

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 3, 2002

Decision: MTHO #26

Taxpayer: Taxpayer

Tax Collector: City of Phoenix

Hearing Date: April 18, 2002

DISCUSSION

Introduction

On November 26, 2001 and December 6, 2001, Taxpayer ("Taxpayer") filed a protest of the City of Phoenix ("City") tax penalties for sales tax numbers and , respectively. After review of the protest, the City concluded the protest was timely and in the proper form. On December 24, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before February 8, 2002. The City filed its response on February 7, 2002. On March 15, 2002, the Municipal Tax Hearing Office set the matter for hearing commencing on April 18, 2002. The Taxpayer and City both appeared and presented evidence at the April 18, 2002 hearing.

The company is in the health management business with two offices in Phoenix. One location is ("North 16th Street") (tax number) and the other location is ("Cactus") (tax number). In mid 1999, the City discovered that the Taxpayer had licensed the Cactus location with the City of Glendale and was paying the privilege license tax to the City of Glendale ("Glendale") even though the Cactus location was within the City limits. The City requested a refund from Glendale for the taxes that had been erroneously sent to Glendale. In discussions with Glendale, the City discovered that tax returns and payments had not been made for several months. The City contacted the Taxpayer regarding the tax returns and payments that had not been received. The Taxpayer still did not send in the returns and payments. As a result, the City performed an estimate for the tax liability for the periods of September 1997, November 1997, October 1998, January 1999, and the period of March 1999 through January 2002. On November 17, 2000, the City issued a Notice of Tax Assessment ("Notice") for the Cactus location in the amount of \$5,408.05. The Notice was sent by certified letter to the Taxpayer's address and was signed for by the Taxpayer on November 18, 2000. The certified letter, and other correspondence, from the City were all received by one employee of the Taxpayer. The one employee was in charge of the mail, preparing tax returns, and having the returns and payments sent back to the City. On January 25, 2001, the employee was home sick and the manager picked up the company mail that contained a letter from the City regarding the Cactus tax matters. The Taxpayer began an internal investigation and found that its employee had not been sending the tax returns and payments to the City. Instead, those returns and associated checks were placed in file boxes and drawers. The Taxpayer discharged the employee and modified its procedures so that one person no longer had total control of the process.

Subsequently, the Taxpayer sent letters of protest to the City of all penalties assessed for both the Cactus location as well as the North 16th Street location. The City Tax Administrator denied the protest. The Taxpayer then filed a protest with the Municipal Tax Hearing Officer.

City Position

The City asserted that all penalties up through June 2000 for the Cactus location cannot be waived because the Taxpayer failed to file a protest pursuant to Model Tax Code Section 14-570 ("Section 570") within 45 days from the receipt of the

assessment letter. As to the other penalties, the City argued that the Taxpayer has not demonstrated reasonable cause or experienced unavoidable circumstances for failing to file or pay taxes in a timely manner. For that reason, the City requested the waiver of penalties be denied.

Taxpayer Position

The Taxpayer asserts that it did not purposely fail to timely file and pay its tax returns. The failure to file and pay taxes in a timely manner resulted from deception and fraudulent activities of a sole employee who was subsequently terminated from employment with the Company. For that reason, the Taxpayer concluded there were extraordinary circumstances for the late filings and as such the Taxpayer asserts it has demonstrated a reasonable basis for waiver of all penalties. As to the City's argument that the Taxpayer has failed to file a timely protest to the November 17, 2000 assessment by the City for the Cactus location, the Taxpayer argued that its protest was timely. While the City's assessment letter was signed for, the Taxpayer argued that it did not receive notice at that time because the letter was signed for by the employee who committed the deception and fraudulent activities. For that reason, the Taxpayer argued that its protest was timely.

ANALYSIS

Section 570 does provide that a protest petition shall be filed "... within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit has been denied."

Because of the malfeasance of an employee, the Taxpayer has argued that it did not receive notice of the determination when the City mailed its assessment letter. The Hearing Officer does not agree with the Taxpayer. The City mailed the assessment letter to the proper address and sent the letter certified. That letter was signed for by an employee of the company, and it would not be reasonable to expect the City to verify that the employee of the Taxpayer was competent in properly handling the mail or for the City to wait an indefinite period of time until the Taxpayer discovered the problem. Therefore, the protest of the penalties up through June 2000 for the Cactus location cannot be waived because the Taxpayer failed to file a timely protest.

As to the remaining penalties, the Hearing Officer concludes that the Taxpayer has demonstrated reasonable cause for abatement of the penalties for failure to file timely returns, but has not demonstrated reasonable cause for abatement of the penalties for failure to timely pay taxes. The employee that handled the sales tax returns and payments initially did them correctly.

Subsequently, for whatever reason, the employee began to store them in file cabinets and boxes instead of mailing them to the City. Based on the evidence, no one else at the company became aware of the problem until March of 2001. The company then took actions to find out what was wrong and took corrective actions. The Hearing Officer concludes that under the circumstances the Taxpayer did have reasonable cause for failing to timely file the returns. The Hearing Officer reaches a different conclusion on the penalties for failing to pay taxes in a timely manner. The Taxpayer made the business decision to have one employee solely in charge of the tax returns and the payment of the taxes. The Taxpayer had in place no "checks and balances" to insure the payments to the City actually cleared the bank. This lack of "checks and balances" went on for a three-year period. A reasonable, prudent businessman would not have allowed this to occur. The Hearing Officer concludes that it is not reasonable to have checks go uncashed for up to three years and not be detected. For that reason, the Hearing Officer concludes that all late payment penalties were properly assessed and the Taxpayer has failed to justify any waiver of those penalties.

FINDINGS OF FACT

1. On November 26, 2001 and December 6, 2001, Well4Life filed a protest of the City tax penalties for sales tax numbers and , respectively.
2. On December 6, 2001, the City concluded the protest was timely and in the proper form.
3. On December 24, 2001, the Hearing Officer ordered the City to file a response to the protest on or before February 8, 2002.

4. On February 7, 2002, the City filed its response.
5. On March 15, 2002, the Municipal Tax Hearing Office set the matter for hearing commencing on April 18, 2002.
6. The Taxpayer and City both appeared and presented evidence at the April 18, 2002 hearing.
7. The Taxpayer is in the health management business with offices located at North 16th Street and Cactus within the City.
8. In mid 1999, the City discovered that the Taxpayer had erroneously licensed and was paying taxes for the Cactus location to Glendale.
9. Shortly thereafter, the City also discovered that the Taxpayer had not filed all the tax returns with Glendale.
10. On November 17, 2000, the City issued a notice to the Taxpayer's address of record for taxes, penalties, and interest in the amount of \$5,408.05 for the Cactus location.
11. The notice was sent by certified mail and signed for by the Taxpayer on November 18, 2000.
12. The Taxpayer had one employee ("Employee") in charge of the mail, preparing tax returns, and having the returns and payments sent to the City.
13. The Employee signed for the City's November 17, 2000 assessment letter.
14. On January 25, 2001, the Employee was sick and the manager picked up the company mail that contained a letter from the City regarding the Cactus tax matters.
15. The Taxpayer began an internal investigation and discovered that the Employee had not been sending the tax returns and payments to the City.
16. The Employee had been placing the tax returns and associated checks in file boxes and drawers.
17. The Taxpayer discharged the Employee and modified its procedures so that one person no longer had total control of the process.
18. The Taxpayer did not file a protest of the City's November 17, 2001 tax assessment for the Cactus property within 45 days of receipt of the assessment.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-605 6, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. Section 540 (b)(1) imposes a penalty for failure to file a timely return unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
3. Section 540 (b)(2) imposes a penalty for failure to pay the tax timely unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
4. Section 570 provides that a protest petition shall be filed within 45 days of receipt by the Taxpayer of a Notice of Determination by the Tax Collector.
5. The Taxpayer was notified of the Notice on November 18, 2000.

6. The Taxpayer failed to file a timely protest of the Notice.
7. The Taxpayer has demonstrated reasonable cause for failing to timely file tax returns for the Cactus property from July 2000 through January 2001.
8. The Taxpayer has demonstrated reasonable cause for failing to timely file tax returns for the North 16th Street property from September 1997 through January 2001.
9. The Taxpayer has not demonstrated any basis for failing to timely pay taxes for the Cactus property from July 2000 through January 2001.
10. The Taxpayer has not demonstrated any basis for failing to timely pay taxes for the North 16th Street property for the period September 1997 through January 2001.

ORDER

It is therefore ordered that the protest of the City of Phoenix penalties by Taxpayer is granted in part and denied in part.

It is further ordered that the City of Phoenix shall amend the assessed penalties by removing the failure to file tax penalties for the Cactus property from July 2000 through January 2001, and removing the failure to file tax penalties for the North 16th Street property from September 1997 through January 2001.

It is further ordered that this decision is effective immediately.

Dated: June 3, 2002

Jerry Rudibaugh

Municipal Tax Hearing Officer