

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 22, 2012

Decision: MTHO # 732

Taxpayer:

Tax Collector: Town of Youngtown

Hearing Date: September 25, 2012

DISCUSSION

Introduction

On April 18, 2012, *Special Care Services* (“Taxpayer”) filed a letter of protest for a tax assessment made by the Town of Youngtown (“Town”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on September 25, 2012. Appearing for Taxpayer was *the President/CEO of Taxpayer*, and *two other representatives*. Appearing for the Town was the *Tax Auditor and his associates*. On September 27, 2012, the Hearing Officer closed the record and indicated a written decision would be issued on or before November 9, 2012.

DECISION

On March 13, 2012, the Town issued an assessment to Taxpayer for additional taxes in the amount of \$135,404.54, interest up through February 2011 in the amount of \$23,803.22, and penalties in the amount of \$32,288.21. The audit period was from July 2005 through December 2011. The assessment was based on unreported rental of real property pursuant to Town Code Section 8A-445 (“Section 445”). Section 445 authorizes a tax on the business activity upon every person engaging in the business of leasing or renting real property located within the Town.

Taxpayer operates an assisted living facility located at *12345 6th Avenue* in the Town. Each of Taxpayer’s clients enters into a Resident Agreement (“Agreement”) in which in which the client is admitted as a Resident. Part of the Agreement provides as follows: The Resident or guarantor agrees to rent premise within the facility on a 30-day basis beginning----- at the rate of \$----- per month.” Taxpayer has approximately 60 unrelated residents at any one time.

Taxpayer argued that it is a sheltered care facility which is specifically excluded as a taxable entity in the definition of “hotel” in the Town Tax Code. Taxpayer noted that while the Town Tax Code does not have a definition of a sheltered care facility, the City

of Flagstaff (“Flagstaff”) has a definition in its Tax Code that Taxpayer’s business would fall under. Taxpayer indicated it provided residents with meals, medication management, transportation to medical appointments, therapeutic activities, laundry services, and 24-hour supervision by certified caregivers. Taxpayer also asserted that they were previously informed by Town officials that Taxpayer was exempt from the “bed tax”. Taxpayer provided a copy of its State of Arizona (“State”) license to operate as an Assisted Living Center to provide supervisory care services.

The Town noted that health care facilities are categorized according to the ranges and depth of care. The Town indicated that facilities cannot accept patients that exceed the range of services for which the facility is licensed. According to the Town, Taxpayer was licensed to provide supervisory care which is the lowest level of assisted living. The Town asserted that the supervisory care level is characterized by independent living and the facility functions to remind persons to take medication and to maintain awareness of the residents functioning. The Town indicated that personal care, the next higher level of assisted living, is earmarked by the fact that residents can no longer function independently. Services provided by a personal care facility include bathing, dressing, eating, incontinence care, etc. As a result, the Town concluded that Taxpayer did not meet the requirements for an exemption.

Based on the Agreements entered into by Taxpayer with its residents, it is clear that Taxpayer receives gross income from the business activity of leasing or renting real property. As a result, the Town has met the burden of proof to demonstrate that Taxpayer has taxable gross income pursuant to Section 445. There are specified exemptions contained in Section 445 in which Taxpayer bears the burden of proof to demonstrate an exemption applies to it. In this case, Taxpayer has argued that subsection “q” should apply to its business. Subsection “q” reads as follows: “Charges to patients receiving “personal care” or “directed care”, by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.” We conclude that Taxpayer has demonstrated that it met the requirement of having an assisted living center license from the State. However, subsection “q” requires the license must be for patients receiving “personal care” or “directed care” in order for the exemption to apply. Further, subsection “q” refers to Chapter 4 Title 36 of the Arizona Revised Statutes and Title 9 of the Arizona Administrative Code for the definitions/licenses for “personal care” or “directed care”. Page 103 of the Arizona Administrative Code provides as follows: “C. The Department shall license an assisted living facility to provide one of the following levels of service: 1. Supervisory care services, 2. Personal care services, or 3. Directed care services. D. To change an assisted living facility’s sub-classification, a licensee shall submit an application for licensure as required by A.R.S. Section 36-421 and 36-422.” It is clear from the Arizona Administrative Code that there are three levels of service for which a license can be granted for an assisted living facility. The exemption set forth in subsection “q” clearly only applies to “personal care” or “directed care” levels of service. Since Taxpayer’s license is for supervisory care services, we must conclude that

Taxpayer has failed to meet its burden of proof that it is entitled to the subsection “q” exemption. Accordingly, we uphold the Town’s tax assessment.

The Town assessed Taxpayer for penalties for failure to timely file or timely pay taxes pursuant to Town Code Section 8A-540 (“Section 540”). Those penalties can be waived for reasonable cause. Taxpayer presented evidence that it had received information from Town officials that the “bed tax” did not apply to Taxpayer. Unfortunately, the “bed tax” is set forth in Town Code Section 8A-444 (“Section 444”) and the tax assessed in this matter was based on Section 445. Based on the evidence, we conclude that Taxpayer reasonably believed it was not liable for any additional taxes. We conclude that Taxpayer has demonstrated reasonable cause to have all penalties waived. Taxpayer’s protest should be partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On April 18, 2012, Taxpayer filed a letter of protest for a tax assessment made by the Town.
2. On March 13, 2012, the Town issued an assessment to Taxpayer for additional taxes in the amount of \$135,404.54, interest up through February 2011 in the amount of \$23,803.22, and penalties in the amount of \$32,288.21.
3. The audit period was from July 2005 through December 2011.
4. Taxpayer operates an assisted living facility located at *6th Avenue* in the Town.
5. Each of Taxpayer’s clients enters into an Agreement in which the client is admitted as a Resident.
6. Part of the Agreement requires the client to agree to rent premises within the facility.
7. Taxpayer provided its residents with meals, medication management, transportation to medical appointments, therapeutic activities, laundry service, and 24-hour supervision by certified caregivers.
8. Taxpayer was informed by Town Officials that it was exempt from the “bed tax”.

9. During the audit period, Taxpayer had a license from the State to operate as an Assisted Living Center to provide supervisory care services.
10. Health care facilities cannot accept patients that exceed the range of services for which the facility is licensed.
11. Taxpayer believed it was paying all of its taxes during the audit period.

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. City Code Section 445 imposes a tax on the business activity of leasing or renting real property.
3. During the audit period, Taxpayer received gross income from the leasing or renting of real property to its clients pursuant to Section 445.
4. Subsection “q” of Section 445 exempts income from patients receiving “personal care” or “directed care” from a licensed assisted living center as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code.
5. Taxpayer demonstrated it met the requirement of having a license for an assisted living center from the State.
6. Subsection “q” requires the license must be for patients receiving “personal care” or “directed care” in order for the exemption to apply.
7. Subsection “q” refers to Chapter 4 Title 36 of the Arizona Revised Statutes and Title 9 of the Arizona Administrative Code for the definitions/licenses for “personal care” or “directed care”.
8. The Arizona Administrative Code provides the Department shall license an assisted living facility to provide one of the following levels of service: 1. Supervisory care services, 2. Personal care services, of 3. Directed care services.
9. To change an assisted living facility’s sub-classification, a licensee must submit an application for licensure as required by A.R.S. 36-421 and 36-422.

10. Since Taxpayer's license is for "supervisory care services", we must conclude that Taxpayer has failed to meet its burden of proof that it is entitled to a subsection "q" exemption.
11. Because no tax forms were filed or taxes paid, the City was authorized to assess penalties pursuant to Section 540.
12. Taxpayer has demonstrated reasonable cause to have all penalties waived in this matter.
13. Taxpayers protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.
14. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the April 18, 2012 protest by *Special Care Services* of a tax assessment made by the Town of Youngtown is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the Town of Youngtown shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer