

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: March 30, 2015

Decision: MTHO # 866

***Taxpayer:***

Tax Collector: City of Chandler

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On November 17, 2014, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Chandler (“City”). At the request of Taxpayer, this matter was classified as a redetermination. After submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on March 13, 2015 and indicated a written decision would be issued on or before April 27, 2015.

### **DECISION**

The City initiated a “rental project” in 2005 to identify unlicensed rental locations in the City. As a result of that project, the City identified Taxpayer’s property located at ***1234 N. Somewhere Lane (“Property”)*** as an unlicensed rental property. The City attempted to contact Taxpayer by mail on nine different occasions from July 2005 through September 2014. On October 14, 2014, the City issued an estimated assessment to Taxpayer for additional taxes in the amount of \$1,202.21, penalties in the amount of \$300.61, interest up through October 2014 in the amount of \$106.51, and license fees of \$33.00. The assessment period was from January 2009 through September 2014. The City utility records for the Property indicate there has been activity relatively consistently since Taxpayer had the water service disconnected in its name.

The City noted that Taxpayer owned at least four properties in the East Valley. Two of the properties were in the City of Mesa, one was in the Town of Gilbert, and one was located in the City. The City property was the only location listed as non-primary. The City utilized Zillow to estimate a quarterly rental amount of \$3,537.00. The City indicated it would review any acceptable documentation provided by Taxpayer for the rental amount. The City indicated acceptable documents would be federally filed Schedule E’s and/or signed rental agreements.

Taxpayer protested the assessment asserting that the City has assessed the Property for periods in which it was not rented. Taxpayer indicated the Property was rented to **Mr. Renti** from January 2009 through January 2010. Taxpayer estimated **Mr. Renti** paid sporadic amounts of cash totaling approximately \$5,600.00. Taxpayer sent a check for \$84.00 to the City for its estimate of taxes due. In addition, Taxpayer contended that the City rental amounts were above the amounts actually received by Taxpayer. Taxpayer also opined that a portion of the assessment exceeded the time limitations set forth in the City Tax Code Section 550 (“Section 550”).

In its reply, Taxpayer provided information on its properties in the City of Mesa. As to the City Property, Taxpayer indicated it remained vacant before and after **Mr. Renti** lived there. Taxpayer also questioned the City’s reliance on Zillow for a rental estimate. Taxpayer opined that a more reliable rental value would be based on MLS. Taxpayer provided an estimate from a real estate broker that estimated a comparable rental home in the area would have rented for approximately \$875.00 to \$900.00 per month.

City Code Section 445 (“Section 445”) imposes a tax on the gross income from the business activity upon every person engaging in the business of renting real property located in the City. City Code Section 545 (“Section 545”) provides that when no returns have been filed by a taxpayer, the City may make an estimate of the gross income based upon whatever information comes into its possession. Section 545 does require that the estimate must be made on a reasonable basis. Section 550 provides for a general statute of limitations (“SOL”) of four years for City assessments. However, there is a provision that suspends the SOL when there have been no tax returns filed.

While Taxpayer has disputed the amount of rental time period and the dollar amount of rental, there is little dispute that Taxpayer did, in fact, rent the Property for a period of time and thus would be taxable on the gross income from the business activity of renting real property pursuant to Section 445. Although Taxpayer has disputed the City’s assessment period, it has not provided any documentation to explain why the records of the City for utility usage remained relatively constant throughout. As a result, we conclude there was rental activity throughout the assessment period. As to the amount of monthly rental, we note that the City’s estimate must be based on a reasonable basis. We do conclude that the City’s use of Zillow would be based on a reasonable basis. Section 545 places the burden on Taxpayer to provide documentation satisfactory to the City to prove the City estimate was not reasonable. In this case, Taxpayer provided an estimate from a real estate broker that estimated a comparable rental home in the area would have rented for approximately \$875.00 to \$900.00 per month. While Taxpayer’s method also appears to be reasonable, it does not negate the reasonableness of the City estimate of \$1179.00 per month. Although technically Taxpayer’s has failed to meet its burden of proving the City’s estimate is not reasonable, we are cognizant of the difficulty of calculating an exact rental value. As a result, we shall average the two reasonable methods provided to determine a monthly rental value of (\$1179.00 plus \$900.00) divided by two or \$1039.50.

As to the SOL, it is clear there were no tax reports filed and as a result the general four year period does not apply. Accordingly, the City's assessment period was proper. City Code Section 540 ("Section 540") authorizes the City to impose penalties when tax returns are not timely filed and when tax payments are not made on a timely basis. Those penalties may be waived for reasonable cause. "Reasonable cause" is defined in Section 540 as the taxpayer exercising ordinary business care and prudence, ie., having a reasonable basis for believing the tax did not apply to its business activity. In this case, we have not been persuaded that Taxpayer had reasonable cause as set forth in Section 540. Accordingly, the penalties are not waived. Based on all the above, we conclude that Taxpayer' protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

### **FINDINGS OF FACT**

1. The City initiated a "rental project" in 2005 to identify unlicensed rental locations in the City.
2. The City identified Taxpayer's Property as an unlicensed rental property.
3. The City attempted to contact Taxpayer by mail on nine different occasions from July 2005 through September 2014.
4. On October 14, 2014, the City issued an estimated assessment to Taxpayer for additional taxes in the amount of \$1,202.21, penalties in the amount of \$300.61, interest up through October 2014 in the amount of \$106.51, and license fees of \$33.00.
5. The assessment period was from January 2009 through September 2014.
6. The City utility records for the Property indicate there has been activity relatively consistently since Taxpayer had the water service disconnected in its name.
7. Taxpayer owned at least four properties in the East Valley.
8. Two of the properties were in the City of Mesa, one was in the Town of Gilbert, and one was located in the City.
9. The Property was the only one listed as non-primary.
10. The City utilized Zillow to estimate a quarterly rental amount of \$3,537.00.

11. The City indicated it would review any acceptable documentation provided by Taxpayer for the rental amount.
12. The City indicated acceptable documents would be federally filed Schedule E's and/or signed rental agreements.
13. The Property was rented to **Mr. Renti** from January 2009 through January 2010.
14. Taxpayer estimated **Mr. Renti** paid a total of \$5,600.00 for rental amounts.
15. Taxpayer provided an estimate from a real estate broker that estimated a comparable rental home in the area of the Property would have rented for approximately \$875.00 to \$900.00 per month.

#### **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 imposes a tax on the gross income from the business activity upon every person engaging in the business of renting real property within the City.
3. Taxpayer rented the Property during the audit period and thus its gross income was taxable pursuant to Section 445.
4. Section 545 provides that when no returns have been filed by a taxpayer, the City may make a reasonable estimate of the gross income based upon any information that comes into their possession.
5. Since Taxpayer failed to file tax returns, the City was authorized pursuant to Section 545 to make an estimate of gross income.
6. Section 545 places the burden of proof upon Taxpayer to provide documentation satisfactory to the City to prove the City estimate was not reasonable.
7. While Taxpayer did not provide sufficient documentation to prove the City's estimate was not reasonable, it did provide for another reasonable estimate for gross income.

8. An average of the City's estimate and Taxpayer's estimate will provide the overall best estimate of Taxpayer's gross income.
9. Section 550 provides for a general SOL of four years for City assessments.
10. Section 550 has a provision that suspends the SOL when there have been no tax returns filed.
11. Since Taxpayer failed to file tax returns, the SOL for Taxpayer has been suspended and the City's assessment period was proper.
12. The City was authorized pursuant to Section 540 to assess penalties in this matter.
13. Penalties pursuant to Section 540 may be waived for reasonable cause.
14. Taxpayer has failed to demonstrate reasonable cause to have any penalties waived in this matter.
15. Based on all the above, Taxpayer's protest should be partly denied and partly granted, consistent with the Discussion, Conclusions, and Findings, herein.
16. The parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section-575.

### **ORDER**

It is therefore ordered that the November 17, 2014 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is therefore ordered that the City of Chandler shall modify the assessment by using a gross monthly income of \$1,039.50.

It is further ordered that this Decision is effective immediately.

***Municipal Tax Hearing Officer***