

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 30, 2009

Decision: MTHO # 474

Taxpayers: *Taxpayer One, Two and Three*

Tax Collector: City of Mesa

Hearing Date: May 26, 2009

DISCUSSION

Introduction

On November 24, 2008, a protest was filed by *Taxpayer One*; *Taxpayer Two*; and, *Taxpayer Three* (collectively, all three referred to as “Taxpayers”). After review, the City of Mesa (“City”) concluded on December 30, 2008 that the protest was timely and in the proper form. On January 8, 2009, the Municipal Tax hearing Officer (“Hearing Officer”) ordered the City to file any response to the protest on or before February 23, 2009. On February 9, 2009, Taxpayers filed a request for ADA accommodations. On February 11, 2009, the Hearing Officer requested Taxpayers clarify if they wanted the matter reclassified from a hearing to a redetermination. On February 19, 2009, the City filed a response to the protest. On February 24, 2009, the Hearing Officer ordered Taxpayers to file any reply on or before March 17, 2009. The City appeared and presented evidence at the May 26, 2009 hearing while Taxpayers failed to make an appearance. On May 27, 2009, the Hearing Officer granted Taxpayers until June 26, 2009 to provide additional documentation. On June 27, 2009, the Hearing Officer indicated Taxpayers had failed to file a response and as a result the record was closed and a written decision would be issued on or before August 11, 2009.

City Position

The City conducted an audit of *Taxpayer One* for the period of June 2002 through June 2008, of *Taxpayer Two* for the period of March 2006 through June 2008, and of *Taxpayer Three* for the period of November 2007 through June 2008. As a result of the audits, the City assessed: *Taxpayer One* for taxes in the amount of \$7,206.97, interest up through July 31, 2008 in the amount of \$2,521.54, penalties of \$1,793.81, and a license fee of \$50.00; *Taxpayer Two* for taxes in the amount of \$2,510.32, interest up through July 31, 2008 in the amount of \$231.68, penalties of \$619.30, and a license fee of \$50.00; and, *Taxpayer Three* for taxes in the amount of \$405.04, interest up through July 31, 2008 in the amount of \$7.06, penalties of \$93.61, and a license fee of \$50.00.

The City indicated that all of the assessments involved the tax on the rental of residential

real property pursuant to City Code Section 5-10-445 (“Section 445”).

The City noted that all three assessments were estimates due to Taxpayers’ failure to respond to City requests for documents. The City had determined an average rental value per residential real property located in the City which is utilized when taxpayers fail to provide any documentation. *Taxpayer One* was assessed on the rentals of 4-Plexs located at *Location 1a*, at *Location 1b*, and at *Location 1c*. In addition, *Taxpayer One* was taxed on single family residences at *Location 1d* and *Location 1e*. In March 2006, the *Location 1a* and *Location 1c* properties were transferred and *Taxpayer Two* became liable for the rental taxes. In November 2007, the *Location 1a* property was again transferred and *Taxpayer Three* became liable for the rental tax.

In response to Taxpayers, the City asserted that City Code Section 5-10-210 (“Section 210”) provides that transactions between related parties are subject to tax. The City argued that Taxpayers failed to provide any reasons why any of the rental income should be exempt.

The City indicated penalties were imposed on Taxpayers for failing to file tax returns and failing to timely pay taxes pursuant to City Code Section 5-10-545 (“Section 545”). The City also noted that Section 545 authorizes the use of an estimate when no returns are filed. The City argued that Taxpayers have failed to provide any documentation to prove the City’s estimates were unreasonable. Based on all the above, the City requested that the assessments be upheld.

Taxpayers Position

Taxpayers disputed the assessments made by the City. *Taxpayer One* asserted the *Location 1b* property was vacant. Taxpayers also claimed that some of the rental properties were exempt because family members were living there.

ANALYSIS

There was no dispute that Taxpayers owned rental properties in the City during the respective audit periods that were taxable pursuant to Section 445. The only disputes presented were the amount of rental income and whether or not any of the amounts were exempt from the City tax. We note that City Code Section 360 provides that all exemptions are subject to a taxpayer providing sufficient documentation.

Taxpayers were given several opportunities to provide documentation to support any exemption claims but no documentation was provided. Accordingly, we conclude that Taxpayers failed to meet their burden of proof pursuant to Section 360 for any exemption claims. As to the amount of income, the City was authorized pursuant to Section 545 to estimate the amount of income/taxes since no tax returns were ever filed. Further, we conclude the City’s method of utilizing an average amount per square foot for City residential property to be a reasonable method. Lastly, we conclude that Taxpayers have

failed to meet their burden of proof pursuant to Section 545 to show the City's estimate was not reasonable and correct.

The City was authorized pursuant to Section 540 to assess penalties. While penalties may be waived for reasonable cause, we conclude Taxpayers have failed to provide any reasonable cause to have the penalties waived. Based on all the above, we find that Taxpayers' protests should be denied.

FINDINGS OF FACT

1. On November 24, 2008, a protest was filed by Taxpayers of a tax assessment made the City.
2. After review, the City concluded on December 30, 2008 that the protest was timely and in the proper form.
3. On January 8, 2009, the Hearing Officer ordered the City to file any response to the protest on or before February 23, 2009.
4. On February 9, 2009, Taxpayers filed a request for ADA accommodations.
5. On February 11, 2009, the Hearing Officer requested that Taxpayers clarify if they want the matter reclassified from a hearing to a redetermination.
6. On February 19, 2009, the City filed a response to the protest.
7. On February 24, 2009, the Hearing Officer ordered Taxpayers to file any reply on or before March 17, 2009.
8. The City appeared and presented evidence at the May 26, 2009 hearing while Taxpayers failed to make an appearance.
9. On May 27, 2009, the Hearing Officer granted Taxpayers until June 26, 2009 to provide additional documentation.
10. On June 27, 2009, the Hearing Officer indicated Taxpayers had failed to file a response and a result, the record was closed and a written decision would be issued on or before August 11, 2009.
11. The City conducted an audit of *Taxpayer One* for the period of June 2002 through June 2008, of *Taxpayer Two* for the period of March 2006 through June 2008, and of *Taxpayer Three* for the period of November 2007 through June 2008.
12. The City assessed: *Taxpayer One* for taxes in the amount of \$7,206.97, interest up through July 31, 2008 in the amount of \$2,521.54, penalties of \$1,793.81, and a

license fee of \$50.00; *Taxpayer Two* for taxes in the amount of \$2,510.32, interest up through July 31, 2008 in the amount of \$231.68, penalties of \$619.30, and a license fee of \$50.00; and, *Taxpayer Three* for taxes in the amount of \$405.04, interest up through July 31, 2008 in the amount of \$7.06, penalties of \$93.61, and a license fee of \$50.00.

13. The City has determined an average rental value for residential real property located in the City.
14. *Taxpayer One* was assessed on the rentals of 4-Plexs located at *Location 1a*, at *Location 1b*, and at *Location 1c*.
15. *Taxpayer One* was taxed on single family residences at *Location 1d* and *Location 1e*.
16. In March 2006, the *Location 1a* and *Location 1c* properties were transferred and *Taxpayer Two* became liable for the rental taxes.
17. In November 2007, the *Location 1a* property was again transferred and *Taxpayer Three* became liable for the rental tax.

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. Taxpayers owned rental properties in the City during their respective audit periods pursuant to Section 445.
3. All claimed exemptions are subject to Taxpayers providing sufficient documentation pursuant to Section 360.
4. Taxpayers failed to provide any documentation to support claimed exemptions pursuant to Section 360.
5. The City was authorized pursuant to Section 545 to estimate the amount of income/taxes since Taxpayers failed to file any tax returns
6. The City's method of utilizing the average amount per square foot for City residential property was a reasonable method.
7. Taxpayers have failed to meet their burden of proof of demonstrating the City's estimates were unreasonable.

8. The City was authorized pursuant to Section 540 for assessing penalties for failure to file tax returns and failure to timely pay taxes.
9. Taxpayers have failed to demonstrate reasonable cause to have the penalties waived.
10. Based on the Discussion, Findings, and Conclusions herein, Taxpayers' protests should be denied.

ORDER

It is therefore ordered that the November 24, 2008 protest by *Taxpayer One*, *Taxpayer Two*; and *Taxpayer Three* of tax assessments made by the City of Mesa is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer