

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: April 30, 2009

Decision: MTHO # 484

Taxpayer: *Taxpayer*

Tax Collector: City of Tucson

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On December 26, 2008, *Taxpayer* filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on February 2, 2009 that the protest was timely and in the proper form. On February 6, 2009, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before March 23, 2009. On March 23, 2009, the City filed a response to the protest. On March 25, 2009, the Hearing Officer ordered Taxpayer to file any reply on or before April 24, 2009. On April 25, 2009, the Hearing Officer indicated no reply was filed and as result the record was closed and written decision would be issued on or before June 10, 2009.

#### **City Position**

The City conducted an audit of Taxpayer for the period of August 2003 and October 2004 through December 2005. According to the City, Taxpayer was in the business of selling tangible personal property at retail. The City concluded Taxpayer owed additional taxes in the amount of \$7,377.71, interest up through October 2008 in the amount of \$2,107.65, and penalties totaling \$1,707.66. The City determined that Taxpayer only filed tax return for the months of October 2004 through March 2005.

The City noted that Taxpayer had business locations in both Phoenix and the City. The City indicated they were only conducting an audit for the City location. According to the City, the auditor met with Taxpayer’s owner at the Phoenix location. The auditor searched through boxes and determined the City records were not located in Phoenix. The auditor met again with Taxpayer in the City to review records. The City was able to find monthly deposits/sales summaries for the months of July, August, September and October of 2004, and February and March of 2005. The City noted that other months of the audit period were not found. The City indicated they were unable to find invoices from the audit period or any resale exemption certificates.

According to the City, Taxpayer was asked repeatedly to verify the date when Taxpayer’s business office in the City was closed. The City asserted that no documentation was ever

provided and as a result the City utilized the date of December 31, 2005 as the date the store ceased doing business. Based on the above, the City requested that the assessment be upheld.

### **Taxpayer Position**

Taxpayer requested a redetermination of the audit results. Taxpayer asserted that all of the business privilege tax returns were filed and the appropriate amount of taxes was paid. Taxpayer opined that the auditor made erroneous assumptions based on a sample outside of the audit period. Taxpayer argued that all of its deductions for labor and resale were erroneously disallowed. According to Taxpayer, the City business was sold prior to the last six months of the audit period. Taxpayer asserted the auditor broke appointments and did not look through the documents provided to conduct an accurate audit. Taxpayer opined that the audit was conducted very unprofessionally. Based on the above, Taxpayer requested a complete redetermination of the audit results.

### **ANALYSIS**

City Code Section 350 (“Section 350”) imposes a duty on taxpayers to keep and preserve suitable records and books and accounts in order to determine the amount of tax. City Code Section 360 (“Section 360”) makes all deductions, exclusions, and exemptions conditional upon adequate proof and documentation being provided by the taxpayer. As a result, the burden of proof is on Taxpayer in this matter to provide adequate documentation to determine the amount of tax. While Taxpayer complained the audit results were not accurate, no documentation was provided with the protest to support Taxpayer’s allegations. Taxpayer was granted the opportunity to file a reply to the City’s response but failed to do so. Based on all the above, Taxpayer has failed to meet its burden of proof pursuant to Sections 350 and 360. The Taxpayer’s protest should be denied.

### **FINDINGS OF FACT**

1. On December 26, 2008, Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on February 2, 2009 that the protest was timely and in the proper form.
3. On February 6, 2009, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response to the protest on or before March 23, 2009.
4. On March 23, 2009, the City filed a response to the protest.

5. On March 25, 2009, the Hearing Officer ordered Taxpayer to file any reply on or before April 24, 2009.
6. On April 25, 2009, the Hearing Officer indicated no reply had been received and as a result, the record was closed and a written decision would be issued on or before June 10, 2009.
7. The City conducted an audit of Taxpayer for the period of August 2003 and October 2004 through December 2005.
8. Taxpayer was in the business of selling tangible personal property at retail.
9. The City assessed Taxpayer for additional taxes in the amount of \$7,377.71, interest up through October 2008 in the amount of \$2,107.65, and penalties totaling \$1,707.66.
10. During the audit period, Taxpayer had business locations in both Phoenix and the City.
11. The City conducted an audit only for the City location.
12. The auditor searched through boxes of documents at Taxpayer's Phoenix location and determined that the City records were not located in Phoenix.
13. The auditor searched through Taxpayer's records in the City and was able to find monthly deposits/sales summaries for the months of July, August, September and October of 2004, and February and March of 2005.
14. The auditor was unable to find other records for other months of the audit period.
15. The auditor was unable to find invoices from the audit period or any resale exemption certificates.
16. Taxpayer failed to provide documentation to demonstrate when Taxpayer's business office in the City was closed.
17. Taxpayer only filed tax returns for the months of October 2004 through March 2005.

### **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 350 imposes a duty on taxpayers to keep and preserve suitable records and books and accounts in order to determine the amount of tax.
3. Section 360 makes all deductions, exclusions, and exemptions conditional upon adequate proof and documentation being provided by the taxpayer.
4. Taxpayer provided no documentation with its protest and failed to reply to the City's response.
5. Taxpayer has failed to meet its burden of proof pursuant to Sections 350 and 360.
6. Taxpayer's protest should be denied.

**ORDER**

It is therefore ordered that the December 26, 2008 protest by *Taxpayer* of a tax assessment by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer