

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 24, 2005
Decision: MTHO #236
Tax Collector: City of Phoenix
Hearing Date: None

DISCUSSION

Introduction

On April 5, 2005, *Taxpayer* Family Limited Partnership (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on April 12, 2005 that the protest was timely and in the proper form. On April 18, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file a response to the protest on or before June 2, 2005. On April 19, 2005, the City filed a response to the protest. On May 2, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 2, 2005. On May 27, 2005, the Taxpayer filed a reply. On June 9, 2005, the Hearing Officer closed the record and indicated a written decision would be issued on or before July 25, 2005.

City Position

The Taxpayer’s July 2004 tax return was received by the City on September 3, 2004. As a result, the City assessed \$3,756.82 in penalties for late filing and late payment pursuant to City Code Section 14-540 (b) (“Section 540 (b)”). The City asserted that the primary criteria for waiving penalties are set forth in Section 540 (f). The primary criteria is that the taxpayer must have a consistent filing and payment history. According to the City, the Taxpayer has been late six times in the past years for the months of 01/03, 04/03, 01/04, 02/04, 03/04, and 04/04. For that reason, the City asserted the Taxpayer did not qualify under the primary criteria for waiver of penalties.

While the Taxpayer’s protest addressed the death of the principal Mr. _____ in 2002, the City did not consider the death as a factor allowing a waiver of penalty for the July 2004 return. In response to the Taxpayer’s argument regarding management changes in 2003 and 2004, the City asserted those changes may have resulted in late returns but are not criteria for the waiver of penalties. Based on the above, the City concluded the Taxpayer does not qualify for the waiver of penalties under any of the criteria listed in Section 540 (f).

Taxpayer Position

The Taxpayer requested a waiver of penalties totaling \$3,731.99 for the month of July 2004. The Taxpayer asserted that the payment was sent by Federal Express believing it would be received on the due date of August 31, 2004. According to the Taxpayer, it was received by the City on September 1, 2004. The Taxpayer indicated the business was left in chaos when the principal, Dr. _____, unexpectedly passed away in 2002.

Subsequently, the Taxpayer changed management in January 2003 and again in January 2004. The Taxpayer asserted that even with the significant management problems, the Taxpayer has made every effort to pay on time. While the Taxpayer acknowledged they have been late in the past, the Taxpayer argued the penalty was excessive for being one day late.

ANALYSIS

The Taxpayer's tax return and payment for July 2004 were received by the City three days after the due date. As a result, the City was authorized to assess penalties for late filing and late payment pursuant to Section 540 (b). These penalties can be waived if the Taxpayer can demonstrate that they meet one of the criteria set forth in Section 540 (f). We concur with the City that the Taxpayer did not meet the criteria of consistently filing and paying taxes in a timely manner. While the Taxpayer has provided some extenuating circumstances, we find those circumstances primarily occurred in 2002 and 2003. We note that the July 2004 return was the fifth late return for 2004. The fact that the Taxpayer sent their July 2004 return by Federal Express demonstrates the Taxpayer was making a reasonable effort to timely file and pay their July 2004 taxes to the City. Based on the overall circumstances, we do find that the assessment of both a failure to timely file and timely pay taxes for a period of three days would result in a penalty which is greatly disproportionate to the amount of tax. As a result, we shall waive the failure to timely pay taxes and approve the penalty for failing to timely file.

FINDINGS OF FACT

1. On April 5, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on April 12, 2005 that the protest was timely and in the proper form.
3. On April 18, 2005, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response to the protest on or before June 2, 2005.
4. On April 19, 2005, the City filed a response to the protest.
5. On May 2, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 2, 2005.
6. On May 27, 2005, the Taxpayer filed a reply.
7. On June 9, 2005, the Hearing Officer closed the record and indicated a written decision would be issued on or before July 25, 2005.
8. The Taxpayer's tax return and payment for July of 2004 was due to the City on August 31, 2004.

9. The Taxpayer's tax return and payment for July of 2004 was received by the City on September 3, 2004.
10. The City assessed the Taxpayer for late filing and late payment penalties for their July 2004 return totaling \$3,756.82.

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's tax return and payment for the month of July 2004 were received by the City three days after the due date.
3. The City is authorized pursuant to Section 540 (b) to assess penalties for late filing and late payment.
4. The Taxpayer has a history of failing to timely file and pay taxes for the year 2004.
5. The Taxpayer has demonstrated a reasonable effort to timely file and pay taxes for the month of July 2004.
6. Based on the overall circumstances, the assessment of both a penalty for failure to timely file and failure to timely pay would result in a penalty that would be greatly disproportionate to the amount of tax.
7. The penalty for failing to timely pay taxes for July 2004 should be waived.
8. The 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 protest of *Taxpayer* Family Limited Partnership of a tax assessment made by the City of Phoenix is hereby denied, in part, and granted, in part, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the penalty for failing to timely pay taxes for July 2004 is hereby waived.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer