form of Agreement that indicated the Taxpayer was the contractor was a forgery. Lastly, the Taxpayer asserted they were not paid any taxes on the Restaurant job. Based on the above, the Taxpayer requested the tax assessment be denied.

ANALYSIS

There was no dispute that there were taxes owed on the plumbing contract work that the Taxpayer performed on the Restaurant. Based on the Taxpayer's testimony they received some verbal misinformation from the Owner-Builder regarding who was the general contractor and who was responsible for the City taxes. While we don't dispute the Taxpayer's testimony, the Taxpayer still has the burden of providing written declarations relieving the Taxpayer of the tax liability. Without those written declarations, the Taxpayer is liable for the tax on the contract work. Therefore, the Taxpayer's protest is denied.

FINDINGS OF FACT

1. On July 24, 2002, the Taxpayer filed a letter of protest of a tax assessment made by the City.
2. After review, the City concluded the protest was timely and in the proper form.
3. On August 14, 2002, the Hearing Officer ordered the City to respond on or before September 30, 2002.
4. The City filed a response on September 24, 2002.
5. On September 26, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before October 10, 2002.
6. The Taxpayer filed a reply on October 10, 2002.
7. A Hearing was scheduled commencing on November 13, 2002.
8. The City and Taxpayer both appeared and presented evidence at the November 13, 2002 hearing.
9. On November 14, 2002, the Hearing Officer filed a letter indicating a written ruling would

be issued on or before December 30, 2002.

10. The Taxpayer has been in the plumbing contractor business for approximately fifteen years.
11. The Taxpayer installed the plumbing as part of the tenant improvements at the Restaurant located in the City.
12. The Taxpayer received income from their plumbing construction work on the Restaurant.
13. The Taxpayer provided no written declaration from either the owner-builder or a contractor indicating they would be liable for the tax on the plumbing construction at the Restaurant.
14. The Taxpayer did not charge City taxes on the plumbing construction at the Restaurant.
15. The Taxpayer did not receive any response from the owner-builder to a letter requesting the owner-builder either state they paid the taxes or they would release the Taxpayer from such liability.

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 415 taxes construction contracting income.
3. A subcontractor is not liable for tax on construction income if they provide a written declaration from either the owner-builder or a contractor indicating they would be liable for the tax.
4. Based on the evidence submitted, the Taxpayer was a taxable construction contractor on the plumbing improvements made to the Restaurant.
5. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the July 24, 2002 protest of ABC Plumbing, Inc. of the City of Mesa tax assessment is hereby denied.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer