

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 8, 2015

Decision: MTHO # 880

*Taxpayer*

### DISCUSSION

#### Introduction

On January 26, 2015, *Taxpayer* filed a letter of protest for a tax assessment made by the City of Phoenix (“City”). A hearing was held on October 26], 2015. Appearing for the City were the *Assistant City Attorney*, and a *Senior Tax Auditor*. Taxpayer failed to make an appearance. The City presented evidence. Subsequent to the hearing, Taxpayer was granted an opportunity to file additional documentation. Taxpayer filed a November 10, 2015 letter indicating no additional documentation would be filed. On November 21, 2015, the Hearing Officer indicated the record was closed and that a written decision would be issued to the parties on or before January 3, 2016.

### DECISION

On December 29, 2014, the City issued an estimated tax assessment to Taxpayer for taxes in the amount of \$46,966.50, interest up through November 2014 in the amount of \$2,209.66, and penalties of \$11,411.07. The assessment period was from October 2011 through November 2014. The tax assessment was issued pursuant to City Code Sections 19-445 and 19-446 (“Sections 445 & 446”). Sections 445 & 446 provide for a tax on the gross income from the business activity of engaging or continuing in the business of leasing, or renting real property located within the City for a consideration.

Taxpayer purchased an historical property at *123 Street* in the City historical district in 2005. A few years after purchasing the historical property, Taxpayer began using it as special events and wedding venue. Initially, Taxpayer attempted to obtain a use permit to use the home as a venue. Taxpayer was not successful in obtaining the use permit. However, Taxpayer continued to use the home as a wedding planner. After review of the matter, the City issued its estimated assessment. The estimated assessment was based on the cost of an event as quoted by Taxpayer in an email to the

City and was applied to the days of the month when weddings and special events usually occur: Friday, Saturday, and Sunday. Taxpayer was assessed under the commercial rental classification pursuant to Section 445(b). The City asserted that Taxpayer was receiving fees for the use of her home. According to the City, that would result in consideration that is considered as rental income pursuant to Section 445. The City argued that Taxpayer was trying to argue form over substance. The City asserted there was no evidence that Taxpayer ever planned a wedding for any other venue other than her home. While Taxpayer has argued the City's assessment was excessive, the City noted that Taxpayer has failed to provide documentation to support its position. If such documentation had been provided, the City asserted they would have reviewed it and made adjustments, if appropriate. The City also noted that there were instances where Taxpayer had collected tax but failed to remit the taxes to the City.

Taxpayer protested the assessment. According to Taxpayer, she is a wedding planner and all compensation is for those services. As of 2013, Taxpayer indicated it is no longer using the venue contract. Taxpayer Exhibit D states that "I charge for my services as your planner, and if you would like to get married in my garden it is your(s) to use at no charge". Taxpayer also questioned the City's assumption that Taxpayer had three events every weekend. Taxpayer argued that it could not schedule multiple events during a weekend as Friday was used for rehearsals, Saturdays were for the wedding, and Sunday was for everyone to pick up their gifts and other items. In addition, Taxpayer noted that it was difficult to hold weddings in the months of December, January, February, June, July, August, and parts of May and September because of the weather. Taxpayer provided a list of 64 events that were held. Taxpayer agreed it owed taxes on the proof of concept events in 2012. Taxpayer also had no issue with the penalties and interest as long as they were assessed on the proper amount.

We note that Taxpayer agreed taxes were due when it used the venue contract. Subsequently, it appears Taxpayer offered the exact same services only a different contract was used that was referred to as an "Event Planner Letter of Agreement" ("Agreement"). Even though the Agreement indicated there was no charge for the venue, we must conclude that there would not have been an agreement without the venue. We concur with the City's conclusion that Taxpayer is arguing form over substance and that Taxpayer is clearly renting her house for a commercial purpose. As a result, we concur with the City that Taxpayer is in the business of renting real property in the City pursuant to Sections 445 and 446. City Code Section 14-545 ("Section 545") provides that the City is permitted to make a reasonable estimate if a Taxpayer fails to file a return. The City's method of utilizing the cost of an event as quoted by Taxpayer was reasonable. Section 545 provides that the burden is on Taxpayer to show the estimate is not reasonable. While we concur with the City on the amount utilized per event, we are not convinced the number of events was reasonable under the circumstances. Taxpayer provided contracts for 65 events. The assessment included three events every week during the audit period or approximately 400 events. Based on Taxpayer's contracts and the extreme heat in the City during the summer, we conclude an average of two events per week would be more reasonable. Accordingly, we shall approve the City's assessment with an adjustment to two events per week. That number may still be too high; however, Taxpayer has not

provided sufficient documentation for any further reduction. Certainly failure to appear and testify under oath does not help Taxpayer's arguments.

While the City was authorized to assess penalties pursuant to City Code Section 540 ("Section 540"), those penalties may be waived for reasonable cause. In this case, Taxpayer has indicated it has no dispute with the penalties as long as the penalties are assessed on the proper amount. We have concluded the proper amount should be based on two events per week. Accordingly, we approve the penalties as assessed on the revised amount of taxes.

Based on all the above, we conclude that Taxpayer's protest should be denied, with the exception of the revision to two events per week, consistent with the Discussion, Findings, and Conclusions, herein.

### **FINDINGS OF FACT**

1. On January 26, 2015, Taxpayer filed a letter of protest for a tax assessment made by the City.
2. On December 29, 2014, the City issued an estimated tax assessment to Taxpayer in the amount of taxes of \$46,966.50, interest up through November 2014 in the amount of \$2,209.66, and penalties of \$11,411.07.
3. The assessment period was from October 2010 through November 2014.
4. Taxpayer purchased an historical property at *123 Street* in the City historical district in 2005.
5. A few years after purchasing the historical property, Taxpayer began using it for special events and as a wedding venue.
6. Taxpayer would use a "special events and wedding contract" which included a venue rental fee.
7. Taxpayer attempted to obtain a use permit to use the home as a venue.
8. Taxpayer was not successful in obtaining the use permit.
9. Taxpayer continued to use the home as a wedding planner and utilized an "event planner letter of agreement" which did not include any breakdown for venue rental

fees.

10. There was no evidence that Taxpayer held any wedding at any location other than her home.
11. The City's estimated assessment was based on the cost of an event as quoted by Taxpayer in an email to the City.
12. The cost of an event was applied to the days of the month when weddings and special events usually occur: Friday, Saturday, and Sunday.
13. The City assumed there were three events per week for each week of the assessment period.
14. Taxpayer provided copies of contracts that stated; "I charge for my services as your planner and if you would like to get married in my garden it is your(s) to use at no charge".
15. Taxpayer indicated she was not able to do multiple events during a weekend as Fridays are used for rehearsals, Saturdays are used for the wedding, and Sunday was for everyone to pick up their gifts and other items.
16. Taxpayer provided contracts for 65 events during the assessment period.
17. The City's assessment included an estimate of approximately 400 events.
18. There were contracts during the months of November 2012 and December 2012 for multiple events for a weekend.
19. Taxpayer did not dispute the assessment of penalties and interest as long as they were applied to the proper amounts.
20. During the assessment period, Taxpayer failed to file tax returns or pay taxes to the City.

### **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. Sections 445 and 446 impose a tax on the gross income from the business activity of engaging or continuing in the business of leasing, or renting real property located within the City for a consideration.
3. Taxpayer's wedding planner agreements include the use of her home for the wedding which results in consideration as rental income pursuant to Sections 445 and 446.
4. Section 545 provides that the City is permitted to make a reasonable estimate of taxes if a taxpayer fails to file a return.
5. Taxpayer failed to file tax returns during the assessment period so it was proper for the City to make a reasonable estimate of taxes.
6. Section 545 provides that Taxpayer must prove the City's estimate was not reasonable by providing sufficient documentation of the type and form required to the satisfaction of the Tax Collector.
7. With the exception of our reduction to two events per week, Taxpayer has failed to meet its burden of proof pursuant to Section 545.
8. City Code Section 19-360 requires all taxpayers to keep and preserve suitable records as may be necessary to determine the amount of tax for which they are liable.
9. The City was authorized to assess penalties pursuant to Section 540.
10. Penalties may be waived based on reasonable cause.
11. Taxpayer has failed to demonstrate reasonable cause to have the penalties waived.
12. Taxpayers protest should be denied, with the exception of the reduction in the number of events, consistent with the Discussion, Findings, and Conclusions, herein.
13. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

**ORDER**

It is therefore ordered that the January 26, 2015 protest by the *Taxpayer* of a tax assessment made by the City of Phoenix is hereby partly denied, and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is therefore ordered that the City of Phoenix shall revise the assessment by reducing the number of events to two per week.

It is further ordered that this Decision is effective immediately.

*Municipal Tax Hearing Officer*