

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 2, 2003
Decision: MTHO #54
Tax Collector: City of Phoenix
Hearing Date: November 6, 2002

DISCUSSION

Introduction

On July 22, 2002, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment from the City of Phoenix ("City"): After review, the City concluded on July 25, 2002, that the protest was timely and in proper form. On August 6, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response on or before September 20, 2002. The City filed its response on September 10, 2002. On October 4, 2002, the matter was set for hearing commencing on November 6, 2002. The Taxpayer and the City both appeared and presented evidence at the November 6, 2002 hearing. On November 7, 2002, the Hearing Officer filed a letter ordering the Taxpayer to file additional documentation on or before January 15, 2003. On January 14, 2003, the Taxpayer requested an extension to file the additional documentation. On January 16, 2003, the Hearing Officer granted the Taxpayer and extension until January 22, 2003. On February 4, 2003, the Hearing Officer granted the Taxpayer an additional extension until February 15, 2003. On February 14, 2003, the Taxpayer filed additional documentation.

On February 24, 2003, the Hearing Officer issued a letter ordering the city to file a response on or before March 10, 2003. The City filed a response to the Taxpayer's additional documentation on March 5, 2003.

City Position

The Taxpayer obtained a privilege license tax ("PLT") license on July 9, 2001. At that time, the Taxpayer indicated a tax liability date of November 1, 1999. The City contacted the Taxpayer on numerous occasions requesting a schedule of revenues. Because the Taxpayer failed to provide information concerning their revenues or file tax returns to pay the taxes due, the City estimated the revenues by using the average revenues reported by other taxpayers in similar businesses. The assessment was for the period of November 1999, as shown on the license application, through February 2001, when the building was damaged by fire. The result of the assessment was taxes due in the amount of \$1,067.42 plus interest through June 2002 in the amount of \$229.46. The City also assessed the Taxpayer pursuant to City Code Sections 14-540 (b)(1) and (b)(2) ("Sections 540 (b)(1) and (b)(2)") for penalties for failing to file tax returns and failing to pay the tax by the delinquency date. The City reviewed the Schedule E from 1999 and 2000 federal tax returns provided by the Taxpayer after the hearing. As a result of that review, the city

revised the assessment in the amount of taxes due of \$58.66, with interest of \$22.05 through February 2003, and penalties totaling \$14.66.

Taxpayer Position

The Taxpayer asserted that he purchased a thirteen unit apartment building on October 12, 1999. According to the Taxpayer, there were initially some tenants in the building, which the Taxpayer had evicted in order to renovate the property. The Taxpayer estimated that he received approximately \$4,500.00 of rent money from the units prior to evicting the tenants. Subsequently, the Taxpayer began the renovation of the apartment building but there was an arson fire in May of 2001 that severely damaged the building. Because of the condition of the building, the City requested the Taxpayer tear down the remainder of the building, which the Taxpayer did within a month of the request. After the hearing, the taxpayer submitted Federal Tax Schedule E's ("Schedule E's") for 1999 and 2000 showing rental income for the apartment building for 1999 and 2000 of \$4,190.00 and zero dollars, respectively.

ANALYSIS

The Taxpayer had taxable rental income commencing on November 1, 1999 pursuant to City Code Section 14-445 ("Section 445"). Further City Code Section 14-350 ("Section 350") requires the taxpayer to keep and preserve adequate records. Since the Taxpayer failed to provide the City with requested records, the City was authorized to make a reasonable estimate of the taxable revenues of the Taxpayer. Further, the City's method of utilizing the average revenues of similar business was reasonable without any documentation from the Taxpayer. It was also reasonable for the City to revise its assessment after receiving documentation from the Taxpayer after the hearing. Accordingly, the Taxpayer's protest should be granted consistent with the City's March 5, 2003 revised assessment.

FINDINGS OF FACT

1. On July 22, 2002, the Taxpayer filed a protest of a tax assessment from the City.
2. After review, the City concluded on July 25, 2002 that the protest was timely and in the proper form.
3. On August 6, 2002, the Hearing Officer ordered the City to file a response on or before September 20, 2002.
4. The City filed its response on September 10, 2002.
5. On October 4, 2002, the matter was set for hearing commencing on November 6, 2002.
6. The Taxpayer and the City both appeared and presented evidence at the November 6, 2002 hearing.
7. On November 7, 2002 the Hearing Officer filed a letter ordering the Taxpayer to file

additional documentation on or before January 15, 2003.

8. On January 14, 2003, the Taxpayer requested an extension to file the additional documentation.
9. On January 16, 2003, the Hearing Officer granted the Taxpayer an extension until January 22, 2003.
10. On February 4, 2003, the Hearing Officer granted the Taxpayer an additional extension until February 15, 2003.
11. On February 14, 2003, the Taxpayer filed additional documentation.
12. On February 24, 2003, the Hearing Officer issued a letter ordering the City to file a response on or before March 10, 2003.
13. The City filed a response to the Taxpayer's additional documentation on March 5, 2003.
14. The Taxpayer purchased a thirteen unit apartment building on October 12, 1999.
15. Initially, there were some tenants in the building which the Taxpayer had evicted in order to renovate the property
16. Subsequently, the Taxpayer began renovation of the apartment building but there was an arson fire in May of 2001 that severely damaged the building.
17. While the Taxpayer started receiving rental income in November of 1999, the Taxpayer did not obtain a PLT license until July 9, 2001.
18. The City contacted the Taxpayer on numerous occasions requesting a schedule of revenues.
19. Because the Taxpayer failed to provide information concerning their revenues or file tax returns to pay the taxes due, the City estimated the revenues by using the average revenues by other Taxpayers in similar businesses.
20. The result of the assessment was taxes due in the amount of \$1,067.42 plus interest through June 2002 in the amount of \$229.46.
21. The city also assessed the Taxpayer for penalties pursuant to Sections 540 (b)(1) and (b)(2).
22. After the hearing, the Taxpayer submitted Schedule E's showing rental income for the apartment buildings for 1999 and 2000 of \$4,190.00 and zero dollars, respectively.
23. The City reviewed the Schedule B's provided by the Taxpayer and agreed to accept them as being representative of the rental income for 1999 and 2000.

24. After review of the Schedule B's, the City revised the assessment resulting in taxes due of \$58.66, with interest of \$22.05 through February 2003, and penalties totaling \$14.66.

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. The Taxpayer had taxable rental income during the audit period pursuant to Section 445.
3. Section 350 requires the Taxpayer to keep and preserve adequate records.
4. The City's method of utilizing the average revenues of similar businesses was reasonable without any documentation from the Taxpayer.
5. It was reasonable for the City to revise its assessment after receiving post-hearing documentation from the Taxpayer.
6. The City Code imposes penalties for failure to file timely returns and for failure to timely pay taxes unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
7. The Taxpayer has not demonstrated reasonable cause for failing to timely file tax returns and for failing to timely pay taxes.
8. The Taxpayer's protest should be granted consistent with the March 5, 2003 revised assessment of the City. -

ORDER

It is therefore ordered that the July 22, 2002 protest of *Taxpayer* should be granted consistent with the March 5, 2003 revised assessment of the City of Phoenix.

It is further ordered that the City of Phoenix shall revise the assessment to reflect taxes due in the amount of \$58.66 plus associated interest and penalties.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer