

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: July 24, 2003
Decision: MTHO #90
Tax Collector: City of Phoenix
Hearing Date: March 31, 2003

DISCUSSION

Introduction

On December 3, 2002, *Taxpayer* ("Taxpayer") filed a protest letter of a tax assessment made by the City of Phoenix ("City"). After review, the City concluded on December 9, 2002, that the protest was timely and in the proper form. On December 13, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before January 27, 2003. The City filed a response on January 14, 2003. On January 22, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before February 12, 2003. On January 24, 2003, a Notice of Hearing ("Notice") was filed setting the matter for hearing commencing on March 12, 2003. On February 21, 2003 another Notice was filed with a hearing date of March 12, 2003. On February 27, 2003, the City requested the hearing be continued. The City's request was granted and on February 28, 2003 another Notice was filed with a new hearing date of March 31, 2003. On March 27, 2003, a new Notice was filed with the same March 31, 2003 hearing date. The hearing was held on March 31, 2003 and the City appeared and presented evidence. The Taxpayer failed to make an appearance. On March 31, 2003, the Hearing Officer ordered the Taxpayer to provide good cause justification for failing to appear at the March 31, 2003 hearing as well as provide additional information in support of its protest on or before May 1, 2003. On April 16, 2003, the Taxpayer filed a letter explaining its failure to appear at the hearing as well as providing other information in support of its protest. On April 30, 2003, the Hearing Officer ordered the City to file any response on or before May 14, 2003. The City filed a response on May 9, 2003. On May 15, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before June 5, 2003. The Taxpayer failed to file a reply. On June 11, 2003, the Hearing Officer filed a letter indicating the record was now closed and a written Decision would be issued on or before July 28, 2003.

During the audit period, the Taxpayer owned and operated a jet ski rental company. The City estimated the Taxpayer's tangible property rental income for the period January 1998 through August 2002. As a result of that estimate, the City assessed the Taxpayer for additional taxes in the amount of \$7,167.57. In addition, the City assessed the Taxpayer for penalties for failure to file and failure to pay in the amount of \$356.87 and \$716.76, respectively.

City Position

During the audit, the Taxpayer provided the City with the following records: some bank statements for 1998, 1999, and 2000; rental contracts for 2000; and, 1998 and 2000 rental income written on a piece of paper. The City informed the Taxpayer that the records were not complete and that the City needed additional information to complete the audit. The Taxpayer informed the City that he did not have any additional information and to go ahead with the estimate based on the records already provided. The various records did not reconcile and the City concluded the bank statements were the most reliable documents. As a result, the City used the bank statements to estimate the gross revenues and used an average of bank deposits as adjusted by the Consumer Price Index ("CPI") to estimate the missing months. According to the City, the Taxpayer provided no information that any of the bank deposits should not be included as business receipts. The City also contacted the Maricopa County Sheriffs Department ("Department") on May 7, 2003 to verify that the Department had the Taxpayer's records. However, the Department had no record of the Taxpayer's name or business name in their database.

Taxpayer Position

The Taxpayer asserted that the City had included amounts from bank deposits that came from parents and credit card advances. According to the Taxpayer, his season ran from April through September and then he was closed from October through March. During the off-season, the Taxpayer indicated he would rebuild and repaint the jet skis and sell them on Ebay. The Taxpayer asserted there was a difference between his reported taxable income and bank deposits was because he borrowed \$50,000 on credit cards and \$15,000 from his parents during the four-year audit period. In addition, the Taxpayer indicated he sold his truck for \$15,000 in June of 1999 and that money was also deposited in his checking account.

According to the Taxpayer, the Department seized all of his business receipts, bank statements, and other related documents on February 5, 2003. In addition, the Department seized the Taxpayer's only source of transportation. As a result, the Taxpayer was unable to get to his post office some twenty miles away and thus did not find out about the tax hearing until after it was over. The Taxpayer also indicated the Department refuses to return any of his business documents so that he can use them as evidence in this matter.

ANALYSIS

City Code Section 14-555(e) ("Section 555") provides that if the Taxpayer fails to maintain or provide such books and records, which the City considers necessary to determine the tax liability, then the City is authorized to use estimates. City Code Section 14-545(b) ("Section 545") further provides that the estimates are to be made on a reasonable basis. In this case, the Taxpayer failed to provide the books and records the City deemed necessary. As a result, it was proper for the City to utilize an estimate pursuant to Section 555. The Hearing Officer also concludes the City's use of the bank deposits as adjusted by the CPI for missing months was a reasonable basis for an estimate. While the Taxpayer has argued that the City has included non-

business related deposits as part of its estimated gross income from business, the Taxpayer has failed to provide any documentation to support his assertion. While the Taxpayer claims the Department seized all of his business records on February 5, 2003, the City has been unable to get the Department to verify the Taxpayer's assertion. Further, the Hearing Officer notes that the Taxpayer would have had all of his records available at the time of the audit and at the time of the preliminary findings from the City on October 15, 2002. The Taxpayer failed to provide additional records at that time. Based on all the above, the Hearing Officer concludes the City's assessment was reasonable and the Taxpayer has failed to provide any documentation to demonstrate otherwise. Therefore, the Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On December 3, 2002, the Taxpayer filed a protest letter of a tax assessment made by the City.
2. After review, the City concluded on December 9, 2002 that the protest was timely and in the proper form.
3. On December 13, 2002, the Hearing Officer ordered the City to file a response to the protest on or before January 27, 2003.
4. The City filed a response on January 14, 2003.
5. On January 22, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before February 12, 2003.
6. On January 24, 2003, a Notice was filed setting the matter for hearing on March 12, 2003.
7. On February 21, 2003, another Notice was filed with a hearing date of March 12, 2003.
8. On February 27, 2003, the City requested the hearing be continued.
9. The City's request was granted and on February 28, 2003 another Notice was filed with a new hearing date of March 31, 2003.
10. On March 27, 2003, a new Notice was filed with the same March 31, 2003 hearing date.
11. The hearing was held on March 31, 2003 and the City appeared and presented evidence.
12. The Taxpayer failed to appear at the hearing.
13. On March 31, 2003, the Hearing Officer ordered the Taxpayer to provide good cause justification for failing to appear at the March 31, 2003 hearing as well as provide additional information in support of its protest on or before May 1, 2003.

14. On April 16, 2003, the Taxpayer filed a letter explaining its failure to appear at the hearing as well as providing other information in support of its protest.
15. On April 30, 2003, the Hearing Officer ordered the City to file any response on or before May 14, 2003.
16. The City filed a response on May 9, 2003.
17. On May 15, 2003, the Hearing Officer ordered the Taxpayer to file any reply to the City on or before June 5, 2003.
18. The Taxpayer failed to file a reply.
19. On June 11, 2003, the Hearing Officer filed a letter indicating the record was now closed and a written Decision would be issued on or before July 28, 2003.
20. During the audit period, the Taxpayer owned and operated a jet ski rental company.
21. The City estimated the Taxpayer's taxable property rental income for the period January 1998 through August 2002.
22. As a result of that estimate, the City assessed the Taxpayer for additional taxes in the amount of \$7,167.57 plus interest.
23. In addition, the City assessed the Taxpayer for penalties for failure to file and failure to pay in the amount of \$356.87 and \$716.76, respectively.
24. During the audit, the Taxpayer provided the City with the following records: some bank statements for 1998, 1999, and 2000; rental contracts for 2000; and, 1998 and 2000 rental income written on a piece of paper.
25. The City informed the Taxpayer that the records were not complete and that the City needed additional information to complete the audit.
26. The Taxpayer informed the City that he did not have any additional information and to go ahead with the estimate based on the records already provided.
27. The various records did not reconcile and the City concluded the bank statements were the most reliable documents.
28. The City used the bank statements to estimate the gross revenues and used an average of bank deposits as adjusted by the CPI to estimate the missing months.
29. The Taxpayer provided no information at the time of the audit that any of the bank deposits should not be included as business receipts.

30. The Department had no record of the Taxpayer's name or business name in their database.

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 underreported tangible personal property rental income pursuant to City Code Section 14-450.
3. The City is authorized pursuant to Section 555 to use estimates when the Taxpayer fails to maintain or provide necessary books and records.
4. The Taxpayer failed to maintain or provide necessary books and records to the City.
5. The City's estimation method was made on a reasonable basis.
6. The Taxpayer has failed to provide documentation to demonstrate that the City's estimate was not reasonable.
7. The Taxpayer has failed to demonstrate reasonable cause for waiving of penalties for failure to timely file or failing to timely pay.
8. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the December 3, 2002 protest of *Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied.

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

Jerry Rudibaugh
Municipal Tax Hearing Officer