

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 30, 2009  
Decision: MTHO # 527  
Taxpayer: *Taxpayer*  
Tax Collector: City of Chandler  
Hearing Date: September 22, 2009

### DISCUSSION

#### Introduction

On May 26, 2009, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on September 22, 2009. Appearing for the City were the Tax Audit Supervisor and Tax Auditor. Taxpayer failed to make an appearance. At the conclusion of the September 22, 2009 hearing, the Hearing Officer granted Taxpayer an opportunity to file additional information. Taxpayer failed to file a response and as a result, the Hearing Officer closed the record and indicated a written decision would be issued on or before December 4, 2009.

### DECISION

On April 8, 2009, the City issued an estimated assessment to Taxpayer for the period of August 2007 through February 2009 for unreported rental income for real property located at *Chandler Property* in the City. The assessment was for additional taxes in the amount of \$7,110.75, interest up through April 2009 in the amount of \$292.94, penalties totaling \$1,758.93, and license fees totaling \$202.50. The City became aware of the rental property when the restaurant operating from the *Chandler Property (Chandler Restaurant)* applied for a liquor license. In its liquor license application, the *Chandler Restaurant* indicated it was paying \$24,950.00 per month to Taxpayer for the rental of the *Chandler Property*. In its protest petition, Taxpayer acknowledged the monthly rental amount utilized by the City was correct according to its monthly lease agreement with the *Chandler Restaurant*. However, Taxpayer asserted that the *Chandler Restaurant* has gone out of business leaving an uncollectible receivable to Taxpayer in the amount of approximately \$500,000.00. As a result, Taxpayer argued no tax was due to the City. The City indicated no adjustments could be made to the estimated assessment without supporting documentation. The City made numerous unsuccessful telephone attempts to contact Taxpayer. The City sent a June 18, 2009 letter to Taxpayer requesting itemized documentation from Taxpayer to support Taxpayer’s assertion that rental income had not been collected. Taxpayer failed to respond to the City. Taxpayer also failed to appear at the hearing and failed to respond to the Hearing Officer’s post hearing request for

additional documentation.

City Code Section 62-545 (“Section 545”) authorizes the City to make an estimate of the amount of tax due when a taxpayer fails to file tax returns. Since Taxpayer failed to file tax returns reporting the rental income from the *Chandler Property*, the City was authorized to make an estimate. Section 545 requires any estimate to be made on a reasonable basis. We conclude the use of the amount provided by the *Chandler Restaurant* was a reasonable basis. In fact, Taxpayer acknowledged the estimate reflected the amount set forth in the rental agreement. Section 545 provides that it is the responsibility of the taxpayer to prove the City’s estimate was not reasonable and correct by providing sufficient documentation of the type and form required by the tax code. City Code Section 62-350 (“Section 350”) requires every person subject to the tax imposed by the tax code to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable for. The City requested such documentation and Taxpayer failed to provide any documentation. As a result, we must conclude that Taxpayer failed to meet its burden of proof that the City’s estimate was not reasonable by providing sufficient documentation. Based on all the above, we conclude Taxpayer’s protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

#### **FINDINGS OF FACT**

1. On May 26, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. On April 8, 2009, the City issued an estimated assessment to Taxpayer for the period of August 2007 through February 2009 for unreported rental income for the *Chandler Property* located in the City.
3. The assessment was for additional taxes of \$7,110.75, interest up through April 2009 in the amount of \$292.94, penalties totaling \$1,758.93, and license fees totaling \$202.50.
4. The City became aware of the rental property when the *Chandler Restaurant* applied for a liquor license.
5. The *Chandler Restaurant* indicated it was paying \$24,950.00 per month to Taxpayer for the rental of the *Chandler Property*.
6. Taxpayer acknowledged the monthly rental amount utilized by the City was correct according to its monthly rental agreement with the *Chandler Restaurant*.
7. Taxpayer asserted the *Chandler Restaurant* had gone out of business leaving an uncollectable receivable to Taxpayer in the amount of approximately \$500,000.00.

8. The City made numerous unsuccessful telephone attempts to contact Taxpayer for additional documentation.
9. On June 18, 2009, the City sent a letter to Taxpayer requesting a list of itemized documentation from Taxpayer to support Taxpayer's assertion that rental income had not been received in the amount of approximately \$500,000.00.
10. Taxpayer never responded to the City's request for supporting documentation.
11. Taxpayer failed to appear at the scheduled hearing and failed to respond to the Hearing Officer's post hearing request for additional documentation.

### 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. City Code Section 62-445 imposes a tax on the rental and leasing of real property.
3. During the assessment period, Taxpayer received rental income from the *Chandler Restaurant* for the *Chandler Property*.
4. Taxpayer failed to report the rental income from the *Chandler Restaurant*.
5. Section 545 authorized the City to make an estimate of the amount of tax due since Taxpayer had failed to file tax returns reporting the rental income from the *Chandler Restaurant*.
6. Taxpayer failed to demonstrate the City's estimate was not reasonable.
7. Section 350 requires every person subject to the tax imposed by the tax code to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable for.
8. The City was authorized pursuant to Section 540 to assess penalties in this matter.
9. Taxpayer's protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

**ORDER**

It is therefore ordered that the May 26, 2009 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer