

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

Decision Date: July 30, 2015

Decision: MTHO # 888

***Taxpayer:***

Tax Collector: City of Chandler

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On April 30, 2015, 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 July 29, 2015 and indicated a written decision would be issued on or before August 31, 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 somewhere north “Property”*** as an unlicensed rental property. The City contacted Taxpayer by mail on October 31, 2014. Taxpayer responded on December 11, 2014. After several more correspondences between the parties, the City issued a Notice of Intent to Estimate (“Notice”) on April 1, 2015. The Notice assessed Taxpayer for additional taxes in the amount of \$487.74, interest up through April 2015 in the amount of \$39.93, license fees of \$19.50, and penalties totaling \$121.88. The assessment period was for October 2009 through March 2015.

Taxpayer filed a protest of the assessment. According to Taxpayer, she has lost money on the Property. Taxpayer indicated the rent received does not cover County property tax, insurance, HOA fees and simple maintenance. Further the rent does not cover any major repairs. Taxpayer also expressed concern that the City looked at billings from Southwest Gas (“SWG”) and Salt River Project (“SRP”) for the Property. Taxpayer opined that she never heard of the City rental tax until the recent assessment. Taxpayer asserted that from October 2009 to the present, she received \$500.00 per month from her daughter and grandson.

The City noted that it reviews City water bills and reported City sales tax. The City opined that it does not have access to other utility providers. The City indicated that prior to January 2015 there were no exemptions for rentals to family members. The law was changed effective January 1, 2015 to exempt rentals to qualifying family members. As a result, the City agreed to revise the assessment to exclude the period January 2015 through March 2015.

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. The tax is on the gross income with no mention of whether a taxpayer has any profits. 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. In this case, the City utilized information provided by Taxpayer to make the estimate. Section 545 places the burden on Taxpayer to provide documentation satisfactory to the City to prove the City’s estimate was not reasonable. In this case, Taxpayer has failed to meet its burden of proof. We concur with the City that the assessment will need to be adjusted for the period of January 2015 through March 2015 to reflect the change in the law.

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, Taxpayer has demonstrated that she was unaware that a rental to a family member would be subject to the City tax. Accordingly, we have been persuaded that Taxpayer had reasonable cause as set forth in Section 540. Accordingly, the penalties are 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 contacted Taxpayer by mail on October 31, 2014.
4. Taxpayer responded to the City on December 11, 2014.
5. After several more correspondences between the parties, the City issued a Notice on April 1, 2015.
6. The Notice assessed Taxpayer for additional taxes in the amount of \$487.74, interest up through April 2015 in the amount of \$39.93, license fees in the amount of \$19.50, and penalties totaling \$121.88.
7. The assessment period was for October 2009 through March 2015.
8. Taxpayer rented the Property to her daughter and grandson.
9. Taxpayer lost money on the rental of the Property.
10. Prior to January 2015, there were no exemptions for rentals to family members.
11. The City indicated it would adjust the assessment for the period January 2015 through March 2015.

### **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. The Section 445 tax is on the gross income with no mention of profits.
5. 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.
6. Since Taxpayer failed to file tax returns, the City was authorized pursuant to Section 545 to make an estimate of gross income.
7. Section 545 places the burden of proof upon Taxpayer to provide documentation satisfactory to the City to prove the City estimate was not reasonable.
8. Taxpayer did not provide sufficient documentation to prove the City's estimate was not reasonable.
9. The City was authorized pursuant to Section 540 to assess penalties in this matter.
10. Penalties pursuant to Section 540 may be waived for reasonable cause.
11. Taxpayer has demonstrated reasonable cause to have any penalties waived in this matter.
12. Based on all the above, Taxpayer's protest should be partly denied and partly granted, consistent with the Discussion, Conclusions, and Findings, herein.
13. 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 August 30, 2015 protest by the *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 excluding the period of January 2015 through March 2015.

It is further ordered the City of Chandler shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

***Municipal Tax Hearing Officer***