

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 31, 2009

Decision: MTHO # 463

Taxpayer: *Taxpayer ABC*

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On October 28, 2008, *Taxpayer ABC* filed a protest of a penalty waiver denial by the City of Phoenix (“City”). After review, the City concluded on November 4, 2008 that the protest was timely and in the proper form. On November 7, 2008, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file a response to the protest on or before December 22, 2008. On November 21, 2008, the City filed a response to the protest. On November 28, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before December 29, 2008. On January 5, 2009, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before February 19, 2009.

City Position

According to the City, Taxpayer failed to timely pay the tax due for the month of March 2008. The City indicated the tax return was received in the City lock box on April 22, 2008. While the tax return was timely filed, the City asserted no payment was included. The City noted that the payment for the March 2008 tax return was received on July 1, 2008. Because the payment was received after the delinquency date, the City assessed a penalty in the amount of \$62.84 pursuant to City Code Section 14-540(b) (“Section 540(b”).

The City recommended Taxpayer’s request for a waiver of the penalties be denied. The City noted that Section 540(f) provides that the City may waive penalties based on (1) a consistent filing and payment history or (2) situations where the taxpayer has experienced unavoidable circumstances or reasons for late filings or payments. The City indicated a consistent filing history is no more than one other delinquent filing or payment within the prior twenty-four months and no outstanding amount due to the City. In a review of Taxpayer’s records, the City determined Taxpayer had late filings and/or late payments for the period of December 2006 through February 2007. As a result, the City concluded Taxpayer did not meet any of the circumstances set forth in Section 540(f) for a waiver.

While Taxpayer indicated it mailed both the March 2008 tax return and the payment

together on April 16, 2008, the City asserted that no payment was received with the tax return. The City noted that they have a contract with *Financial Institution* to receive the tax returns and payments. According to the City, the *Financial Institution* is under strict supervision and adheres to strict internal controls when it comes to opening the envelopes and separating out the tax returns and checks. The City indicated that should a *Financial Institution* employee misplace or lose a check, such action would be grounds for immediate dismissal. The City has not been notified of any *Financial Institution* employee dismissal. Based on all the above, the City argued the denial of the penalty waiver was proper.

Taxpayer Position

Taxpayer protested the City's denial of a request for a waiver of a penalty in the amount of \$62.84 for late payment for its March 2008 tax return. Taxpayer asserted check number 2895 was mailed on April 16, 2008 with the March 2008 tax return. After being notified by the City that check number 2895 had not been received, Taxpayer stopped payment on that check and Taxpayer sent a replacement check to the City. Taxpayer argued that it had made every effort to file and pay the March 2008 return and payment in a timely manner. As a result, Taxpayer requested the penalty be waived.

ANALYSIS

We have conflicting information regarding whether Taxpayer mailed a check with its March 2008 tax return. While it is possible that Taxpayer mailed the check with the return and the check somehow got lost, Taxpayer has no way to prove that is what happened. We have no evidence that the *Financial Institution* has been making errors in handling the City's returns and payments. The only way to resolve the matter is to determine which party has the burden of proof. We conclude that Taxpayer has the burden of proof of demonstrating that a payment was made in a timely manner. We must conclude that Taxpayer has failed to meet its burden of proof and that the payment was not made in a timely manner. As noted by the City, a waiver may still be made if Taxpayer has a consistent filing history. We find the City's policy that a consistent filing history means no more than one delinquent filing or payment for the prior twenty-four months to be a reasonable interpretation. In this case, there was no dispute that Taxpayer had more than one delinquency over the prior twenty-four month period. As a result, Taxpayer does not meet any of the circumstances for a waiver set forth in Section 540(f). Based on all the above, Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On October 28, 2008, Taxpayer filed a protest of a penalty waiver denial made by

the City.

2. After review, the City concluded on November 4, 2008, that the protest was timely and in the proper form.
3. On November 7, 2008, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response to the protest on or before December 22, 2008.
4. On November 21, 2008, the City filed a response to the protest.
5. On November 28, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before December 29, 2008.
6. On January 5, 2009, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before February 19, 2009.
7. The City received Taxpayer's March 2008 tax return on April 22, 2008.
8. The **Financial Institution** receives tax returns and payments on behalf of the City.
9. The **Financial Institution** received Taxpayer's March 2008 tax return on April 22, 2008, but there was no payment enclosed.
10. Taxpayer's check number 2895 was never cashed.
11. On June 23, 2008, Taxpayer sent a replacement check for its March 2008 tax return.
12. The City received Taxpayer's payment for its March 2008 tax return on July 1, 2008.
13. Taxpayer had more than one delinquent tax returns or delinquent payments for the period of December 2006 through February 2007.
14. **Financial Institution** employees are dismissed if they misplace or lose any tax payments.
15. There was no evidence of any **Financial Institution** employee being dismissed for the handling of Taxpayer's March 2008 tax return/payment.

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. Taxes are due and payable on or before the twentieth day of the month next succeeding the month in which tax accrues.
3. Taxpayer's March 2008 tax payment was due on April 21, 2008.
4. The City did not receive Taxpayer's March 2008 tax return payment until July 1, 2008.
5. The City was authorized to assess penalties pursuant to Section 540.
6. Taxpayer has the burden of proof to demonstrate its tax payment for its March 2008 return was timely.
7. Taxpayer failed to demonstrate it filed a timely tax payment with its March 2008 tax return.
8. Taxpayer has failed to demonstrate it was entitled to a waiver pursuant to Section 540(f).
9. Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the October 28, 2008, protest by *Taxpayer ABC* of a protest of a penalty waiver denial by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer