

DECISION OF MUNICIPAL TAX HEARING OFFICER

March 20, 2013

Taxpayer
Taxpayer's Address

Taxpayer
MTHO #724

Dear Taxpayer:

We have reviewed the arguments presented by *Taxpayer* in its protest and by the City of Tucson (Tax Collector or City) in its Response to the Protest and at the hearing held on February 11, 2013. The review period covered was May 2007 through April 2011. Taxpayer did not appear at the hearing and the hearing was held in Taxpayer's absence.

A letter was sent allowing Taxpayer time to submit written evidence into the record accompanied by a written explanation that established good cause for its absence at the hearing. Taxpayer did not timely respond. The record was therefore closed by letter dated March 6, 2013 and this matter is ready for ruling. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer may have completed its tax forms on the accrual basis when they should have been completed on a cash basis. Taxpayer requested a hearing to present new information it had obtained.

Tax Collector's Response

Taxpayers may report under either the cash or accrual basis in determining monthly gross income. Any timing differences between the cash basis and the accrual basis over a four-year audit period would be minimal. The auditor here used Taxpayer's Sales Tax Liability summary reports to determine gross income for the audit period. The reports stated that the income was compiled on the cash basis. Taxpayer has not provided any records or other evidence to show the summary reports did not accurately show Taxpayer's gross income on a cash basis.

Discussion

Taxpayer reported gross receipts of \$862,749.89 and deductions of \$482,381.57 resulting in reported receipts subject to tax during the audit period of \$380,368.32. The Tax Collector audited Taxpayer and determined that during the audit period Taxpayer received gross receipts of \$1,865,509.64 and was entitled to deductions of \$1,041,454.67 resulting in receipts subject to privilege tax of \$824,024.97. Taxpayer protested that it might have completed its tax returns on the accrual basis instead of the cash basis. Taxpayer has not provided any other information, documents or evidence.

The Tax Collector's audit of Taxpayer was based on reports provided by Taxpayer labeled Sales Tax Liability. The report indicated it was prepared on a cash basis. In some months the Sales Tax Liability report agreed with the return filed and in other months it did not. Taxpayer has not provided an explanation for how the returns were completed. It was therefore appropriate for the Tax Collector to base the assessment on Taxpayer's records.

The assessment issued by the City is presumed correct and it is Taxpayer's burden to overcome that presumption. Taxpayer here has not produced any evidence, documents or other information to overcome the presumption of correctness. Based on the record here we conclude that Taxpayer's protest should be denied. The City's privilege tax assessment against Taxpayer was proper.

Findings of Fact

1. During the period May 2007 through April 2011 Taxpayer reported gross receipts of \$862,749.89 and deductions of \$482,381.57 resulting in reported receipts subject to tax of \$380,368.32.
2. The Tax Collector audited Taxpayer for the period May 2007 through April 2011 and determined that for the audit period Taxpayer received gross receipts of \$1,865,509.64 and was entitled to deductions of \$1,041,454.67 resulting in receipts subject to privilege tax of \$824,024.97.
3. The Tax Collector issued Taxpayer an assessment for the difference between the amount of income subject to tax reported by Taxpayer and the amount determined by the Tax Collector.
4. Taxpayer protested the assessment stating that it might have completed its tax returns on the accrual basis instead of the cash basis and requested a hearing.
5. Taxpayer has not provided any other information, documents or evidence.
6. The Tax Collector based its assessment on Taxpayer's reports called Sales Tax Liability.
7. The reports indicated they were completed on a cash basis.
8. In some months the Sales Tax Liability report agreed with the return filed and in other months it did not.
9. The Tax Collector timely submitted its response to Taxpayer's protest.
10. Taxpayer did not submit a reply to the Tax Collector's response.
11. A hearing was scheduled in this matter for November 16, 2012 which was rescheduled to January 7, 2013 and then to February 11, 2013 at Taxpayer's request.
12. Taxpayer did not attend the hearing.
13. Taxpayer did not submit an explanation for its absence at the hearing or submit written evidence to be included in the record.
14. The record was closed by letter dated March 6, 2013.

Conclusions of Law

1. The City privilege tax is imposed on persons engaging in certain business activities. Tucson City Code (TCC), Chapter 19, Article II.
2. The privilege tax is measured by the person's gross income from the taxable business activity. TCC § 19-400(a)(1).
3. The presumption is that an assessment of additional tax is correct and the burden is on the taxpayer to overcome the presumption. *See, Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
4. Taxpayer has not overcome the presumption of correctness in this case.
5. The Tax Collector's assessment to Taxpayer was proper.

Ruling

Taxpayer's protest of an assessment made by the City of Tucson for the period May 2007 through April 2011 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period May 2007 through April 2011 is upheld.

The 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