

Jerry Rudibaugh

Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 6, 2002

Decision: MTHO #9

Taxpayer:

Tax Collector: City of Phoenix

Hearing Date: February 22, 2002

DISCUSSION

Introduction

On July 30, 2001, Taxpayer filed with the Municipal Tax Hearing Officer its July 30, 2001 protest of the City of Phoenix ("City") tax assessment. The Taxpayer requested and was granted an extension until September 19, 2001 to submit additional information. The Taxpayer failed to file any additional information and the City was instructed to respond to the form and timeliness of the protest petition. After review, the City filed its October 10, 2001 finding that the protest was timely and in the proper form. On October 19, 2001, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file its response on or before December 3, 2001. The City filed its response on November 26, 2001. On December 4, 2001, the Hearing Officer set the matter for hearing on February 22, 2002. The Taxpayer and City both appeared and presented evidence at the February 22, 2002 hearing.

The Taxpayer is in the business of residential rental of real property. In April of 1998 the Taxpayer hired Apartment Hunters to collect all rental revenue for the properties in question and to pay the appropriate City taxes.

City Position

On March 2, 2001, the City filed a Notice and Demand to File Tax Returns ("Demand Notice") with the Taxpayer because the Taxpayer had not filed returns for 36 months. The Taxpayer failed to respond to the Demand Notice within 30 days and as a result the account was referred to an auditor to complete an estimated assessment. The auditor contacted the Taxpayer for information on the income from the rental property. On May 22, 2001, the rental information was faxed to the City. Based on that information, the City assessed the Taxpayer additional tax in the amount of \$467.59 as well as penalties for failure to file when due, failure to pay timely, and failure to file on demand in the amount of \$75.29, \$51.55, and \$80.42, respectively. Even though it was past the statute of limitation, the City assessed additional taxes for 1996 because the income for that year was under-reported by more than 25%. The City utilized the rental amount

provided by the Taxpayer in its May 22, 2001 fax to arrive at the tax assessment for 1997. While the Taxpayer provided an account history to show that Apartment Hunters began to collect the property rents in April of 1998, there was no documentation provided to the City that the rental income was actually reported and taxes paid to the City. For that reason, the City assessed additional taxes and penalties for the years 1998 through 2001.

Taxpayer Position

The Taxpayer protested any assessment for 1996 because it was outside of the four-year limitation set forth in Phoenix City Code Section 14-550(a) ("Section 550a"). The Taxpayer asserted the assessment for 1997 was not correct because the City utilized the wrong rental amounts. The Taxpayer protested the entire assessment for the years 1998 through 2001 because the taxes were paid by Apartment Hunters under License No. 920033103. The Taxpayer brought documentation to the hearing to

demonstrate that all taxes had been paid for the years 1998 through 2001 by Apartment Hunters for the Taxpayer.

Analysis

Section 550a limits the City assessment to a four-year period subject to various exceptions. One of those exceptions is when a taxpayer under-reports by 25%. Under the exception, the City assessment may go back six years. Since the Taxpayer under-reported by more than 25%, the City's assessment for 1996 was proper. As to the 1997 rental amounts, the City utilized the information initially provided by the Taxpayer. While the Taxpayer subsequently argued that amount was wrong, the Taxpayer failed to provide any documentation to substantiate its claim.

As to the taxes for the years 1998 through 2001, the Taxpayer provided documentation at the hearing to substantiate its claim that Apartment Hunters had already filed and paid those taxes.

Based on all the above, the City's assessment for the years 1996 and 1997 is affirmed and the Taxpayer's protest for the years 1998 through 2001 is granted.

FINDINGS OF FACT

1. On July 30, 2001 Taxpayer filed a letter of protest of the City tax assessment.
2. The Taxpayer requested and was granted an extension until September 19, 2001 to submit additional information.
3. The Taxpayer failed to file any additional information.
4. On October 10, 2001, the City concluded the protest was timely and in the proper form.
5. On November 26, 2001, the City filed its response to the protest.
6. The matter was set for hearing on February 22, 2002.
7. The Taxpayer and City both appeared and presented evidence at the February 22, 2002 hearing.
8. The Taxpayer is in the business of residential rental of real property.
9. The Taxpayer under-reported their income by more than 25% for 1996.
10. The City utilized the rental amount provided by the Taxpayer in its May 22, 2001 fax to arrive at the tax assessment for 1997.
11. At the hearing, the Taxpayer provided documentation that all taxes had been paid for the years 1998 through 2001 by Apartment Hunters for the Taxpayer.

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. Section 540 (b)(1) imposes a penalty for failure to file a timely return unless the taxpayer shows that the failure is due to reasonable -cause and not willful neglect.
3. Section 540 (b)(2) imposes a penalty for failure to pay the tax timely unless the taxpayer shows that the failure, is due to

reasonable cause and not willful neglect.

4. Section 540 (b)(3) imposes a penalty for failure to file a return within 30 days of receiving a Demand Notice unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.
5. Section 550(a) allows the City to make an assessment back six years when a taxpayer under-reports by 25%.
6. The Taxpayer failed to provide documentation to support its assertion that the City was utilizing the wrong income amount for 1997.
7. The Taxpayer provided documentation the Apartment Hunters had already reported and paid Taxpayer's taxes for 1998 through 2001.
8. The Taxpayer's protest for the years 1996 and 1997 should be denied.
9. The Taxpayer's protest for the years 1998 through 2001 should be granted.

ORDER

It is therefore ordered that the July 30, 2001, protest of the City of Phoenix tax assessment by Taxpayer is granted in part and denied in part.

It is further ordered that the City of Phoenix shall amend the tax assessment by removing all additional taxes, interest, and penalties for the years 1998 through 2001.

It is further ordered that this decision is effective immediately.

Dated: April 6, 2002

Jerry Rudibaugh

Municipal Tax Hearing Officer