

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 22, 2004
Decision: MTHO #148
Tax Collector: City of Phoenix
Hearing Date: February 6, 2004

DISCUSSION

Introduction

On October 22, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on October 24, 2003 that the protest was timely and in proper form. On October 29, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before December 15, 2003. The City filed a response, dated December 1, 2003. On November 29, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before December 22, 2003. On December 11, 2003, a Notice of Tax Hearing (“Notice”) was issued setting the matter for hearing commencing on February 6, 2004. The Taxpayer filed a reply on December 20, 2003. On January 19, 2004, the Taxpayer filed a protest of a second assessment from the City. On January 24, 2004, the Hearing Officer consolidated the matters and ordered the City to file a response on or before February 2, 2004. The City filed a response on January 30, 2004. Both parties appeared and presented evidence at the February 6, 2004 hearing. On February 9, 2004, the Hearing Officer indicated the Taxpayer agreed to provide additional records to the City on or before February 10, 2004; the City would file any recommended adjustments/legal arguments on or before February 20, 2004; the Taxpayer would file any reply on or before March 5, 2004; and, a written decision would be issued on or before March 22, 2004. On February 24, 2004, the City filed a closing legal memorandum. On March 4, 2004, the Taxpayer filed a closing response memorandum.

City Position

The City assessed the Taxpayer for tax and interest due on three licenses for three different ownerships. The ownerships were for: *Mr. C*, as sole owner, PLT#**643** (“Tax No. 643”); *Mr. C* and *Ms. C*, joint ownership, PLT#**640** (“Tax No. 640”); and, *Mr. C* and *Mr. B*, joint ownership, PLT#**635** (“Tax No. 635”).

After being notified by the Tax Enforcement Section, the Taxpayer had several rental properties licensed in September of 2003. The City obtained the monthly revenues for each of the properties from August 1999 through July 2003 and assessed taxes for Tax No. 643, Tax No. 640, and Tax No. 635 in the amounts \$988.94, \$1,385.35, and \$397.67, respectively. Subsequently,

the City assessed Tax No. 640 for an additional rental property for the period August 1999 to October 2003 for taxes in the amount of \$992.26. After receiving additional documentation from the Taxpayer after the hearing, the City recommended reducing the additional tax on Tax No. 640 to \$595.03.

The City asserted that City Code Section 14-445 (“Section 445”) imposes a tax on the rental of real property, exempting a person who owns fewer than three residential units in the State. The City indicated that they do not, by convention, consider the first individual listed on a deed as the responsible party for tax purposes. According to the City, all parties to a joint deed are jointly and severally liable for any debts related to the real property. The City argued that the order of the names appearing on a joint deed is irrelevant. As to the Taxpayer’s argument that a City employee had advised him that the transactions at issue were not taxable, the City asserts that the Taxpayer has provided no written documentation or name of the person spoken to. Based on all the above, the City requested that the assessments be upheld in their entirety (except for the recommended reduction to Tax No. 640).

Taxpayer Position

The Taxpayer asserted that he was a landlord and not a tenant and thus the tax should not be assessed against him pursuant to City Code Section 14-440 (“Section 440”). In addition, the Taxpayer indicated that he did not collect the tax during the assessment period. According to the Taxpayer, the only section that addresses a four year tax period is City Code Section 14-550 (“Section 550”). The Taxpayer asserted that Section 550 allows the City to collect additional tax when it is determined that taxes paid had been incorrect or fraudulently filed. The Taxpayer argued that neither of those applied in this case. Based on the above, the Taxpayer requested the taxes and interest be abated because they are unfair, unjust, and create an undue burden upon the Taxpayer.

The Taxpayer argued that the property located at *Address 1* in the City is jointly owned by the Taxpayer and *Ms. C*. According to the Taxpayer, *Ms. C*’s name appears first and thus is the primary owner of the *Address 1* property. The Taxpayer asserted that since *Ms. C* was the primary owner and she owns less than three rentals, there should be no tax assessed on the *Address 1* property.

ANALYSIS

The Taxpayer was a sole or joint owner of more than three residential units in the State during the assessment period. As a joint owner of rental property, the Taxpayer is jointly and severally liable for any debts related to the property including City transaction privilege taxes. As a result, the City was authorized to assess the Taxpayer on the jointly owned property located at *Address 1* no matter whose name appeared on the deed first. It is not relevant whether the Taxpayer actually itemized the tax to the tenants since the tax pursuant to Section 445 is imposed on the rental income collected by the Taxpayer. While the Taxpayer argued this is unfair, it is also unfair to a competitor of the Taxpayer to have to collect and pay the tax and not have the Taxpayer also be assessed. Section 550 authorizes the City to collect additional tax when it is

determined that the incorrect amount of taxes has been paid. Since the Taxpayer failed to pay any taxes on the assessed units, it is clear that the incorrect amount of taxes have been paid and the City is authorized pursuant to Section 550 to assess additional taxes. Lastly, the City's recommended revision for the tax assessed on the *Address 1* property was proper since it was based on actual numbers instead of an estimate.

FINDINGS OF FACT

1. On October 22, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on October 24, 2003 that the protest was timely and in the proper form.
3. On October 29, 2003, the Hearing Officer ordered the City to file a response to the protest on or before December 15, 2003.
4. The City filed a response, dated December 1, 2003.
5. On November 29, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before December 22, 2003.
6. On December 11, 2003, a Notice was issued setting the matter for hearing commencing on February 6, 2004.
7. The Taxpayer filed a reply on December 20, 2003.
8. On January 19, 2004, the Taxpayer filed a protest of a second assessment from the City.
9. On January 24, 2004, the Hearing Officer consolidated the matters and ordered the City to file a response on or before February 2, 2004.
10. The City filed a response on January 30, 2004.
11. Both parties appeared and presented evidence at the February 6, 2004 hearing.
12. On February 9, 2004, the Hearing Officer indicated the Taxpayer agreed to provide additional records to the City on or before February 10, 2004; the City would file any recommended adjustments/legal arguments on or before February 20, 2004; the Taxpayer would file any reply on or before March 5, 2004; and, a written decision would be issued on or before March 22, 2004.
13. On February 24, 2004, the City filed a closing legal memorandum.
14. On March 4, 2004, the Taxpayer filed a closing response memorandum.

15. The City assessed the Taxpayer for tax and interest due on three licenses for three different ownerships.
16. The ownerships were for Tax No. 643, Tax No. 640, and Tax No. 635.
17. After being notified by the Tax Enforcement Section, the Taxpayer had several rental properties licensed in September of 2003.
18. The City obtained the monthly revenues for each of the properties from August 1999 through July 2003 and assessed taxes for Tax No. 643, Tax No. 640, and Tax No. 635 in the amounts \$988.94, \$1,385.35, and \$297.67, respectively.
19. Subsequently, the City assessed Tax No. 640 for an additional rental property for the period August 1999 to October 2003 for taxes in the amount of \$992.26.
20. After receiving additional documentation from the Taxpayer after the hearing, the City recommended reducing the additional tax on Tax No. 640 to \$595.03.
21. There was no written documentation provided to demonstrate the Taxpayer had been erroneously advised on taxes by a City employee.
22. The Taxpayer was not a tenant.
23. The Taxpayer did not collect the taxes from the tenants during the assessment period.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to bear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. The Taxpayer was in the business of renting more than three residential units in the City during the assessment period.
3. As a joint owner of residential property, the Taxpayer was jointly and severally liable for City taxes.
4. The Taxpayer underreported rental income during the assessment period.
5. The City was authorized pursuant Section 550 to collect additional taxes.
6. It was proper for the City revise the assessment on the *Address 1* property based on actual numbers provided by the Taxpayer.
7. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the October 22, 2003 and January 19, 2004 protests of *Taxpayer* of tax assessments made by the City of Phoenix shall be denied.

It is further ordered that the City of Phoenix shall revise its assessment on the property located at *Address 1* to reflect the actual rental amounts provided by *Mr. C*.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer