

DECISION OF MUNICIPAL TAX HEARING OFFICER

April 6, 2011

Taxpayer
Taxpayer's Address

Taxpayer
MTHO #620

Dear *Taxpayer*:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Tucson (Tax Collector or City). The review period covered was December 2004 through September 2010. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer's City of Tucson privilege license was cancelled by the City without Taxpayer's knowledge. Taxpayer had other Taxpayer entities and was not aware that the license was cancelled. Taxpayer had timely paid its taxes for over 50 years. When the license was cancelled, the City no longer sent Taxpayer the reporting form. Taxpayer does not deny its responsibility for the tax, but the problem was caused by the City canceling the license. Taxpayer is therefore requesting the abatement of interest. Taxpayer is not able to pay the assessment and is also requesting an interest free 36-month payout of the assessment.

Tax Collector's Response

Taxpayer's license was inadvertently cancelled. Once the City realized the problem, Taxpayer was contacted regarding the need for a privilege tax license for the property. Taxpayer had a responsibility to obtain a license and to file monthly returns. Taxpayer should have inquired as to why they had not received their monthly return forms or Taxpayer could have downloaded the form from the City's website. The Tax Collector waived penalties for the unlicensed period. Interest cannot be waived and is due for the audit period and on any payment plan.

Discussion

Taxpayer was licensed with the City, filed privilege tax returns and paid taxes. The City cancelled Taxpayer's license effective December 2004. Thereafter Taxpayer did not receive reporting forms. Taxpayer did not file privilege tax returns or pay privilege taxes to the City. When the City discovered the problem in 2008, the City contacted Taxpayer to get licensed and to start paying privilege taxes again. Taxpayer began reporting to the City in July 2008.

The City audited Taxpayer for the period December 2004 through September 2010, which included the period during which Taxpayer was not licensed. The Tax Collector issued an assessment for privilege taxes in the amount of \$24,409.43, interest in the amount of \$6,062.79

and penalties in the amount of \$81.93. The Tax Collector waived all penalties for the period during which Taxpayer was not licensed (December 2004 through June 2008.)

Taxpayer timely protested the assessment, requesting that interest be waived for the period during which Taxpayer was not licensed and that it be allowed to pay the assessment over a three-year period without interest. Taxpayer did not protest the assessment of the tax or the assessment of penalty and interest for periods after June 2008. For the reasons that follow, interest cannot be waived.

Tucson City Code (TCC) § 19-540(a) imposes interest on any taxpayer who does not pay taxes which were due or found to be due before the delinquency date. Interest continues to accrue until the tax is paid. Interest is not a penalty, but is simply compensation to the City for the lost time-value of money received after the due date. *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256, (1998) (Non-punitive interest is, after all, nothing more than compensation for the use of money. The Taxpayers had the benefit of using the funds before paying the tax claim and, in the legal sense, suffers no loss by reason of paying interest on the money it retained in its possession).

Interest accrues if taxes are unpaid. The Tax Collector waived all penalties for Taxpayer not filing returns or not paying privilege taxes for the unlicensed period. It is therefore not necessary to address whether Taxpayer's failure to file returns and pay taxes was Taxpayer's mistake or that of the City. As long as the taxes are unpaid, interest accrues.

Taxpayer also requested that it be allowed to pay the assessment over three years free of interest. First, because interest continues to accrue until the tax is paid, interest will continue to accrue during any installment payment period. Second, TCC § 19-596 authorizes the City to enter into installment payment arrangements with taxpayers. If the Tax Collector refuses to enter into an installment payment arrangement, the taxpayer may petition the Taxpayer Problem Resolution Officer to review that determination. The City and the Taxpayer Problem Resolution Officer, not the Hearing Officer, determine whether the City should enter into an installment payment arrangement.

Based on all the above, we conclude Taxpayer's protest should be denied. The City's privilege tax assessment against Taxpayer was proper.

Findings of Fact

1. Taxpayer is the owner of real property that it leases to tenants.
2. Taxpayer was licensed with the City, filed privilege tax returns and paid taxes for periods before December 2004.
3. The City cancelled Taxpayer's license effective December 2004.
4. Taxpayer did not receive reporting forms and did not file privilege tax returns or pay privilege taxes to the City for the period December 2004 through June 2008.
5. The City discovered that Taxpayer's license should not have been cancelled and contacted Taxpayer to get licensed and to start paying privilege taxes.
6. The City audited Taxpayer for the period December 2004 through September 2010.

7. The audit included the period during which Taxpayer was not licensed and did not file reports or pay privilege taxes to the City.
8. The Tax Collector issued an assessment to Taxpayer for the period December 2004 through September 2010 in the amount of \$24,409.43 privilege tax, interest in the amount of \$6,062.79 and penalties in the amount of \$81.93.
9. The Tax Collector waived penalties for the period during which Taxpayer was not licensed.
10. The penalty in the amount of \$81.93 related to August 2009, a month when Taxpayer was licensed.
11. Taxpayer timely protested the assessment and requested that interest be waived for the period during which Taxpayer was not licensed.
12. Taxpayer did not protest the assessment of the tax or the assessment of penalty and interest for periods after June 2008.
13. Taxpayer also requested that it be allowed to pay the assessment over a three-year period without interest.

Conclusions of Law

1. Taxpayer was required to have a City of Tucson Privilege Tax License. TCC § 19-300.
2. Taxpayer was subject to the City privilege tax for its commercial leasing business during the audit period.
3. It is the taxpayer's responsibility to cause his return and payment to be timely received by the Tax Collector. TCC § 19-530(c).
4. Taxpayer did not pay the privilege tax for the period December 2004 through June 2008 before those taxes became delinquent.
5. TCC § 19-540(a) imposes interest on any taxpayer who fails to pay any of the taxes which were due or found to be due before the delinquency date until the tax is paid.
6. TCC § 19-540(a) recognizes the time value of money, and thus requires a taxpayer that is holding or using money that rightfully belongs to the City to pay interest for the use of that money. *See, Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256, (1998).
7. Taxpayer is liable to pay interest on the taxes that are unpaid from the date the taxes were due until paid.
8. The Hearing Officer does not have the authority to waive the interest.
9. TCC § 19-596 authorizes the City to enter into installment payment arrangements with taxpayers.
10. A taxpayer who is aggrieved by a decision of the Tax Collector to refuse to enter into an installment payment agreement may petition the Taxpayer Problem Resolution Officer to review that determination. TCC § 19-596(g).
11. The City and the Taxpayer Problem Resolution Officer, not the Hearing Officer, determine whether the City should enter into an installment payment arrangement. TCC § 19-596(g).

12. The Hearing Officer does not have the jurisdiction to order the City to enter into an installment payment arrangement. TCC § 19-596(g).
13. The Tax Collector's assessment to Taxpayer was proper.

Ruling

The January 10, 2011 protest by Taxpayer of an assessment made by the City of Tucson for the period December 2004 through September 2010 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period December 2004 through September 2010 is upheld.

The Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

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c: ***Tax Audit Administrator***
Municipal Tax Hearing Office