

**Jerry Rudibaugh**  
**Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: June 24, 2002

Decision: MTHO #36

Tax Collector: City of Peoria

Hearing Date: May 8, 2002

**DISCUSSION**

**Introduction**

On February 12, 2002, Taxpayer filed a protest of the City of Peoria ("City") tax assessment. After review of the protest, the City concluded it was timely but not in the proper form. On February 25, 2002, the City filed its response to the protest. As a result, the Municipal Tax Hearing Officer ("Hearing Officer") concluded the protest was in proper form.

On March 3, 2002, and March 10, 2002, the Taxpayer sent letters of reply to the City. On March 15, 2002 the Municipal Tax Hearing Office scheduled the matter for hearing commencing on May 8, 2002. The City and Taxpayer both appeared and presented evidence at the May 8, 2002 hearing. The Hearing Officer issued a May 13, 2002 letter indicating that a written ruling would be issued on or before June 24, 2002.

The Taxpayer has been in the business of renting residential property located at XXXXXXXXXXXX ("First Property"), since July 29, 1983 and renting residential property located at XXXXXXXXXXXX ("Second Property"), since February 7, 1994. Both of these properties are located within the City.

The Taxpayer was selected for audit due to a random check of property owners being managed by XXXXXXXXXXXX ("Property Manager"). For some time periods, the Property Manager collected privilege tax on the rental of the First and Second Property and placed the monies in an escrow account. As a result of the random audit, a tax assessment was issued on December 24, 2001 for taxes on the amount of \$1,748.01, interest of \$601.86, penalties of \$421.01 and license fees of \$60.00. Subsequently, the Taxpayer provided additional records and the City issued an amended assessment on January 18, 2002 for taxes in the amount of \$1,373.87, interest of \$419.59, penalties of \$347.95, and license fees of \$30.00.

**City Position**

The City argued that the tax assessment was proper since the Taxpayer was in the business of renting residential property within the City. Further, the City asserted that it was proper to review a six year period pursuant to Model City Tax Code Section 9A-550 (c) ("Section 550 (c)") since no tax return had been filed. As to the assessment interest, the City argued that it did not have the authority to abate interest pursuant to Model City Tax Code Section 9A-540 (a) ("Section 540 (a)"). The City argued that the penalty was appropriately assessed since the Taxpayer has failed to demonstrate any reasonable cause for

failing to pay the taxes in a timely manner. Based on all the above, the City requested its assessment be upheld in the entirety.

### **Taxpayer Position**

The Taxpayer argued that they were not in the business of renting residential property. The Taxpayer asserted that the First Property was occasionally rented to winter visitors while the Taxpayer was residing in Colorado and Nevada. The Second Property was rented to the Taxpayer's daughter without a lease. Based on the above, the Taxpayer argued the rentals should be considered casual and not taxable.

The Taxpayer asserted that they did not know of the requirement to purchase a sales tax license and collect sales tax until notified by the City in September/October of 2001. The Taxpayer argued that it was not fair and reasonable to assess back taxes for six years since the City failed to notify the Taxpayer of the tax. According to the Taxpayer, the City should accept responsibility for their mistakes and not penalize the Taxpayer.

### **ANALYSIS**

It is the responsibility of the Taxpayer to be knowledgeable of the law. There was no evidence that the tax laws were not properly legislated and published. Accordingly, the Hearing Officer must conclude that the tax laws in question were proper and legal. While the Taxpayer argued that they were not in the business of renting residential property, the evidence demonstrated that the Taxpayer received income from two properties and had hired a Property Manager to manage those properties. As a result, the Hearing Officer concludes the Taxpayer was in the business of renting residential property. As to the penalties, the Hearing Officer concludes the Taxpayer has shown reasonable cause to abate all penalties. That conclusion was based on the following:

(1) The Taxpayer was not aware that his rental income was taxable; (2) The Taxpayer did not have the intent to evade taxes; and, (3) The Taxpayer rented one of the properties to a family member.

City Code Section 540 (a) ("Section 540 (a)") prohibits the Hearing Officer from waiving or abating any interest except as it relates to a tax abated. Since none of the tax was abated, the Hearing Officer does not have the authority to waive/abate any interest.

### **FINDINGS OF FACT**

1. On February 12, 2002, the Taxpayer filed a letter of protest of the tax assessment of the City.
2. After review of the protest, the City concluded it was timely but not in the proper form.
3. On February 25, 2002, the City filed its response to the protest.
4. On March 4, 2002, the Hearing Officer concluded the protest was in the proper form.
5. On March 3 and 10, 2002, the Taxpayer sent letters of reply to the City.
6. On March 15, 2002, the Municipal Tax Hearing Office scheduled the matter for hearing commencing on May 8, 2002.
7. The City and Taxpayer both appeared and presented evidence at the May 8, 2002 hearing.
8. The Taxpayer has been renting residential property at the First and Second Property located within the City.
9. The Taxpayer hired the Property Manager to manage his rental properties.
10. For some time periods, the Property Manager collected privilege taxes on the rental of the First and Second Property and placed the monies in an escrow account.

11. As a result of an audit, the City issued a tax assessment on December 24, 2001 for taxes, interest, penalties, and license fees.
12. After the Taxpayer provided additional records, the City revised its assessment downward on January 18, 2002.
13. The Second Property was rented to a family member.
14. The Taxpayer did not become aware of the rental tax until notified by the City in September/October of 2001.

### **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. City Code imposes a tax on renting residential property within the City.
3. The Taxpayer was in the business of renting residential property pursuant to the City Code.
4. Section 540 (a) prohibits the Hearing Officer from waiving or abating interest except as it relates to a tax abated.
5. Section 540 (b)(1) imposes a penalty for failure to file a timely return unless taxpayer shows that the failure is due to reasonable cause and not willful neglect.
6. Section 540 (b)(2) imposes a penalty for failure to pay the tax when due unless the taxpayer shows that the failure is due to a reasonable cause and not willful neglect.
7. Section 550 (c) authorizes the Tax Collector to assess additional taxes without any time limitation when there has been a failure to file returns.
8. The Taxpayer has demonstrated a reasonable cause for failing to file returns and for failing to pay the tax in a timely manner.

### **ORDER**

It is therefore ordered that with the exception of the penalties, the February 12, 2002 protest filed by Taxpayer is hereby denied.

It is further ordered that the City of Peoria will vacate all penalties assessed on Taxpayer.

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

Jerry Rudibaugh

Municipal Tax Hearing Officer