

DECISION OF MUNICIPAL TAX HEARING OFFICER

December 10, 2012

Taxpayer's Representative
Address of Taxpayer's Representative

Taxpayer
MTHO #722

Dear Taxpayer's Representative:

We have reviewed the evidence and information presented by *Taxpayer* and the City of Scottsdale (Tax Collector or City) at the hearing on August 29, 2012 and in post-hearing memoranda. The review period covered was February 2006 through January 2012. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer is a limited liability company (LLC). Taxpayer leases property to another entity. Taxpayer was assessed City of Scottsdale privilege tax under the commercial lease classification for the lease of the property. The definition of person in the Scottsdale Tax Code (STC) does not include limited liability companies. Taxpayer is therefore not subject to privilege tax under the STC.

Tax Collector's Response

Taxpayer is considered to be in the business of leasing real property under the STC. Taxpayer LLC falls within the definition of "person" in the code. None of the exemptions provided by the code apply. Taxpayer is therefore subject to the City privilege tax under the commercial lease classification.

Discussion

Taxpayer is a limited liability company that owns real property in the City. Taxpayer leases the property to *NMCA, Inc.* Taxpayer did not pay the City privilege tax on its lease. The Tax Collector conducted an audit assessment of Taxpayer for the period February 2006 through January 2012 and issued an assessment. The Tax Collector considered Taxpayer taxable under the commercial lease classification. Taxpayer timely protested the assessment.

STC § 445 imposes the City privilege tax on every person engaging or continuing in the business activity of renting, leasing or licensing for use real property located in the City for a consideration. Taxpayer contends that since it is an LLC and the definition of the term "person" under the STC does not include LLC's, Taxpayer is not a person subject to the

privilege tax . The Tax Collector contends that the definition of “person” is broad enough to include LLC’s.

STC § 100 defines “person” to mean an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. The definition further provides that a person is to be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated.

While STC § 100 does not specifically include the term “limited liability company” in the definition of “person”, A.R.S. § 29-857 provides:

A limited liability company established under this chapter or a foreign limited liability company transacting business in this state pursuant to this chapter shall pay the taxes that are imposed by the laws of this state or any political subdivision of this state on domestic and foreign limited partnerships on an identical basis, except that, for purposes of title 43 [Arizona income tax], a domestic or foreign limited liability company and its members shall be taxed as if the limited liability company is either a partnership or a corporation or is disregarded as an entity as determined pursuant to the internal revenue code as defined in section 43-105.

Under A.R.S. § 29-857, except for income tax purposes, LLC’s are to be taxed as a limited partnership. Partnerships are specifically included in the definition of “person” in STC § 100.

Including LLC’s in the definition of “person” even when it is not specifically enumerated is also consistent with authorities holding that the definition of “person” should be broadly construed. See, e.g. *Arizona Department Of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 181 P.3d 188 (2008); *Kmart Michigan Property Services, LLC v. Department Of Treasury*, 283 Mich.App. 647, 770 N.W.2d 915 (2009); *Utah Advisory Opinion No. 01-009*, 05/18/2001.

Taxpayer also argued that it was a disregarded entity for tax purposes. Taxpayer’s treatment for federal or state income tax purposes does not dictate its treatment for privilege tax purposes. Under A.R.S. § 29-857, a limited liability company is required to pay taxes that are imposed on limited partnerships other than for income tax purposes. It is for state income tax purposes that a limited liability company may be disregarded and taxed in the same manner as determined under the internal revenue code. For privilege tax purposes the City can thus tax an LLC that is otherwise disregarded for federal income tax purposes.

Based on all the above, we conclude Taxpayer’s protest should be denied. The City’s privilege tax assessment against Taxpayer was proper.

Findings of Fact

1. Taxpayer is a limited liability company.
2. Taxpayer is disregarded for federal income tax purposes.
3. Taxpayer is title owner to real property within the City.

4. Taxpayer leased the property to *NMCA, Inc.* during the audit period.
5. Taxpayer did not pay City privilege tax from its lease of the property.
6. The Tax Collector conducted an audit assessment of Taxpayer for the period February 2006 through January 2012 and issued an assessment.
7. The Tax Collector considered Taxpayer taxable under the commercial lease classification.
8. The assessment was based on the Tax Collector's estimate of the value of the lease from Taxpayer to *NMCA, Inc.*
9. Taxpayer timely protested the assessment.
10. Taxpayer believed it was not subject to the City privilege tax because the tax is imposed on persons and it is not a person under the STC.
11. Taxpayer also argued that it was a disregarded entity for tax purposes.

Conclusions of Law

1. STC § 445 imposes the City privilege tax on persons engaging in the business activity of renting, leasing or licensing for use real property located in the City.
2. Person means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. STC § 100.
3. A person is considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. STC § 100.
4. A limited liability company transacting business in Arizona is required to pay the taxes that are imposed by the laws of Arizona or any political subdivision of Arizona on domestic and foreign limited partnerships on an identical basis, except that, for purposes of Title 43, A.R.S. a domestic or foreign limited liability company and its members shall be taxed as if the limited liability company is either a partnership or a corporation or is disregarded as an entity as determined pursuant to the internal revenue code as defined in section 43-105. A.R.S. § 29-857.
5. Taxpayer's tax treatment for federal and state income tax purposes is not relevant to Taxpayer's tax treatment for privilege tax purposes.
6. Taxpayers are free to use whatever form of business they choose, but in choosing a form they must accept its advantages and disadvantages. *Higgins v. Smith*, 308 U.S. 473 (1940).
7. Taxpayer fell within the definition of "person" and was subject to the City privilege tax for its leasing activity.
8. The City's privilege tax assessment against Taxpayer was proper.
9. Taxpayer's protest should be denied.

Ruling

The protest by Taxpayer of an assessment made by the City of Scottsdale for the period February 2006 through January 2012 is denied.

The Tax Collector's Notice of Assessment is upheld.

Taxpayer has 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: ***Scottsdale Tax Audit Manager***
Municipal Tax Hearing Office