

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 30, 2009

Decision: MTHO # 469

Taxpayer: *Taxpayer 1*

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On December 1, 2008, *Taxpayer 1* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on December 3, 2008, that the protest was timely but not in the proper form. On December 11, 2008, the Municipal Tax Hearing Officer (“Hearing Officer”) granted Taxpayer until January 26, 2009 to correct the form. On December 17, 2008, Taxpayer filed a clarification to his form and requested the matter be classified as a redetermination. On December 22, 2008, the Hearing Officer classified the matter as a redetermination and ordered the City to file a response on or before February 5, 2009. On February 2, 2009, the City filed a response to the protest. On February 9, 2009, the Hearing Officer granted Taxpayer until March 1, 2009 to file any reply. On March 9, 2009, Taxpayer filed a reply. On March 19, 2009, the Hearing Officer indicated the record was now closed and written decision would be issued on or before April 23, 2009.

City Position

The City commenced a desk review of Taxpayer on September 18, 2008. On January 22, 2009, the City issued an assessment for additional taxes due in the amount of \$6,270.54 plus interest up through October 2008 in the amount of \$701.46. The audit period for the assessment was June 2005 through September 2008. In response to Taxpayer, the City asserted they utilized the tax rate of 1.9 percent in accordance with the City Code. The City noted that the City Code Sections 14-445 and 14-446 (“Sections 445 and 446”) required persons engaging or continuing in the business of leasing or renting real property within the City limits during the months of June 2005 to November 2007 to charge 1.8 percent. However, if the real property being leased or rented was for non-residential rental business activity, then an additional 0.1 percent would be added for a total tax of 1.9 percent.

The City included commercial rental income for Taxpayer commencing in June 2005 for two tenants, *Tenant A* and *Tenant B*. The amount of monthly rental income from those two tenants was \$900.00 and \$850.00, respectively. While Taxpayer claimed the real

property was sold to *Taxpayer 2* in March 2006, the City could find no evidence of an official sale of real property from Taxpayer to *Taxpayer 2*. The City checked databases in the Maricopa County Assessor, Recorder, and Treasurer for the period of June 2005 to September 2008 and all three sources indicated that Taxpayer retained ownership of the commercial property. Further, the City indicated they were unable to find any City license from *Taxpayer 2* during the months in question.

As a result, the City included the alleged monthly installment payment of \$10,037.28 from *Taxpayer 2* as additional monthly rental income for Taxpayer from March 2006 to March 2008. Based on all the above, the City requested the assessment be upheld.

Taxpayer Position

Taxpayer argued that the City did not utilize the correct tax rate of 1.8 percent for the period of July 2005 through March 2006. According to Taxpayer, he sold the rental property to *Taxpayer 2* in March 2006. Taxpayer indicated *Taxpayer 2* ran the business and collected rents from March 2006 to March 2008. At that time, Taxpayer took the business back and collected rents from April 2008 to the current time.

Taxpayer disputed the City's position on the ownership by *Taxpayer 2*. Taxpayer argued there does not have to be a title change to change owners. Taxpayer provided a copy of a March 1, 2006 Commercial Property Purchase Agreement ("Purchase Agreement") between Taxpayer and *Taxpayer 2* that indicated *Taxpayer 2* was purchasing the real property at *12th Street Property* for \$1,200,000.00. Taxpayer also provided a copy of an unsecured promissory note which indicated *Taxpayer 2* would be making monthly payments of \$10,037.28. Taxpayer also provided a grant deed, dated March 3, 2006, in which the *12th Street Property* was granted to *Taxpayer 2*. Based on the above, Taxpayer argued that *Taxpayer 2* was obligated to pay the tax on the rents he collected for the other tenants.

ANALYSIS

There was no dispute that Taxpayer received monthly gross income from *Tenant A* and *Tenant B* for rent of real property at the *12th Street Property* during the audit period. The rental amounts were supported by copies of commercial lease agreements between Taxpayer and *Tenant A* and *Tenant B*. We also conclude that the City utilized the proper tax rate of 1.9 percent for the period of June 2005 to November 2007 pursuant to Section 445 and 446.

We do not find support in the record for the City's assessment for rental income from *Taxpayer 2*. There was no evidence of any commercial lease agreement between Taxpayer and *Taxpayer 2* and the alleged monthly lease amount was over ten times more than the lease amounts for *Tenant A* and *Tenant B*. Further, we conclude that the Purchase Agreement, the unsecured promissory note, and the grant deed which was recorded in San Bernardino County, California provided evidence that Taxpayer had sold

the *12th Street Property* to *Taxpayer 2*. We conclude Taxpayer's protest should be partly granted and partly denied consistent with the Discussion, Findings and Conclusions, herein.

FINDINGS OF FACT

1. On December 1, 2008, Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on August 6, 2008 that the protest was timely but not in the proper form.
3. On December 11, 2008, the Hearing Officer granted Taxpayer until January 26, 2009 to correct the form.
4. On December 17, 2008, Taxpayer filed a clarification to its form and requested the matter be classified as a redetermination.
5. On December 22, 2008, the Hearing Officer classified the matter as a redetermination and ordered the City to file a response on or before February 5, 2009.
6. On February 2, 2009, the City filed a response to the protest.
7. On February 9, 2009, the Hearing Officer granted Taxpayer until March 11, 2009, to file any reply.
8. On March 9, 2009, Taxpayer filed a reply.
9. On March 19, 2009, the Hearing Officer indicated the record was now closed and a written decision would be issued on or before April 23, 2009.
10. The City commenced a desk review of Taxpayer on September 18, 2008.
11. On January 22, 2009, the City issued an assessment for additional taxes due in the amount of \$6,270.54 plus interest up through October 2008 in the amount of \$701.46.
12. The audit period for the assessment was June 2005 through September 2008.
13. The City utilized the tax rate of 1.9 percent during the period of June 2005 to November 2007.
14. The City included commercial rental income for Taxpayer commencing in June 2005 for two tenants, *Tenant A* and *Tenant B*.

15. The amount of monthly rental income from *Tenant A* and *Tenant B* was for \$900.00 and \$850.00, respectively.
16. Taxpayer provided a copy of a March 1, 2006 Purchase Agreement between Taxpayer and *Taxpayer 2* whereby *Taxpayer 2* was purchasing the *12th Street Property* for \$1.2 million.
17. Taxpayer provided a copy of an unsecured promissory note indicating *Taxpayer 2* would be making monthly payments of \$10,037.38.
18. Taxpayer provided a grant deed, dated March 3, 2006, in which the *12th Street Property* was granted to *Taxpayer 2*.
19. The City included the \$10,037.28 monthly payments as part of Taxpayer's monthly rental income.
20. Taxpayer took the *12th Street Property* back in March 2008.

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 audit period, Taxpayer was in the business of leasing commercial real property pursuant to Sections 445 and 446.
3. During the audit period, Taxpayer received monthly gross income from *Tenant A* and *Tenant B* for the rental of commercial real property pursuant to Sections 445 and 446.
4. During the period of June 2005 to November 2007, the proper City tax rate on the rental of commercial real property was 1.9 percent.
5. There was no evidence that Taxpayer had any commercial lease agreement during the audit period with *Taxpayer 2*.
6. Based on the Purchase Agreement, the unsecured promissory note, and the grant deed, we conclude that Taxpayer had sold the *12th Street Property* to *Taxpayer 2* on March 1, 2006.
7. We conclude that the monthly payments of \$10,037.28 from *Taxpayer 2* to Taxpayer were for the purchase of the *12th Street Property* and not for the rental

of commercial real property.

8. 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 December 1, 2008 protest of *Taxpayer 1* of a tax assessment made by the City of Phoenix is hereby partly granted and partly denied consistent with the Discussion, Findings and Conclusion, herein.

It is further ordered that the City of Phoenix shall remove the monthly payments of \$10,037.28 from *Taxpayer 2* from the assessment.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer