

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 31, 2010
Decision: MTHO # 545
Taxpayer: *Taxpayer*
Tax Collector: City of Chandler
Hearing Date: February 18, 2010

DISCUSSION

Introduction

On September 30, 2009, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on February 18, 2010. Appearing for the City were *Tax Audit Supervisor*, and *Senior Tax Auditor*. Taxpayer failed to make an appearance. At the conclusion of the February 18, 2010 hearing, the Hearing Officer granted Taxpayer until March 22, 2010 to file additional documentation. On March 24, 2010, the Hearing Officer indicated no response had been filed by Taxpayer and as a result the record was closed. The Hearing Officer indicated a written decision would be issued on or before May 7, 2010.

DECISION

Taxpayer was the successor business to *Previous Owner*. At the time of the transfer; *Previous Owner* owed the City an estimated \$10,462.00 in taxes, \$1,023.60 in interest through June 2009, and penalties in the amount of \$2,376.87. Subsequently, Taxpayer provided additional documentation for the City to review. As a result of that review, the City revised the assessment to \$3,153.55 in taxes, interest up through August 2009 in the amount of \$94.90, and penalties totaling \$677.57. The City made the assessment pursuant to City Code Section 62-595 (“Section 595”). Section 595(d)(2) provides as follows: “If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.” Section 595 provides that: “A person’s successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector.” In this case, the City noted that Taxpayer failed to obtain any certificate.

In the protest letter, Taxpayer asserted it was not connected to *Previous Owner* and that

the tax matter should be addressed to the trustee for *Previous Owner*. In response, the City noted that Taxpayer is an Arizona LLC and its members are *Manager* and *Member*. The records from the Arizona Corporation Commission (“ACC”) show that the only officer for *Previous Owner* was *Officer* (President and Director). The City also noted that Taxpayer’s still advertises under the name “*Arizona Spa*” The advertising further indicated Taxpayer was “The Valley’s oldest and largest spa dealership.” Additionally, Taxpayer maintains four retail locations that were previously operated by *Previous Owner*. Based on all the above, the City requested the assessment be upheld.

Our December 23, 2009 letter granted Taxpayer an opportunity to file a reply to the City on or before January 13, 2010. We did not receive any reply. Taxpayer was granted a hearing on February 18, 2010 to reply to the City. Taxpayer failed to make an appearance. Our February 18, 2010 letter granted Taxpayer a post-hearing opportunity to file a reply to the City on or before March 22, 2010. Again, we received no reply. Based on the evidence, that Taxpayer acquired *Previous Owner*. We also conclude that *Previous Owner* owed the City for taxes, interest, and penalties at the time Taxpayer acquired *Previous Owner*. We further conclude that Taxpayer failed to obtain a certificate from the Tax Collector showing that no amount of taxes, interest, and penalties were owed to the City by *Previous Owner*. As a result, Taxpayer is liable pursuant to Section 595(d)(2) for payment of the amount of taxes, interest, and penalties required to be paid by *Previous Owner*. Taxpayer’s protest should be denied.

FINDINGS OF FACT

1. On March 31, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. Taxpayer acquired *Previous Owner*.
3. At the time of the transfer from *Previous Owner* to Taxpayer, *Previous Owner* owed the City an estimated \$10,462.00 in taxes for the period August 2006 through March 2009, \$1,023.60 in interest up through June 2009, and penalties in the amount of \$2,376.87.
4. Subsequently, Taxpayer provided the City additional documentation for the City to review.
5. After review of the additional documentation, the City revised the assessment to \$3,153.55 in taxes, interest up through August 2009 in the amount of \$94.90, and penalties totaling \$677.57.
6. Taxpayer is an Arizona LLC and its members are *Manager* (manager and member) and *Member*.
7. ACC records show that the only officer for *Previous Owner* was *Officer* (President

and Director).

8. Taxpayer still advertises under the name “*Arizona Spa*”.
9. The advertising indicated Taxpayer was “The Valley’s oldest and largest spa dealership.”
10. Taxpayer maintains four retail locations that were previously operated by *Previous Owner*.
11. Our December 23, 2009 letter granted Taxpayer an opportunity to file a reply to the City on or before January 13, 2010.
12. Taxpayer failed to file a reply to our December 23, 2009 letter.
13. Taxpayer was granted a hearing on February 18, 2010 to reply to the City.
14. Taxpayer failed to appear at the February 18, 2010 hearing.
15. Our February 18, 2010 letter granted Taxpayer a post-hearing opportunity to file a reply to the City on or before March 22, 2010.
16. Taxpayer failed to respond to our February 18, 2010 letter.

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 was the successor to *Previous Owner* pursuant to Section 595.
3. *Previous Owner* owed the City for taxes, interest, and penalties at the time Taxpayer became the successor to *Previous Owner*.
4. Taxpayer failed to obtain a certificate from the City pursuant to Section 595 showing that no amounts of taxes, interest, or penalties were owed to the City by *Previous Owner*.
5. Taxpayer is liable pursuant to Section 595(d)(2) for payment of the amount of taxes, interest, and penalties required to be paid by *Previous Owner*.
6. Taxpayer’s protest should be denied consistent with the Discussion, Findings, and

Conclusions, herein.

ORDER

It is therefore ordered that the September 30, 2009 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer