

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: February 9, 2010
Decision: MTHO # 533
Taxpayer: *Taxpayer*
Tax Collector: City of Mesa
Hearing Date: December 16, 2009

DISCUSSION

Introduction

On July 16, 2009, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Mesa (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on December 16, 2009. Appearing for the City were *Assistant City, Tax Administrator, Tax Audit Supervisor*, and *Auditor*. Appearing for Taxpayer was *Taxpayer Representative*. At the conclusion of the December 16, 2009 hearing, the record was left open and the Hearing Officer granted Taxpayer until December 30, 2009 in which to submit additional evidence. On January 14, 2010, the Hearing Officer indicated the Taxpayer had failed to submit any additional evidence and as a result the record was closed and a written decision would be issued on or before March 1, 2010.

DECISION

The City conducted a non audit compliance of Taxpayer for the period August 2002 through May 2007 and for the period June 2007 through December 2008. As a result, the City assessed Taxpayer for additional taxes in the amount of \$10,847.82, interest up through January 2009 in the amount of \$2,718.19, penalties totaling \$2,687.13 and a license fee of \$50.00. The assessment was for the rental of *Mesa Property*. For the first audit period, the *Mesa Property* was occupied by an affiliated company, *Tenant 1*. For the second period, the *Mesa Property* was occupied by an unrelated tenant, *Tenant 2*. Since Taxpayer provided no documentation, the City’s assessment was based on an estimate. After the assessment was issued, Taxpayer provided documentation to support the rental amounts paid by *Tenant 2*. The City utilized the *Tenant 2* rental amounts for the second audit period and reduced those amounts by five percent for each prior year to determine the rental amounts for the first audit period. As a result, the City revised the assessment for additional taxes in the amount of \$5,793.92, interest up through June 2009 in the amount of \$1,692.72, penalties totaling \$1,431.73, and a license fee of \$50.00. For the period of June 2007 through April 2008, Taxpayer provided *Tenant 2* with ten

months of free rent in exchange for *Tenant 2* painting the *Mesa Property* inside and outside. The City did include the cost of painting of \$10,000.00 as the rental income for that ten month period.

Taxpayer did not dispute the taxability of the rental transactions but did protest the use of the estimates by the City. Taxpayer still disputed the amounts included by the City after use of the rental amounts provided by Taxpayer for *Tenant 2*. Taxpayer did not have documentation to support its dispute but was granted additional time after the hearing to provide supporting documentation. Taxpayer failed to provide any additional information. City Code Section 5-10-445 (“Section 445”) provides for a tax on every person engaged in the business activity of leasing or renting real property. Taxpayer did not dispute that it was engaged in the business of renting or leasing real property. City Code Section 5-10-545 (“Section 545”) authorizes the City to make a reasonable estimate of the amount of tax that is due when the taxpayer fails to file a return. In this case, there were no returns filed and the City made an estimate based on the information available. Section 545 places the burden on the taxpayer to prove the City’s estimate was not reasonable. In this case, Taxpayer provided documentation to demonstrate the actual rental amount for *Tenant 2*. As a result, it was proper for the City to utilize the actual rental amounts and revise the assessment. Taxpayer failed to provide documentation to demonstrate the amount of rent from *Tenant 1*. The City utilized the *Tenant 2* rental amounts to revise the estimates for the *Tenant 1* rental amounts. The burden of proof was on Taxpayer to provide documentation to proof those revised estimates were not reasonable. Taxpayer failed to meet that burden of proof. Based on all the above, the City’s revised assessment is upheld. Taxpayer’s July 16, 2009 protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On July 16, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. The City conducted a non audit compliance of Taxpayer for the period of August 2002 through May 2007 and June 2007 through December 2008.
3. The City assessed Taxpayer for additional taxes in the amount of \$10,847.82, interest up through January 2009 in the amount of \$2,718.19, penalties totaling \$2,687.13, and a license fee of \$50.00.
4. The assessment was for the rental of real property at the *Mesa Property*.
5. For the first audit period, the *Mesa Property* was occupied by an affiliated company.

Tenant 1.

6. For the second audit period, the ***Mesa Property*** was occupied by an unrelated tenant, ***Tenant 2.***
7. Since Taxpayer provided no rental information, the City's assessment was based on an estimate.
8. After the assessment was issued, Taxpayer provided documentation to support the rental amounts paid by ***Tenant 2.***
9. The City utilized the ***Tenant 2*** rental amounts for the second audit period and reduced the rental amounts by five percent for each prior year to determine the rental amounts for the first audit period.
10. The City revised the assessment for additional taxes in the amount of \$5,793.92, interest up through June 2009 in the amount of \$1,692.72, penalties totaling \$1,431.73, and a license fee of \$50.00.
11. Taxpayer provided ***Tenant 2*** with ten months of free rent in exchange for ***Tenant 2*** painting the ***Mesa Property*** inside and outside.
12. The City included the cost of the painting of \$10,000.00 as the rental amount for the ten month period.
13. Taxpayer was given the opportunity after the hearing to provide additional documentation to support its protest but Taxpayer failed to file any additional documentation.

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. Taxpayer was in the business of renting/leasing real property pursuant to Section 445 during the audit period.
3. The City was authorized pursuant to Section 545 to estimate Taxpayer's taxable income for the audit period.

4. Section 545 requires any estimate made by the City must be on a reasonable basis.
5. Section 545 provides it is the responsibility of a taxpayer to prove the City's estimate was not reasonable.
6. Taxpayer provided additional documentation for the City's review to demonstrate adjustments should be made to the City's assessment.
7. Taxpayer failed to meet its burden of proving the City should make any additional adjustments to the City's assessment.
8. Taxpayer's protest should be denied with the exception of the adjustments set forth in the City's October 1, 2009 memo, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the July 16, 2009 protest by *Taxpayer* of a tax assessment made by the City of Mesa is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Mesa shall amend the assessment consistent with the City's October 1, 2009 memo.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer