

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: March 14, 2005

Decision: MTHO #202

Tax Collector: City of Tucson

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On July 11, 2004, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Tucson ("City"). After review, on August 2, 2004, the City concluded the protest was in the proper form but not timely. On August 12, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the Taxpayer to file a response to the timeliness issue on or before September 27, 2004. On September 24, 2004, the Taxpayer filed a response. On October 4, 2004, the Hearing Officer ordered the City to file any reply on the timeliness issue on or before October 18, 2004. The City filed a reply on October 11, 2004. On November 5, 2004, the Hearing Officer concluded the protest was not timely. On November 9, 2004, the Taxpayer requested reconsideration of the timeliness issue. On November 19, 2004, the Hearing Officer concluded there was sufficient ambiguity existing on the timeliness issue to go forward with the protest. In addition, the Taxpayer was ordered to file clarification to their protest on or before December 10, 2004. On December 9, 2004, the Taxpayer provided clarification. On December 10, 2004, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response on or before January 24, 2005. On December 22, 2004, the City filed a response. On January 18, 2005, the Hearing Officer ordered the Taxpayer to provide any reply on or before February 17, 2005. On February 22, 2005, the Hearing Officer indicated no reply had been filed and as a result the record was being closed and a written decision would be issued on or before April 18, 2005.

#### **City Position**

The City conducted an audit of the Taxpayer for the period June 1999 through April 2003. The City concluded that the Taxpayer had understated income from the rental of personal property pursuant to City Code Section 19-450 ("Section 450"). The City assessed the Taxpayer for additional taxes totaling \$11,094.09 plus interest up through October of 2004 in the amount of \$4,448.42. The City also assessed penalties totaling \$2,145.06 but subsequently waived the penalties.

According to the City, the Taxpayer was in the business of the rental and sale of sound equipment. The City indicated the Taxpayer did not collect tax on most transactions classified as concert services, even though the services were, in fact, taxable equipment

rentals. The City's May 28, 2004 assessment was received by the Taxpayer on June 2, 2004. After the 45 day period for payment or protest of the assessment had elapsed, the City sent a July 26, 2004 ten day letter to the Taxpayer. On July 30, 2004, the Taxpayer contacted the City to protest the assessment. While the Taxpayer claimed a fax had been sent to the City within the 45 day period, the City asserted there was no evidence that a fax was ever received by the City. As a result, the City argued the protest was not timely filed.

The City reviewed the exemption certificates provided by the Taxpayer as part of its protest. The City noted the following about the exemption certificates:

- All but one of the certificates submitted were completed and signed in December 2004. The one exception was signed March 2004. The audit sample period was calendar year 2000 and 2001.
- Where dates of service are requested on the certificates, most were not completed or had dates inconsistent with the sample period.
- One certificate had no signature.

The City asserted that City Regulation 19-350.1 and 19-360.1 ("Regulation 350.1 and 360.1") state the minimum documentation required for exemptions and re-rentals. According to the City, Arizona Form 5000 or similar document is required and must be obtained at the time of the transaction. The City indicated that in subsequent audits of the Taxpayer, only appropriately completed certificates would be allowed. In this case, the City accepted the submitted certificates and recommended the audit assessment be reduced by \$3,183.37 if the Hearing Officer determines the protest was timely.

### **Taxpayer Position**

The Taxpayer asserted it faxed and mailed its protest to the City on June 11, 2004. The Taxpayer provided an office form that indicated the protest was faxed to the City on June 11, 2004. The Taxpayer had a similar office form that indicated the protest was mailed to the Municipal Tax Hearing Office in Phoenix on June 11, 2004. The Taxpayer acknowledged that neither the City nor the Phoenix offices received the fax and/or mailing. However, the Taxpayer argued that their supporting documentation demonstrates the protest was timely filed.

As part of its protest, the Taxpayer provided copies of exemption certificates and argued the sales to those companies should not have been taxed. According to the Taxpayer, the following companies had tax exempt certificates for re-sale or re-rental of sound equipment:

- *Listing of multiple purchasers*

The Taxpayer estimated the amount of taxes should be decreased by over \$5,000.00 for the exempt sales/rentals.

## ANALYSIS

It is clear from the documentation provided that the City never received a timely protest. What is not as clear is whether or not a timely fax was ever sent by the Taxpayer. While the Taxpayer has provided copies of fax transmittals and a mailing confirmation form that indicate a timely protest was sent, there is no independent verification that a fax and mailing were timely sent. While correspondence can get lost, it would be unusual for both the fax and mailing to not reach their intended destination. We are also bothered by the fact that a professional accountant would not have confirmed the protest reached its destination. With all that said, we do find it is possible that the fax and mailing were processed in a timely manner. Because of that possibility and the fact that it is preferable to have a decision on the substance of the protest, we conclude the protest was timely made.

As to the exemption certificates, we do find they provide a reasonable basis for the Taxpayer to conclude those companies were either re-selling or re-renting the sound equipment. While it would have been preferable to have the certificates signed and dated at the time of sale/rental, most of the certificates indicate the exemptions are for an on-going period. As a result, we will approve the City's recommended reduction in taxes of \$3,183.37 along with associated interest.

## FINDINGS OF FACT

1. On July 11, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, on August 2, 2004, the City concluded the protest was in the proper form but not timely.
3. On August 12, 2004, the Hearing Officer ordered the Taxpayer to file a response to the timeliness issue on or before September 27, 2004.
4. On September 24, 2004, the Taxpayer filed a response.
5. On October 4, 2004, the Hearing Officer ordered the City to file a reply on the timeliness issue on or before October 18, 2004.
6. The City filed a reply on October 11, 2004.
7. On November 5, 2004, the Hearing Officer concluded the protest was not timely.
8. On November 9, 2004, the Taxpayer requested reconsideration of the timeliness issue.
9. On November 19, 2004, the Hearing Officer concluded there was sufficient

ambiguity existing on the timeliness issue to go forward with the protest.

10. On November 19, 2004, the Taxpayer was ordered to file clarification to their protest on or before December 10, 2004.
11. On December 9, 2004, the Taxpayer provided clarification.
12. On December 10, 2004, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response on or before January 24, 2005.
13. On December 22, 2004, the City filed a response.
14. On January 18, 2005, the Hearing Officer ordered the Taxpayer to provide any reply on or before February 17, 2005.
15. On February 22, 2005, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before April 8, 2005.
16. The City conducted an audit of the Taxpayer for the period June 1999 through April 2003.
17. The City concluded the Taxpayer had understated income from the rental of personal property.
18. The City assessed the Taxpayer for additional taxes totaling \$11,094.09 plus interest up through October of 2004 in the amount of \$4,448.42.
19. The City also assessed penalties totaling \$2,145.06 but subsequently waived the penalties.
20. The Taxpayer was in the business of the rental and sale of sound equipment.
21. The City's May 28, 2004 assessment was received by the Taxpayer on June 2, 2004.
22. After the 45 day period for payment or protest of the assessment had elapsed, the City sent a July 26, 2004 ten day letter to the Taxpayer.
23. The Taxpayer provided an office form that indicated the protest was faxed to the City on June 11, 2004.
24. The Taxpayer had a similar form that indicated the protest was mailed to the Municipal Tax Hearing Office in Phoenix on June 11, 2004.

25. Neither the City nor the Phoenix offices received the fax and/or mailing.
26. As part of its protest, the Taxpayer provided copies of exemption certificates from companies that re-sold or re-rented sound equipment.
27. After review, the City concluded the submitted certificates supported a reduction on taxes of \$3,183.37.

### **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. During the audit period, the Taxpayer underreported rental income pursuant to Section 450.
3. The Taxpayer has presented sufficient evidence to conclude it is possible a protest was timely filed.
4. The Taxpayer has presented sufficient evidence to demonstrate that a reasonably prudent businessman would conclude an item is being acquired for resale or for rental in the ordinary course of business.
5. The City's recommended reduction in the assessment of \$3,183.37 should be approved.
6. The Taxpayer's protest should be partly denied and partly approved consistent with the Discussion, Findings, and Conclusions, herein.

### **ORDER**

It is therefore ordered that the July 11, 2004 protest by *Taxpayer* of a tax assessment made by the City of Tucson is hereby partly denied and partly approved consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Tucson shall revise the assessment downward by the \$3,183.37 as reflected in the City's December 22, 2004 letter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer