

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 10, 2002

Decision: MTHO #34

Taxpayer: Taxpayer

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On January 30, 2002, a letter of protest was received from Taxpayer regarding a tax assessment from the City of Phoenix ("City"). After review of the protest petition, the City concluded on January 31, 2002 that the protest was timely and in proper form. On February 4, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before March 21, 2002. The protest was processed as a redetermination.

On March 15, 2002, the City filed its response. On March 25, 2002, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before April 24, 2002. The Taxpayer failed to file any reply, and on May 6, 2002, the Hearing Officer issued a letter closing the record and indicating a written ruling would be issued on or before June 20, 2002.

The Taxpayer is a property management company that acts on behalf of four individual owners to collect rents and maintain properties. The auditor for the City requested the Taxpayer provide the rental revenues for five properties in which the Taxpayer acted as the property management company. The Taxpayer provided the requested information and the City utilized the information to make its tax assessment.

City Position

The taxable revenue amounts were taken directly from correspondence provided by the Taxpayer. City Tax Code Regulation 14-100.1 (b) (2) "(Regulation 100.1 (b) (2)) provides that a property manager is subject to the tax imposed upon the business of leasing or renting real property even if such leasing or renting would be deemed "casual" if each property owner managed their own real property. Lastly, City Code Regulation 14-200.1 (a) ("Regulation 200.1 (a)") provides that refundable deposits shall be included in taxable residential rental revenue for the month that the lessee forfeited the deposits. Based on the above, the City requested the assessment be upheld.

Taxpayer Position

The Taxpayer asserted that the auditor overstated the rental income for the five Glendale properties by \$4,694.00. The Taxpayer also argued that since the five properties are owned by four separate individuals, then each of the properties would

be exempt from sales tax pursuant to City Tax Code Section 14-445 (f) ("Section 445 (f)"). Lastly, the Taxpayer asserted that the City is attempting to collect sales tax on "Forfeited Deposits" which are not true income. According to the Taxpayer, these were funds used by the tenants to reimburse the owner for maintenance expenses paid by the owner and as such should not be included in income for the Taxpayer.

ANALYSIS

City Tax Code Section 14-445 ("Section 445") imposes a tax on the gross income from leasing or renting real property within the City. While the Taxpayer asserted the City had overstated the amount of rental income, the Taxpayer failed to reply to the argument that the City had simply utilized the revenue amounts provided by the Taxpayer. As a result, the Hearing Officer concludes that the Taxpayer agreed with the City argument. Accordingly, the Hearing Officer must deny the Taxpayer's protest regarding a calculation error.

Regulation 200.1(a) does provide that refundable deposits shall be included as gross income to the Taxpayer for the month in which they are forfeited. The Hearing Officer concurs with the City's position. Lastly, Regulation 100.1 (b) (2) does provide a property manager is subject to the tax even if such rental or leasing would be deemed "casual" if the owner managed such property for himself. The Hearing Officer concurs with the City's position.

FINDINGS OF FACT

1. On January 30, 2002, Direct filed a letter of protest of the City tax assessment.
2. After review of the protest position, the City concluded on January 31, 2002 that the protest was timely and in the proper form.
3. On February 4, 2002, the Hearing Officer ordered the City to file a response to the protest on or before March 21, 2002.
4. The protest was processed as a redetermination.
5. On March 15, 2002, the City filed its response.
6. On March 25, 2002, the Hearing Officer ordered the Taxpayer to file a reply to the City on or before April 24, 2002.
7. The Taxpayer failed to file any reply, and on May 6, 2002, the Hearing Officer issued a letter closing the record and indicating a written ruling would be issued on or before June 20, 2002.
8. The Taxpayer is a property management company that acts on behalf of four individual owners to collect rents and maintain properties.
9. The taxable revenue amounts determined by the City were taken directly from correspondence provided by the Taxpayer.
10. The Taxpayer failed to reply to the City's assertion that the taxable revenue amounts were taken directly from correspondence provided by the Taxpayer.
11. The tenants of the properties forfeited deposits to the owners for maintenance expenses paid by the owner.

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 imposes a tax on the gross income from leasing or renting real property within the City.
3. The Taxpayer has failed to demonstrate that the taxable revenue amounts determined by the City were erroneous.
4. Regulation 200.1 (a) provides that refundable deposits shall be included in gross income to the taxpayer for the month in which they are forfeited.
5. Regulation 100.1 (b) (2) provides that a property manager is subject to the tax even if such rental or leasing would be deemed casual if the owner managed such property for himself.
6. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the Taxpayer January 30, 2002 protest of the City of Phoenix tax assessment is hereby denied.

It is further ordered that this decision shall be effective immediately.

Jerry Rudibaugh

Municipal Tax Hearing Officer