

DECISION OF MUNICIPAL TAX HEARING OFFICER

March 7, 2016

Taxpayer
Taxpayer's Address

Taxpayer
MTHO #897

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 January 2009 through September 2014. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

The City issued an estimated assessment against Taxpayer. Most of Taxpayer's sales were on-line sales for out of state and out of country clients. Taxpayer has submitted additional information for some of the periods at issue and will be following up with documentation for the other periods. Taxpayer should be allowed deductions for exempt sales.

Tax Collector's Response

The Tax Collector issued an estimated assessment. Taxpayer submitted documentation that was not previously submitted to the City. The auditor reviewed the documentation and issued a revised assessment allowing deductions that the City could verify. The Tax Collector's revised assessment should be upheld.

Discussion

The Tax Collector issued an estimated assessment to Taxpayer. Taxpayer protested and submitted additional information. Based on the additional information, the Tax Collector issued a revised assessment. Taxpayer did not respond to the revised assessment, submit a reply or provide any additional documentation.

The revised assessment issued by the City is presumed correct and it is Taxpayer's burden to overcome that presumption with substantial credible and relevant evidence that establishes that the assessment was erroneous. A general denial of liability is not sufficient to overcome the presumption. Taxpayer here has not produced any evidence, documents or other information to overcome the presumption of correctness of the revised assessment. Based on the record here we conclude that the City's revised privilege tax assessment against Taxpayer dated February 26, 2015 is proper. Taxpayer's protest is thus granted in part consistent with the Tax Collector's revised assessment.

Findings of Fact

1. Taxpayer was engaged in the business of selling, rebuilding and servicing fuel injectors and other automotive parts in the City during the review period.
2. The Tax Collector audited Taxpayer for the review period and issued an estimated assessment.
3. Taxpayer protested the assessment and submitted documentation that was not previously submitted to the City.
4. Based on the information submitted by Taxpayer, on February 26, 2015 the Tax Collector issued a revised assessment.
5. Taxpayer did not reply, respond to the revised assessment or submit any additional information.

Conclusions of Law

1. The City privilege tax is imposed on persons engaging in certain business activities. Phoenix City Code (PCC), Chapter 14.
2. The Tax Collector may issue an assessment if he is not satisfied with the return and payment of the amount of tax required or if no returns were filed. PCC § 14-545(a).
3. The Tax Collector properly issued a revised assessment based on information submitted by Taxpayer after its protest.
4. 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).
5. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. *U.S. v. McMullin*, 948 F.2d 1188 (10th Cir.,1991); *Anastasato v. C.I.R.*, 794 F.2d 884 (3rd Cir.,1986).
6. A general denial of liability is not sufficient to overcome the presumption that the assessment is correct. *Avco Delta Corp. Canada Ltd. v. U.S.*, 540 F.2d 258 (7th Cir., 1976).
7. The revised assessment is presumed correct and Taxpayer has not overcome the presumption of correctness.
8. The Tax Collector's February 26, 2015 revised assessment to Taxpayer is upheld.

Ruling

Taxpayer's protest of an assessment made by the City of Phoenix for the period January 2009 through September 2014 is upheld in part and denied in part consistent with the Tax Collector's revised assessment dated February 26, 2015.

The Tax Collector's February 26, 2015 revised assessment to Taxpayer for the period January 2009 through September 2014 is upheld.

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

Sincerely,

Hearing Officer

HO/7100.doc/10/03

c: *Asst. City Attorney*
Municipal Tax Hearing Office