

Decision Date: July 20, 2007
Decision: MTHO #351
Taxpayer: *Taxpayer*
Tax Collector: City of Tempe
Hearing Date: June 26, 2007

DISCUSSION

Introduction

On February 2, 2007, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Tempe (“City”). After review, the City concluded on February 26, 2007 that the protest was timely and in the proper form. On March 5, 2007, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before April 19, 2007. On April 10, 2007, the City filed a response to the protest. On April 16, 2007, the Hearing Officer ordered Taxpayer to file a reply on or before May 7, 2007. On May 21, 2007, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on June 26, 2007. Both parties appeared and presented evidence at the June 26, 2007 hearing. On June 26, 2007, the Hearing Officer indicated the record was closed and written decision would be issued on or before August 10, 2007.

City Position

On January 31, 2007, the City issued a deficiency assessment against Taxpayer for taxes on unreported income from the rental of real property pursuant to City Code Section 16-445 (“Section 445”). The assessment for the period of April 2005 through December 2006 consisted of taxes of \$3,693.44, licensing fees of \$170.00, interest up through November 2006 of \$169.40, a late licensing fee of \$15.00, and penalties of \$812.95. Taxpayer paid all taxes and interest but protested the late fee and penalties totaling \$827.95.

The City had assessed penalties pursuant to City Code Section 540 (“Section 540”) for late payment and late filing of tax returns. The City noted that Section 540(f) provides specific circumstances in which the City could waive the penalties. The City asserted none of those specific circumstances applied in this case. According to the City, on June 6, 2005, Taxpayer was issued license #NNNNNN for certain residential rented properties owned by *Mr. X*. *Mr. X* is a member and a manager of Taxpayer. The City indicated that *Mr. X* contacted them on January 11, 2006 regarding his residential rented properties and also disclosed to the City about the commercial property being rented by Taxpayer at *Location* in the City. The City provided *Mr. X* a license application for the commercial property along with tax forms for the months of April 2005 through December 2005. The City opined that monthly returns were sent to *Mr. X* for each month during the period January 2006 through December 2006 but none were ever returned to the City. According to the City, monthly account statements were also sent to *Mr. X* beginning on February 6, 2006. The City asserted that *Mr. X* has significant real estate holdings. The City asserted that a reasonably prudent businessman involved in the real estate business can reasonably be expected to be familiar with the laws concerning the taxation of rental income. Based on all the above, the City argued the penalties should be upheld.

Taxpayer Position

Taxpayer asserted it did not become aware of their tax obligation until *Mr. X* spoke to the City in January 2006. Since Taxpayer was not aware of its tax obligation, it did not charge or collect taxes from any tenants for 2005. Even after being notified in January 2006, Taxpayer opined it believed the tax was only paid at the end of the year. As a result, Taxpayer requested waiver of all penalties assessed.

ANALYSIS

There was no dispute that Taxpayer had unreported income from the rental of the property at *Location* for the period of April 2005 through December 2006. There was also no dispute that Taxpayer failed to timely file tax reports for that period. As a result, the City was authorized pursuant to Section 540 to assess penalties for late payment of taxes and late filing of reports. Those penalties can be waived when a taxpayer can demonstrate reasonable cause for failing to timely pay and/or timely file reports. While *Mr. X* had other real estate holdings in addition to his ownership in Taxpayer, we are convinced he did not become aware of the tax obligation for Taxpayer until his January 11, 2006 meeting with the City. As a result, we conclude Taxpayer has demonstrated reasonable cause for failing to timely pay taxes and for failing to timely file tax returns for a reasonable period after *Mr. X* became aware of the tax obligations. Clearly that reasonable period does not extend up through the December 2006 time frame. We find a reasonable period would extend for one month after the January 11, 2006 meeting. Accordingly, the late payment and late filing penalties are waived up through the period February 11, 2006. Taxpayer failed to demonstrate reasonable cause for waiver of any penalties after February 11, 2006. Consistent with the above, Taxpayer's protest is partly granted and partly denied.

FINDINGS OF FACT

- 1) On February 2, 2007, Taxpayer filed a protest of a tax assessment made by the City.
- 2) After review, the City concluded on February 26, 2007 that the protest was timely and in the proper form.
- 3) On March 5, 2007, the Hearing Officer ordered the City to file a response to the protest on or before April 19, 2007.
- 4) On April 10, 2007, the City filed a response to the protest.
- 5) On April 16, 2007, the Hearing Officer ordered Taxpayer to file a reply on or before May 7, 2007.
- 6) On May 21, 2007, a Notice scheduled the matter for hearing commencing on June 26, 2007.
- 7) Both parties appeared and presented evidence at the June 26, 2007 hearing.

- 8) On June 26, 2007, the Hearing Officer indicated the record was closed and a written decision would be issued on or before August 10, 2007.
- 9) On January 31, 2007, the City issued a deficiency assessment against Taxpayer for taxes on unreported income from the rental of real property located at *Location* in the City.
- 10) The assessment for the period of April 2005 through December 2006 consisted of taxes of \$3,693.44, licensing fees of \$170.00, interest up through November 2006 of \$169.40, a late licensing fee of \$15.00, and penalties for late payment and late filing for late payment and late filing of returns totaling \$812.95.
- 11) Taxpayer paid all taxes and interest but protested the late fee and penalties totaling \$827.95.
- 12) On June 6, 2005, *Mr. X* was issued license #123 for certain residential rental properties.
- 13) *Mr. X* was a member and manager of Taxpayer.
- 14) *Mr. X* contacted the City on January 11, 2006 regarding his residential properties and at the same time disclosed to the City about commercial property being rented by Taxpayer at *Location*.
- 15) On January 11, 2006, the City informed *Mr. X* that the rental income from *Location* was taxable.
- 16) The City provided *Mr. X* a license application for the *Location* property along with tax forms for the months of April 2005 through December 2005.
- 17) The City sent monthly tax returns to *Mr. X* for the period January 2006 through December 2006 but none were returned to the City.
- 18) The City also sent monthly account statements to *Mr. X* beginning on February 6, 2006.
- 19) *Mr. X* has other real estate holdings in addition to his ownership in Taxpayer.
- 20) *Mr. X* did not become aware of the tax obligation for Taxpayer until he spoke to the City on January 11, 2006.

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) During the period of April 2005 through December 2006, Taxpayer had rental income from *Location* which was taxable pursuant to Section 445.
- 3) Taxpayer failed to timely pay taxes or timely file reports for the period April 2005 through December 2006.
- 4) The City was authorized pursuant to Section 540 to assess penalties for late payment and late filing of returns.
- 5) Taxpayer demonstrated reasonable cause to have the late payment and late filing penalties waived for the period April 2005 through February 11, 2006.
- 6) 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 February 2, 2007 protest by *Taxpayer* of a tax assessment made by the City of Tempe is hereby partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Tempe shall waive the late payment and late filing penalties for the period April 2005 through February 11, 2006.

It is further ordered that this decision shall be effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer