

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: August 26, 2002

Decision: MTHO #39

Tax Collector: City of Tempe

Hearing Date: July 11, 2002

DISCUSSION

Introduction

On March 4, 2002, the "Taxpayer" filed a protest of the City of Tempe ("City") tax assessment. After review of the protest, the City concluded on March 26, 2002, that the protest was timely and in the proper form. On April 8, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before May 23, 2002. The City filed its response on May 22, 2002. On May 24, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before June 7, 2002. The Taxpayer did not file a reply. On June 25, 2002, notice was sent scheduling this matter for hearing commencing on July 11, 2002. Both the Taxpayer and the City appeared at the July 11, 2002 hearing and presented evidence. On July 1, 2002, the Hearing Office issued a letter indicating a written decision would be issued on or before August 26, 2002.

In March of 2001, the Taxpayer purchased improved property located at NNN S. _____ Drive ("Taxpayer Property") within the City. The property was purchased from an individual that resided outside the State of Arizona ("State"). The previous owner had an outstanding tax balance owing to the City at the time the Taxpayer purchased the property. The City pursued the collection of the outstanding balance from the previous owner without success. Subsequently, the City assessed the Taxpayer for taxes, penalties, and interest totaling \$1,931.06 (as of May 2002).

City Position

The City argued that the Taxpayer is liable for the taxes of the former owner pursuant to City Code Section 16-595 ("Section 595"). The City emphasized the following from Section 595: If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

Since the Taxpayer failed to obtain a certificate from the City stating that no amount of taxes was due from the previous owner, the City asserted that the Taxpayer is liable for the unpaid taxes of the former owner.

Taxpayer Position

The Taxpayer argued that they purchased the building from the previous owner but did not purchase the business. According to the Taxpayer, the previous owner was responsible for clearing up all tax liens and outstanding balances of accounts at

close of escrow. Further, the Taxpayer asserted there was no lien on the Taxpayer Property notifying the Taxpayer of the outstanding taxes. As a result, the Taxpayer disputed the tax assessment of the City.

ANALYSIS

Section 595 authorizes the City to collect taxes from the successor in business unless the buyer has received a certificate stating that no amount of taxes is due. In this case, the Taxpayer did not receive any certificate. While the Taxpayer argued that he purchased the building and not the business, the Hearing Officer concluded that the Taxpayer purchased a commercial building and continued with the existing commercial rental business. Although the Taxpayer changed the business name, that did not change the fact that the Taxpayer purchased an on-going business with existing commercial tenants. Further, those tenants continued to pay rent to the Taxpayer for at least a six month period after the Taxpayer purchased the Taxpayer Property. Based on all the above, we must deny the Taxpayer's protest of the tax and associated interest.

While the Taxpayer's protest did not specifically make reference to the penalties imposed, the Hearing Officer concludes they were part of the protest since the Taxpayer protested the entire assessment of \$1,931.06. Under the circumstances of this case, where the Taxpayer was not the original person failing to file timely returns and failing to timely pay taxes as well as the Taxpayer's lack of knowledge at the time of purchase demonstrates reasonable cause and not willful neglect by the Taxpayer. For those reasons, the penalties for failing to timely file and failing to timely pay taxes should be waived for the Taxpayer.

FINDINGS OF FACT

1. On March 4, 2002, the Taxpayer filed a protest of the City tax assessment.
2. After review of the protest, the City concluded on March 26, 2002 that the protest was timely and in the proper form.
3. On April 8, 2002, the Hearing Officer ordered the City to file a response to the protest on or before May 23, 2002.
4. The City filed its response on May 22, 2002.
5. On May 24, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before June 7, 2002.
6. The Taxpayer did not file a reply.
7. On June 25, 2002, notice was sent scheduling this matter for hearing commencing on July 11, 2002.
8. In March of 2001, the Taxpayer purchased improved property (Taxpayer Property) within the City.
9. The Taxpayer Property was purchased from an individual that resided outside the State.
10. The previous owner of the Taxpayer Property was licensed to report "commercial rental" activity.
11. The Taxpayer is licensed to report "commercial rental" activity.
12. The previous owner of Taxpayer Property had an outstanding tax balance owing to the City at the time the Taxpayer purchased the property.
13. The City pursued the collection of the outstanding balance from the previous owner without success.
14. The Taxpayer failed to obtain a certificate from the City stating that no amount of taxes was due from the

previous owner of the Taxpayer Property.

15. As of May 2002, the City assessed the Taxpayer for taxes, penalties, and interest totaling \$1,931.06 as a result of the outstanding balance from the previous owner of the Taxpayer Property.

16. The Taxpayer continued to rent spaces in the Taxpayer Property to the same tenants of the previous owner for six to eleven months after purchasing the property.

17. The Taxpayer did not become aware of the taxes owed by the previous owner until receipt of the tax assessment from the City.

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. Pursuant to Section 595, unless a purchaser of a business obtains a certificate from the City, the purchaser is personally liable for payment of the amount of taxes required to be paid by the former owner of the business.
3. Since the Taxpayer failed to obtain a certificate from the City, the Taxpayer is liable for the taxes owed by the previous owner.
4. After purchase of the Taxpayer Property, the Taxpayer continued with the same commercial rental business activity.
5. The City Code imposes a penalty for failure to file a timely return and for failure to timely pay taxes unless Taxpayer shows that the failure is due to reasonable cause and not willful neglect.
6. The Taxpayer was unaware of the outstanding taxes on the Taxpayer Property at the time of purchase.
7. The Taxpayer has demonstrated reasonable cause for failing to timely file tax returns and for failing to timely pay taxes.
8. The Taxpayer's protest of the taxes and associated interest should be denied.
9. The Taxpayer's protest of the penalties should be granted.

ORDER

It is therefore ordered that the March 9, 2002, protest of Taxpayer is hereby denied with the exception of the protest of the penalties included in the assessment of the City of Tempe.

It is further ordered that the City of Tempe shall revise the March 4, 2002 assessment to eliminate all penalties.

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

Jerry Rudibaugh

Municipal Tax Hearing Officer