

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 29, 2002

Decision: MTHO #24

Taxpayer: Taxpayer

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On December 5, 2001, 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. The protest was processed as a redetermination. On December 10, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file their response on or before January 24, 2002. On January 14, 2002, the City filed its response. On January 21, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before February 20, 2002. The Taxpayer failed to file a reply. On March 11, 2002, the Hearing Officer sent a letter to the Taxpayer indicating the record was going to be closed and a written ruling would be issued.

The Taxpayer owns and leases residential real property located within the City. Taxpayer was assessed additional taxes by the City in the amounts of \$1,713.81 for Privilege License No. and \$1,279.69 for Privilege License No. . The assessment was for the period May 1997 through September 2001. The City also assessed interest on the unpaid taxes.

City Position

City Code Section 14-445(a) ("Section 445(a)") imposes a tax on the rental of real property within the City. City Code Section 14-540(a) ("Section 540(a)") imposes interest on any tax that was not paid by the delinquency date. The City asserted that the interest may not be waived or abated by the City or the Hearing Officer unless the tax due is also abated. Since the Taxpayer has not protested the tax, the City argued that the assessed interest is also due. Therefore, the City requested the protest be denied.

Taxpayer Position

The assessed taxes were paid, however, the Taxpayer requested the interest amounts be waived. The Taxpayer did not believe the interest charge was justified since they had no idea there was a City tax on rentals. For that reason, the Taxpayer requested the interest be waived

ANALYSIS

The sole issue in this case is whether or not the interest added onto the tax assessed can be waived or abated. The following is extracted from Section 540(a): "Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 14-570." It is absolutely clear from Section 540(a) that the Hearing Officer does not have the authority to waive or abate the interest unless the tax is also abated. Since the tax was not protested, the Hearing Officer must conclude that the interest cannot be waived or abated. Accordingly, the protest shall be denied.

FINDINGS OF FACT

1. On December 5, 2001, the Taxpayer filed a protest of the City's tax assessment.
2. After review of the protest, the City concluded the protest was timely and in the proper form.
3. On December 10, 2001, the Hearing Officer ordered the City to file their response on or before January 24, 2002.
4. The City filed its response on January 14, 2002.
5. On January 21, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before February 20, 2002.
6. The Taxpayer failed to file a reply.
7. On March 11, 2002, the Hearing Officer sent a letter to the Taxpayer indicating the record would be closed and a written ruling would be issued.
8. The Taxpayer owns and leases residential real property located within the City.
9. The Taxpayer was assessed additional taxes by the City in the amounts of \$1,713.81 for Privilege License Number 01006027 and \$1,279.69 for Privilege License Number 01006029.
10. The City assessed interest on the unpaid taxes.
11. The Taxpayer requested the interest be waived because they had no idea there was a City tax on rentals.

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. Section 445(a) imposes a tax on rental of real property with the City limits.
3. Section 540(a) imposes interest on any tax that was not paid by the delinquency date.
4. Section 540(a) precludes the Hearing Officer from abating or waiving the interest unless the tax is also abated.
5. The tax was not protested.
6. The interest cannot be waived or abated by the Hearing Officer.
7. The protest should be denied.

ORDER

It is therefore ordered that the December 5, 2001 protest of Taxpayer shall be denied.

It is further ordered that this decision is effective immediately.

Dated: April 29, 2002

Jerry Rudibaugh

Municipal Tax Hearing Officer