

# Jerry Rudibaugh

## Municipal Tax Hearing Officer

### DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 14, 2002

Decision: MTHO #52

Tax Collector: City of Phoenix

Hearing Date: None

### DISCUSSION

#### Introduction

On July 2, 2002, "Taxpayer" filed a protest of the City of Phoenix ("City") tax assessment. After review of the protest, the City concluded the protest was timely and in proper form. On July 17, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") processed the protest as a redetermination. Also on July 17, 2002, the Hearing Officer ordered the City to file a response to the protest on or before September 2, 2002. The City filed its response dated July 16, 2002, to the protest. On August 6, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before September 5, 2002. The Taxpayer did not file any reply. On September 16, 2002, the Hearing Officer filed a letter indicating the record was closed and a written decision would be issued on or before October 21, 2002.

The Taxpayer was assessed as a speculative builder for May 2001 in the amount of \$9,978.95 plus interest in the amount of \$1,097.68. The assessment was made by the City on June 18, 2002. The Taxpayer paid the tax amount of \$9,978.95 on June 6, 2002 based on preliminary work papers sent by the City in early May 2002.

#### City Position

Section 14-540 (a) ("Section 540a") of the City Code provides that any taxpayer who failed to pay any tax found to be due before the delinquency date shall pay interest on that tax at the rate of 1% per month, until paid. Section 540a also provides that the interest cannot be waived by the City nor abated by the Hearing Officer unless the tax itself is found not to be due. The Taxpayer did not protest the tax and has paid it. According to the City, any delay between the taxable sale and the assessment was primarily due to the fact that the Taxpayer did not report the taxable sale to the City. Accordingly, the City requests the assessment of interest be upheld in full.

#### Taxpayer Position

The Taxpayer requested an abatement of the interest assessed in the amount of \$1,097.68. The Taxpayer requested abatement of the interest because of the delay in the time between the May 2001 tax period and the time when the Taxpayer became aware of the tax. The Taxpayer indicated it had no history of payment of sales tax since this is the first time taxes were due. However, the Taxpayer asserts that two related sister companies both have an extensive history of prompt payment and thus the Taxpayer should also be considered as an entity that would pay taxes promptly when due.

## ANALYSIS

Section 540 (a) prohibits the Hearing Officer from waiving or abating any interest except as it is related to a tax abated. Since none of the tax was abated, the Hearing Officer does not have the authority to waive/abate any interest. Therefore, the protest must be denied.

## FINDINGS OF FACT

1. On July 2, 2002, the Taxpayer filed a protest of the City tax assessment.
2. After review of the protest, the City concluded the protest was timely and in the proper form.
3. On July 17, 2002, the Hearing Officer processed the protest as a redetermination.
4. On July 17, 2002, the Hearing Officer ordered the City to file a response to the protest on or before September 2, 2002.
5. The City filed its response, dated July 16, 2002, to the protest.
6. On August 6, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before September 5, 2002.
7. The Taxpayer did not file a reply.
8. On September 16, 2002, the Hearing Officer filed a letter indicating a written decision would be issued on or before October 21, 2002.
9. The Taxpayer was assessed as a speculative builder for May 2001 in the amount of \$9,978.95 plus interest in the amount of \$1,097.68.
10. The assessment was made by the City on June 18, 2002.
11. The Taxpayer paid the tax amount of \$9,978.95 on June 6, 2002 based on preliminary work papers sent by the City in early May 2002.
12. Any delay between the taxable sale and the assessment was primarily due to the fact that the Taxpayer did not report the taxable sale to 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. City Code Section 14-416 imposes a tax on the gross income on property sold by a speculative builder.
3. Section 540 (a) requires the City to include interest on all tax assessments.
4. Section 540 (a) prohibits the Hearing Officer from waiving or abating interest except as it relates to a tax abated.

5. There was no protest of the speculative builder tax.

6. The protest of the Taxpayer should be denied.

**ORDER**

It is therefore ordered that the July 2, 2002 protest of Taxpayer 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