

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: November 17, 2003

Decision: MTHO #130

Tax Collector: City of Phoenix

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On June 26, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a penalty waiver denial made by the City of Phoenix (“City”). After review, the City concluded on July 8, 2003 that the protest was timely and in the proper form. On July 11, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file any response on or before August 25, 2003. On August 13, 2003, the City filed its response to the protest. On August 20, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before September 22, 2003. On October 1, 2003, the Hearing Officer filed a letter indicating no reply had been received from the Taxpayer and as a result the record was being closed and a written decision would be issued on or before November 17, 2003.

#### **City Position**

The Taxpayer filed delinquent tax returns for the period February 2001 through January 2002. These returns were received by the City on November 15, 2002. The Taxpayer filed a second batch of delinquent tax returns for the period February 2002 through December 2002. The second batch of returns was received by the City on February 3, 2003. The Taxpayer filed one request for waiver of penalties for all the late returns. The waiver request was received on February 5, 2003. The City concluded the request met the requirements of City Code Section 14-540(f) (“Section 540(f)”) for a waiver. However, the City concluded the February 5, 2003 request was not timely pursuant to City Code Section 14-540(g) (“Section 540 (g)”) for the returns received on November 15, 2002. The City indicated that Section 540(g) provides that: “No request for waiver of penalty under subsection (f) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty.” The City indicated it had no record of ever informing the Taxpayer to wait until both late batches had been filed before filing a waiver request.

#### **Taxpayer Position**

The Taxpayer protested the City’s denial of the penalty waiver request for the period February 2001 to January 2002. The Taxpayer asserted they had a dishonest employee who discarded any correspondence from taxing authorities, prepared checks to pay the liabilities, however never mailed the payments. As soon as the owner discovered the malfeasance, the dishonest employee was terminated. The Taxpayer asserted they have a long history of compliance with filing and

payment deadlines. According to the Taxpayer, they were instructed by the City to send the waiver request after both late batches had been filed.

### **ANALYSIS**

There was no dispute that the Taxpayer had provided a sufficient basis for waiver of all penalties pursuant to Section 540(f). The only issue was whether or not the request for waiver of the first batch was timely filed. It is also clear from Section 540(g) that any waiver pursuant to Section 540(f) cannot be granted unless a written request is received by the Tax Collector within 45 days following the imposition of a penalty. Based on the evidence presented, the Taxpayer's request for a waiver of the first batch of returns was not filed until approximately 65 days after the imposition of a penalty. While the Taxpayer has argued they were directed by the City to not send the waiver request until both batches had been filed, the City has denied providing such instructions to the Taxpayer. Based on the evidence presented, the Hearing Officer must conclude the Taxpayer failed to timely file a waiver request for the first batch of returns and as a result the Section 540(f) waiver is not available.

### **FINDINGS OF FACT**

1. On June 26, 2003, the Taxpayer filed a protest of penalty waiver denial made by the City.
2. After review, the City concluded on July 8, 2003 that the protest was timely and in proper form.
3. On July 11, 2003, the Hearing Officer classified this matter as a redetermination and ordered the City to file any response on or before August 25, 2003.
4. On August 13, 2003, the City filed its response to the protest.
5. On August 20, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before September 22, 2003.
6. On October 1, 2003, the Hearing Officer filed a letter indicating no reply had been received from the Taxpayer and as a result the record was being closed and a written decision would be issued on or before November 17, 2003.
7. The Taxpayer filed delinquent tax returns for the period February 2001 through January 2002.
8. These returns were received by the City on November 15, 2002.
9. The Taxpayer filed a second batch of delinquent returns for the period February 2002 through December 2002.

10. The second batch of returns was received by the City on November 15, 2002.
11. The City notified the Taxpayer of the imposition of penalties on the first batch of returns on November 30, 2002.
12. The Taxpayer filed one request for waiver of penalties for all late returns on February 5, 2003.
13. The City concluded the request met the requirements of Section 540(f) for a waiver.

### **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. The City is authorized to impose penalties for failing to timely file returns and failing to timely pay taxes pursuant to Section 540.
3. The City is authorized to grant waivers of penalties pursuant to Section 540(f) as long as the Taxpayer has timely filed the request pursuant to Section 540(g).
4. The Taxpayer failed to timely file the request for waiver of penalties on the first batch of returns pursuant to Section 540 (g).
5. The Taxpayer's protest should be denied.

### **ORDER**

It is therefore ordered that the June 26, 2003 protest of *Taxpayer* of a penalty waiver denial by the City of Phoenix is hereby denied.

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

Jerry Rudibaugh  
Municipal Tax Hearing Officer