

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: May 18, 2012

Decision: MTHO # 683

Taxpayer:

Tax Collector: City of Douglas

Hearing Date: April 18, 2012

DISCUSSION

Introduction

On December 1, 2011, ***Taxpayer*** filed a letter of protest for MTHO # 683 of a tax assessment made by the City of Douglas (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on April 18, 2012. Appearing for Taxpayer was ***their representative***. Appearing for the City was the ***Interim Finance Director***. On April 20, 2012, the Hearing Officer closed the record and indicated a written decision would be issued on or before June 4, 2012.

DECISION

On October 7, 2011, the City issued an assessment to Taxpayer for additional taxes in the amount of \$7,661.48, interest up through August 2011 in the amount of \$752.24, and penalties in the amount of \$2,436.55. The assessment was for the business of rental of real property pursuant to City Code Section 5.04.445 (“Section 445”).

Prior to October 2010, the City utilized the Arizona Department of Revenue (“DOR”) to collect and enforce the City’s transaction privilege tax. According to the City, the DOR was very lax on enforcing Section 445. As a result, in October of 2010, the City began to collect and enforce its City Tax Code. The City sent out a March 23, 2010 letter to all the delinquent landlords in the City. The letter offered landlords with the opportunity to voluntarily remit the rental or leasing taxes owed for the 2009 tax year forward. The due date for compliance was April 16th, 2010. The City sent out a second letter on April 22, 2010 to those landlords that failed to respond to the March 23, 2010 letter. The second letter gave the landlords until May 7, 2010 in which to comply. On May 11, 2010, the City sent a third letter requesting compliance on or before May 31, 2010 or the City would seek an audit on the landlord’s business. Each of the letters was sent to Taxpayer’s ***property manager***. The landlord discussed the matter with the City but failed to voluntarily remit any taxes. On July 27, 2011, the City sent a letter to Taxpayer indicating it had been selected for an audit.

Taxpayer indicated it was not made aware of the tax until receipt of a July 27, 2011 certified mail from the City. Taxpayer requested the tax be applied commencing on October 2010 when the City notified local business owners of the reporting requirements on the City's web site. Alternatively, Taxpayer requested it receive the offer from the City's March 23, 2010 letter of remitting taxes for the 2009 tax year forward.

Clearly, Taxpayer was in the business of renting of real property during the audit period. As a result, Taxpayer was liable for tax on the gross income from the business pursuant to Section 445. In reviewing the City's March 23, 2010 letter, we note that even though the City requested taxpayers to voluntarily bring matters current from 2009 tax year forward, the City did not waive any tax liabilities for prior years. The notice on the City web site notified taxpayers that the City was going to begin to collect the City transaction privilege tax beginning in October 2010. The tax on rentals has been in the City Tax Code prior to that date with the DOR as the tax collector. While the DOR may have been lax on enforcing the tax code, we have seen nothing in writing that would indicate to a taxpayer that the tax authorized by Section 445 was being waived. While Taxpayer may not have been aware of the City's March 23, 2010 letter, we conclude its landlord did receive the letter and should have brought it to Taxpayer's attention. Based on all the above, we conclude the City's tax assessment was proper.

Lastly, we have the matter of interest and penalties. The City assessed Taxpayer for interest and penalties pursuant to City Code Section 5.04.540 ("Section 540"). Section 540 provides that interest may not be abated except as it relates to a tax abated. In this case, no tax was abated and as a result no interest may be abated. The City assessed Taxpayer for penalties pursuant to Section 540 for failure to file and failure to timely pay. The penalties may be waived for "reasonable cause". Reasonable cause is defined in Section 540 that a taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity. While we did not approve Taxpayer's protest of the underlying taxes, we do conclude that Taxpayer exercised ordinary business care and prudence. Accordingly, we shall waive all penalties.

FINDINGS OF FACT

1. On December 1, 2011, Taxpayer filed a letter of protest for MTHO # 683 of tax assessment made by the City.
2. On October 7 2011, the City issued an estimated assessment to Taxpayer for MTHO # 683 for additional taxes in the amount of \$7,661.48, interest up through August 2011 in the amount of \$752.24, penalties in the amount of \$2,436.55.
3. The assessment was for the business of rental of real property pursuant to Section 445.

4. Prior to October 2010, the City utilized the DOR to collect and enforce the City's transaction privilege tax.
5. According to the City, the DOR was very lax on enforcing Section 445.
6. In October of 2010, the City began to collect and enforce its City Tax Code.
7. The City sent out a March 23, 2010 letter to all the delinquent landlords in the City.
8. The letter offered landlords with the opportunity to voluntarily remit the rental or leasing taxes owed for the 2009 tax year forward.
9. The due date for compliance was April 16, 2010.
10. The City sent out a second letter on April 22, 2010 to those landlords that failed to respond to the March 23, 2010 letter.
11. The second letter gave the landlords until May 7, 2010 in which to comply.
12. On May 11, 2010, the City sent out a third letter requesting compliance on or before May 31, 2010 or the City would seek an audit on the landlord's business.
13. On July 27, 2011, the City sent a letter to Taxpayer indicating it had been selected for an audit.

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 in the business of renting of real property during the audit period.
3. The City's March 23, 2010 letter did not waive any tax liabilities for prior years.
4. The tax on rentals has been in the City Tax Code prior to the time the City began to collect the City transaction privilege tax beginning in October of 2010.

5. While the DOR may have been lax in enforcing the tax code, we have seen nothing in writing that would indicate to a taxpayer that the tax authorized by Section 445 was being waived.
6. While Taxpayer may not have been aware of the City's March 23, 2010 letter, we conclude that its landlord did receive the letter and should have brought it to Taxpayer's attention.
7. The City was authorized to assess interest and penalties pursuant to Section 540.
8. Since no taxes were abated in this matter, the interest may not be waived pursuant to Section 540.
9. Taxpayer has demonstrated reasonable cause to have all penalties waived in this matter.
10. Taxpayer's protest should be partly granted, and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.
11. The parties have timely appeal rights pursuant to Model City Tax Code Section-575.

ORDER

It is therefore ordered that the December 1, 2011 protest by *Taxpayer* of tax assessment made by the City of Douglas is hereby partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that all penalties in this matter are hereby waived.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer