

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 12, 2015

Decision: MTHO # 890

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: None

DISCUSSION

Introduction

On July 13, 2015, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Chandler (“City”). At the request of Taxpayer, this matter was classified as a redetermination. After submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on September 1, 2015 and indicated a written decision would be issued on or before October 15, 2015.

DECISION

The City initiated a “rental project” in 2005 to identify unlicensed rental locations in the City. As a result of that project, the City identified Taxpayer’s property located *nearby* as an unlicensed rental property. The City contacted Taxpayer by mail in 2006.. Taxpayer responded that the Property was in fact a rental and provided income information. A bill was prepared for the period of February 2005 through September 2006. All penalties were waived and Taxpayer paid the assessment. Taxpayer filed and paid on a quarterly basis through March 2011. At that time, Taxpayer cancelled the license with the City. In May of 2015, the City discovered that Taxpayer had the Property for rent. The City billed Taxpayer for rental tax for the period of April 2011 through June 2015. The amount due was for taxes of \$447.47, interest of \$27.14, penalties of \$107.99, and license fees of \$15.00. According to Taxpayer, an agreement was reached with the City whereby Taxpayer would pay the full assessment less the penalties of \$107.99. The City denied any agreement on waiving the penalties had been reached and continued to assess Taxpayer for the penalties. Taxpayer protested the penalties.

The City asserted that Taxpayer does not qualify for a waiver of penalties. Since no reasonable cause has been provided by Taxpayer, the City maintains the penalties are due.

City Code Section 445 (“Section 445”) imposes a tax on the gross income from the business activity upon every person engaging in the business of renting real property located in the City. In this case, there is no dispute that Taxpayer received rental income during the review period. Accordingly, the taxes assessed were proper.

City Code Section 540 (“Section 540”) authorizes the City to impose penalties when tax returns are not timely filed and when tax payments are not made on a timely basis. Those penalties may be waived for reasonable cause. “Reasonable cause” is defined in Section 540 as the taxpayer exercising ordinary business care and prudence, i.e., having a reasonable basis for believing the tax did not apply to its business activity. In this case, Taxpayer was clearly aware of the rental tax based on the previous assessment made in 2006. This is further corroborated by the fact the Taxpayer subsequently filed and paid quarterly taxes. As a result, we must conclude that Taxpayer has failed to meet its burden of proof pursuant to Section 540 to have the penalties waived. Accordingly, the penalties are not waived. We also note that City Code Section 541 (“Section 541”) does allow abatement of penalties in certain instances if a taxpayer is given erroneous advice by an employee of the City. However, the advice must be in writing. Otherwise, you end up as in this case where each side has a different recollection of what advice, if any, was given. Based on all the above, we conclude that Taxpayer’s protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. The City initiated a “rental project” in 2005 to identify unlicensed rental locations in the City.
2. The City identified Taxpayer’s Property as an unlicensed rental property.
3. The City contacted Taxpayer by mail in 2006.
4. Taxpayer responded to the City that the Property was in fact a rental property and provided income information.
5. A bill was prepared for the period of February 2005 through September 2006.
6. All penalties were waived and Taxpayer paid the assessment.

7. Taxpayer filed and paid quarterly taxes through March 2011.
8. Taxpayer cancelled the license with the City.
9. In May of 2015, the City discovered that Taxpayer had the Property for rent.
10. The City billed Taxpayer for taxes of \$447.47, interest of \$27.14, penalties of \$107.99, and license fees of \$15.00.
11. Taxpayer paid the full assessment less the penalties of \$107.99.
12. Taxpayer protested the penalties arguing the City had waived them.

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. Section 445 imposes a tax on the gross income from the business activity upon every person engaging in the business of renting real property within the City.
3. Taxpayer rented the Property during the assessment period and thus its gross income was taxable pursuant to Section 445.
4. The City was authorized pursuant to Section 540 to assess penalties in this matter.
5. Penalties pursuant to Section 540 may be waived for reasonable cause.
6. Taxpayer has not demonstrated reasonable cause to have any penalties waived in this matter.
7. Based on all the above, Taxpayer's protest should be denied, consistent with the Discussion, Conclusions, and Findings, herein.
8. The parties have timely rights of appeal to the Arizona Tax Court pursuant to

Model City Tax Code Section-575.

ORDER

It is therefore ordered that the July 13, 2015 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.

Municipal Tax Hearing Officer