

DECISION OF MUNICIPAL TAX HEARING OFFICER

September 20, 2011

Name & Address of Taxpayer's Representative & CPA

Taxpayer
MTHO #652

Dear Taxpayer's Representative & CPA:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Tucson (Tax Collector or City). The review period covered was January 2007 through December 2010. Taxpayer's protest, Tax Collector's response and our findings and ruling follow.

Taxpayer's Protest

Taxpayer is in the business of painting structures for commercial and residential customers. Taxpayer did not pay privilege tax on its receipts but paid the privilege tax on the paint and supplies it purchased for the jobs. Taxpayer was assessed City of Tucson privilege tax under the construction contracting classification based on its receipts. The Tax Collector did not give Taxpayer any credit for the privilege tax Taxpayer paid on its purchases. Taxpayer understands that taxes are due. Taxpayer is protesting that it was not allowed a credit for taxes it paid on its purchases of paint and supplies.

Tax Collector's Response

Taxpayer was a construction contractor subject to tax on its taxable receipts. During the audit period Taxpayer reported that all of its income was exempt. Taxpayer contended that it paid tax to its vendors on the paint and other supplies used on the jobs. City Tax Code Section 415 does not allow a credit for tax paid on purchases. Taxpayer can request a refund from the vendor for the taxes paid on its purchases. However, a credit should not be applied against the tax due in the audit. Taxpayer is liable for the tax that was assessed.

Discussion

Taxpayer is a painting contractor taxable as a construction contractor under Tucson City Code (TCC) § 19-415. The Tax Collector conducted an audit assessment of Taxpayer for the period January 2007 through December 2010 and issued an assessment to Taxpayer under the construction contractor classification. The audit allowed Taxpayer deductions and exclusions provided by TCC § 19-415. The Tax Collector did not allow Taxpayer any credit for privilege taxes Taxpayer paid when Taxpayer purchased the materials and supplies it used on its jobs.

Taxpayer agrees that its receipts are taxable. The question is whether Taxpayer may be allowed a credit for the privilege taxes it paid to its suppliers. There is no provision in TCC § 19-415 for such a credit. Deductions and credits from tax are strictly construed and a taxpayer must show he is entitled to a deduction or credit. Taxpayer has not cited any authority and has not met its

burden to shown that a construction contractor may be allowed a credit for taxes paid on the materials and supplies it purchases.

Even if a credit were allowable to a construction contractor for taxes paid on materials incorporated into a structure, nothing has been presented in the record that would allow us to calculate a credit amount.¹ Taxpayer has not quantified the vendors or the amount of taxes paid on the purchase of property that was incorporated into the project (such as paint).

Based on the record, Taxpayer is not entitled to any credit or deduction in addition to the amounts allowed by the Tax Collector in the assessment. Taxpayer's protest of the Notice of Audit Assessment for the period January 2007 through December 2010 is denied.

Findings of Fact

1. Taxpayer is in the business of painting structures for commercial and residential customers.
2. Taxpayer contends in its protest that it paid tax to the retailer when it purchased materials and supplies Taxpayer used in its painting jobs.
3. Taxpayer considered all of its receipts exempt from the City's privilege tax during the audit period.
4. Taxpayer did not pay privilege taxes to the City during the audit period.
5. The Tax Collector conducted an audit assessment of Taxpayer for the period January 2007 through December 2010 and issued an assessment for City privilege tax under the construction contracting classification in the amount of \$4,565.44 and interest through April 30, 2011 in the amount of \$573.42.
6. The Tax Collector did not assess any penalties.
7. The assessment allowed Taxpayer a 35% standard deduction, factored tax deduction, out-of-city deduction and subcontractor deduction.
8. The Tax Collector did not allow Taxpayer any credit for privilege taxes paid by Taxpayer on its purchases of materials and supplies.
9. Taxpayers timely protested the assessment and requested a redetermination.
10. Taxpayer agreed that tax was due but protested the disallowance of any credits for taxes Taxpayer paid to its suppliers.
11. Taxpayer did not present any evidence or documentation showing how much tax was paid to its suppliers or that the material suppliers paid City privilege tax related to the sales of materials and supplies to Taxpayer.

Conclusions of Law

¹ TCC § 19-465(11) allows a retailer selling materials to the contractor an exclusion for the sale of tangible personal property that is to be incorporated into the structure as a part of the construction contracting activity. Because there is no exclusion for the sale of supplies that are not incorporated into the project, taxes paid on the purchase of supplies such as rags or tape would not be entitled to a credit in any event.

1. Taxpayer was a construction contractor during the audit period subject to the City's privilege tax under TCC § 19-415.
2. Tax statutes are construed strictly against a party who claims an exemption or a credit. *Davis v. Arizona Department of Revenue*, 197 Ariz. 527, 529-30, 4 P.3d 1070, 1072-73 (App. 2000).
3. The burden is on the taxpayer to show he is entitled to a deduction or exemption from tax. *See Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
4. TCC § 19-415 does not authorize a credit for amounts identified as tax paid by a construction contractor to its suppliers.
5. TCC § 19-465(11) allows retailers selling materials to a construction contractor an exclusion for tangible personal property sold that is to be incorporated into the structure as a part of the construction contracting activity.
6. There is no authority that would allow the Hearing Office to authorize the credit sought by Taxpayer.
7. The City's assessment of privilege tax and interest against Taxpayer for the period January 2007 through December 2010 was proper.

Ruling

Taxpayer's protest of an assessment of privilege tax and interest made by the City of Tucson for the period January 2007 through December 2010 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period January 2007 through December 2010 is upheld.

Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

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c: ***Tax Audit Administrator***
Municipal Tax Hearing Office