

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 11, 2012

Decision: MTHO # 693

Taxpayer:

Tax Collector: City of Phoenix

Hearing Date: June 12, 2012

DISCUSSION

Introduction

On January 12, 2012, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Phoenix (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on June 12, 2012. Appearing for the City were the ***Assistant City Attorney***, the ***Tax Audit Supervisor***, a ***Senior Tax Auditor***, and a ***Tax Auditor***. Taxpayer appeared on his own behalf. On June 13, 2012, the Hearing Officer indicated the record was closed and a written decision would be issued on or before July 27, 2012.

DECISION

On January 12, 2012, the City issued an estimated assessment to Taxpayer pursuant to City Code Section 14-545 (“Section 545”). The assessment was for \$8,371.70 for the period January 2007 through November 2009. The assessment was completed using previously reported income. On January 31, 2012, the assessment was adjusted to \$1,812.34 due to an error on the monthly taxable revenues used to make the estimate. On April 12, 2012, the assessment was again adjusted as the assessment period should have only included the period of December 2009 through October 2011. The latest assessment was for taxes in the amount of \$546.25, penalties for failure to file and failure to timely pay in the amount of \$136.68, and interest up through May 2012 in the amount of \$27.96.

The City indicated Taxpayer was the owner of the property located at ***12345 N. Somewhere (“Somewhere Property”)*** in the City. There is a car rental business operating under the name ***Rent-A-Car Business (“RACB LLC”)*** from the ***Somewhere Property***. Taxpayer is a managing member of ***RACB LLC***. Because Taxpayer and ***RACB LLC*** were different legal entities, the City concluded a rental exists between the two legal entities and assessed Taxpayer for rental income pursuant to City Code Section 14-445 (“Section 445”). The City also assessed Taxpayer for penalties pursuant to City Code Section 14-540 (“Section 540”) since Taxpayer has been licensed with the City under the

business activity of Commercial Rental since 1998 and should have been aware of his tax liabilities.

Taxpayer argued that he did not own the *Somewhere Property* and asserted it was owned by *RACB LLC*. Further, Taxpayer asserted that he did not receive any rental income from *RACB LLC*.

City Code Section 14-100 (“Section 100”) defines a “person” to mean an individual, partnership, joint venture, association, etc. It further indicates a person shall be considered a distinct and separate person from any general or limited partnership with which such person is affiliated. It’s clear from the record that Taxpayer and *RACB LLC* were separate persons pursuant to Section 100. While Taxpayer has argued the *Somewhere Property* was owned by the *RACB LLC*, the evidence does not support that assertion. The loan agreement for the *Somewhere Property* lists Taxpayer as the borrower. The April 28, 1998 disclaimer deed indicates Taxpayer was the owner of the *Somewhere Property*. Taxpayer has not provided sufficient evidence to persuade the Hearing Officer that *RACB LLC* owned the *Somewhere Property*. Since *RACB LLC* and the *Somewhere Property* were owned by different persons, *RACB LLC* was receiving the benefit of using Taxpayer’s real property. As a result, it was proper for the City to assess Taxpayer for rental income pursuant to Section 445. Since no monies appeared to change hands between Taxpayer and *RACB LLC*, it was proper for the City to determine the “market value” pursuant to City Code Section 14-210 (“Section 210”). Section 210 applies when transactions between affiliated companies or persons is not indicative of the market value. Section 545 requires any estimate by the City to be reasonable. It further provides that it is the responsibility of the taxpayer to prove the estimate is not reasonable by providing sufficient documentation. In this case, Taxpayer has not provided sufficient documentation to prove the City’s estimate for the rental income was not reasonable.

Lastly, the City was authorized to assess penalties pursuant to Section 540 since Taxpayer failed to file tax returns or timely pay taxes. Those penalties may be waived if there is reasonable cause. “Reasonable cause” is defined in Section 540 to mean the taxpayer exercised ordinary business care and prudence. Taxpayer indicated he had paid a previous assessment. As a result, we conclude that Taxpayer either knew or should have known of the requirement to report rental income. Accordingly, we do not find Taxpayer has demonstrated reasonable cause to have the penalties waived. Based on all the above, we conclude Taxpayer’s January 12, 2012 protest should be denied.

FINDINGS OF FACT

1. On January 12, 2012, Taxpayer filed a protest of a tax assessment made by the City.
2. On January 12, 2012, the City issued an estimated assessment to Taxpayer for \$8,371.70 for the period January 2007 through November 2009.
3. The assessment was completed using previously reported income.
4. On January 31, 2012, the City adjusted the assessment to \$1,812.34 due to an error on the monthly taxable revenues used to make the assessment.
5. On April 12, 2012, the assessment was again adjusted as the assessment period should have only included the period of December 2009 through October 2011.
6. The latest assessment was for taxes in the amount of \$546.25, penalties for failure to file and failure to timely pay in the amount of \$136.68, and interest up through May 2012 in the amount of \$27.96.
7. Taxpayer was the owner of the Washington Property.
8. *RACB LLC* operated its business from the *Somewhere Property*.
9. Taxpayer is a managing member of *RACB LLC*.
10. There was no rental agreement between Taxpayer and *RACB LLC*.
11. The loan agreement for the *Somewhere Property* lists Taxpayer as the borrower.
12. The April 28, 1998 disclaimer deed indicates Taxpayer was the owner of the *Somewhere Property*.

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 of rental of real property.
3. Pursuant to Section 100, Taxpayer and **RACB LLC** were separate persons.
4. Taxpayer has not provided sufficient evidence to persuade the Hearing Officer that **RACB LLC** owned the **Somewhere Property**.
5. **RACB LLC** was receiving the benefit of using Taxpayer's real property.
6. Taxpayer was in the business activity of rental of real property pursuant to Section 445.
7. Since Taxpayer and **RACB LLC** were affiliated companies, it was proper for the City to determine market value pursuant to Section 210.
8. Taxpayer failed to provide sufficient documentation pursuant to Section 545 to prove the City's estimate was not reasonable.
9. The City was authorized pursuant to Section 540 to assess penalties for failure to timely file and failure to timely pay taxes.
10. Taxpayer has failed to demonstrate reasonable cause to have the penalties waived.
11. The City's April 12, 2012 revised assessment should be approved.
12. Taxpayer's January 12, 2012 protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.
13. 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 January 12, 2012 protest by **Taxpayer** of a tax assessment made by the City of Phoenix should be denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Phoenix shall revise its assessment consistent with their April 12, 2012 revisions.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer