

## DECISION OF MUNICIPAL TAX HEARING OFFICER

February 6, 2013

### ***Taxpayers***

29118 N. 69<sup>th</sup> Place  
Scottsdale, AZ 85266

***JBRP, LLC*** - MTHO # 747

***RHB*** - MTHO # 748

***LRP, LLC*** - MTHO # 749

### ***Dear Taxpayers:***

We have reviewed the evidence submitted for redetermination by ***JBRP LLC, RHB and LRP LLC*** (collectively Taxpayers) and the City of Chandler (Tax Collector or City). The review periods covered were November 2005 through November 2009 (MTHO # 747), April 2007 through June 2008 (MTHO # 748) and September 2005 through December 2011 (MTHO # 749). Taxpayers' protests, Tax Collector's response, and our findings and ruling follow.

### Taxpayers' Protests

Taxpayers were assessed City privilege tax for the rental of real properties. The properties were never rental properties. Taxpayers were lenders for the properties. When the buyers of the properties defaulted, the properties went back to the lender as a foreclosure. In addition, ***Taxpayers***, who are also members of the two limited liability Taxpayers, are currently in Chapter 11 Bankruptcy. No tax should be due on any of the properties.

### Tax Collector's Response

Taxpayers had purchased and were the owners of the properties. Taxpayers entered into lease-purchase agreements. Taxpayers did not record a transfer of title or an agreement of sale with the Maricopa County Recorder. Payments Taxpayers received were therefore rent subject to the City privilege tax. The City's assessments should be upheld.

### Discussion

The parties have submitted very little documentation in this case. The Tax Collector contends that Taxpayers purchased the properties and then entered into lease-purchase agreements. There were no agreements of sale or transfer of title documents recorded with the Maricopa County Recorder showing that Taxpayers had sold the properties. Therefore the payments Taxpayers received constituted rent subject to the City's privilege tax.

Taxpayers contend they did not lease the properties but were the sellers and lenders. Therefore no taxes are due. Taxpayers however did not provide any deed or other conveyance documents to show they did not own or have title to the property during the audit periods.

The Tax Collector issued assessments to Taxpayers under the commercial lease classification. The occupancy of premises by one person with the consent or permission of the owner may create between the parties an implied contract which yields the necessary foundation for a landlord and tenant relationship. Here it appears persons other than Taxpayers were occupying the properties.

The presumption is that an assessment of additional tax is correct. Taxpayers must rebut that presumption. Taxpayers here have provided no evidence to rebut the presumption. The assessments must therefore be upheld.

*Taxpayers* contend that they are currently in Chapter 11 Bankruptcy. The filing of a petition in bankruptcy operates as an automatic stay against many acts that could be taken against the debtors. However, there is an exception to the automatic stay for the making of an assessment for any tax and issuance of a notice and demand for payment.

Once an assessment is issued, the taxpayer has certain appeal rights. Until the appeal rights have terminated, the assessment is not final. The proceedings before the Municipal Tax Hearing Office are merely the continuation of a comprehensive tax assessment process. As a step in the tax assessment process, these proceedings fall under the exception to the automatic stay.

Based on the above, the Tax Collector's assessments for the periods November 2005 through November 2009 (MTHO # 747), April 2007 through June 2008 (MTHO # 748) and September 2005 through December 2011 (MTHO # 749) are upheld.

#### Findings of Fact

1. Taxpayers held title to properties in the City located at:
  - a. ***ABCDE W. Place*** (MTHO # 747).
  - b. ***12345 E. Place*** (MTHO # 748).
  - c. ***6789 N. Place*** (MTHO # 749).
2. Taxpayers held title to the properties during the audit periods.
3. The properties were occupied by persons other than Taxpayers.
4. Taxpayers received payments from the persons who occupied the properties.
5. Taxpayers did not pay City privilege tax on the payments Taxpayers received.
6. No documents were submitted into the record identifying the nature of the respective interests in the properties of Taxpayers and the persons occupying the properties during the audit periods.
7. No documents were submitted showing a conveyance of the properties by Taxpayers to others during the audit periods.
8. The Tax Collector contends Taxpayers entered into lease-purchase agreements and the payments Taxpayers received constituted rent subject to the tax.
9. The Tax Collector issued assessments to Taxpayers under the commercial lease classification.

10. No lease-purchase agreements or other documents were submitted into the record.
11. Taxpayers timely protested the assessments arguing that they did not lease the properties but sold them.
12. **Taxpayers** filed a petition in bankruptcy and are currently in Chapter 11 Bankruptcy.

#### Conclusions of Law

1. CTC § 62-445 imposes the City privilege tax on the business activity of renting, leasing or licensing for use real property located in the City.
2. The presumption is that an assessment of additional tax is correct and the taxpayer must rebut the presumption. *See, Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
3. The occupancy of premises by one person with the consent or permission of the owner may create between the parties an implied contract which yields the necessary foundation for a landlord and tenant relationship. *Kransky v. Hensleigh*, 146 Mont. 486, 490, 409 P.2d 537, 539 (1965).
4. Absent evidence to the contrary, the occupancy of the properties by persons other than Taxpayers created a landlord and tenant relationship between Taxpayers and persons occupying the properties.
5. The payments Taxpayers received constituted rent.
6. A conveyance of real property must be by a written instrument. A.R.S. § 33-401.A.
7. A deed or conveyance of real property must be signed by the seller and be duly acknowledged before an officer authorized to take acknowledgements. A.R.S. § 33-401.B.
8. No deed or other conveyance document was provided by Taxpayers showing that Taxpayers did not have title to the properties during the audit periods.
9. An assessment by the Tax Collector does not become final if the taxpayer protests or appeals the assessment. CTC § 62-555(f).
10. The decision made by the Hearing Officer upon administrative review by hearing or redetermination does not become final if the taxpayer appeals the order or decision to the Arizona Tax Court. CTC § 62-570(d)(2).
11. A petition in bankruptcy generally operates as a stay of the commencement or continuation of administrative proceedings against the debtor. 11 U.S.C. § 362(a).
12. An exception to the stay is provided for the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment. 11 U.S.C. § 362(b)(9)(D).
13. An appeal or protest of an assessment is a continuation of the city privilege tax assessment process. *See, Delpit v. Commissioner* 18 F.3d 768 (9th Cir.1994).
14. An appeal or protest of an assessment is an exception to the automatic stay.
15. These proceedings are a step in the tax assessment process and fall under the exception to the automatic stay of 11 U.S.C. § 362(a).

16. The City's privilege tax assessments against Taxpayers were proper. Taxpayers' protests should be denied.

Ruling

The protests by Taxpayers of the assessments made by the City of Chandler for the periods November 2005 through November 2009 (MTHO # 747), April 2007 through June 2008 (MTHO # 748) and September 2005 through December 2011 (MTHO # 749) are denied.

The Tax Collector's Notices of Assessment are 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: *Tax Audit Supervisor*  
Municipal Tax Hearing Office