

**Jerry Rudibaugh**  
**Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: August 30, 2002

Decision: MTHO #18

Tax Collector: City of Phoenix

City of Mesa

City of Prescott

City of Scottsdale

City of Tempe

City of Tucson

Hearing Date: None

**DISCUSSION**

**Introduction**

During the months of October, November, and December of 2001, "Taxpayer" filed protests of tax assessments by the Cities of Phoenix, Mesa, Prescott, Scottsdale, Tempe and Tucson ("Cities"). After review of the respective protests, the Cities concluded during the months of November and December 2001 and January and February of 2002 that the protests were timely and in the proper form. The protests were processed as hearings. On February 12, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the Cities to file a response to the protests on or before March 29, 2002. On March 7, 2002, the Taxpayer filed a request to change the protests from requiring a hearing to a redetermination. On March 18, 2002, the Cities filed a request for an extension of time to file a response, as it was the understanding of the Cities that the Taxpayer would be amending the protests. On March 26, 2002, the Hearing Officer granted the Cities request for an extension and ordered the Taxpayer to file any amendment to its protests on or before April 9, 2002. The Taxpayer failed to file any amendment and on April 16, 2002, the Hearing Officer ordered the Cities to file a response to the protests on or before May 16, 2002. On May 14, 2002, the Cities filed another request for an extension as the Taxpayer had informed the Cities that the Taxpayer was not going to proceed with the protests as filed. On May 20, 2002, the Hearing Officer granted the Cities request and ordered the Taxpayer to clarify its intention regarding the protests on or before June 4, 2002. On June 10, 2002, the Hearing Officer granted an extension until June 24, 2002 for the Taxpayer to file its intention. On June 21, 2002, the Taxpayer filed a revision to its petition indicating they were only protesting the penalties assessed (the City of Tucson did not assess any penalties and as a result was no longer included in the protest), and were not protesting the assessment of taxes and interest. On June 24, 2002, the Hearing Officer ordered the Cities to file a response to

the request to abate the penalties on or before July 24, 2002. On July 18, 2002, the Cities filed their response to the amended petition. On August 12, 2002, the Hearing Officer issued a letter indicating a written decision would be issued on or before September 2, 2002.

Each of the Cities issued tax assessments against the Taxpayer for unreported construction contracting plus interest. In addition, all of the Cities with the exception of the City of Tucson assessed penalties for failure to file timely and failure to timely pay. Initially, the Taxpayer filed a petition to protest all of the taxes and interest as well as the assessed penalties. Subsequently, the Taxpayer amended the petition to only protest the assessed penalties.

### **City Position**

Each of the Cities that assessed penalties included a penalty for failure to file in a timely manner pursuant to Section 14-540 (b) (1) ("Section 540 (b) (1)") and failure to pay in a timely manner pursuant to Section 14-540 (b) (2) ("Section 540 (b) (2)"). After the Taxpayer amended the protest petition, each of the Cities reviewed the facts and tax history of the Taxpayer. After review, each of the Cities concluded the penalties should be waived.

### **Taxpayer Position**

The Taxpayer asserted that they relied upon an outside accounting firm in reporting its taxable gross income under the construction contracting classification. Since the Taxpayer relied upon professional tax advice, the Taxpayer requested that all penalties be abated.

### **ANALYSIS**

Each of the Cities is authorized pursuant to their Codes to impose penalties to file timely returns and for failure to timely pay taxes unless the Taxpayer shows that the failure is due to reasonable cause and not willful neglect. In this case, the Taxpayer has demonstrated that they had reasonably relied on the advice of an outside accounting firm in reporting taxable gross income under the construction contracting classification. Based on that reasonable reliance, it was proper for the Cities to waive all penalties. Accordingly, the protest of the Taxpayer, as amended on June 21, 2002, should be granted.

### **FINDINGS OF FACT**

1. During the months of October, November and December of 2001, the Taxpayer filed protests of tax assessments by the Cities.
2. After review of the respective protests, the Cities concluded that the protests were timely and in the proper form.
3. The protests were processed as hearings.
4. On February 12, 2002, the Hearing Officer ordered the Cities to file a response to the protests on or before March 29, 2002.
5. On March 7, 2002, the Taxpayer filed a request to change the protests from requiring a hearing to a redetermination.
6. On March 18, 2002, the Cities filed a request for an extension of time to file a response, as it was the understanding of the Cities that the Taxpayer would be amending the protests.

7. On March 26, 2002, the Hearing Officer granted the Cities request for an extension and ordered the Taxpayer to file an amendment to its protests on or before April 9, 2002.
8. The Taxpayer failed to file an amendment and on April 16, 2002, the Hearing Officer ordered the Cities to file a response to the protests on or before May 16, 2002.
9. On May 14, 2002, the Cities filed another request for an extension as the Taxpayer had informed the Cities that the Taxpayer was not going to proceed with the protests as filed.
10. On May 20, 2002, the Hearing Officer granted the Cities request and ordered the Taxpayer to clarify its intention regarding the protests on or before June 4, 2002.
11. On June 10, 2002, the Haring Officer granted an extension until June 24, 2002 for the Taxpayer to file its intention.
12. On June 21, 2002, the Taxpayer filed a revision to its petition indicating they were only protesting the penalties assessed (the City of Tucson did not assess any penalties and as a result was no longer included in the protest), and were not protesting the assessment of taxes and interest.
13. On June 24, 2002, the Hearing Officer ordered the Cities to file a response on the request to abate the penalties on or before June 24, 2002.
14. On July 18, 2002, the Cities filed their response to the amended petition.
15. On August 12, 2002, the Hearing Officer issued a letter indicating a written decision would be issued on or before September 2, 2002.
16. Each of the Cities issued tax assessments against the Taxpayer for unreported construction contracting plus interest.
17. In addition, all of the Cities with the exception of the City of Tucson, assessed penalties for failure to file timely and failure to timely pay.
18. The Taxpayer relied upon professional tax advice in filing the tax returns to the Cities.
19. After review of the facts and tax history of the Taxpayer, each of the Cities concluded the penalties should be waived.

### **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 Codes of the Cities impose penalties for failure to file timely returns and for failure to timely pay taxes unless the Taxpayer shows that the failure is due to reasonable cause and not willful neglect.
3. The Taxpayer has demonstrated reasonable cause for failing to timely file tax returns and for failing to timely pay taxes.
4. The Taxpayer protest as amended on June 21, 2002, should be granted.

**ORDER**

It is therefore ordered that the protest of Taxpayer as amended on June 21, 2002, is hereby granted.

It is further ordered that the Cities of Phoenix, Mesa, Prescott, Scottsdale, and Tempe shall revise their assessments to eliminate all penalties assessed on Taxpayer.

It is further ordered that this decision is effective immediately.

Jerry Rudibaugh

Municipal Tax Hearing Officer