

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: August 11, 2003  
Decision: MTHO #63  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On August 13, 2002, *Taxpayer* filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on September 9, 2002, that the protest was not in the proper form. On September 16, 2002, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the Taxpayer to correct the form of the protest on or before October 31, 2002. On September 24, 2002, the Taxpayer filed clarification of its protest. On October 16, 2002, the Hearing Officer classified this matter as a redetermination and ordered the City to file any response on or before December 2, 2002. On November 25, 2002, the City filed a response to the protest. On December 6, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before January 20, 2003. On January 16, 2003, the Taxpayer requested an extension until February 20, 2003. On January 28, 2003, the Hearing Officer granted the Taxpayer’s extension request. On February 19, 2003, the Taxpayer requested another extension. On February 20, 2003, the Hearing Officer granted the Taxpayer an extension until March 5, 2003. The Taxpayer filed a reply dated February 28, 2003. On March 11, 2003, the Hearing Officer ordered the City to review the information provided by the Taxpayer and to file any comments/recommendations by March 25, 2003. The City filed its comments/recommendations on March 13, 2003. On April 7, 2003, the Hearing Officer ordered the Taxpayer to reply to the City on or before April 21, 2003. On April 23, 2003, the Taxpayer requested an extension of time in order to provide additional records. On April 30, 2003, the Hearing Officer ordered the Taxpayer to meet with the City on or before May 19, 2003 to discuss documentation that he could provide and to provide such documentation on or before June 19, 2003. On May 27, 2003, the Taxpayer provided the City with copies of resale certificates. On June 3, 2003, the Hearing Officer ordered the City to review the new documentation provided by the Taxpayer and provide comments/recommendations on or before July 3, 2003. The City filed its comments/recommendations on June 19, 2003. On June 30, 2003, the Hearing Officer filed a letter indicating the record was closed and that a written Decision would be issued on or before August 14, 2003.

**City Position**

The City sent the Taxpayer a May 16, 2001 letter indicating their intent to conduct an audit of the Taxpayer. The City received no response to the letter or to phone calls to the Taxpayer. On July 19, 2001, the City was able to contact the Taxpayer’s owner and was told they needed to

contact the Taxpayer's accountant. The City attempted to contact the accountant on six occasions but was unsuccessful. The City continued to send letters, make telephone calls, and set up meetings with the Taxpayer in order to proceed with the audit. Finally, on October 29, 2001, the Taxpayer was sent a letter stating they needed to contact the City by November 5, 2001 or the City would estimate the tax liability. The City received no response and on April 26, 2002, the City sent an estimated assessment to the Taxpayer. The Taxpayer was given a deadline of May 10, 2002 to provide documentation that would change the assessment. The City received no response from the Taxpayer and on June 14, 2002, the City sent a Notice of Tax Assessment ("Notice") to the Taxpayer.

The Taxpayer filed their tax returns but took deductions for sales for resale that equaled the entire amount of revenues reported. Because the City was unable to examine the Taxpayer's records, the deductions were disallowed in the estimated assessment. As a result, the City assessed the Taxpayer additional taxes in the amount of \$12,589.80 plus interest for the period December 1996 through February 2002. In addition, the City assessed penalties for failure to timely file tax returns pursuant to City Code Section 14-540(b)(1) ("Section 540(b)(1)") and failure to pay tax when due pursuant to City Code Section 14-540 (b)(2) ("Section 540(b)(2)") in the amounts of \$213.27 and \$1,259.04, respectively.

The City reviewed the documentation provided by the Taxpayer on February 28, 2003. The City asserted that the documentation did not show any dollar amounts or which transactions apply to which customer. Further, the City indicated the Taxpayer did not provide exemption certificates that state the reason why a transaction is exempt. The City also reviewed the Taxpayer's documentation provided on June 2, 2003. The City reviewed seven test months and determined that if the names and amounts on the submitted documents were reliable data then sales for resale represented 2.85 percent of reported sales for resale. The City concluded that if it is determined the Taxpayer's submission was reliable, the tax should be reduced by \$338.17, the penalties should be reduced by \$39.94, and the associated interest would also be reduced.

### **Taxpayer Position**

In the Taxpayer's original protest he indicated all of his belongings had been stolen from his car. In his letter of clarification, the Taxpayer asserted he was protesting the entire assessment as he has been paying what his accountant has told him to pay. On February 19, 2003, the Taxpayer filed a letter stating that he had numerous Arizona Resale Certificates ("Certificates") which needed to be copied and mailed to the City and Hearing Officer. On February 28, 2003, the Taxpayer filed a letter with a list of 84 company names and what appeared to be resale certificate numbers. Subsequently, on April 23, 2003, the Taxpayer filed a letter requesting time to obtain resale certificates from his customers. On June 2, 2003, the Taxpayer provided the following documentation: 38 pages of documents that represented exemption certificates for their customers who purchased products to be resold; 23 hand-written pages labeled as wholesale with information separated by month from June 1996 through December 2001; and, 13 pages of unidentified documents separated by month from October 1996 through December 2002.

## **ANALYSIS**

Based on the record, it is clear that the Taxpayer was not cooperative with the City when the City attempted to review the Taxpayer's books and records. When the Taxpayer failed to provide any records to support its claimed deductions, the City was authorized pursuant to City Code Section 14-545 ("Section 545") to make a reasonable estimate. In this case, it was proper for the City to disallow all the unsupported deductions when making its estimate. The Hearing Officer concludes that the City's use of the gross sales reported less the unsupported deductions was a reasonable estimate pursuant to Section 545.

After concluding the City's estimate was reasonable, we must determine whether or not the Taxpayer subsequently provided sufficient supporting documentation to show the City's estimate was not reasonable. In reviewing the Taxpayer's documentation, the Hearing Officer had concerns over the inconsistencies. For example, the Taxpayer initially indicated his records had been stolen from his car. Next, in his February 19, 2003 letter, the Taxpayer indicated he had numerous Certificates that needed to be copied. However, on February 28, 2003, the Taxpayer simply filed a list of 84 company names and numbers without any Certificate copies. Finally, on June 2, 2003 the Taxpayer filed additional documentation that included copies of Certificates. In reviewing those Certificates, the Hearing Officer notes that some of the names were different from the previously supplied list of 84 company names. In addition, 19 of the 38 Certificates provided were dated in 1992 which is five years before the Taxpayer obtained a privilege license tax and the December 1996 beginning of the audit period. The remaining Certificates were all dated after the February 19, 2003 date at which time the Taxpayer indicated he had numerous Certificates that needed to be copied. These Certificates were also all dated after the end of the audit period. Lastly, even if these Certificates were all determined to be valid for the audit period, there were no records/invoices provided that would tie the Certificates to specific sales during the audit period. Based on all the above, the Hearing Officer concludes that the Taxpayer has failed to provide sufficient supporting documentation to demonstrate that the City's estimate was not reasonable.

The City is authorized to impose a penalty for failure to timely file tax returns pursuant to Section 540(b)(1) and failure to timely pay taxes pursuant to Section 540(b)(2). These penalties can be waived for reasonable cause. In this case, there was no evidence provided on why some of the tax returns were not timely filed. Accordingly, the Hearing Officer concludes there was no reasonable cause shown for failing to timely file tax returns. As to the failure to timely pay taxes, while we didn't find sufficient evidence to support the claimed deductions, the Hearing Officer does find there was sufficient evidence to demonstrate that the Taxpayer had reasonable cause to believe his sales were exempt sales for resale. As a result, the Hearing Officer concludes the penalty for failure to timely pay taxes should be waived.

## **FINDINGS OF FACT**

1. On August 13, 2002, the Taxpayer filed a protest of a tax assessment made by the City.

2. After review, the City concluded on September 9, 2002 that the protest was not in the proper form.
3. On September 16, 2002, the Hearing Officer ordered the Taxpayer to correct the form of the protest on or before October 31, 2002.
4. On September 24, 2002, the Taxpayer filed clarification of its protest.
5. On October 16, the Hearing Officer classified this matter as a redetermination and ordered the City to file any response on or before December 2, 2002.
6. On November 25, 2002, the City filed a response to the protest.
7. On December 6, 2002, the Hearing Officer ordered the Taxpayer to file any reply on or before January 20, 2003.
8. On January 16, 2003, the Taxpayer requested an extension until February 20, 2003.
9. On January 28, 2003, the Hearing Officer granted the Taxpayer's extension request.
10. On February 19, 2003, the Taxpayer requested another extension.
11. On February 20, 2003, the Hearing Officer granted the Taxpayer an extension until March 5, 2003.
12. The Taxpayer filed a reply dated February 28, 2003.
13. On March 11, 2003, the Hearing Officer ordered the City to review the information provided by the Taxpayer and to file any comments/recommendations by March 25, 2003.
14. The City filed its comments/recommendations on March 13, 2003.
15. On April 7, 2003, the Hearing Officer ordered the Taxpayer to reply to the City on or before April 21, 2003.
16. On April 23, 2003, the Taxpayer requested an extension of time in order to provide additional records.
17. On April 30, 2003, the Hearing Officer ordered the Taxpayer to meet with the City on or before May 19, 2003 to discuss documentation that he could provide and to provide such documentation on or before June 19, 2003.
18. On May 27, 2003, the Taxpayer provided the City with copies of resale certificates.
19. On June 3, 2003, the Hearing Officer ordered the City to review the new documentation

provided by the Taxpayer and provide comments/recommendations on or before July 3, 2003.

20. The City filed its comments/recommendations on June 19, 2003.
21. On June 30, 2003, the Hearing Officer filed a letter indicating the record was closed and that a written Decision would be issued on or before August 14, 2003.
22. The City sent the Taxpayer a May 16, 2001 letter indicating their intent to conduct an audit of the Taxpayer.
23. The City received no response to the letter or to phone calls to the Taxpayer.
24. On July 19, 2001, the City was able to contact the Taxpayer's owner and was told they needed to contact the Taxpayer's accountant.
25. The City attempted to contact the accountant on six occasions but was unsuccessful.
26. The City continued to send letters, make telephone calls, and set up meetings with the Taxpayer in order to proceed with the audit.
27. Finally, on October 29, 2001, the Taxpayer was sent a letter stating they needed to contact the City by November 5, 2001 or the City would estimate the tax liability.
28. The City received no response and on April 26, 2002, the City sent an estimated assessment to the Taxpayer.
29. The Taxpayer was given a deadline of May 10, 2002 to provide documentation that would change the assessment.
30. The City received no response from the Taxpayer and on June 14, 2002 the City sent a Notice to the Taxpayer.
31. The Taxpayer filed their tax returns but took deductions for sales for resale that equaled the entire amount of revenues reported.
32. Because the City was unable to examine the Taxpayer's records, the deductions were disallowed in the estimated assessment.
33. As a result, the City assessed the Taxpayer additional taxes in the amount of \$12,589.80 plus interest for the period December 1996 through February 2002.
34. The City assessed penalties for failure to timely file tax returns pursuant to Section 540(b)(1) and failure to pay tax when due pursuant to Section 540(b)(2) in the amounts of \$213.27 and \$1,259.04, respectively.

35. On February 28, 2003, the Taxpayer provided a list of companies along with unidentified numbers for each of the companies.
36. After review of the documentation, the City concluded it did not show any dollar amounts or indicate which transactions apply to which customers.
37. On June 2, 2003, the Taxpayer provided the following documentation: 38 pages of documents that represented exemption certificates for their customers who purchased products to be resold; 23 hand-written pages labeled as wholesale with information separated by month from June 1996 through December 2001; and, 13 pages of unidentified documents separated by month from October 1996 through December 2002.
38. The City reviewed seven test months of the June 2003 documentation and concluded that if the submitted documents contained reliable data then sales for resale represented 2.85 percent of reported sales for resale.
39. The City concluded that if the 2.85 percent were accepted then the tax should be reduced by \$338.17, the penalties should be reduced by \$39.94, and the associated interest would also be reduced.

#### **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 14-3 50 requires that the taxpayer keeps and preserves adequate records to be available for review by the City.
3. When a taxpayer fails to supply adequate books and records, the City is authorized to make a reasonable estimate of the tax due.
4. Based on the record, the City made a reasonable estimate of the tax due from the Taxpayer for the audit period.
5. The Taxpayer has failed to provide sufficient supporting documentation to demonstrate that the City's estimate was not reasonable.
6. The City is authorized to assess penalties for failing to timely file tax returns and failing to timely pay taxes pursuant to sections 540 (b)(1) and (b)(2), respectively.
7. The Taxpayer has failed to demonstrate reasonable cause for failing to timely file tax returns.
8. The Taxpayer has demonstrated reasonable cause for failing to timely pay taxes.

9. The penalty for failing to timely pay taxes should be waived.
10. With the exception of the penalty for failing to timely pay taxes, the Taxpayer's protest should be denied.

**ORDER**

It is therefore ordered that the August 13, 2002 protest of *Taxpayer* of a tax assessment by the City of Phoenix is hereby denied with the exception of the penalty for failing to timely pay taxes.

It is further ordered that the City of Phoenix shall revise the tax assessment of *Taxpayer* by removal of the failure to timely pay tax penalty.

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

Jerry Rudibaugh  
Municipal Tax Hearing Officer