

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 24, 2005
Decision: MTHO #237
Tax Collector: City of Phoenix
Hearing Date: None

DISCUSSION

Introduction

On April 8, 2005, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on April 12, 2005 that the protest was timely and in the proper form. On April 18, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file a response to the protest on or before June 2, 2005. On May 3, 2005, the City filed a response to the protest. On May 12, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 13, 2005. On June 13, 2005, the Taxpayer filed a reply. On June 20, 2005, the Hearing Officer closed the record and indicated a written decision would be issued on or before August 4, 2005.

City Position

The City performed an estimate of retail revenue for the taxpayer for the period August 2002 through November 2004. As a result of the estimate, the City assessed the Taxpayer for additional taxes of \$3,350.76 plus interest and penalties of \$1,089.09. According to the City, the Taxpayer failed to comply with numerous requests to file and pay privilege license tax on outstanding returns. Since the Taxpayer failed to provide any records, the City estimated revenues using the Taxpayer’s most recent reporting history. The City sent a Notice and Demand to File Taxes Letter (“Demand Letter”) on June 18, 2003 for the time period August 2002 through April 2003. The City asserted the Taxpayer did not comply with the Demand Letter and as a result, the City assessed the Taxpayer for penalties for failure to file timely returns, failure to timely pay tax due, and failure to comply with the Demand Letter. Based on the above, the City requested the assessment be upheld in its entirety.

Taxpayer Position

The Taxpayer has agreed that the estimated amounts of the City were reasonable and as a result the tax assessment was proper. Because the Taxpayer failed to file timely returns, failed to timely pay taxes, and failed to comply with the Demand Letter, the City was authorized pursuant to City Code Section 14-540 (b) (“Section 540(b)”) to assess penalties. While the penalties may be waived when the Taxpayer meets one of the specified criteria set forth in Section 540(f) and/or demonstrates reasonable cause, the

Taxpayer has failed to meet its burden of proof. The Demand Letter made it clear that an additional penalty of 25 percent would be assessed if the Taxpayer failed to comply. The Taxpayer did not respond in a timely manner to the Demand Letter.

FINDINGS OF FACT

1. On April 8, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on April 12, 2005 that the protest was timely and in the proper form.
3. On April 18, 2005, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response to the protest on or before June 2, 2005.
4. On May 3, 2005, the City filed a response to the protest.
5. On May 12, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 2, 2005.
6. On June 13, 2005, the Taxpayer filed a reply.
7. On June 20, 2005, the Hearing Officer closed the record and indicated a written decision would be issued on or before August 4, 2005.
8. The Taxpayer failed to timely file returns or timely pay taxes to the City for period August 2002 through November 2004.
9. The City estimated the Taxpayer's monthly gross income based on the Taxpayer's most recent reporting history.
10. The Taxpayer failed to provide any records to the City.
11. The City sent a Demand Letter to the Taxpayer on June 18, 2003.
12. The Taxpayer failed to respond to the Demand Letter.

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 has failed to timely file reports and timely pay taxes for the period August 2002 through November 2004.

3. The Taxpayer has failed to comply with the Demand Letter.
4. The City was authorized pursuant to Section 540(b) to assess penalties for failing to timely file reports, failing to timely pay taxes, and failing to comply with the Demand Letter.
5. The Taxpayer has failed to meet its burden of proof to have penalties waived.
6. The Taxpayer's protests should be denied.

ORDER

It is therefore ordered that the April 8, 2005 protest by *Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer