

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 5, 2002

Decision: MTHO #22

Tax Collector: City of Phoenix

Hearing Date: March 28, 2002 and May 22, 2002

DISCUSSION

Introduction

On November 21, 2001, Taxpayer Mobile Home Park ("Taxpayer") filed a protest of the City of Phoenix ("City") tax assessment. After review of the protest, the City concluded the protest was timely and in the proper form. On December 4, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") processed the protest as a redetermination and ordered the Taxpayer to respond by January 3, 2002 if a hearing was required. Also on December 4, 2001, the Hearing Officer ordered the City to file any response to the protest on or before February 4, 2002. On January 3, 2002, the Taxpayer requested the matter be set for hearing. On January 7, 2002, the Hearing Officer reclassified the protest as needing a hearing. On January 22, 2002 the City filed its response. On February 4, 2002 the matter was scheduled for a hearing commencing on March 28, 2002.

The City appeared and presented evidence at the March 28, 2002 hearing. The Taxpayer failed to make an appearance. On April 1, 2002, the Hearing Officer ordered the Taxpayer to file on or before May 1, 2002 any good cause reasons for missing the March 28, 2002 hearing. On April 19, 2002, the Taxpayer filed a Motion to Reopen Hearing ("Motion") because they did not receive notice of the March 28, 2002 hearing. Since the Taxpayer had good cause for failing to appear at the March 28, 2002 hearing, the hearing was reopened on May 22, 2002. The City and Taxpayer both appeared and presented evidence at the May 22, 2002 hearing. On May 24, 2002, the Hearing Officer filed a letter indicating a written ruling would be issued on or before July 8, 2002.

Taxpayer was purchased by Company T in or about September 1980. Company T is in the business of owning and managing properties for itself; as well as for other owners. From 1980 through 1983 the Taxpayer property was managed by Company C. In 1983, Company T assumed management control and prepared and filed tax returns with the City up through and including the spring of 1997. Taxpayer had an on-site manager ("Manager") that provided a monthly property control report ("Report") to Company T's in-house property supervisor and Chief Operating Officer ("COO"). The COO utilized the Report to prepare and file the City tax returns. In mid 1997, the COO went on extended medical leave. At about the same time frame, the Manager also left for medical reasons. As a result of these two personnel losses, the tax returns for the City were not prepared and filed commencing in May 1997 through December 2000. In late 2000, the COO returned to work and discovered the problem. At about the same time, the City sent a Notice and Demand to File Tax Returns ("Demand Notice") letter, dated February 8, 2001. The Demand Notice was received by the Taxpayer on February 12, 2001. The Demand Notice instructed the Taxpayer to file tax returns for the period May 1997 through December 2000 within thirty days of receipt. The Taxpayer failed to comply within the thirty-day period and as a result the account was referred to an auditor to complete an estimated assessment. From April 18, 2001 to June 14, 2001, the auditor had 22 contacts with the Taxpayer regarding revenue information for the period in which returns were not filed with the City. On June 15, 2001, the Taxpayer faxed a

schedule of revenue to the auditor. On October 11, 2001, a Notice of Tax Assessment ("Tax Notice") was sent to the Taxpayer. The City assessed the Taxpayer taxes in the amount of \$20,515.42 plus interest for residential rental/transient lodging for the period May 1997 through December 2000. In addition, the City assessed penalties for failure to timely file a tax return Section 14-540 (b)(1) ("Section 540 (b)(1)"), failure to timely pay taxes Section 14-540 (b)(2) ("Section 540 (b)(2)"), and failure to file on Demand Notice Section 14-540 (b)(3) ("Section 540 (b)(3)") in the amount of \$3,077.43, \$2,051.57, and \$5,128.94, respectively. The Taxpayer has protested the assessment of penalties.

City Position

A monthly tax return was sent to the Taxpayer for each month during the period May 1997 through December 2000. In addition, monthly statements were sent each month commencing in July 1997 notifying the Taxpayer that his returns were delinquent. Based on the above, the City requested the failure to timely file tax penalties be upheld pursuant to Section 540 (b)(1).

The Taxpayer requested the failure to pay taxes be abated because the individuals responsible for filing the returns were affected by serious medical emergencies. In response, the City acknowledged that pursuant to Section 14-540 (f)(3)(c) ("Section 540 (f)") the penalty to timely pay taxes can be waived for the reports immediately prior to the due date of the preparer due to serious illness.

The City asserted that Section 540 (f) is meant to include the initial tax return and a reasonable period thereafter. The City does not consider 44 consecutive months to be a reasonable period. For that reason, the City requested the failure to pay taxes in a timely manner be upheld pursuant to Section 540 (b)(2).

The City also requested the Taxpayer's request to abate the failure to file on Demand Notice be denied. The City asserted that the Taxpayer's failure to file tax returns or respond to the monthly statements demonstrated the Taxpayer has been noncompliant. In addition, the Taxpayer failed to comply with the Demand Notice within the required thirty-day period. For those reasons, the City requested the penalty for failure to file on Demand Notice be upheld.

Taxpayer Position

The Taxpayer concurred with the proposed additional tax and corresponding interest. The Taxpayer asserted that reasonable cause exists in support of a waiver of each of the assessed penalties. The Taxpayer requested a waiver of the penalties pursuant to City Tax Code Section 14-540 (0 ("Section 540 (f)") for the following reasons: 1. The Taxpayer has consistently filed and paid the taxes in a timely manner; 2. The two individuals primarily responsible for filing the tax returns were affected by a serious medical emergency; 3. The Taxpayer has never been audited by the City for the tax and the Taxpayer has not been noncompliant with any other provisions of its filing requirement; and, 4. Once the delinquency was brought to the attention of the Taxpayer, the Taxpayer immediately took all action necessary to retrieve the archived information and provide it to the City. The Taxpayer acknowledged that it took longer than the thirty days set forth in the Demand Notice because of the substantial amount of work necessary to gather information for a 44-month period.

Based on the reasons set forth above, the Taxpayer argued that reasonable cause exists to waive all the penalties assessed by the City.

ANALYSIS

There is no dispute that the City properly assessed taxes and associated interest on the Taxpayer for the period May 1997 through September 2000 for conducting the business of residential rental and transient lodging pursuant to City Code Sections 14-445 ("Section 445") and 14-447 ("Section 447").

The City is authorized pursuant to Sections 540 (b)(1) and 540 (b)(2) to assess penalties for failure to timely file and for failure to timely pay taxes. Clearly, the Taxpayer failed to timely file and pay taxes for a 44-month period. Section 540 (1) provides that under some circumstances the Section 540 (b)(1) and Section 540 (b)(2) penalties can be waived. In this case, Subsection C of Section 540 (0 is the most on point. Subsection C provides that the penalties can be waived when there is a serious illness of the preparer of the reports immediately prior to the due date. In the circumstances of this case, the Taxpayer lost two key personnel involved in filing of the tax returns at approximately the same time frame due to serious medical problems. As a result, the Hearing Officer concurs with the Taxpayer that the penalties pursuant to Sections (b)(1) and (b)(2)

should be waived for those reports immediately prior to the due date. The Hearing Officer also concurs with the City that it would not be reasonable to waive the penalties for a 44-month period. While it is judgmental on the part of the Hearing Officer; the Hearing Officer concludes that under the circumstances a reasonable period of time for the Taxpayer to have discovered and corrected the problem would be 90 days. Accordingly, the Hearing Officer grants the Taxpayer's request to abate penalties assessed pursuant to Sections 540 (b)(1) and 540 (b)(2) solely for the three month period for May 1997 through July 1997. The request to abate penalties assessed pursuant to Sections 540 (b)(1) and 540 (b)(2) for the period of August 1997 through December 2000 is denied.

The City is authorized, pursuant to Section 540 (b)(3) to assess a penalty when the Taxpayer fails or refuses to file a return within thirty days of having received a Demand Notice. In this case, the Taxpayer failed to file a return within the required thirty-day period. Section 540 (b)(3) also provides that the penalty is not proper if the Taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. Based on the evidence presented, the Taxpayer had to do a great deal of work to gather the information for 44 tax returns. Further, the fact that there were at least 22 contacts between the Taxpayer and City after the receipt of the Demand Notice indicates the Taxpayer was working to comply with the City's request. Based on the above, the Hearing Officer concludes the Taxpayer has demonstrated reasonable cause for failing to fully comply with the Demand Notice within thirty days of receipt. The Taxpayer's request to abate the Section 540 (b)(3) penalty is granted.

FINDINGS OF FACT

1. On November 21, 2001, Taxpayer filed a protest of the City tax assessment.
2. After review of the protest, the City concluded the protest was timely and in the proper form.
3. The protest was processed as a redetermination.
4. On December 4, 2001, the Hearing Officer ordered the City to file any response to the protest on or before February 4, 2002.
5. On January 3, 2002, the Taxpayer requested the matter be set for a hearing.
6. On January 7, 2002, the Hearing Officer reclassified the protest to include a hearing.
7. On January 22, 2002, the City filed its response.
8. On February 4, 2002, the matter was scheduled for a hearing commencing on March 28, 2002.
9. The City appeared and presented evidence at the March 28, 2002 hearing.
10. The Taxpayer failed to appear at the March 28, 2002 hearing.
11. On April 1, 2002, the Hearing Officer ordered the Taxpayer to file on or before May 1, 2002 any good cause reasons for missing the March 28, 2002 hearing.
12. On April 19, 2002, the Taxpayer filed a Motion because they did not receive notice of the March 28, 2002 hearing.
13. Since the Taxpayer had good cause for failing to appear at the March 28, 2002 hearing, the hearing was reopened on May 22, 2002.
14. The City and Taxpayer both appeared and presented evidence at the May 22, 2002 hearing.

15. On May 24, 2002, the Haring Officer filed a letter indicating a written ruling would be issued on or before July 8, 2002.
16. Taxpayer was purchased by Company T in or about September 1980.
17. Company T is in the business of owning and managing properties for itself; as well as other owners.
18. Taxpayer was in the business of residential rental and transient lodging.
19. From 1980 through 1983, the Taxpayer property was managed by Company C.
20. In 1983, Company T assumed management control and prepared and filed tax returns with the City up through and including the Spring of 1997.
21. Taxpayer had a Manager that provided a monthly Report to Company T's COO.
22. The COO utilized the Report to prepare and file the City tax returns.
23. In mid 1997, both the COO and the Manager had to leave their respective employer for extended medical leave.
24. As a result of the loss of these two key personnel, the tax returns for the City were not prepared and filed commencing in May 1997 through December 2000.
25. In late 2000, the COO returned to work and discovered the problem with the tax returns.
26. On February 8, 2001, the City sent a Demand Notice to the Taxpayer.
27. The Demand Notice was received by the Taxpayer on February 12, 2001.
28. The Demand Notice instructed the Taxpayer to file tax returns for the period May 1997 through December 2000 within thirty days of receipt.
29. The Taxpayer failed to comply within thirty days and the account was referred to an auditor to complete an estimated assessment.
30. From April 18, 2001 to June 14, 2001, the auditor had 22 contacts with the Taxpayer regarding revenue information for the period in which returns were not filed.
31. On June 15, 2001, the Taxpayer faxed a schedule of revenue to the auditor.
32. The Taxpayer had to get some of the information from the archives for the 44-month period.
33. On October 11, 2001, a Tax Notice was sent to the Taxpayer.
34. The City assessed the Taxpayer taxes in the amount of \$20,515.42 plus interest for the period May 1997 through December 2000.
35. The City assessed penalties for failure to timely file tax returns, for failure to timely pay taxes, and failure to file on Demand Notice in the amounts of \$3,077.43, \$2,051.57, and \$5,128.94, respectively.
36. A monthly tax return was sent to the Taxpayer for each month during the period May 1997 through December 2000.
37. In addition, monthly statements were sent each month commencing in July 1997 notifying the Taxpayer

that their returns were delinquent.

38. The Taxpayer failed to timely file and pay taxes for a 44-month 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. City Code Section 14-445(a) and 14-447 impose a tax on residential rental and transient lodging with the City.

3. Section 540(b)(1) imposes a penalty for failure to file a timely return unless taxpayer shows that the failure is due to reasonable cause and not willful neglect.

4. Section 540(b)(2) imposes a penalty for failure to pay the tax when due unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.

5. Section 540 (b)(3) imposes a penalty for failure to file on Demand Notice.

6. After loss of two key personnel involved in filing of tax returns, it was reasonable for the Taxpayer to not timely file or pay taxes for a three-month period.

7. The penalties for failure to timely file and failure to timely pay taxes for the three-month period of May 1997 through July 1997 should be abated.

8. The Taxpayer has demonstrated reasonable cause for failing to fully comply with the Demand Notice within thirty days of receipt.

9. The Taxpayer's request to abate the Section 540 (b)(3) penalty should be granted.

ORDER

It is therefore ordered that the November 21, 2001 protest filed by Taxpayer Mobile Home Park is hereby denied except as set forth in the following ordering paragraphs.

It is further ordered that the City of Phoenix shall revise its assessment by abating the penalties for failure to timely file and failure to timely pay taxes for the three-month period of May 1997 through July 1997.

It is further ordered that the City of Phoenix shall revise its assessment by abating all penalties assessed pursuant to Section 540 (b)(3).

It is further ordered that this decision is effective immediately.

Jerry Rudibaugh

Municipal Tax Hearing Officer