

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: May 19, 2011

Decision: MTHO # 607

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: March 21, 2011

DISCUSSION

Introduction

On August 25, 2010, 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 March 21, 2011. Appearing for Taxpayer was ***herself***. Appearing for the City were the ***Tax Audit Supervisor***, and the ***Senior Tax Auditor***. On April 11, 2011, the Hearing Officer closed the record and indicated a written decision would be issued on or before May 23, 2011.

DECISION

In March 2008, the City sent a letter to Taxpayer inquiring whether Taxpayer’s property at ***1234 Somewhere Place*** in the City was a rental unit. The City agreed to waive penalties if Taxpayer complied with providing the requested information. Taxpayer indicated she complied with the request in a timely manner. The City indicated they did not receive the response. The City sent a May 12, 2010 letter to Taxpayer with an estimated assessment for the period June 1, 2002 through June 30, 2010. The City concluded that Taxpayer owed additional taxes in the amount of \$2,301.23, interest up through May 2010 in the amount of \$541.49, and penalties totaling \$564.70. In addition there were \$42.00 in license fees and penalties. At that time, Taxpayer provided additional information which the City utilized to amend the assessment. The amended assessment was based on the actual rental amounts. Based on the amended assessment, Taxpayer owed additional taxes in the amount of \$640.92, interest up through July 2010 in the amount of \$61.57, and penalties totaling \$160.23. In addition, there were license fees and penalties totaling \$30.00.

Taxpayer protested the City’s inclusion of interest and penalties since Taxpayer believed she had fully complied with the City’s March 2008 letter. Taxpayer noted the property was only being rented because she is unable to sell the property. The City noted that City Code Section 62-540(a)(1) (“Section 540”) provides that “said interest may be neither

waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 62-570.” The City agreed to waive the penalties on the tax assessment but concluded the license fee penalty could not be waived pursuant to City Code Section 62-300(h) (“Section 300”). Section 300 provides that “if any person required to be licensed under this Chapter fails to obtain a license on or before the conducting of any business activity requiring such license, such person shall be subject to a penalty in the amount of one hundred fifty percent (150%) of the applicable fee for each event or period of time for which such fee would have been imposed from and after the date on which such activity commenced until paid.”

After review of this matter, we conclude that Taxpayer did comply in a timely manner with the City’s March 2008 request. Since Taxpayer has demonstrated reasonable cause pursuant to Section 540, it was appropriate for the City to waive all penalties associated with the tax assessment. As to the penalties on the license fee, we conclude those penalties are assessed when a taxpayer commences a business activity prior to obtaining a license pursuant to Section 300. Unlike Section 540, Section 300 does not contain a provision to waive penalties. We note that the City’s March 2008 letter informed Taxpayer that the license fee penalties could not be waived. Lastly, we conclude that Section 540 provides that interest cannot be waived or abated unless they relate to a tax that was abated. Since no taxes have been abated from the revised assessment, no interest may be waived or abated. Based on all the above, Taxpayer’s protest, with the exception of the penalties on the tax assessment, should be denied.

FINDINGS OF FACT

1. On August 25, 2010, Taxpayer filed a protest of a tax assessment made by the City.
2. In March 2008, the City sent a letter to Taxpayer inquiring whether Taxpayer’s property at *1234 Somewhere Place* in the City was a rental unit.
3. The City agreed to waive penalties if Taxpayer complied with providing the requested information.
4. Taxpayer complied with the City’s request in a timely manner.
5. The City sent a May 12, 2010 letter to Taxpayer indicating they failed to receive Taxpayer’s timely response.

6. The City's May 12, 2010 letter contained an estimated assessment for the period June 1, 2002 through June 30, 2010 for additional taxes due in the amount of \$2,301.23, interest up through May 2010 in the amount of \$541.49, and penalties totaling \$564.70.
7. In addition, there were \$42.00 in licensing fees and penalties.
8. Taxpayer provided additional information which the City utilized to amend the assessment.
9. Based on the amended assessment, Taxpayer owed additional taxes in the amount of \$640.92, interest up through July 2010 in the amount of \$61.57, and penalties totaling \$160.23.
10. In addition, there were license fees and penalties totaling \$30.00.

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. City Code Section 62-445 imposes a tax on the rental of real property in the City.
3. During the assessment period, Taxpayer was renting real property at ***1234 Somewhere Place*** in the City.
4. Taxpayer has demonstrated reasonable cause to have all penalties on the tax assessment waived.
5. Section 300 does not contain any provisions for waiving penalties.
6. Section 540 provides that interest cannot be waived or abated unless they relate to a tax that was abated.
7. Taxpayer's protest should be denied with the exception of the penalties waived on the tax assessment, consistent with the Discussion, Findings, and Conclusions, herein.

8. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the August 25, 2010 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby denied, with the exception of the penalties on the tax assessment, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Chandler shall remove all penalties, except for license fee penalties, from the assessment.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer