

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 28, 2010

Decision: MTHO #585

Taxpayer:

Tax Collector: City of Peoria

Hearing Date: None

DISCUSSION

Introduction

On April 6, 2010, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Peoria (“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 November 18, 2010 and indicated a written decision would be issued on or before January 3, 2011. Subsequently, the City filed surrebuttal and Taxpayer filed rejoinder.

DECISION

The City performed an account review of Taxpayer for the period January 2004 to September 2009. The City concluded Taxpayer’s alarm monitoring charges were taxable telecommunication services pursuant to City Code Section 12-470(a)(2)(D) (“Section 470”). Taxpayer was assessed taxes in the amount of \$21,072.36, penalties in the amount of \$3,560.51, and interest up through February 2010 in the amount of \$5,268.20.

Taxpayer provides alarm monitoring and customer services to more than 940,000 customers in the United States and Canada, including customers in the City. Taxpayer charged an installation fee and fees for monitoring the system from the monitoring centers located in Texas and Tennessee. The Court in People’s Choice TV Corporation (PCTV) v City of Tucson, held that the cities may not tax the gross income of a provider of microwave pay television services received from connection, access, subscription, or membership fees for its programming package that included both local and out-of-state programs. ARS Section 42-6004(A) (“Section 6004”) prohibits municipalities from levying a tax on:

Interstate telecommunications services, which include that portion of Telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.

This office in Decision No. MTHO #211 concluded that Taxpayer was in the business of providing telecommunications services pursuant to Section 470. We further concluded that the Supreme Court in People's Choice concluded that the business must be viewed as a whole and that "gross income that such interstate businesses receive for sales, tolls, subscriptions, and subscriber services" cannot be taxed pursuant to Section 6004. Subsequently, Decision No. MTHO #211 was appealed and the Court of Appeal in City of Peoria v Brink's Home Security, Inc. concluded that alarm monitoring is intrastate telecommunications and subject to the City's privilege tax as codified in Section 470. Taxpayer has appealed the Court of Appeal's decision to the Arizona Supreme Court which has granted Taxpayer's Petition for Review and set oral argument for January 19, 2011. Based on the Court of Appeal's decision in City of Peoria v Brink's Home Security, Inc., we must conclude that Taxpayer's protest must be denied.

Both parties made requests for attorney fees in this matter. Taxpayer requested attorney fees pursuant to City Code Section 12-578 ("Section 578") and the City pursuant to Arizona Rule of Civil Procedure 11 ("Rule 11"). Since this matter has reached the Arizona Supreme Court for a final resolution, we must conclude that the position of both parties was substantially justified. Accordingly, both requests for attorney fees should be denied.

The City imposed penalties on Taxpayer pursuant to City Code Section 12-540 ("Section 540") Consistent with our decision on the attorney fees, we conclude that Taxpayer has demonstrated reasonable cause to have all penalties waived. Accordingly, all penalties are waived in this matter.

FINDINGS OF FACT

1. On April 6, 2010, Taxpayer filed a protest of a tax assessment made by the City.
2. The City performed an account review of Taxpayer for the period January 2004 to September 2009.
3. Taxpayer was assessed taxes in the amount of \$21,072.36, penalties in the amount of \$3,560.51, and interest up through February 2010 in the amount of \$5,268.20.
4. Taxpayer provides alarm monitoring and customer services to more than 940,000 customers in the United States and Canada, including customers in the City.
5. Taxpayer charged an installation fee and fees for monitoring the system from the monitoring centers located in Texas and Tennessee.

6. Taxpayer's business resulted in the transmitting and receiving of information via electromagnetic means across state borders.

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. Taxpayer is in the business of providing telecommunications services pursuant to Section 470.
3. We concluded in Decision No. MTHO #211 that the Supreme Court in People's Choice concluded that the business must be viewed as a whole and that "gross income that such interstate businesses receive for sales, tolls, subscriptions, and subscriber services" cannot be taxed pursuant to Section 6004.
4. Decision No. MTHO #211 was appealed and the Court of Appeal in City of Peoria v Brink's Home Security, Inc. concluded that alarm monitoring is intrastate telecommunications and subject to the City's privilege tax as codified in Section 470.
5. Taxpayer has appealed the Court of Appeal's decision to the Arizona Supreme Court which has granted Taxpayer's Petition for Review and set oral argument for January 19, 2011.
6. Based on the Court of Appeal's decision in City of Peoria v Brink's Home Security, Inc., we must conclude that Taxpayer's protest should be denied.
7. Taxpayer requested attorney fees pursuant to Section 578 and the City requested attorney fees pursuant to Rule 11.
8. Since this matter has reached the Arizona Supreme Court for a final resolution, we must conclude that the position of both parties was substantially justified.
9. Both requests for attorney fees should be denied
10. Taxpayer has demonstrated reasonable cause to have all penalties in this matter

waived.

ORDER

It is therefore ordered that the April 6, 2010 protest *Taxpayer* of a tax assessment made by the City of Peoria is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that all requests for attorney fees are hereby denied.

It is further ordered that all penalties in this matter are hereby waived.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer