

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 22, 2003
Decision: MTHO #134
Tax Collector: City of Tucson
Hearing Date: None

DISCUSSION

Introduction

On May 1, 2003, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Tucson ("City"). After review, the City concluded on August 4, 2003 that the protest was timely and in the proper form. On August 21, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") classified this matter as a hearing and ordered the City to file a response on or before October 6, 2003. On September 8, 2003, the City filed a response. On September 10, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before October 1, 2003. The Taxpayer filed a reply on September 21, 2003. On September 30, 2003, the Hearing Officer ordered the Taxpayer to provide clarification by October 14, 2003 whether they desired a hearing or redetermination. On October 6, 2003, the Taxpayer clarified that they desired a redetermination. On October 13, 2003, the Hearing Officer reclassified the matter as a redetermination and ordered the City to respond to the additional information provided by the Taxpayer on or before October 31, 2003. On October 22, 2003, the City filed its response. On October 27, 2003, the Hearing Officer ordered the Taxpayer to reply on or before November 12, 2003. On November 24, 2003, the Hearing Officer filed a letter indicating the Taxpayer had not filed a reply and as a result the record was closed and a written decision would be issued on or before January 8, 2004.

City Position

The City conducted an audit of the Taxpayer for the period April 1999 through January 2003. The City assessed the Taxpayer for rental income from tenants at _____, _____, and _____ N. _____ Road pursuant to City Code Section. 19-450 ("Section 450"). Because the Taxpayer failed to provide documentation requested by the City, the City did an estimate to arrive at a tax assessment of \$7,319.47 plus interest. The City also assessed the Taxpayer for penalties pursuant to City Code Section 19-540 (b) ("Section 540 (b)") totaling \$2,288.06. The City estimate was based on unreported property taxes and undocumented changes in reported rental income on the tax returns. Base rent was determined using the leases between the Taxpayer and the tenants as well as information on some of the check stubs provided by the Taxpayer. According to the City, the leases outlined the responsibilities of the tenants to pay rent, sales taxes, monthly common area maintenance fees, and property taxes. City Code Section 445 ("Section 445") provides that the gross income for the rental of real property includes "payments made by the lessee to, or on

behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the gross income.”

As part of the audit process, the City made numerous calls and left messages with the Taxpayer in an effort to obtain documentation to complete the audit. As few records were forthcoming, the City sent an estimated assessment to the Taxpayer on April 8, 2003. The City argued that pursuant to City Code Section 19-350 (a) (“Section 350”) the Taxpayer is required to “keep and preserve suitable records”. According to the City, the records provided throughout the audit process were inadequate to support the Taxpayer’s arguments. As a result, the City requested the assessment be upheld.

In response to the Taxpayer’s assertion that there was an error in the April 1999 audited income figure, the City noted the difference consisted of sales tax collected on rent and property tax receipts from the tenants. According to the City, they had allowed the difference as a deduction in the audit work papers and no further adjustment was necessary. The Taxpayer claimed gross receipts of \$30,227.05 less than the City audited receipts for October 1999. The primary difference, according to the City, was because the Taxpayer had asserted they had not received payment from a tenant for property taxes. The City made no adjustment because the Taxpayer failed to provide any documentation to support its assertion. While the Taxpayer asserted that all three tenants made no rental payments for November 1999 and double payments for December 1999, the City did not make any adjustment because the Taxpayer failed to provide any documentation to support its assertion.

In response to the Taxpayer’s assertion that the audited income was incorrect from March and April of 2001, the City argued that the Taxpayer failed to provide any documentation to demonstrate that the March 23, 2001 check for property tax from one tenant was received in April of 2001. The City also disputed the Taxpayer’s claim that the City overstated the income for the combined months of March and April 2001. According to the City, the difference was based on sales tax collected on property tax payments and an increase in common area maintenance fees of \$17.00 per month. After review, the City agreed with the Taxpayer’s assertion that the rental amount from May 2001 through January 2003 was \$94,686.30. As to the Taxpayer’s assertion that *Tenant* over paid sales taxes for the period of July 1997 through May 1999 there was no evidence of any reduction in rental income reported by the Taxpayer in June 1999. Further, there was no documentation from the Taxpayer to show how the matter was dealt with. As a result, the City made no adjustment.

Lastly, the City noted that the City tax returns showed that the Taxpayer had reported the property tax payment for the second half of 2002 on the December 2002 tax return. Based on the Pima County Assessor’s property tax records, the City determined the payment was actually paid in May 2003. As a result, the City assumed the December 2002 return was in error reflecting a duplicate payment for the October 2002 payment. For that reason, the City reduced the Taxpayer’s audited income for the tax payment. Subsequently, the City has determined that the Taxpayer did not report the property tax in May 2003. Consequently, the City requested approval to amend the assessment to include the property tax as part of the assessment for either December 2002 or May 2003.

Taxpayer Protest

The Taxpayer protested the original assessment of \$8,947.94 because of alleged errors made by the City during its audit. The Taxpayer provided the City with additional documentation to support its protest. After review, the City revised the assessment to \$6,357.71. The Taxpayer continued to protest the revised assessment for alleged errors. According to the Taxpayer, the City overstated April 1999 revenues, October 1999, and November 1999 revenues. The Taxpayer asserted that for the period November 2001 through April 2001, they had reported gross income that was less than the actual gross income but had reported the correct taxes based on the actual gross income. The Taxpayer also argued that the City overstated the combined income for March and April of 2001 by \$2,158.03. According to the Taxpayer, the City included income for \$94,739.47 or \$94,768.37 for May 2001 though January 2003. The Taxpayer asserted the actual income amount was \$94,686.30. Lastly, the Taxpayer indicated that **Tenant** had overpaid sales tax for the period July 1997 though May 1999 the amount of \$4,359.88. **Tenant** took a credit for this amount on their June 1999 rent payment. Based on all the above, the Taxpayer requested an adjustment to the City's assessment.

ANALYSIS

The Taxpayer had rental income from real property, which was taxable pursuant to City Code Section 19-450 ("Section 450"). In this case, the only issue is whether or not the City assessment was made on the proper income level. Based on the evidence presented, the Taxpayer did not provide the documentation requested by the City and as required by Section 350. As a result, the City had to make an assessment based on the information it had available. Part of that information showed that the payment of the tenants included property taxes. As a result, it was reasonable and prudent for the City to include property taxes as part of the assessment. It was not proper for the City to remove the property taxes included with the December 2002 return. For that reason, we shall order the City to revise their assessment to include the property tax as part of the December 2002 return. The Taxpayer also provided evidence that proper rental amounts from May 2001 through January 2003 were \$94,686.30. As a result, the City shall revise the assessment to reflect that amount. While it appears based on the April 30, 1999 letter from **Tenant** that the June 1999 rent should be reduced by \$4,359.88, we share the concerns of the City that the same rental income was reported in June 1999. Further, we gave the Taxpayer an opportunity to reply to the City's October 22, 2003 recommendations and the Taxpayer failed to file a reply. As a result, we must conclude that the Taxpayer does not dispute the concerns of the City. Accordingly, we cannot recommend any adjustment for the April 30, 1999 **Tenant** letter. With the exception of those items approved herein, the protest of the Taxpayer shall be denied.

FINDINGS OF FACT

1. On May 1, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on August 4, 2002 that the protest was timely and in the proper form.
3. On August 21, 2003, the Hearing Officer classified this matter as a hearing and ordered the City to file a response on or before October 6, 2003.
4. On September 8, 2003, the City filed a response.
5. On September 10, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before October 1, 2003.
6. The Taxpayer filed a reply on September 21, 2003.
7. On September 30, 2003, the Hearing Officer ordered the Taxpayer to provide clarification by October 14, 2003 whether they desired a hearing or redetermination.
8. On October 6, 2003, the Taxpayer clarified that they desired a redetermination.
9. On October 13, 2003, the Hearing Officer reclassified this matter as a redetermination and ordered the City to respond to the additional information provided by the Taxpayer on or before October 31, 2003.
10. On October 22, 2003, the City filed its response.
11. On October 27, 2003, the Hearing Officer ordered the Taxpayer to reply on or before November 12, 2003.
12. On November 24, 2003, the Hearing Officer filed a letter indicating the Taxpayer had not filed a reply and as a result the record was closed and a written decision would be issued on or before January 8, 2004.
13. The City conducted an audit of the Taxpayer for the period April 1999 through January 2003.
14. The City assessed the Taxpayer for rental income from tenants at _____, _____, and _____N. _____Road pursuant to Section 450.
15. Because the Taxpayer failed to provide documentation requested by the City, the City did an estimate to arrive at a tax assessment of \$7,319.47 plus interest.

16. The City also assessed the Taxpayer for penalties pursuant to Section 540 (b) totaling \$2,288.06.
17. Subsequently, the City waived the penalties.
18. The City estimate was based on unreported property taxes and undocumented changes in reported rental income on the tax returns.
19. Base rent was determined using the leases as information on some of the check stubs provided by the Taxpayer.
20. The leases outlined the responsibilities of the tenants to pay rent, sales taxes, monthly common area maintenance fees, and property taxes.
21. As part of the audit process, the City made numerous calls and left messages with the Taxpayer in an effort to obtain documentation to complete the audit.
22. As few records were forthcoming, the City sent an estimated assessment to the Taxpayer on April 8, 2003.
23. The records provided throughout the audit process were inadequate to support the Taxpayer's arguments.
24. The Taxpayer failed to provide any documentation to demonstrate that the March 23, 2001 check for property tax from one tenant was received in April of 2001.
25. The difference between the income as stated by the Taxpayer and by the City for the months of March and April of 2001 was based on sales tax collected on property tax payments and an increase in common area maintenance fees of \$17.00 per month.
26. The rental amounts from May 2001 through January 2003 were \$94,686.30.
27. There was no evidence of any reduction in rental income reported by the Taxpayer in June 1999 for *Tenant*.
28. The City failed to assess the Taxpayer for the property tax payment for the second half of 2002.
29. The Taxpayer failed to provide documentation to demonstrate that three tenants made no rental payments for November 1999.

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. The Taxpayer had rental income from real property, which was taxable pursuant to Section 450.
 3. Section 445 provides that the gross income for the rental of real property included “payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the gross income”.
 4. Pursuant to Section 350, the Taxpayer is required to “keep and preserve suitable records”.
 5. With the exceptions noted herein, the Taxpayer has failed to meet its burden of providing documentation to support its allegations.
 6. With the exceptions noted herein, the Taxpayer’s protest should be denied.

ORDER

It is therefore ordered that the May 1, 2003 protest of *Taxpayer* of a tax assessment made by the City of Tucson is hereby denied.

It is further ordered that the City of Tucson shall revise its assessment to include the property taxes as part of the December 2002 return.

It is further ordered that the City of Tucson shall revise its assessment to reflect rental amounts from May 2001 through January 2003 of \$94,686.30.

It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer