

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: May 31, 2006  
Decision: MTHO #274  
Tax Collector: City of Phoenix  
Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On October 27, 2005, *Taxpayer* filed a protest of a tax payment made by the City of Phoenix (“City”). After review, the City concluded on October 27, 2005, that the protest was timely but not in the proper form. On October 31, 2005, the Hearing Officer granted the Taxpayer an extension until December 15, 2005 to correct the form. On December 10, 2005, the Taxpayer requested an extension to correct the form. On December 14, 2005, the Hearing Officer granted the Taxpayer an extension until January 31, 2006. On January 25, 2006, the Taxpayer corrected the form. On February 3, 2006, the Hearing Officer ordered the City to provide a response to the protest on or before March 20, 2006. On March 20, 2006, the City filed a response to the protest. On March 20, 2006, the Taxpayer filed a reply. On March 24, 2006, the Hearing Officer ordered the Taxpayer to file a reply on or before March 23, 2006. On April 23, 2006, the Hearing Officer extended the Taxpayer’s deadline until April 24, 2006. On April 14, 2006, the Taxpayer filed a reply. On April 28, 2006, the Hearing Officer indicated the record was closed and a written decision would be issued on or before June 8, 2006.

#### **City Position**

The City indicated the Taxpayer was licensed as a sole proprietorship owned by *Company ABC*. According to the City, the Taxpayer was a retail florist in the business of selling locally and nationally through their affiliation with *Flower 1* and *Flower 2*. The City noted that the only tax return filed for the period November 1996 through March 2002 was the May 1998 return. The City asserted the Taxpayer failed to respond to the City’s August 5, 2003 Notice and Demand to File Tax Returns (“Notice”).

Since the Taxpayer failed to respond to the Notice, the City indicated they were authorized, pursuant to City Code Section 14-555 (e) (“Section 555 (e)”) to use estimates to determine the correct tax. The City utilized the income the Taxpayer had reported to the State of Arizona (“State”) to estimate the Taxpayer’s taxable income. The City had to further estimate the income for the months of 11/96, 1/98, 1/00, and 3/02 as those months were not included in the reporting history received from the State. As a result of the City estimate, the City assessed the Taxpayer for additional taxes of \$8,681.26. The City also assessed the Taxpayer for interest up through September 2005 in the amount of \$5,991.21. Lastly, the City assessed the Taxpayer for penalties totaling \$4,389.95 for failure to file returns, failure to timely pay taxes, and failure to timely respond to the Notice.

In response to the Taxpayer's argument that the company was transferred to *Entity 1* in November 2001 and the name changed to *Company ABC*, the City asserted no documentation had been provided to support this claim. According to the City, the Taxpayer has made no ownership change, name change or location change to its City Privilege Tax License and there was no application for a new license.

As to the penalties, the City argued there was no reasonable basis provided for failing to file returns, failing to timely pay tax, or failing to respond to the Notice. The City asserted they attempted from May 1, 2001 to October 20, 2005 to bring the Taxpayer into compliance with the City Code. As a result, the City opined the penalties were properly assessed.

### **Taxpayer Position**

The Taxpayer argued the State forms were incorrect as they failed to deduct twenty percent amounts shared on *Flower 1* and *Flower 2* orders. The Taxpayer indicated they never disputed the State amounts as they reached a payment agreement with the State in order to stop legal action. According to the Taxpayer, the company was transferred to *Entity 1* in 1999. The Taxpayer asserted that *Entity 1* managed the business from 1996 forward. The Taxpayer indicated *Entity 1* had health problems and the business slowed down considerably. The Taxpayer asserted that *Entity 1* did not inform her parents about the state of the business because of the parent's ill health. The Taxpayer asserted that neither *Entity 1* nor her parents have the ability to pay the taxes. As a result the Taxpayer requested a discharge of the taxes, penalties, and interest.

### **ANALYSIS**

Pursuant to City Code Section 460 (a) ("Section 460 (a)"), the evidence was clear that the Taxpayer had understated retail income for the period November 1996 through March 2002. City Code Section 14-350 ("Section 350") provides that the Taxpayer shall maintain suitable books and records to determine the appropriate amount of tax. In this case, the Taxpayer failed to provide suitable books and records. As a result, the City was authorized pursuant to Section 545 to make a reasonable estimate. We find that the City's use of State tax returns would provide a reasonable estimate for the City taxable income. We further find that the Taxpayer has failed to demonstrate that the City's estimate was not reasonable. Based on the above, we uphold the City's determination of taxes due.

As to the interest assessed, City Code Section 540 ("Section 540") makes it clear that no interest may be abated by the Hearing Officer except for interest related to any taxes abated. Since no taxes were abated, the interest may not be abated.

Section 540 provides that the City may assess penalties for failure to timely file returns and for failure to timely pay taxes. Section 540 also provides that an additional penalty may be assessed for failure to file a return within thirty days of receiving a Notice. The

City was authorized to assess all three penalties in this matter. Any or all of the penalties may be waived if the Taxpayer demonstrates reasonable cause for their actions. In this case, we do find the Taxpayer was acting reasonably in relying on *Entity 1* to timely file returns and timely pay taxes. As a result, we shall waive the penalties for failure to timely file returns and failure to timely pay taxes. However, the reasonableness of relying on *Entity 1* can't go on forever. We find the City made numerous efforts to bring the Taxpayer into compliance with little success. As a result, we do not find the Taxpayer acted reasonably in not timely responding to the Notice. Accordingly, the penalty for failing to file a return within thirty days of receiving the Notice is not waived.

### **FINDINGS OF FACT**

1. On October 27, 2005 the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on October 27, 2005, that the protest was timely but not in the proper form.
3. On October 31, 2005, the Hearing Officer granted the Taxpayer an extension until December 15, 2005 to correct the form.
4. On December 10, 2005, the Taxpayer requested an extension to correct the form.
5. On December 14, 2005, the Hearing Officer granted the Taxpayer an extension until January 31, 2006.
6. On January 25, 2006, the Taxpayer corrected the form.
7. On February 3, 2006, the Hearing Officer ordered the City to provide a response to the protest on or before March 20, 2006.
8. On March 20, 2006, the City filed a response to the protest.
9. On March 20, 2006, the Taxpayer filed a reply.
10. On March 24, 2006, the Hearing Officer ordered the Taxpayer to file a reply on or before March 23, 2006.
11. On April 3, 2006, the Hearing Officer extended the Taxpayer's deadline until April 24, 2006.
12. On April 14, 2006, the Taxpayer filed a reply.
13. On April 28, 2006, the Hearing Officer indicated the record was closed and a written decision would be issued on or before June 8, 2006.

14. The Taxpayer was licensed as a sole proprietorship owned by the *Company ABC*.
15. The Taxpayer was a retail florist in the business of selling locally and nationally through affiliation with *Flower 1* and *Flower 2*.
16. The only tax return filed with the City for the period November 1996 through March 2002 was the May 1998 return.
17. The City contacted the Taxpayer on numerous occasions in order to bring the Taxpayer into compliance with the City Tax Code.
18. The Taxpayer failed to respond to the City's August 5, 2003 Notice.
19. Because the Taxpayer failed to provide books and records, the City utilized the income the Taxpayer reported to the State in order to estimate the Taxpayer's taxable income.
20. The City further had to estimate the income for the months of 11/96, 1/98, 1/00, and 3/02 as those months were not included in the reporting history received from the State.
21. The City assessed the Taxpayer for additional taxes in the amount of \$8,681.26.
22. The City assessed the Taxpayer for interest up through September 2005 in the amount of \$5,991.21.
23. The City assessed the Taxpayer for penalties totaling \$4,389.95 for failure to file returns, failure to timely pay taxes, and failure to respond to the Notice.
24. No documentation was provided to the City to demonstrate a ownership change, a name change, or a location change.
25. The Taxpayer turned the business over to *Entity 1* to operate and depended on *Entity 1* to file City forms and pay City taxes.

### 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. During the period November 1996 through March 2002, the Taxpayer had understated retail sales pursuant to Section 460 (a).

3. The Taxpayer failed to maintain suitable books and records to determine the appropriate amount of tax pursuant to Section 350.
4. The City was authorized pursuant to Section 545 to estimate the Taxpayer's taxable income.
5. The City's estimate was reasonable.
6. Since no taxes were abated, no interest can be abated by the Hearing Officer pursuant to Section 540.
7. The City was authorized pursuant to Section 540 to assess penalties for failure to timely file returns, for failure to timely pay taxes, and for failure to file a return within thirty days of receiving a Notice.
8. The Taxpayer demonstrated reasonable cause for failing to timely file returns and for failing to timely pay taxes.
9. The Taxpayer did not demonstrate reasonable cause for failing to file a return within thirty days of receiving the Notice.
10. The penalties for failing to timely file returns and failing to timely pay taxes should be waived.
11. The Taxpayer's protest should be denied with the exception of the penalties for failure to timely file returns and failure to timely pay taxes.

### **ORDER**

It is therefore ordered that the October 27, 2005 protest by *Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied with the exception of the penalties for failure to timely file returns and failure to timely pay taxes.

It is further ordered that the City of Phoenix shall revise the assessment by removing the penalties for failure to timely file and failure to timely pay taxes.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer