

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 15, 2005

Decision: MTHO #217

Tax Collector: City of Tucson

Hearing Date: None

DISCUSSION

Introduction

On October 12, 2004, *Taxpayer* (“Taxpayer”) filed a letter of protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on October 21, 2004 that the protest was timely and in the proper form. On October 25, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before December 9, 2004. On December 15, 2004, the City was granted an extension until December 27, 2004 in which to file a response. On December 21, 2004, the City filed a response to the protest. On December 24, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before January 18, 2005. On January 11, 2005, a Notice of Tax Hearing (“Notice”) scheduled the matter for a hearing commencing on March 2, 2005. On March 1, 2005, the Taxpayer requested the matter be reclassified as a redetermination. On March 4, 2005, the Hearing Officer reclassified the matter as a redetermination and indicated a written decision would be issued on or before April 18, 2005.

City Position

The Taxpayer is in the business of installing and servicing alarm systems, surround sound systems, and built-in central vacuum systems. The City conducted an audit of the Taxpayer for the period March 2000 through February 2004. The City adjusted the Taxpayer’s gross income due to reporting errors resulting in a tax assessment of \$2,230.54 plus interest up through August 2004 in the amount of \$948.73. The City also assessed penalties totaling \$542.30 but subsequently waived the penalties.

In response to the Taxpayer’s protest, the City indicated that interest was calculated at the standard one percent per month as authorized by City Code Section 19-540(a) (“Section 540(a)"). The City noted that the Taxpayer had more tax due in the earlier months of the audit period which caused the interest to accumulate through the audit period. The City argued that such interest can not be waived by either the City or the Hearing Officer. The City indicated they understood the time required by the Taxpayer to gather the records and find the documentation needed by the City. However, the City asserted the time required to perform any audit is in direct relation to the condition of the records available for the audit.

Taxpayer Position

The Taxpayer argued that the amount of interest assessed of \$948.73 is excessive when compared to the additional tax due of \$2,230.54. The Taxpayer asserted that they invested numerous hours in cooperating fully with the City which alleviated additional work for the City. The Taxpayer requested the amount of additional work to be considered in determining the amount of interest owed.

ANALYSIS

The Taxpayer did not protest any of the additional taxes assessed. The only protest was on the interest assessment. Based on the information provided by the City, the interest was calculated according to the City Code. Further, Section 540(a) provides that “interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated ...”. Since no tax was abated, the interest can not be abated by the Hearing Officer. Accordingly, the protest is denied.

FINDINGS OF FACT

1. On October 12, 2004, the Taxpayer filed a letter of protest of a tax assessment made by the City.
2. After review, the City concluded on October 21, 2004 that the protest was timely and in the proper form.
3. On October 25, 2004, the Hearing Officer ordered the City to file a response to the protest on or before December 9, 2004.
4. On December 15, 2004, the City was granted an extension until December 27, 2004 in which to file a response.
5. On December 21, 2004, the City filed a response to the protest.
6. On December 24, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before January 18, 2005.
7. On January 11, 2005, a Notice scheduled the matter for a hearing commencing on March 2, 2005.
8. On March 1, 2005, the Taxpayer requested the matter be reclassified as a redetermination.
9. On March 4, 2004, the Hearing Officer reclassified the matter as a redetermination and indicated a written decision would be issued on or before

April 18, 2005.

10. The Taxpayer is in the business of installing and servicing alarm systems, surround sound systems, and built-in central vacuum systems.
11. The City conducted an audit of the Taxpayer for the period March 2000 through February 2004.
12. The City adjusted the Taxpayer's gross income due to reporting errors resulting in a tax assessment of \$2,230.54 plus interest up through August 2004 in the amount of \$948.73.
13. The City also assessed penalties totaling \$542.38 but subsequently waived the penalties.
14. The Taxpayer had more tax due in the earlier months of the audit period which caused the interest to accumulate through the audit period.
15. It took a great deal of time to complete the audit because of the condition of the books and records of the Taxpayer.

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. The Taxpayer did not protest the assessment of additional taxes.
3. Since no taxes were abated, the Hearing Officer can not waive the interest assessed pursuant to Section 540(a).
4. The protest should be denied.

ORDER

It is therefore ordered that the October 12, 2004 protest of *Taxpayer* of a tax assessment made by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer