

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 13, 2004

Decision: MTHO #190

Tax Collector: City of Tucson

Hearing Date: None

### DISCUSSION

#### Introduction

On April 23, 2004, *Taxpayers* (“Taxpayers”) filed a protest of a deficiency determination made by the City of Tucson (“City”). After review, the City concluded on June 3, 2004 that the protest was timely and in the proper form. On June 10, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before July 26, 2004. On June 16, 2004, the City filed a response. On June 19, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before July 19, 2004. On July 28, 2004, the Hearing Officer indicated no reply had been received and that the record was being closed and a written decision would be issued on or before September 13, 2004.

#### City Position

The Taxpayers are real property owners at the location of \_\_\_\_\_ Street in the City, with City license number *XXX*. The real property was rented to *Tenant* (“*Tenant*”), with City license number *YYY*. The *Taxpayers* were the corporate officers of *Tenant*. *Tenant* would re-rent space to individual *subtenants*. The tax returns for the months of August 2000 through November 2001, January 2002, and March 2002 through January 2004 were either filed without remittance or were delinquent. As a result, the City billed the Taxpayers for those months.

The City argued that the Taxpayers are liable for the tax on the rental of real property to their corporation pursuant to City Code Section 19-445 (“Section 445”). According to the City, the Taxpayer and the corporation were distinct and separate persons pursuant to City Code Section 19-100 (“Section 100”). The City acknowledged the Taxpayers would normally be entitled to a deduction for the portion of the property that was re-rented by the corporation. However, the City asserted the deduction is based on the percentage of the space being rented by the corporation to the individual dealers. The City indicated they would be willing to allow the deduction if the Taxpayers provided the total square footage and the square footage being re-rented to the individual dealers. (The Hearing Officer notes the Taxpayers were given an opportunity to provide this information but did not reply).

The City agreed that once the corporation was dissolved, the Taxpayers would not have rental income from *Tenant*. The City asserted the Taxpayers would still have rental income from the

rental of space to the individual dealers. The City also argued that the Taxpayers would also owe retail tax on the sales the business makes for the independent dealers. According to the City, the dissolution of the corporation does not eliminate the debts of the corporation. The City argued that the **Taxpayers** are responsible as officers of the corporation to pay the corporation's debts once the corporation is dissolved.

### **Taxpayer Position**

The Taxpayers asserted that they rent their building at \_\_\_\_\_ Street to the corporation they also own, **Tenant**. According to the Taxpayers, **Tenant** then re-rents the premises to over 80 **subtenants**. The Taxpayers argued that under Code 31 of the City, a deduction for rent for re-rent is allowed. The Taxpayers asserted that for every period except for September 2000, October 2000, December 2000, and December 2001, the amount **Tenant** re-rented for is more than the Taxpayers rented to **Tenant**. As a result, the Taxpayers argued that except for those four months the tax owed would be zero. According to the Taxpayers, **Tenant** was dissolved in September of 2002. The Taxpayers asserted that since they cannot rent the building to itself, no tax would be due after October 2002.

### **ANALYSIS**

The Taxpayers and **Tenant** are distinct and separate persons pursuant to Section 100. As a result, the rental by the Taxpayers of real property to **Tenant** was taxable pursuant to Section 445. While the City has acknowledged the Taxpayers would normally be entitled to a deduction for the portion of the property re-rented by the corporation, the Taxpayer have failed to provide necessary documentation to support such a deduction. After the dissolution of the corporation, the Taxpayers continued to rent the real property to the independent dealers, which was taxable pursuant to Section 445. Based on the above, the Taxpayers protest should be denied.

### **FINDINGS OF FACT**

1. On April 23, 2004, the Taxpayers filed a protest of a deficiency determination made by the City.
2. After review, the City concluded on June 3, 2004 that the protest was timely and in proper form.
3. On June 10, 2004, the Hearing Officer ordered the City to file a response to the protest on or before June 26, 2004.
4. On June 16, 2004, the City filed a response.
5. On June 19, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before July 19, 2004.

6. On July 28, 2004, the Hearing Officer indicated no reply had been received and that the record was being closed and a written decision would be issued on or before September 13, 2004.
7. The Taxpayers are real property owners at the location of \_\_\_\_\_ Street in the City, with City license number *XXX*.
8. The real property was rented to *Tenant* with City license number *YYY*.
9. The *Taxpayers* were the corporate officers of *Tenant*.
10. *Tenant* would re-rent space to individual *subtenants*.
11. The tax returns for the months of August 2000 through November 2001, January 2002, and March 2002 through January 2004 were either filed without remittance or were delinquent.
12. The City billed the Taxpayer for the months filed without remittance or were delinquent.
13. The Taxpayers failed to provide the total square footage of the \_\_\_\_\_ Street building or the percentage of space being rented by the corporation to the individual dealers.
14. The corporation was dissolved in September of 2002.
15. There was no evidence that the City was notified of the dissolution of the corporation.

### 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 Taxpayers and *Tenant* are distinct and separate persons pursuant to Section 100.
3. Rental of real property is taxable pursuant to Section 445.
4. The Taxpayer failed to provide documentation to support their request for a re-rental deduction.
5. After dissolution of the corporation, the Taxpayers rental of real property to the independent contractors was a taxable activity pursuant to Section 445.
6. The Taxpayers protest should be denied.

**ORDER**

It is therefore ordered that the April 23, 2004 protest of *Taxpayers* of a delinquency determination made by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer