

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 30, 2013

Decision: MTHO # 758

Taxpayer:

Tax Collector: City of Peoria

Hearing Date: None

DISCUSSION

Introduction

On October 29, 2012 and as amended on December 13, 2012, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Peoria (“City”). At the request of Taxpayer, this matter was classified as a redetermination. After submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on April 2, 2013 and indicated a written decision would be issued on or before May 17, 2013.

DECISION

The City issued a tax assessment to Taxpayer for the period of February 2009 through September 2012. The assessment was for additional taxes in the amount of \$544.72, interest of \$31.99, penalties of \$130.20, and license fees of \$220.00. Subsequently, the City waived the penalties. The City indicated that Taxpayer had residential rental property at ***12345 W. Place (“Property”)***, located in the City. The City determined that the Property was rented since February 2009. Since the City had been unable to obtain rental information from Taxpayer, the City estimated the rental income by utilizing information from Zillow.com for similar properties in the area.

Taxpayer protested that the tax assessment should only be for one year as Taxpayer was not aware of the tax until the City assessment. Taxpayer asserted the City was negligent for not bringing the tax assessment to Taxpayer’s attention until three years after the property was first rented. Taxpayer also requested the assessment be reduced because Taxpayer was on monthly disability limited income. Taxpayer asserted that the unexpected tax assessment had caused her undue stress, financial hardship, and sleepless nights.

City Code Section 12-445 (“Section 445”) imposes a tax on the gross income from the business activity upon every person engaging in the business of renting real property within the City. There was no dispute that Taxpayer was renting the Property during the

audit period. As a result, the City was authorized to assess a tax on the gross income. Since Taxpayer had failed to file tax returns, the City was authorized pursuant to City Code Section 12-545 (“Section 545”) to make a reasonable estimate of Taxpayer’s taxable income. The City utilized information from similarly situated properties to make an estimate. We find that method to be a reasonable basis pursuant to Section 545. Taxpayer had the burden pursuant to Section 545 to prove the estimate was not reasonable by providing documentation to demonstrate such. Taxpayer failed to meet its burden of proof pursuant to Section 545. As a result, we approve the City’s tax assessment. While we understand Taxpayer has some difficult personal circumstances, we can find no basis in the City Code for any reduction in the assessment for those personal circumstances.

City Code Section 12-540 (“Section 540”) authorizes the City to impose penalties and to assess interest on the taxes due. Section 540 provides that penalties may be waived for reasonable cause. In this case, the City waived the penalties. The waiver was appropriate as Taxpayer’s lack of knowledge of the tax along with no evidence of any prior tax issues would constitute reasonable cause for the waiver. Section 540 makes it clear that interest may not be waived unless the underlying tax was erroneous. Since we concluded the underlying tax was proper, there is no basis for removal of any interest.

Based on all the above, we conclude that Taxpayer’s October 29, 2012 and as amended on December 13, 2012 protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein. Taxpayer will need to discuss any payment plans with the City.

FINDINGS OF FACT

1. On October 29, 2012 and as amended on December 13, 2012, Taxpayer filed a protest of a tax assessment made by the City.
2. At the request of Taxpayer, this matter was classified as a redetermination.
3. Taxpayer was assessed additional taxes in the amount of \$544.72, interest of \$31.99, penalties of \$130.20, and license fees of \$220.00.
4. Subsequently, the City waived the penalties.
5. The assessment period was for the period of February 2009 through September 2012.
6. Taxpayer had Property during the audit period which was residential rental property located in the City.
7. The City was unable to obtain rental information from Taxpayer.

8. The City estimated Taxpayer's rental income by utilizing information from Zillow.com for similar properties in the area.
9. Taxpayer was not aware of the tax until the City assessment.
10. Taxpayer failed to file tax returns with the City during the audit period.

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 upon every person engaging in the business of renting real property within the City.
3. Taxpayer's gross income from the rental of the Property during the audit period was taxable pursuant to Section 445.
4. Since Taxpayer had failed to file tax returns, the City was authorized pursuant to Section 545 to make a reasonable estimate of Taxpayer's taxable income.
5. The City's method of estimating Taxpayer's taxable income was reasonable.
6. Taxpayer failed to prove the City's estimate of taxable income was not reasonable.
7. Taxpayer failed to provide any basis in the City Code to reduce the assessment.
8. Section 540 authorized the City to assess penalties and interest.
9. Taxpayer demonstrated reasonable cause to have the penalties waived.
10. Section 540 makes it clear that interest cannot be waived unless the underlying taxes are abated.
11. Based on all the above, Taxpayer's protest should be denied, consistent with the Discussion, Conclusions, and Findings, herein.
12. 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 October 29, 2012 and as amended on December 13, 2012 protest by *Taxpayer* of a tax assessment made by the City of Peoria is hereby denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer