

DECISION OF MUNICIPAL TAX HEARING OFFICER

August 13, 2012

Taxpayer's Name
Taxpayer's Address

Taxpayer
MTHO #679

Dear Taxpayer:

We have reviewed the evidence presented by *Taxpayer* and the City of Tucson (Tax Collector or City) at the hearing on February 27, 2012 and in post-hearing memoranda. The review periods covered were October 1993, July 1994, July 1996, November 1996, September 1997, January 2006 and August 2007 through July 2011. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City of Tucson privilege tax under the retail sale classification. The Tax Collector did not allow deductions for bad debts and discounts/refunds. Those deductions were included in Taxpayer's general ledgers. The audit also included a notice of not filing privilege tax returns for the months of October 1993, July 1994, July 1996, November 1996 and September 1997. Those periods go back 15 to 18 years. Records are no longer available for those periods. Taxpayer requests that the audit be redetermined.

Tax Collector's Response

Taxpayer did not provide documentation during the audit for deductions for bad debts and/or customer refunds. If Taxpayer can explain the nature of the deductions and provide documentation to support the deductions, the City will allow the deductions. The City records show that Taxpayer did not file returns for the months of October 1993, July 1994, July 1996, November 1996 and September 1997. Taxpayer was regularly notified through monthly mail correspondence that the returns for those months were delinquent. Taxpayer is therefore liable for the tax for those months.

Discussion

Two issues were presented in Taxpayer's protest:

- Whether Taxpayer is entitled to deductions for bad debts and refunds, and
- Whether Taxpayer filed its privilege tax returns for the months of October 1993, July 1994, July 1996, November 1996 and September 1997 (missing periods).

Bad Debt Deductions.

Taxpayer submitted post-hearing documentation to support its claim for bad debt deductions. Based on that information, the Tax Collector agreed to allow additional deductions totaling \$17,960.67 and issued a modified assessment dated May 2, 2012. In its reply Taxpayer did not raise any additional arguments regarding the bad debt deductions. Taxpayer's reply only addressed the issue of delinquent returns.

Delinquent Returns.

The Tax Collector stated at the hearing and in post-hearing memoranda that City records indicated that returns were not filed for the missing periods, that the City has historically notified all taxpayers when a monthly return is delinquent and that the licensing system would automatically include that notice the following month and every month thereafter until the return was filed. The Tax Collector also testified that the City would also send an investigator to contact a taxpayer regarding delinquent returns.

The Tax Collector however does not know whether such notices were actually sent to Taxpayer here. The City has no copies of any of the notices or a log showing that notices were sent to Taxpayer. Taxpayer testified that it did not receive any mailed notices of delinquent returns and no investigator contacted Taxpayer regarding delinquent returns. Taxpayer has destroyed its records for periods before 2006.

Taxpayer had no reason to believe returns were not filed. Taxpayer follows a set routine in preparing and filing the monthly returns. The first notice Taxpayer received was a hand delivered notice by the auditor during the initial audit interview in September, 2011. Thereafter Taxpayer did receive three more notices in October 2011 and February and May, 2012.

There appear to be two possibilities, either Taxpayer failed to file for the missing months or Taxpayer filed and the City's records incorrectly indicate Taxpayer did not file for the missing months. If Taxpayer had not filed the missing returns, it should have received monthly notices of the missing returns over an eighteen year period. Taxpayer would not have ignored such notices and destroy its records. Based on the record and sworn testimony in this case, we conclude that Taxpayer had filed its returns for the months of October 1993, July 1994, July 1996, November 1996 and September 1997.

Based on all the above, we conclude that the City's modified assessment of privilege tax, interest and penalty dated May 2, 2012 is upheld in part and reversed in part. The Tax Collector shall remove from the modified assessment the tax, interest and penalty attributed to the months of October 1993, July 1994, July 1996, November 1996 and September 1997. The remainder of the modified assessment dated May 2, 2012 is upheld.

Findings of Fact

1. Taxpayer operates a truck and auto repair facility in the City.
2. The Tax Collector audited Taxpayer for the periods October 1993, July 1994, July 1996, November 1996, September 1997, January 2006 and August 2007 through July 2011 and issued an assessment for privilege taxes in the amount of \$1,897.75, interest through August 31, 2011 of \$631.49 and combined penalties of \$207.84.
3. The assessment also included an accounts receivable balance of \$261.48 for the missing periods.

4. Taxpayer timely protested the assessment because the Tax Collector did not allow deductions for bad debts and refunds and Taxpayer had not been notified before the start of the audit in September 2011 that returns were missing for past periods. Those periods go back 15 to 18 years and Taxpayer no longer has records available for those periods.
5. The Tax Collector agreed to review additional documentation regarding deductions for bad debts and refunds.
6. Based on additional information submitted by Taxpayer, the Tax Collector allowed additional deductions totaling \$17,960.67 and issued a modified assessment dated May 2, 2012.
7. Taxpayer accepted the amount of the additional deductions allowed in the modified assessment. Taxpayer continued to dispute that it did not file returns for the missing months.
8. The Tax Collector testified that the City historically notified all taxpayers when a monthly return is delinquent. The licensing system would then automatically include that notice the following month and every month thereafter until the return was filed.
9. The Tax Collector also testified that the City would also send an investigator to contact a taxpayer regarding delinquent returns.
10. The City has no copies of any of the notices that may have been sent to Taxpayer or a log showing that notices were sent to Taxpayer.
11. The Tax Collector does not know whether any notices were actually sent to Taxpayer.
12. Taxpayer testified that it did not receive any mailed notices of delinquent returns and no City investigator had contacted Taxpayer regarding delinquent returns.
13. The City did not provide Taxpayer notices of delinquent returns for the missing months or otherwise notify Taxpayer of missing returns before September 2011.
14. Taxpayer had no reason to believe returns were not filed for the missing periods. Taxpayer follows a set routine in preparing and filing the monthly returns.
15. If Taxpayer had failed to file returns for the missing periods, the City would have notified Taxpayer before September 2011.
16. Taxpayer filed its returns for the months of October 1993, July 1994, July 1996, November 1996 and September 1997.

Conclusions of Law

1. TCC § 19-460 imposes the City privilege tax on the business activity of selling tangible personal property at retail.
2. The Tax Collector's modified proposed assessment dated May 2, 2012 allowed Taxpayer all deductions for bad debts and refunds that were substantiated by Taxpayer.
3. Taxpayer is not entitled to any additional deductions for the audit period.
4. Taxpayers are required to file privilege tax returns for their business activity within the City.

5. It is the taxpayer's responsibility to cause his return to be timely filed. TCC § 19-530(c).
6. Taxpayer timely filed its privilege tax returns for the months of October 1993, July 1994, July 1996, November 1996 and September 1997.
7. The City's modified assessment of privilege tax, interest and penalty dated May 2, 2012 is upheld in part and reversed in part. The Tax Collector shall remove from the modified assessment the tax, interest and penalty attributed to the months of October 1993, July 1994, July 1996, November 1996 and September 1997. The remainder of the modified assessment dated May 2, 2012 is upheld.

Ruling

The protest by Taxpayer of an assessment made by the City of Tucson for the periods October 1993, July 1994, July 1996, November 1996, September 1997, January 2006 and August 2007 through July 2011, as modified May 2, 2012, is upheld in part and denied in part.

The Tax Collector shall remove from the modified assessment the tax, interest and penalty attributed to the months of October 1993, July 1994, July 1996, November 1996 and September 1997. The remainder of the modified assessment is upheld.

The parties have 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