

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

Decision Date: January 24, 2007

Decision: MTHO #329

Taxpayer: *Taxpayer ABC*

Tax Collector: City of Phoenix

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On September 26, 2006, *Taxpayer ABC* (“Taxpayer”) filed a protest of a tax assessment made by The City of Phoenix (“City”). After review, the City concluded on October 9, 2006 that the protest was timely and in the proper form. On October 12, 2006 the Municipal Tax Hearing Officer (“Hearing Officer”) classified the matter as a redetermination and ordered the City to file a response to the protest. On November 27, 2006, the City filed a response to the protest. On November 30, 2006, the Hearing Officer ordered Taxpayer to file a reply on or before December 21, 2006. On December 5, 2006, the Hearing Officer extended Taxpayer’s reply deadline until December 28, 2006. On January 4, 2007, the Hearing Officer indicated no reply had been filed by Taxpayer and as result the record was closed and a written decision would be issued on or before February 20, 2007.

#### **City Position**

The City made an estimate of Taxpayer’s tax liability for the period January 2002 through June 2006. The City assessed Taxpayer for unreported residential rental revenues pursuant to City Code Section 14-440 (“Section 440”) and unreported commercial rental revenues pursuant to City Code Section 14-445 (“Section 445”) with taxes due in the amount of \$3,683.46. The City assessed penalties for failure to file timely tax returns and for failure to timely pay taxes pursuant to City Code Section 14-540(b) (“Section 540(b)”) in the amount of \$910.29. The City also assessed interest pursuant to City Code Section 14-540(a) (“Section 540(a)”) in the amount of \$906.39 up through July 2006.

The City asserted that when a lessor has fewer than three residential units available for rent in the state and no commercial units available for rent, the residential rentals are exempt from the tax. The City indicated that as of January 2002, Taxpayer owned two commercial buildings at *Address 123* and *Address 345* with an unspecified number of tenants and a residential rental property at *Address 678* with two units available for rent. According to the City, there was no evidence that the commercial property was occupied by Taxpayer or any related company as of January 2002. The City noted that Taxpayer

later added another commercial property and a second residential rental with seven rental units. As a result, the City concluded Taxpayer should have been paying taxes to the City on the rental properties.

The City indicated it often will waive penalties when the Taxpayer was unaware of the tax, but licenses and pays the taxes in a reasonable period. The City asserted it could not waive the penalties in this matter because there were multiple delays by Taxpayer in obtaining a license, providing income information and paying the taxes owed. According to the City, it took almost two months to receive license applications from Taxpayer after the City notified Taxpayer of the need to be licensed. In addition, the City noted it took from February 22, 2006 to April 27, 2006 to get income schedules from Taxpayer for the four years under review. During the review process, the City mailed Taxpayer tax returns for the months of February, March, and April 2006. The City asserted that as of July 31, 2006, Taxpayer had not returned any of the tax returns for the months of February, March, April, May, and June 2006. As a result, the City included those months, along with penalties, in its estimate of taxes due. The City noted that Taxpayer has still not paid any of the assessment as of November 27, 2006. The City argued that Taxpayer did not act reasonably to avoid the penalties and Taxpayer has not shown why their actions should result in a waiver or abatement of any penalty imposed. Accordingly, the City requested the assessed penalties be upheld.

### **Taxpayer Position**

Taxpayer asserted he purchased two small buildings, *Address 123* and *Address 345*, several years ago. According to Taxpayer, these buildings were used as owner occupants. Taxpayer indicated that he contacted the City at the time the buildings were purchased and was informed they were not required to pay a rental tax. Based on the information recently provided by the City, Taxpayer opined they now understand a rental tax has to be paid to the City. Taxpayer argued that if he had been aware a tax had to be paid, he would have been paying all along. Taxpayer did not protest the assessed tax or interest. However, Taxpayer requested the penalties be waived on this matter.

### **ANALYSIS**

There was no protest of the underlying tax. As a result, the tax assessed and the associated interest are upheld. Since Taxpayer failed to timely file reports or timely pay taxes, the City was authorized pursuant to Section 540(b) to assess penalties. Those penalties may be waived if Taxpayer is able to demonstrate reasonable cause for failing to timely report and timely pay. While Taxpayer has claimed someone from the City informed him no rental tax was required, there was no documentation to substantiate what was actually said. Even with that said, we recognize that a first time owner of rental properties could be confused by the requirements set forth in Section 445. We also note that the City's reasons for not waiving the penalties resulted from delays by Taxpayer after the City informed him of the tax liability. As a result, we conclude Taxpayer presented reasonable cause for failing to timely file reports or timely pay taxes until February 1, 2006. There was not reasonable cause for not timely filing reports or timely

paying taxes after February 1, 2006.

### **FINDINGS OF FACT**

1. On September 26, 2006, Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on October 9, 2006, that the protest was timely and in the proper form
3. On October 12, 2006, the Hearing Officer classified the matter as a redetermination and ordered the City to file a response to the protest on or before November 27, 2006.
4. On November 27, 2006, the City filed a response.
5. On November 30, 2006, the Hearing Officer ordered Taxpayer to file any reply on or before December 21, 2006.
6. On December 5, 2006, the Hearing Officer extended Taxpayer's reply deadline until December 28, 2006.
7. On January 4, 2007, the Hearing Officer indicated no reply had been filed by Taxpayer and as a result the record was closed and a written decision would be issued on or before February 20, 2007.
8. The City made an estimate of Taxpayer's tax liability for the period January 2002 through June 2006.
9. The City assessed Taxpayer for unreported residential rental revenues pursuant to Section 440 and unreported commercial rental revenues pursuant to Section 445 with taxes due in the amount of \$3,683.46.
10. The City assessed penalties for failure to file timely tax returns and for failure to timely pay taxes pursuant to Section 540(b) in the amount of \$910.29.
11. The City assessed interest pursuant to Section 540(a) in the amount of \$906.39 up through July 2006.
12. As of January 2002, Taxpayer owned two commercial buildings at **Address 123** and **Address 345** with an unspecified number of tenants and a residential rental property at **Address 678** with two units available for rent.
13. Subsequently, Taxpayer added another commercial property and a second residential unit with seven rental units.

14. It took almost two months to receive license applications from Taxpayer after the City notified Taxpayer of the need to be licensed.
15. It took from February 22, 2006 until April 27, 2006 to get income schedules from Taxpayer for the four years under review by the City.
16. During the review process, the City mailed Taxpayer tax returns for the months of February, March and April 2006.
17. As of July 31, 2006, Taxpayer had not returned any of the tax returns for the months of February, March, and April 2006.
18. Taxpayer has not paid any of the City's assessment as of November 27, 2006.
19. At the time Taxpayer purchased *Address 123* and *Address 345*, Taxpayer contacted the City and was informed, based on the oral information provided, he was not to pay a rental tax.

### **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. Taxpayer had unreported residential and commercial rental revenues pursuant to Sections 440 and 445.
3. The City was authorized pursuant to Section 540(a) to assess interest on taxes due.
4. Taxpayer did not protest the underlying tax in the matter.
5. The tax assessment and interest assessment are upheld.
6. Since Taxpayer failed to timely file reports or timely pay taxes, the City was authorized to assess penalties.
7. Taxpayer presented reasonable cause for failing to timely file reports or timely pay taxes until February 1, 2006.

8. Taxpayer did not present reasonable cause for failure to timely file reports or timely pay taxes after February 1, 2006.
9. The penalties imposed prior to February 1, 2006 should be waived.
10. Taxpayer's September 26, 2006 protest should be partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

### **ORDER**

It is therefore ordered that the September 26, 2006 protest of *Taxpayer ABC* of a tax assessment made by the City of Phoenix is hereby partially granted and partially denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Phoenix shall waive all penalties assessed prior to February 1, 2006.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer