

DECISION OF MUNICIPAL TAX HEARING OFFICER

September 6, 2013

Taxpayer
Address for Taxpayer

Taxpayer
MTHO # 783

Dear Taxpayer:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Phoenix (Tax Collector or City). The review period covered was August 2007 through October 2012. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

The Tax Collector issued an assessment against Taxpayer for unpaid privilege tax. The income Taxpayer received was less than the amount in the assessment. Taxpayer would like to add some additional paperwork to be reviewed.

Tax Collector's Response

Taxpayer did not file privilege tax returns or pay privilege taxes during the audit period. Taxpayer did not provide requested documents to the City. The Tax Collector therefore issued an estimated assessment. The estimate was based on highest net taxable income shown on previously filed tax returns. Documents presented by Taxpayer have not shown that the Tax Collector's estimate of income was not reasonable and correct. The City's assessment should be upheld as issued.

Discussion

Taxpayer is in the business of selling carved stones to be used for decorative or construction purposes. Taxpayer had previously submitted privilege tax returns for the periods January 2004 through July 2007. Taxpayer did not file returns or pay privilege taxes during the audit period.

The Tax Collector issued Taxpayer an estimated assessment. The Tax Collector's estimate was based on the highest net taxable income Taxpayer had reported in prior tax returns. Taxpayer protested arguing that the amount of the assessment was overstated and asked for an opportunity to provide more information.

After the estimated assessment was issued, Taxpayer submitted numerous invoices, copies of some state privilege tax returns and summary sheets. The Tax Collector stated in its response that the City recalculated the estimated assessment based on the documentation submitted by Taxpayer, but the recalculated amount was higher than the original assessment. Taxpayer did not submit a reply to the Tax Collector's response or submit any additional information.

The privilege tax is measured by gross income from the business. Taxpayer was required to keep books and records showing Taxpayer's gross income attributable to its activities in the City. Regulation § 14-350.1(g) requires a taxpayer's books and records to indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income. Taxpayer did not provide the necessary records to permit the Tax Collector to determine Taxpayer's gross receipts and any applicable deductions or exemptions for the review period.

Because Taxpayer had not provided the required records, Phoenix Tax Code (PTC) §§ 14-545(b) and 14-555(e) authorized the Tax Collector to determine the correct tax by estimating Taxpayer's income on a reasonable basis. Taxpayer had previously filed City privilege tax returns. The Tax Collector based his estimate on the highest previously filed return. Because no returns had been filed during the audit period, it was reasonable for the Tax Collector to base his estimate on Taxpayer's past tax history. Under the circumstances, the Tax Collector used a reasonable method to estimate Taxpayer's net taxable income to be used in the assessment.

It is Taxpayer's responsibility to prove that the Tax Collector's estimate is not reasonable and correct. While Taxpayer did submit numerous invoices, copies of some state privilege tax returns and summary sheets, the Tax Collector stated in its response that the information provided by Taxpayer resulted in an amount higher than the original estimated assessment. Taxpayer did not submit a reply to the Tax Collector's response or submit any additional information showing that the Tax Collector's estimate was not correct.

Based on the record before the Hearing Officer, Taxpayer has not proven that the Tax Collector's estimate was not reasonable.

Findings of Fact

1. Taxpayer sells carved stones to be used for decorative or construction purposes.
2. Taxpayer did not file privilege tax returns or pay City privilege taxes during the period August 2007 through October 2012.
3. The Tax Collector audited Taxpayer and issued an assessment for the period August 2007 through October 2012.
4. The Tax Collector based the assessment on privilege tax returns that Taxpayer had previously filed.
5. Taxpayer protested the assessment stating the income Taxpayer received was less than the amount in the assessment.
6. After the estimated assessment was issued, Taxpayer submitted numerous invoices, copies of some state privilege tax returns and summary sheets.
7. The Tax Collector reviewed the information and indicated in its response that a recalculation based on the additional information resulted in an increase of the original assessment but the City was precluded by the City Code from increasing the assessment.
8. Taxpayer did not file a reply to the City's response or submit any documentation or tax returns.

Conclusions of Law

1. The City privilege tax is imposed on persons engaging in certain business activities. Phoenix Tax Code, Chapter 14.
2. The privilege tax is measured by the person's gross income from the taxable business activity. PTC § 14-400(a)(1).
3. It is the taxpayer's responsibility to cause his return and payment to be timely received by the Tax Collector. PTC § 14-530(c).
4. The presumption is that an assessment of additional tax is correct. *See, Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 141 P.2d 729 (1948).
5. Taxpayers are required to maintain records showing the gross income of the taxpayer attributable to any activity occurring in whole or in part in the City. Regulation § 14-350.1(a).
6. The books and records of the taxpayer are required to indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income. Regulation § 14-350.1(g).
7. Taxpayer has not provided the required records for the audit period showing Taxpayer's income attributable to its activities in the City.
8. The Tax Collector was authorized to estimate Taxpayer's income to determine the correct tax. PTC § 14-555(e).
9. The Tax Collector's estimate is required to be made on a reasonable basis. PTC § 14-545(b).
10. The Tax Collector's estimate based on Taxpayer's past tax history was reasonable.
11. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct. PTC § 14-545(b).
12. Taxpayer did not prove that the Tax Collector's estimate of gross receipts was not reasonable and correct.
13. The Tax Collector's Notice of Assessment is proper.

Ruling

Taxpayer's protest of the assessment for the period August 2007 through October 2012 by the City of Phoenix is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period August 2007 through October 2012 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: ***Assistant City Attorney***
Municipal Tax Hearing Office