

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 20, 2016

Decision: MTHO # 903

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: None

DISCUSSION

Introduction

On October 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 March 25, 2016 and indicated a written decision would be issued on or before May 9, 2016.

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 at ***12345*** (“Property”) as an unlicensed rental property. The City contacted Taxpayer by mail on July 2, 2015. Taxpayer responded on July 13, 2015. Taxpayer indicated the Property was rented commencing in September of 2014 for \$1,200.00 per month. After additional research, the City believed the Property may have been rented prior to September 2014. As a result, the City requested additional documentation from Taxpayer to substantiate the use of the Property prior to September 2014. Because, Taxpayer failed to provide the requested documentation, the City issued a Notice of Intent to Estimate (“Notice”) on September 25, 2015. Taxpayer replied to the Notice on October 15, 2015. As a result, the City calculated the amount of tax due for the period September 2014 through September 2015. Since Taxpayer failed to provide documentation for periods prior to September 2014, the City issued an Estimated Assessment (“Estimate”) for the period August 2008 through August 2014. The Estimate was for taxes in the amount of \$1,276.81, interest up through November 2015 in the amount of \$169.21, penalties in the amount of \$319.21, and \$17.00 in license fees.

Taxpayer filed a protest of the Estimate. Taxpayer indicated he travels a lot for work. Because he is gone so much, Taxpayer liked to have someone in the house while he was

traveling. As a result, Taxpayer permitted girl friends to live at the Property for free when he was gone. Taxpayer did not want to pay for water and electric and had those bills listed in the girlfriend(s) name. Taxpayer protested the assessment because he did not collect any rents. In addition, Taxpayer protested the City's use of the \$1200.00 per month rent all the way back to 2008.

The City noted that it reviews City water bills. In this case, there were other individuals listed for water service during the period of review. In addition, the City noted that Taxpayer's current address is listed in the City of Tempe and the Affidavit signed for purchase indicates Taxpayer's address was **678910**. As a result, the City concluded that Taxpayer was not living at the Property. The City requested Taxpayer provide statements from the tenants referred to as girlfriends as to possible compensation for the use of the Property. The City noted Taxpayer failed to provide any documentation. In response, Taxpayer indicated he had three ex-wives and three ex-girlfriends and he did not believe any of them would give him a written document. As to the monthly rental amounts, the City utilized an estimate from Zillow to corroborate Taxpayer's monthly rental of \$1200.00 per month was reasonable for the current period. As to earlier periods, the City concluded rental values have fluctuated very little over the past several years.

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. City Code Section 545 ("Section 545") provides that when no returns have been filed by a taxpayer, the City may make an estimate of the gross income based upon whatever information comes into its possession. Section 545 does require that the estimate must be made on a reasonable basis. In this case, the City utilized information provided by Taxpayer to make the estimate. Section 545 places the burden on Taxpayer to provide documentation satisfactory to the City to prove the City's estimate was not reasonable. In this case, the City requested documentation from Taxpayer to demonstrate the Property was not rented during the period of August 2008 through August of 2014. Taxpayer has failed to meet its burden of proof. Taxpayer also failed to provide any documentation to demonstrate the rental values in the City have been fluctuating. Based on all the above, we conclude the City's tax assessment was 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, ie., having a reasonable basis for believing the tax did not apply to its business activity. In this case, Taxpayer has demonstrated that he had a reasonable basis for believing he did not owe any taxes for the period August 2008 through August 2014. Accordingly, we have been persuaded that Taxpayer had reasonable cause as set forth in Section 540. Accordingly, the penalties are waived. Based on all the above, we conclude that Taxpayer' protest should be partly granted and partly 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 on July 2, 2015.
4. Taxpayer responded to the City on July 13, 2015.
5. Taxpayer indicated the Property was rented commencing in September 2014 for \$1200.00 per month.
6. After additional research, the City believed the Property may have been rented prior to September 2014.
7. The City requested additional documentation from Taxpayer to substantiate the use of the property prior to September 2014.
8. Taxpayer failed to provide the requested information.
9. The City issued an Estimate for the period August 2008 through August 2014 for additional taxes in the amount of \$1,276.81, interest up through November 2015 in the amount of \$169.21, license fees in the amount of \$17.00, and penalties totaling \$319.21.
10. Taxpayer travels a lot for work and likes to have someone at the Property while he is gone traveling.
11. Taxpayer has three ex-wives and three ex-girlfriends.
12. Taxpayer permitted girlfriends to live at the property while he was gone.
13. Taxpayer did not want to pay for water or electric and had those bills listed in the girlfriend(s) name.

14. Taxpayer's current address is listed in the City of Tempe and the Affidavit signed for purchase indicates Taxpayer's address was **678910**.
15. The City requested documentation from Taxpayer to demonstrate possible compensation for the use of the Property.
16. Taxpayer failed to provide the requested documentation.
17. The City utilized Zillow to corroborate Taxpayer's monthly rental of \$1200.00 per month was reasonable.

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 period August 2008 through August 2014 and thus its gross income was taxable pursuant to Section 445.
4. Section 545 provides that when no returns have been filed by a taxpayer, the City may make a reasonable estimate of the gross income based upon any information that comes into their possession.
5. Since Taxpayer failed to file tax returns, the City was authorized pursuant to Section 545 to make an estimate of gross income.
6. Section 545 places the burden of proof upon Taxpayer to provide documentation satisfactory to the City to prove the City estimate was not reasonable.
7. Taxpayer did not provide sufficient documentation to prove the City's estimate was not reasonable.

8. The City was authorized pursuant to Section 540 to assess penalties in this matter.
9. Penalties pursuant to Section 540 may be waived for reasonable cause.
10. Taxpayer has demonstrated reasonable cause to have all penalties waived in this matter.
11. Based on all the above, Taxpayer's protest should be partly denied and partly granted, consistent with the Discussion, Conclusions, and Findings, herein.
12. 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 October 13, 2015 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered the City of Chandler shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer