

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 6, 2016

Decision: MTHO # 910

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: None

DISCUSSION

Introduction

On June 6, 2016, 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 14, 2016. October 1, 2016 and indicated a written decision would be issued on or before November

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 North Somewhere*** (“Property”) as an unlicensed rental property. The City contacted Taxpayer by mail on August 29, 2014. Taxpayer failed to respond. The City sent additional letters on January 30, 2015 and March 9, 2015. Taxpayer responded that there was no tenant during the period of June 2014 through April 2015. Taxpayer provided information that after April 2015 there was a church member staying there for free. Subsequently, the City became aware through a review of City water records that the tenant from April 2015 had provided a copy of their lease to the City Utility Services Division (“Utility Division”). On February 19, 2016, the City again requested information from Taxpayer. As Taxpayer failed to respond, the City issued a “Notice of Intent to Estimate” on April 27, 2016. The City utilized the rental amounts from the lease obtained through the Utility Division. Taxpayer failed to respond and on June 2, 2016, the City issued a “Notice of Estimated Assessment” (“Estimate”). The Estimate was for the period April 2015 through March 2016. The assessment was for taxes in the amount of \$211.92, interest up through April 2016 in the amount of \$1.99, penalties in the amount of \$53.00, and license fees of \$5.50. Taxpayer filed a protest on June 6, 2016.

Taxpayer filed a protest of the Estimate. Taxpayer indicated the Property is utilized to

help drug free families who are having financial hardship to get back on their feet. The occupants are urged to put utilities in their name in order to build up their credit. According to Taxpayer, no monies are collected and thus the gross revenues should be reduced to zero.

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 a tenant of 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, Taxpayer has provided minimal documentation and failed to reply to the City’s response to the protest. We are left with the question of why there would be a written lease with a dollar amount listed if the rent was for free. Taxpayer has failed to meet its burden of proof. 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 April 2015 through March 2016. 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 August 29, 2014.
4. Taxpayer failed to respond.
5. The City sent additional letters on January 30, 2015 and March 9, 2015.
6. Taxpayer responded there was no tenant during the period of June 2014 through April 2015.
7. Taxpayer provided information that after April 2015 there was a church member staying there for free.
8. Subsequently, the City became aware through a review of City water records that the tenant from April 2015 had provided a copy of their lease to the Utility Division.
9. On February 19, 2016, the City gain requested additional information from Taxpayer.
10. Taxpayer failed to provide the requested information.
11. On June 2, 2016, the City issued an Estimate for the period April 2015 through March 2016 for additional taxes in the amount of \$211.92, interest up through April 2016 in the amount of \$1.99, license fees in the amount of \$5.50, and penalties totaling \$53.00.
12. The City utilized the amounts on the lease obtained from the Utility Division to estimate the monthly rental amounts.
13. Taxpayer indicated the Property is utilized to help drug free families who are having financial hardship to get back on their feet.
14. The occupants are urged to put utilities in their name in order to build up their credit.
15. Taxpayer failed to reply to the City's response to the protest to explain why there was a written lease if no monies were being collected.

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 April 2015 through March 2016 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 June 6, 2016 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