

## **Jerry Rudibaugh**

### **Municipal Tax Hearing Officer**

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

Decision Date: July 19, 2002

Decision: MTHO #25

Tax Collector: City of Tucson

Hearing Date: April 9, 2002

#### **DISCUSSION**

##### **Introduction**

On July 18, 2001, "Taxpayer" filed a protest of the City of Tucson ("City") tax assessment. After review of the protest, the City concluded on December 4, 2001 that the protest was timely and in the proper form. On December 10, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before January 24, 2002. On January 28, 2002, the City filed its response. The matter was set for hearing commencing on April 9, 2002, and the City appeared and presented evidence. On April 12, 2002, the Hearing Officer ordered the Taxpayer to file any additional written evidence on or before May 13, 2002 along with a written explanation to establish good cause for the Taxpayer's failure to appear at the April 9, 2002 hearing. On May 13, 2002, the Taxpayer submitted additional records. On May 16, 2002, the Hearing Officer ordered the City to file any response/comments on or before June 17, 2002. The City filed a response on June 13, 2002. On June 17, 2002, the Hearing Officer filed a letter indicating a written ruling would be issued on or before July 29, 2002.

Taxpayer is a hotel consisting of ten rooms, no restaurant, and no retail sales. The City conducted an audit of Taxpayer for the period December 1, 1997 through October 31, 2000. The Taxpayer's records were incomplete, however, the Taxpayer indicated that he prepared the tax returns from his bank statements. Using the bank statements, the auditor determined that the amount reported to the City was \$38,543.52 less than what was on the bank statements. In addition, there were no bank statements for December 1997 and March 1998. The City utilized the same percentage of unreported income for the other months to adjust December 1997 and March 1998. Lastly, there was no return filed for September 2000 and the City utilized the bank statement to calculate the taxable rental income not reported. The City completed the audit in June of 2001 with a tax liability for transient rental in the amount of \$2,028.44, a penalty of \$30.99 for the September 2000 return, and interest up through May 31, 2001 in the amount of \$229.02. The City also assessed a bed tax in the amount of \$272.00, a penalty of \$27.20, and interest in the amount of \$9.52. The total assessment as of May 31, 2002 was in the amount of \$2,597.17. While the Taxpayer informed the City that he had additional records to demonstrate the City assessment was too high, the Taxpayer never provided any additional records prior to the hearing in this matter. Subsequent to the hearing, the Taxpayer did provide additional records for the City to review.

##### **City Position**

The City utilized the records provided by the Taxpayer in order to compute its tax assessment. When the Taxpayer complained the gross income calculated was too high, the City requested the Taxpayer provide additional records. Those additional records were not provided either before or during the hearing. Subsequent to the hearing, the Taxpayer provided additional records for the City to review. The Taxpayer provided the deposit records for the missing months of December 1997 and March 1998, which the City utilized in revising its assessment. The City also allowed credit card charge backs as a result of the additional records and allowed a deduction for phone income that had been previously included. The City's revised assessment reduced the total assessment from \$2,597.17 to \$954.76. The revised assessment consisted of a tax liability for transient rental in the amount of \$557.87, a penalty in the amount of \$30.99, and interest up through May 2002 in the amount of \$57.18. The bed tax assessment remained at \$272.00, a penalty in the amount of \$27.20, and interest was updated up through May 2002.

## **Taxpayer Position**

The Taxpayer protested that it was highly unlikely that he had not reported \$53,736.68 of gross income. While the City had requested additional records, the Taxpayer had experienced several management and computer system changes which resulted in delays in getting the information. The Taxpayer failed to attend the April 9, 2002 hearing because he was in Oregon with his elderly father who is terminally ill. The Taxpayer asserted that in October of 2000, his hotel manager maliciously destroyed hotel financial records and stole money and property. According to the Taxpayer, the police were called in and the manager was fired. As a result of the record destruction, it took a great deal of time for the Taxpayer to put together supporting documentation for his claim that the City's original assessment was greatly inflated.

## **ANALYSIS**

It is the responsibility of the Taxpayer pursuant to the City Code to maintain necessary books and records. The City on several occasions requested the Taxpayer provide the necessary books and records. The Taxpayer never provided the requested books and records. As a result, the City was authorized pursuant to the City Code to utilize what information it had to calculate the assessment. The City's method of utilizing bank statements and corresponding percentage of under-reported income was a reasonable method of estimating the Taxpayer's tax assessment. The Hearing Officer further concludes that it was reasonable for the City to utilize the additional records provided by the Taxpayer after the hearing to revise the tax assessment. Based on the above, the Taxpayer's protest should be granted to the extent it is consistent with the revised assessment of the City.

## **FINDINGS OF FACT**

1. On July 18, 2001, Taxpayer filed a protest of the City tax assessment.
2. After review of the protest, the City concluded on December 4, 2001 that the protest was timely and in the proper form.
3. On December 10, 2001, the Hearing Officer ordered the City to file a response on or before January 24, 2002.
4. The City filed its response on January 28, 2002.
5. The matter was set for hearing on April 9, 2002.
6. The City appeared and presented evidence at the April 9, 2002 hearing while the Taxpayer failed to make an appearance.
7. On April 12, 2002, the Hearing Officer ordered the Taxpayer to file any additional evidence along with a written explanation to establish good cause for the Taxpayer's failure to appear at the April 9, 2002 hearing.
8. On May 13, 2002, the Taxpayer submitted additional records along with an explanation that he failed to attend the April 9, 2002 hearing because he was in Oregon with his terminally ill father.
9. On May 16, 2002, the Hearing Officer ordered the City to file any response/comments to the Taxpayer on or before June 17, 2002.
10. The City filed a response on June 13, 2002.
11. On June 17, 2002, the Hearing Officer filed a letter indicating a written ruling would be issued on or before July 29, 2002.
12. Taxpayer is a hotel consisting of ten rooms, no restaurant, and no retail sales.
13. The City conducted an audit of Taxpayer for the period December 1, 1997 through October 31, 2000.
14. The Taxpayer's records were incomplete, however, the Taxpayer indicated he prepared the tax returns from his

bank statements.

15. The Taxpayer provided the City with bank statements for all the audit months except for December 1997 and March 1998.
16. Utilizing the monthly bank statements, the City concluded the Taxpayer had underreported income for those months.
17. The City estimated the months of December 1997 and March 1998 had the same percentage of under-reported income as the other months.
18. The Taxpayer failed to file a return for September 2000 and the City utilized the bank statement to calculate the taxable rental income.
19. The City completed the audit in June of 2001 with a tax liability for transient rental in the amount of \$2,028.44, a penalty of \$30.99 for the September 2000 return, and interest up through May 31, 2001 in the amount of \$229.02.
20. The City also assessed a bed tax in the amount of \$272.00, a penalty of \$27.20, and interest in the amount of \$9.52.
21. The total assessment as of May 31, 2001 was in the amount of \$2,597.17.
22. While the Taxpayer informed the City that he had additional records to demonstrate the City assessment was too high, the Taxpayer never provided additional records either prior to or during the hearing.
23. Subsequent to the hearing, the Taxpayer provided additional records for the City to review.
24. The Taxpayer provided the deposit records for the missing months of December 1997 and March 1998, which the City utilized in revising its assessment.
25. The City also allowed credit card charge backs as a result of the additional records and allowed a deduction for phone income that had been previously included as part of the assessment.
26. The City's revised assessment reduced the total assessment from \$2,597.17 to \$954.76.

### **CONCLUSIONS OF LAW**

1. Pursuant to ARS Section 42-605 6, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. The City Code imposes a tax on transient rental and bed tax income.
3. The City Code imposes a penalty for failure to file a timely return unless Taxpayer shows that the failure is due to reasonable cause and not willful neglect.
4. The City Code requires the Taxpayer to maintain or provide necessary books and records.
5. The City Code authorizes the City to utilize estimates when the Taxpayer has failed to maintain or provide necessary books and records.
6. The City utilized a reasonable method of estimation in determining the Taxpayer's original assessment.
7. The taxpayer had good cause for failing to appear at the April 19, 2002, hearing.
8. It was reasonable for the City to utilize the additional records provided by the Taxpayer after the hearing to revise

the tax assessment.

9. The June 13, 2002 revised assessment of the City is reasonable and should be approved.

10. The Taxpayer's protest should be approved to the extent of the City's revised assessment.

**ORDER**

It is therefore ordered that the July 18, 2001 protest of Taxpayer is hereby granted to the extent it is consistent with the June 13, 2002 revised assessment of the City of Tucson.

It is further ordered that the City of Tucson shall revise the June 12, 2001 tax assessment for Taxpayer to include the revisions proposed in its June 13, 2002 response.

It is further ordered that this decision is effective immediately.

Jerry Rudibaugh

Municipal Tax Hearing Officer