

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 25, 2012

Decision: MTHO # 701

Taxpayers:

Tax Collector: City of Glendale

Hearing Date: September 11, 2012

DISCUSSION

Introduction

On March 16, 2012, a letter of protest was filed by ***Taxpayers*** of a tax assessment made by the City of Glendale (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on September 11, 2012. Appearing for the City were the ***Deputy City Attorney***, and the ***Tax Auditor, Taxpayers represented themselves***. On September 13, 2012, the Hearing Officer indicated the record was closed and a written decision would be issued on or before October 26, 2012.

DECISION

On January 23, 2012, the City issued a Notice of Determination (“Notice”) to Taxpayers for taxes in the amount of \$206.65, interest up through January 2012 in the amount of \$10.16, and penalties totaling \$51.64. Taxpayers are the owners of real property located at ***12345 N. Arizona (“N. Arizona”)*** in the City. Taxpayers had been renting the ***N. Arizona*** Property to various tenants since October 2009. The City assessed Taxpayers for the period of October 2009 through June 2011. On September 22, 2011, the City issued preliminary work papers to the Taxpayers. Subsequently, Taxpayers provided information which indicated the ***N. Arizona*** Property was not rented during the months of April, May, and June 2011. As a result, the City revised the final work papers to remove the rental income for those periods.

Taxpayers did not dispute the assessment of taxes on the rental income. Taxpayers did dispute the assessment of penalties. The City had assessed penalties for failure to file tax reports and failure to timely pay taxes pursuant to City Code Section 21.1-540(b)(1) and (2) (“Section 540”). The City did not waive the penalties because no good cause was shown.

City Code Section 21.1-445 (“Section 445”) imposes a tax on the gross income from the

business activity upon everyone engaging in the business of leasing or renting of real property. Since there was no dispute that Taxpayers had engaged in the rental of the *N. Arizona* Property, the tax assessment pursuant to Section 445 was proper. Since the City removed any assessment for the months of April, May, and June 2011, that portion of the protest has been resolved. That leaves us with the sole issue of the penalties. The City was authorized pursuant to Section 540 to assess penalties for failure to file returns and failure to timely pay. Those penalties may be waived for reasonable cause. Taxpayers indicated the *N. Arizona* Property had been utilized by family members until it was rented to a third party in October 2009. Taxpayers provided testimony that they were unaware of the tax until receipt of the City's assessment. Under the circumstances in this case, we conclude Taxpayers lack of understanding of the City Tax Code provides reasonable cause to waive the penalties in this matter. Based on all the above, we conclude Taxpayers protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On March 16, 2012, Taxpayers filed a protest of a tax assessment made by the City.
2. On January 23, 2012, the City issued a Notice to Taxpayers for taxes in the amount of \$206.65, interest up through January 2012 in the amount of \$10.16, and penalties totaling \$51.64.
3. The assessment was for the period of October 2009 through June 2011.
4. Taxpayers are the owners of the *N. Arizona* Property in the City.
5. On September 22, 2011, the City issued preliminary work papers to the Taxpayers.
6. Subsequent to the preliminary work papers, Taxpayers provided information to the City which indicated the *N. Arizona* Property was not rented during the months of April, May, and June 2011.
7. The City revised the final work papers to remove the rental income from the months of April, May, and June 2011.
8. Taxpayers did not dispute the assessment of taxes on the rental income.
9. Taxpayers were not aware that the rental of the *N. Arizona* Property was subject to City tax until receipt of the City work papers.

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 of renting or leasing of real property.
3. Since Taxpayers rented the *N. Arizona* Property during the assessment period, the City's assessment of taxes and interest was proper.
4. Because Taxpayers failed to file tax returns and failed to timely pay taxes, the City was authorized to assess penalties pursuant to Section 540.
5. Under the circumstances set forth herein, Taxpayers have demonstrated reasonable cause to have all penalties waived.
6. Taxpayers March 16, 2012 protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.
7. 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 March 16, 2012 protest by *Taxpayers* of a tax assessment made by the City of Glendale should be partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Glendale shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer