DECISION OF MUNICIPAL TAX HEARING OFFICER

June 13, 2014

Name of Taxpayer's representative
Address of Taxpayer's representative

Taxpayer
MTHO # 821

Dear Taxpayer's Representative:

We have reviewed the evidence submitted for redetermination ***Taxpayer*** and the City of Chandler (Tax Collector or City). The review period covered was April 1984 through December 2012. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City privilege tax for the rental of residential real property in the City. The City's assessment is incorrect because the City code taxing residential rentals was not in effect for the entire audit period, the City's estimate of income is overstated, the property was not rented for the entire audit period and it was the responsibility of the property manager who managed the property for Taxpayer to pay the taxes.

Tax Collector's Response

Taxpayer owned the property during the audit period, leased the property to tenants and received rent payments. The City has taxed residential rentals since 1960. Taxpayer was therefore subject to the privilege tax during the audit period. The City's estimate of income was reasonable and Taxpayer did not provide evidence to show the estimate was not correct. The City does agree to delete certain periods from the assessment where it appears the property was not rented. The City has no record of a property manager filing returns or paying taxes for the property. The assessment should be upheld except for the periods the City agrees the property was not rented.

Discussion

Taxpayer owned property located at ***ABCDE Street*** in the City. Other persons occupied the property and paid rent to Taxpayer. Chandler Tax Code (CTC) § 62-445 imposes the City privilege tax on the business activity of renting, leasing or licensing for use real property located in the City for a consideration. The tax applies to the activity of leasing a single residential unit. Taxpayer was thus taxable for its activity of leasing real property located in the City for a consideration. The City has no record of Taxpayer or a property manager filing privilege tax returns or paying privilege taxes for the property. The City therefore issued an assessment.

Taxpayer protested the assessment contending:

- the City code taxing residential rentals was not in effect for the entire audit period,
- the City's estimate of income is overstated,
- the property was not rented for the entire audit period, and
- the property manager who managed the property for Taxpayer was responsible for filing returns and paying the taxes.

Was the City Tax on Real Property Rental in Effect During the Audit Period?

The taxation of renting or leasing real property is governed by CTC § 62-445. The City's response stated that prior to November 1999, the tax code was codified in Chapter 15 and the City has been imposing a privilege tax on rentals of real property since 1960.[1] Taxpayer did not submit a reply. We therefore hold that the City privilege tax on real property rentals, including single unit residential rentals, was in effect during the audit period.

Was the Amount of Income Used in the Assessment Overstated?

The Tax Collector estimated that Taxpayer received rent of $2,649 in each quarter of the audit period. Because Taxpayer had not filed returns or provided other financial information to the Tax Collector, the Tax Collector was authorized to use an estimate. The Tax Collector's response stated the estimate was based on the March 2013 rent estimate for Taxpayer's property posted on Zillow.com. That was a reasonable basis for the estimate of rental income.

Under the City code, it is Taxpayer's responsibility to prove that the Tax Collector's estimate was not correct. Taxpayer did not submit a reply or present evidence to prove the Tax Collector's estimate was not correct. Because Taxpayer has not submitted any evidence showing that the Tax Collector's estimate was not correct, the Tax Collector's estimate of income used in the assessment is upheld.

Was the Property Rented During the Entire Audit Period?

The Tax Collector's assessment assumed that the property was rented during each month of the audit period. Taxpayer contended in its protest that there were periods during which the property was not rented. While Taxpayer did not specify the months when the property was not rented, Taxpayer contended that during the periods the property was vacant the water/sewer service would have been in the property owner's name.

The Tax Collector agreed in its response that the City generally does not estimate tax for periods property appears to be vacant indicated by no water account activity or by the fact that the owner was on the water account. The City therefore agreed in its response to exclude a total of 26.5 months from the assessment. Taxpayer has not provided evidence to show that additional periods should be excluded from the assessment.

Was a Property Manager Responsible for Paying the Tax?

Taxpayer contends that during a portion of the audit period the property was managed by a property manager who was responsible for paying the tax. No management agreement or other evidence of a management agreement was submitted.

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[1] References to CTC § 62-445 include prior versions of the provision.

CTC § 62-100 defines "broker" as any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

The potential liability of a broker however does not relieve the principal of liability unless proof of payment of the correct amount of the tax is presented to the Tax Collector. City Regulation § 62-100.1(d). No proof of payment of the tax by a property manager has been presented here. Taxpayer is therefore liable for the payment of the tax.

Based on the foregoing, Taxpayer's protest is upheld in part and denied in part. Taxpayer is subject to the privilege tax and associated interest and penalty on its lease of the property in the City during the audit period. The Tax Collector shall exclude a total of 26.5 months from the assessment.

Findings of Fact

1. Taxpayer owned real property in the City at ***ABCDE Street***.
2. Before issuing the assessment, the City attempted to contact Taxpayer numerous times to obtain information regarding the rental of the property. Taxpayer did not respond.
3. Taxpayer did not file privilege tax returns with the City or pay City privilege taxes for the period April 1984 through December 2012.
4. The City had no record of a property manager being licensed or paying City privilege taxes on the rental of the property during the audit period.
5. The Tax Collector issued an assessment to Taxpayer under the rental of real property classification for the period April 1984 through December 2012. The assessment was returned to the City as unclaimed.
6. The City reissued the assessment to ***Taxpayers***.
7. The Tax Collector estimated that Taxpayer received quarterly rent of $2,649.
8. Taxpayer protested contending that:
    a. the City code taxing residential rentals was not in effect for the entire audit period,
    b. the City's estimate of income is overstated,
    c. the property was not rented for the entire audit period, and
    d. the property manager who managed the property for Taxpayer was responsible for filing returns and paying the taxes.
9. Taxpayer presented no documentation or other evidence with its protest.
10. The Tax Collector's response to the protest stated that:
    a. the City has taxed single residential rentals since 1960,
    b. the estimate was based on the March 2013 rent estimate for Taxpayer's property posted on Zillow.com,

c. the City agrees to exclude a total of 26.5 months from the assessment as detailed in Exhibit D to the Tax Collector's response, and

d. the City had no record of a property manager being licensed or paying City privilege taxes on the rental of the property during the audit period.

Conclusions of Law

1. The presumption is that an assessment of additional income tax is correct. A*rizona State Tax Commission v. Kieckhefer,* 67 Ariz. 102, 191 P.2d 729 (1948).

2. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. *U.S. v. McMullin,* 948 F.2d 1188 (10th Cir.,1991); *Anastasato v. C.I.R.*, 794 F.2d 884 (3rd Cir.,1986).

3. A general denial of liability is not sufficient to overcome the presumption that the assessment is correct. *Avco Delta Corp. Canada Ltd. v. U.S.,* 540 F.2d 258 (7th Cir., 1976).

4. CTC § 62-445 imposed the City privilege tax on the business activity of renting, leasing or licensing for use real property located in the City for a consideration during the audit period.

5. The tax under CTC § 62-445 applies to the rental of a single residential property.

6. Taxpayer leased property in the City during the audit period and was subject to the City privilege tax under CTC § 62-445.

7. Taxpayer has not provided records showing Taxpayer's income attributable to its activities in the City during the audit period.

8. The Tax Collector was authorized to estimate Taxpayer's income to determine the correct tax. CTC § 62-555(e).

9. The Tax Collector's estimate is required to be made on a reasonable basis. CTC § 62-545(b).

10. The Tax Collector's estimate based on the March 2013 rent estimate for Taxpayer's property posted on Zillow.com was reasonable.

11. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct by providing sufficient documentation of the type and form required by the tax code or satisfactory to the Tax Collector. CTC § 62-545(b).

12. Taxpayer did not prove that the Tax Collector's estimate of gross receipts was not reasonable and correct.

13. A broker is any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under the code, and who receives for his principal all or part of the gross income from the taxable activity. CTC § 62-100.

14. Brokers shall be, wherever necessary, treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. City Regulation § 62-100.1(a).

15. The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. City Regulation § 62-100.1(d).

16. Proof of payment of the tax by a broker has not been presented to the Tax Collector and Taxpayer is not relieved of liability for the tax.

17. The City may assess taxes for periods for which a return was not filed at any time without regard to audit statute of limitations. CTC § 62-550(c).

18. The City's privilege tax assessment against Taxpayer is upheld in part and reversed in part. The assessment shall be modified to exclude a total of 26.5 months as detailed in Exhibit D to the Tax Collector's response to Taxpayer's protest.

Ruling

The protest by Taxpayer of the assessment made by the City of Chandler for the period April 1984 through December 2012 is upheld in part and denied in part.

The Tax Collector shall recalculate the assessment by excluding a total of 26.5 months as detailed in Exhibit D to the Tax Collector's response to Taxpayer's protest.

The parties have 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: ***Senior Tax Auditor***
Municipal Tax Hearing Office