

DECISION OF MUNICIPAL TAX HEARING OFFICER

June 15, 2012

Taxpayer
Taxpayer's address

Taxpayer
MTHO #694

Dear Taxpayer:

We have reviewed the evidence and arguments presented for redetermination by *Taxpayer* and the City of Peoria (Tax Collector or City). The review period covered was July 1, 2009 through October 31, 2011. Taxpayer's protest, Tax Collector's response and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City privilege tax under the retail classification for Taxpayer's sales of trucks and equipment. Taxpayer operated its business on leased premises. When Taxpayer leased the property, the property was located in the County. Taxpayer was not aware that the property was later annexed by the City and Taxpayer did not collect or pay sales taxes after the annexation. Taxpayer was notified by the City in November 2011 that the property had been annexed in July of 2009 and Taxpayer was responsible for privilege taxes on all its sales from that time. The City failed to do its due diligence and failed to notify Taxpayer and other businesses on the same tract of land that the City had annexed the property. Taxpayer had no way of knowing the City had annexed the property. Even as late as October 2009 the county sheriff responded to calls, not the City police. Taxpayer should only be liable for tax after it was informed by the City that tax should be collected on Taxpayer's sales.

Tax Collector's Response

Taxpayer operated as a retail seller of trucks and equipment in the City and is therefore subject to the City's privilege tax. Taxpayer did not pay any City privilege tax during the audit period. The City audited Taxpayer and issued an assessment. Taxpayer has not challenged the applicability of the tax or the amount of the assessment. Taxpayer argues that it was unaware of the annexation and therefore did not pay taxes, that the City failed to follow proper annexation procedures regarding notification and Taxpayer did not charge the tax to its customers. Contrary to Taxpayer's argument, the City complied with the law regarding annexation of the property. The annexation was requested by the owner of the property and he could have informed Taxpayer of the annexation. Such notice was not the City's responsibility. Finally, the tax is imposed on the business, not on the customers. It is not relevant that Taxpayer did not pass the tax on to its customers. Because Taxpayer's activities were taxable during the review period, the assessment was proper. However, because Taxpayer may have a good faith basis for not filing in a timely manner, the City asks that the assessed penalties be abated.

Discussion

Taxpayer operates a retail business in the City on leased property. When Taxpayer leased the property and started its operation, the property was in the county and no City taxes were paid. The City annexed the property in July 2009. Taxpayer was not aware of the annexation and therefore did not pay City privilege taxes even after the annexation. The City notified Taxpayer of the annexation when it audited Taxpayer in November 2011. The City issued an assessment for the periods after the annexation (starting July 2009) through October 2011.

No issues have been raised regarding the fact that Taxpayer is in a retail business, that retail sales are taxable by the City or the amounts included in the assessment. The question presented is whether the City is nevertheless precluded from enforcing the tax during the review period because the City did not personally inform Taxpayer of the annexation.

Generally, it is a taxpayer's responsibility to be familiar with the code of the jurisdiction where it operates. Every person is presumed to know the law and its requirements, and a mistake as to such requirements is no excuse for failure to meet them. *Newman v. Fidelity Savings and Loan Association*, 14 Ariz. 354, 128 P. 53 (1912). Annexation of property by a city is governed by A.R.S. § 9-471. Nothing in that statute requires the City to give notice to tenants of properties that may be annexed. The record here indicates that the City gave the required statutory notices.

Once the annexation becomes final, the City acquires the right to exercise all political and governmental powers delegated to it by law over property and inhabitants in the annexed territory, which would include the right to impose a tax. There is nothing in the record here to indicate that the validity of the annexation was timely challenged. Therefore the annexation become final thirty days after the ordinance was adopted and the City then had the authority to impose the privilege tax. We know of no authority that would allow us to invalidate the assessment because Taxpayer did not receive personal notice of the annexation from the City.

Taxpayer also stated that it did not collect the tax from its customers. The City privilege tax is assessed against the business for the privilege of engaging in business in the City. The tax is not assessed against the customer. A taxpayer business may, but is not required to, pass the cost of the tax onto its customers. The taxpayer business is liable for the tax whether or not the cost of the tax was collected from the customer.

The Tax Collector agreed that the penalties that were included in the assessment should be abated. The penalties are abated. The City's assessment of privilege tax and interest against Taxpayer is upheld.

Findings of Fact

1. Taxpayer is in the business of selling tangible personal property.
2. Taxpayer entered into a lease agreement dated November 1, 2008 to lease property located at *12345 Lost Way Avenue.*, Peoria, Arizona.
3. Taxpayer conducted its business on the property starting on or about January 1, 2009.
4. At the time Taxpayer entered into the lease agreement the property was not within Peoria's city limits.
5. The City held a public hearing on June 3, 2008 to discuss the annexation proposal.
6. Notice of the hearing was physically posted on the property and published in the Peoria Times newspaper.

7. No comments or objections to the annexation were presented at the hearing.
8. The City received signed Petitions for Annexation of the property from the owners of the property in July 2008.
9. The City Council adopted Ordinance 09-16 approving the annexation on June 2, 2009.
10. The Ordinance was recorded with the Maricopa County Recorder on August 21, 2009.
11. The City did not personally notify Taxpayer of the proposed annexation or the adoption of Ordinance 09-16.
12. Taxpayer was not aware that its business location was annexed by the City and therefore did not pay City privilege taxes after the annexation.
13. The City notified Taxpayer of the annexation when it audited Taxpayer in November 2011.
14. The City issued an assessment for unpaid privilege taxes, interest and penalties for the periods after the annexation, July 2009 through October 2011.
15. Taxpayer timely protested the assessment stating:
 - a. When Taxpayer leased the property, it was located in the county.
 - b. Taxpayer was not aware that the property was later annexed by the City and therefore Taxpayer did not collect or pay sales taxes.
 - c. The City failed to do its due diligence and failed to notify Taxpayer and other businesses on the same tract of land that the City had annexed the property.
 - d. Taxpayer had no way of knowing the City had annexed the property.
16. There is nothing in the record indicating that anyone timely challenged the validity of the annexation.

Conclusions of Law

1. The City imposes a privilege tax on the activity of selling tangible personal property at retail within the City. PCC § 12-460.
2. Taxpayers are presumed to know the law and its requirements, and a mistake as to such requirements is no excuse for failure to meet them. *Newman v. Fidelity Savings and Loan Association*, 14 Ariz. 354, 128 P. 53 (1912).
3. Cities and towns are required to follow the procedures set forth in A.R.S. § 9-471 to extend and increase the corporate limits of the city or town by annexation.
4. The city must file in the office of the county recorder of the county in which the annexation is proposed a blank petition setting forth a description and an accurate map of all the exterior boundaries of the territory contiguous to the city or town proposed to be annexed. A.R.S. § 9-471.A.1.
5. Notice and a copy of the filing must be given to the clerk of the board of supervisors and to the county assessor. A.R.S. § 9-471.A.1.
6. Signatures on petitions filed for annexation may not be obtained for a waiting period of thirty days after filing the blank petition. After filing the blank petition, the governing

body of the city or town must hold a public hearing within the last ten days of the thirty day waiting period to discuss the annexation proposal. A.R.S. § 9-471.A.2. and 3.

7. Notice of the public hearing must be given by publication at least once in a newspaper of general circulation, posting in at least three conspicuous public places in the territory proposed to be annexed and by sending the notice by first class mail to the chairman of the board of supervisors of the county and to each owner of the real and personal property, as shown on the list furnished by the county assessor and the department of revenue, that would be subject to taxation by the city or town in the event of annexation in the territory proposed to be annexed. A.R.S. § 9-471.A.3(a) through (d).
8. The procedures set forth in A.R.S. § 9-471 do not require the City to provide personal notice to tenants of properties that are proposed to be annexed by the City.
9. The city has one year after the last day of the thirty day waiting period to submit a petition signed by the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation, as shown by the last assessment of the property. A.R.S. § 9-471.A.4.
10. Any city or town, the attorney general, the county attorney, or any other interested party may question the validity of the annexation for failure to comply with A.R.S. § 9-471.
11. The petition questioning the validity of the annexation must be filed in court within thirty days after adoption of the ordinance annexing the territory by the governing body of the city or town and not otherwise. A.R.S. § 9-471.C.
12. No action may be brought to question the validity of an annexation ordinance unless brought within the time and for the reasons provided A.R.S. § 9-471.C.
13. The annexation becomes final after the expiration of thirty days from the adoption of an ordinance annexing the territory subject to the review of the court to determine the validity of the annexation if petitions in objection have been filed. A.R.S. § 9-471.D.
14. After the ordinance is adopted, the city clerk is required to provide a copy of the adopted annexation ordinance to the clerk of the board of supervisors of each county that has jurisdiction over the annexed area. A.R.S. § 9-471.D.
15. Once the annexation becomes final, the City acquires the right to exercise all political and governmental powers delegated to it by law over property and inhabitants in the annexed area. *Blount v. MacDonald*, 18 Ariz. 1, 155 P. 736 (1916); *City of Phoenix v. Superior Court*, 158 Ariz. 214, 762 P.2d 128 (App. 1988).
16. If the validity of a city's annexation ordinance is timely challenged in court, the annexation does not automatically become final thirty days after the ordinance was adopted, but rather becomes final when judicial determination has been made as to challenged annexation's validity. *Tohono O'odham Nation v. City of Glendale*, 227 Ariz. 113, 253 P.3d 632 (App. 2011)
17. The City has the right to impose privilege taxes in the annexed area unless the validity of the annexation is timely challenged in court and the annexation is declared invalid. *Copper Hills Enterprises, LTD., v. Arizona Department of Revenue*, 214 Ariz. 386, 153 P.3d 407 (2007).

18. There is nothing in the record indicating that the City's annexation of the subject property was challenged and the annexation was declared invalid by a court.
19. The City had the authority to impose privilege taxes on businesses located within the annexed territory.
20. The City privilege tax is a tax on the person engaging in business and not a tax on the customer. *Arizona Department of Revenue v. Action Marine, Inc.* 218 Ariz. 141, 181 P.3d 188 (2008).
21. A business may, but is not required to, pass the cost of the tax onto its customers.
22. A taxpayer is liable for the tax whether or not the taxpayer passes the cost of the tax onto its customers. *Arizona Department of Revenue v. Action Marine, Inc., supra.*
23. Taxpayer is liable for the City privilege tax on its sales of tangible personal property even though Taxpayer did not pass the cost of the tax onto its customers.
24. The City's assessment of privilege tax and interest against Taxpayer for the period July 1 2009 through October 31, 2011 is proper.
25. The Tax Collector agreed that the penalties included in the assessment should be abated.

Ruling

Taxpayer's protest of an assessment of privilege tax and interest made by the City of Peoria for the period July 1, 2009 through October 31, 2011 is denied.

The Tax Collector's Notice of Assessment of privilege tax and interest to Taxpayer for the period July 1, 2009 through October 31, 2011 is upheld.

The Tax Collector shall abate the penalties included in the assessment.

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: *Assistant City Attorney*
Municipal Tax Hearing Office