

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 22, 2009

Decision: MTHO # 487

Taxpayer: *Family Living Trust*

Tax Collector: City of Mesa

Hearing Date: October 1, 2009

DISCUSSION

Introduction

On January 14, 2009, a letter of protest was filed by *Family Living Trust* (“Taxpayer”) of a tax assessment made by the City of Mesa (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on October 1, 2009. Appearing for Taxpayer was *Person 1*, *Person 2* and *Mr. ABC*. Appearing for the City were *Assistant City Attorney*, *Tax Audit Supervisor*, and *Senior Tax Auditor*. At the conclusion of the October 1, 2009 hearing, the record was closed and the Hearing Officer indicated a written decision would be issued on or before November 16, 2009.

DECISION

Taxpayer is the owner of the real property located at *1234 Mesa Property* (“*Mesa Property*”) in the City. The *Mesa Property* is occupied by *Mr. ABC*, a sole proprietor. *Mr. ABC* is one of the trustees of Taxpayer. At the request of the City, Taxpayer provided an estimate of the market value for the rental of the *Mesa Property*. The City accepted Taxpayer’s estimate as being reasonable. On December 19, 2008, the City completed a non-audit compliance assessment of Taxpayer for the period of July 2004 through December 2008. As a result, the City assessed Taxpayer for additional taxes in the amount of \$2,893.68, interest up through November 2008 in the amount of \$439.69, penalties totaling \$697.72, and a license fee of \$50.00. Taxpayer protested the assessment because from a Federal and Arizona income tax perspective, no difference exists between a living trust and a sole proprietor. The City noted that City Code Section 5-10-100 (“Section 100”) defines a “person”. That definition specifically includes an individual and a trust to be distinct separate legal entities. *Mr. ABC* acknowledged that he paid the mortgage, property tax, and insurance on behalf of Taxpayer. Section 100 includes a definition of “business” which means all activities engaged in with the object of gain, benefit, or advantage. As a result, Taxpayer was in business since it derived a gain, benefit, or advantage by having *Mr. ABC* pay the mortgage payment, property taxes, and insurance on the *Mesa Property*. City Code Section 5-10-445 (“Section 445”) imposes a tax on the gross income from the business activity upon each person engaged in the business of leasing or renting real property for consideration. Based on all the above, we

must conclude that Taxpayer was engaged in the business of renting the *Mesa Property* pursuant to Section 445. City Code Section 5-10-210 (“Section 210”) requires transactions between affiliated persons to be subject to tax based on the market value. The only evidence presented on the market value was from Taxpayer. After review, the City accepted Taxpayer’s market value. Accordingly, we approve the City’s use of Taxpayer’s market value and approve the City’s tax assessment.

Since Taxpayer failed to timely file tax returns or timely pay taxes, the City was authorized pursuant to City Code Section 5-10-540 (“Section 540”) to impose penalties. Section 540 provides the penalties may be waived when a taxpayer demonstrates reasonable cause. At the hearing, the City acknowledged that Taxpayer had presented reasonable cause. Accordingly, all penalties in this matter are waived. Based on all the above, Taxpayer’s protest should be partly, granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On January 14, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. On December 19, 2008, the City completed a non-audit compliance assessment of Taxpayer for the period of July 2004 through December 2008.
3. The City assessed Taxpayer for additional taxes in the amount of \$2,893.68, interest up through November 2008 in the amount of \$439.69, penalties totaling \$697.72, and a license fee of \$50.00.
4. Taxpayer is the owner of the *Mesa Property*.
5. The *Mesa Property* is occupied by *Mr. ABC*, a sole proprietor.
6. *Mr. ABC* is one of the trustees for Taxpayer.
7. *Mr. ABC* paid the mortgage, property tax, and insurance on the *Mesa Property* on behalf of Taxpayer.
8. Taxpayer provided an estimate of the market value for the rental of the *Mesa Property*.
9. The City accepted Taxpayer’s market value estimate as being reasonable.
10. Taxpayer failed to timely file tax reports or timely pay taxes.
11. Because a living trust and a sole proprietor were the same for Federal and Arizona

income taxes, Taxpayer believed they would be the same for City transaction privilege tax purposes.

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 of renting real property for a consideration.
3. Pursuant to Section 100, Taxpayer and **Mr. ABC** were separate legal entities.
4. Pursuant to Section 100, Taxpayer derived a gain, benefit, or advantage by having **Mr. ABC** pay the mortgage, property taxes, and insurance on the **Mesa Property**.
5. Taxpayer was in the business of renting the **Mesa Property** pursuant to Section 445.
6. Section 210 requires transactions between affiliated persons to be subject to tax based on market value.
7. Taxpayer provided evidence of the market value for the rental of the **Mesa Property**.
8. Taxpayer's estimate of the market value was reasonable and should be approved.
9. Since Taxpayer failed to timely file reports or timely pay taxes, the City was authorized pursuant to Section 540 to assess penalties.
10. Taxpayer has demonstrated reasonable cause for failing to file and failing to timely pay taxes.
11. All the penalties in this matter should be waived.
12. Taxpayer's protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the January 14, 2009 protest by *Family Living Trust* of a tax assessment made by the City of Mesa is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

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

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer