

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 20, 2004

Decision: MTHO #214

Tax Collector: City of Phoenix

Hearing Date: None

### DISCUSSION

#### Introduction

On September 28, 2004, *Taxpayer* (“Taxpayer”) filed a protest of a denial by the City of Phoenix (“City”) of a request for a tax refund. After review, the City concluded on October 12, 2004 that the protest was timely and in the proper form. On October 18, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) classified the matter as a redetermination and ordered the City to file a response to the protest on or before December 3, 2004. The City filed a response on October 20, 2004. On November 1, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before December 1, 2004. On November 18, 2004, the Taxpayer filed a reply. On November 24, 2004, the Hearing Officer closed the record and indicated a written decision would be issued on or before January 10, 2005.

#### City Position

The City recommended the Taxpayer’s request for a refund of taxes paid for metered utility billings for tenants for the period January 2001 through June 2002 be denied. The City asserted that City Code Section 14-445 (b) (“Section 445 (b)”) states: “if individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.” The City asserted the Taxpayer did not provide the meter readings for all of the tenants. In addition, the City noted the information the Taxpayer provided for the two largest tenants, *Tenant A* and *Tenant B*, appeared to be estimates with no documentation from *the utility company* to corroborate the accuracy. The City argued that Section 445 (b) requires that each single tenant be charged for the exact billing from the utility company. The City asserted that *the utility company* bills customers for usage on a monthly basis, not on an annual basis. According to the City, the Taxpayer estimated the monthly bills and then made an adjustment in January 2002 for the monthly difference between what the tenants paid for utilities and the amount *the utility company* actually billed in 2001. The City noted that the Taxpayer billed the same amounts for each month from February 2002 through June 2002 with no adjustments for what *the utility company* actually billed. As a result of the above, the City recommended the refund request denial should be upheld.

## **Taxpayer Position**

The Taxpayer requested a refund of City taxes paid in the amount of \$7,230.16 for the period January 2001 through June 2002. According to the Taxpayer, each tenant had individual utility meters. The Taxpayer asserted that the tenants were charged for their exact use of utilities at the same rate billed by the utility company for the period January 2001 through August 2001. For the period of September 2001 through December 2001, the Taxpayer collected an estimated amount from the tenants based on previous usage in 2001. The Taxpayer indicated that each account was reconciled in December 2001 to ensure the total amount charged each tenant equaled the amount charged by the utility company. According to the Taxpayer, an estimated monthly amount was also collected from the tenants for the period January 2002 through June 2002.

In response to the City, the Taxpayer provided the meter reading for all the tenants during the years 2001 and 2002. In response to the City, the Taxpayer asserted the intent was to always insure the tenants were charged for their exact share of the billing from the utility company as required by the leases. While the amounts were estimated for the period of September 2001 through December 2001, the exact amounts were reconciled in December 2001. According to the Taxpayer, the same process was started in the year 2002 before the owner switched management companies effective in June 2002. The Taxpayer requested the true intent and purpose of Section 445 (b) be upheld with a refund being granted.

## **ANALYSIS**

The sole issue in this case is whether or not the Taxpayer has complied with Section 445 (b) and thus eligible for a refund of taxes paid on utility billings for tenants during the period January 2001 through June 2002. Based on the evidence, individual utility meters were installed for each tenant during the refund period. In addition, the Taxpayer did separately charge each tenant for bills from the utility company. Clearly, the Taxpayer did not charge each tenant for the exact billing from the utility company on a monthly basis. However, the Taxpayer did reconciliation for the year 2001 so that each tenant did pay the exact billing for that year. Further, the Taxpayer has provided a reasonable basis for doing a monthly estimate with reconciliation at year's end. We do find this meets the requirements of Section 445 (b) of charging each tenant for the exact billing from the utility company. For the time period, January 2002 through June 2002, there was no evidence of any reconciliation and as a result we must conclude that the Taxpayer has not met the requirements of Section 445 (b) since each tenant was not charged the exact billing from the utility company. Based on the above, we find the Taxpayer's protest should be granted for the period January through December 2001 and denied for the period January through June 2002.

## **FINDINGS OF FACT**

1. On September 28, 2004, the Taxpayers filed a protest of a denial by the City of a request for a tax refund.
2. After review, the City concluded on October 12, 2004 that the protest was timely and in proper form.
3. On October 18, 2004, the Hearing Officer classified the matter as a redetermination and ordered the City to file a response to the protest on or before December 3, 2004.
4. The City filed a response on October 20, 2004.
5. On November 1, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before December 1, 2004.
6. On November 18, 2004, the Taxpayer filed a reply.
7. On November 24, 2004, the Hearing Officer closed the record and indicated a written decision would be issued on or before January 10, 2004.
8. The Taxpayer requested a refund of \$7,230.16 for City taxes paid on utility fees paid by the tenants of the Taxpayer for the period January 2001 through June 2002.
9. Each of the tenants of the Taxpayer had individual utility meters.
10. The tenants were charged for their exact use of utilities at the same rate billed by the utility company for the period January 2001 through August 2001.
11. During the period of September 2001 through December 2001, the Taxpayer collected an estimated amount from the tenants based on previous usage in 2001.
12. The estimates were used to eliminate late fees assessed and to alleviate risk on the Taxpayer.
13. Each account was reconciled in December 2001 so that the tenants were charged for the exact share of the billing from the utility company for the period September 2001 through December 2001.
14. The Taxpayer collected estimated amounts from the tenants for utilities during the period January 2002 through June 2002.
15. The Taxpayer was replaced by another management company prior to any reconciliation of the utility bills for the period January 2002 through June 2002.

## 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 445 (b) provides that utility charges are exempt from City taxes if individual utility meters are installed for each tenant and the lessor separately charged each tenant for the exact billing from the utility company.
3. For the year 2001, the Taxpayer had individual utility meters installed for each tenant and after a year's end reconciliation separately charged each tenant for the exact billing from the utility company.
4. For the period January through June 2002, the Taxpayer did not charge each tenant for the exact billing from the utility company.
5. The Taxpayer's protest should be granted in part, and denied, in part.

## ORDER

It is therefore ordered that the September 28, 2004 protest of *Taxpayer* of a denial by the City of Phoenix of a request for a tax refund should be granted, in part, and denied, in part, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Phoenix shall grant the Taxpayer's request for a tax refund for the period January through December 2001.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer