

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 12, 2006

Decision: MTHO #257

Tax Collector: City of Scottsdale

Hearing Date: February 1, 2006

DISCUSSION

Introduction

On August 8, 2005, a protest was filed by *Taxpayer* of an assessment of penalties by the City of Scottsdale ("City"). After review, the City concluded on August 17, 2005, that the protest was timely and in the proper form. On August 22, 2005, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before October 6, 2005. On October 3, 2005, the City filed a response to the protest. On October 17, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 7, 2005. On October 28, 2005, a Notice of Tax Hearing ("Notice") scheduled this matter for hearing on December 12, 2005. On November 2, 2005, the Taxpayer requested the hearing be rescheduled. On November 30, 2005, a Notice rescheduled the hearing for February 1, 2006.

Both parties appeared and presented evidence at the February 1, 2006 hearing. On February 3, 2006, the Hearing Officer indicated the Taxpayer's opening brief shall be filed on or before March 3, 2006; the City's response brief shall be filed on or before April 3, 2006; and the Taxpayer's reply brief shall be filed on or before April 18, 2006. On February 23, 2006, the Taxpayer filed its initial brief. On March 21, 2006, the City filed a response brief. On May 1, 2006, the Hearing Officer indicated no reply brief had been filed and as a result the record was closed and a written decision would be issued on or before June 15, 2006.

City Position

According to the City, the Taxpayer was assessed penalties pursuant to City Code Section 540 ("Section 540") for late filing and late payment of taxes for the reporting months of January 2005 and March 2005. The City indicated the Taxpayer was assessed penalties for January 2005 in the amount of \$9,365.16 and for March 2005 in the amount of \$12,636.02. The City asserted the penalties for January 2005 were waived because the Taxpayer had converted to a new accounts payable system. The City also noted that on the back of the tax statements sent to City taxpayers, it indicates that "postmarks are not evidence of timely filing." The City argued that City Code Section 530 (c) ("Section 530") makes it clear that postmarking is not sufficient. The City asserted that Section 540 defines reasonable cause for the purpose of waiving penalties to mean that the Taxpayer exercised ordinary business care and prudence. The City argued the Taxpayer has not demonstrated ordinary business care and prudence in believing that a postmark was sufficient for a timely filing in light of the clear bolded and capped wording on the return

filed by the Taxpayer. The City indicated that it must uniformly interpret its Tax Code and the City can not treat this Taxpayer any differently than other taxpayers who must pay a penalty. Based on the above, the City requested the Taxpayer's protest be denied.

Taxpayer Position

The Taxpayer requested abatement of the penalty in the amount of \$12,636.02 for its March 2005 tax filing. The Taxpayer asserted the payment was received by the City by April 30, 2005 via overnight mail delivery. The Taxpayer indicated that Section 540 states that "...the Taxpayer shall pay a penalty unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect ..." The Taxpayer argued that any delinquency was due to reasonable cause. According to the Taxpayer, employees of the City Tax Division have repeatedly informed the Taxpayer that filings were considered timely if mailed by the end of the month. The Taxpayer asserted it has consistently filed and paid the taxes in a timely manner. The Taxpayer indicated it had one late filing over the past six years and that was because of a company side conversion of internal Accounts Payable Systems. The Taxpayer discovered on April 29, 2005, that it had not yet filed its March 2005 filing. The Taxpayer hired *Shipping Company* to provide an expedited shipment on Saturday, April 30, 2005. *Shipping Company* was not able to deliver the tax return on April 30, 2005 as the City was not open for business on Saturday. The Taxpayer asserted in its post hearing memorandum that it had made changes to its internal processes so that the issued did not repeat.

ANALYSIS

Section 530 makes it clear that the Taxpayer's March 2005 tax return and payment would need to be received by the City on or before the last business of April 2005. As a result, the Taxpayer's March 2005 tax return and payment needed to be received by the City on or before April 29, 2005. While the Taxpayer attempted to have it delivered on April 30, 2005, that was not a City business day. The Taxpayer did have it delivered to the City on May 2, 2005. As a result, the Taxpayer's March 2005 tax return and payment was not timely filed and the City was authorized pursuant to Section 540 to assess penalties for failure to timely file and for failure to timely pay taxes.

The sole issue is whether or not the Taxpayer has demonstrated reasonable cause to have the penalties waived. Section 540 does require the penalties to be waived if the Taxpayer has consistently filed and paid the taxes in a timely manner. While there is no definition in the Tax Code for "consistently" we do know that it doesn't mean every time otherwise the Tax Code would have so stated. In this case, the evidence demonstrated the Taxpayer had timely filed all tax returns and timely paid taxes for every month of a six year period with the exception of two months. It just so happens those two months occurred within a three month period. In addition, there were entirely different reasons for the two late filings. The January 2005 late filing was caused by a change in the accounting system. The March 2005 late filing was caused by the Taxpayer simply waiting too late to file the return. We believe this could happen to an ordinary prudent businessperson. We also find

that the Taxpayer acted as a reasonable prudent businessperson by attempting an expedited delivery even on a Saturday. Lastly, the Taxpayer acted as a reasonable prudent businessperson by modifying procedures so that the problem did not reoccur. Based on the above, we conclude the Taxpayer has demonstrated reasonable cause to have the March 2005 late penalties waived. The Taxpayer's protest should be granted.

FINDINGS OF FACT

1. On August 8, 2005 a protest was filed by the Taxpayer of an assessment of penalties by the City.
2. After review, the City concluded on August 17, 2005, that the protest was timely and in the proper form.
3. On August 22, 2005, the Hearing Officer ordered the City to file a response to the protest on or before October 6, 2005.
4. On October 3, 2005, the City filed a response to the protest.
5. On October 17, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 7, 2005.
6. On October 28, 2005, a Notice scheduled this matter for hearing on December 12, 2005.
7. On November 2, 2005, the Taxpayer requested the hearing be rescheduled.
8. On November 30, 2005, a Notice rescheduled the hearing for February 1, 2006.
9. Both parties appeared and presented evidence at the February 1, 2006 hearing.
10. On February 3, 2006, the Hearing Officer indicated the Taxpayer's opening brief shall be filed on or before March 3, 2006; the City's response brief shall be filed on or before April 3, 2006, and, the Taxpayer's reply brief shall be filed on or before April 18, 2006.
11. On February 23, 2006, the Taxpayer filed its initial brief.
12. On March 21, 2006, the City filed a response brief.
13. On May 1, 2006, the Hearing Officer indicated no reply brief had been filed and as a result the record was closed and a written decision would be issued on or before June 9, 2006.
14. The Taxpayer was assessed penalties for late filing and late payment of taxes for

the reporting months of January 2005 and March 2005.

15. The Taxpayer was assessed penalties for January 2005 in the amount of \$9,365.16 and for March 2005 in the amount of \$12,636.02.
16. The City waived the penalties for January 2005.
17. The penalties for January 2005 were waived because the Taxpayer had converted to a new accounts payable system.
18. The Taxpayer discovered on April 29, 2005, that it had not yet filed its March 2005 filing.
19. The Taxpayer hired *Shipping Company* to provide an expedited shipment on Saturday, April 30, 2005.
20. *Shipping Company* was not able to provide an expedited shipment on Saturday, April 30, 2005 as the City was not open for business.
21. Subsequently, the Taxpayer has made changes to its internal processes so that similar issues did not occur again.

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 Taxpayer's March 2005 tax return and payment were not timely filed with the City pursuant to Section 530.
3. The City was authorized pursuant to Section 540 to assess penalties for late filing and late payment.
4. The Taxpayer has demonstrated reasonable cause to have the penalties waived.
5. The Taxpayer's protest should be granted.

ORDER

It is therefore ordered that the August 8, 2005 protest of *Taxpayer* is hereby granted.

It is further ordered that the City of Scottsdale shall waive the penalties assessed for the March 2005 tax return and payment.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer