

DECISION OF MUNICIPAL TAX HEARING OFFICER

September 14, 2015

Taxpayer's Name
Taxpayer's Address

Taxpayer
MTHO #887

Dear Taxpayer:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Chandler (Tax Collector or City). The review period covered was January 2012 through December 2014. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.¹

Taxpayer's Protest

Taxpayer was assessed City privilege tax for the rental of residential real property in the City to his son. Taxpayer was not renting the property to his son. Taxpayer bought the property and obtained the loan because his son's credit rating was not sufficient to obtain financing. Taxpayer made an agreement with his son to sell him the property when it was purchased. His son's obligations to purchase the property were to make the mortgage payments and repay Taxpayer for the down payment. As long as those conditions were met Taxpayer's son would be entitled to own the house. Taxpayer considers that arrangement to be a sale and not a rental of the property.

Tax Collector's Response

Taxpayer was the owner of the property during the audit period and it was occupied by his son. Taxpayer's son paid the mortgage on the property. Chandler does not exempt leases of real property to family members from the tax. Taxpayer was therefore subject to the City privilege tax during the audit period. The Tax Collector based the assessment on information provided by Taxpayer. The assessment should be upheld.

Discussion

Taxpayer was the record owner of the property during the audit period and had obtained a mortgage to purchase the property. Another person occupied the property and made the mortgage payments. Chandler Tax Code (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 for a consideration. The tax applies to the activity of leasing a single residential unit and no exemption is provided for leases to family members.

¹ Taxpayer did not submit a Reply Memorandum.

Taxpayer contends that he is not taxable because he purchased the property for his son and agreed to sell him the property if the son made the mortgage payments and repaid Taxpayer for the down payment. Taxpayer's son could not purchase the property directly because of an insufficient credit score. However, no documentation or other evidence has been provided to show that Taxpayer's son repaid Taxpayer for the down payment and that Taxpayer did in fact sell the property to his son. The record here shows that Taxpayer continued to be the record owner of the property during the audit period.

No particular form of words are necessary to create the relationship of landlord and tenant or the obligation to pay rent. The occupancy of premises by one person with the consent or permission of the owner can create between the parties the relation of landlord and tenant. An implied contract may thus be created which yields the necessary foundation for a landlord and tenant relationship. *Kransky v. Hensleigh*, 146 Mont. 486, 490, 409 P.2d 537, 539 (1965). Here, Taxpayer owned the property. Another person, his son, used the property and made the mortgage payments. The son making the mortgage payments was a benefit to Taxpayer and constituted consideration. Taxpayer was thus engaged in the activity of leasing real property located in the City for a consideration.

The assessment issued by the Tax Collector is presumed correct and it is Taxpayer's burden to overcome that presumption with substantial credible and relevant evidence that establishes that the assessment was erroneous. A general denial of liability is not sufficient to overcome the presumption. Taxpayer here has not produced any substantial credible and relevant evidence sufficient to overcome the presumption of correctness. Based on the record here we conclude that the City's privilege tax assessment against Taxpayer was proper and that Taxpayer's protest should be denied.

Findings of Fact

1. Taxpayer purchased real property in the City and obtained a mortgage.
2. Taxpayer held record title to the property during the audit period.
3. The property was occupied by Taxpayer's son during the audit period.
4. Taxpayer did not file privilege tax returns with the City or pay City privilege taxes during the audit period.
5. The Tax Collector issued an assessment to Taxpayer under the rental of real property classification for the period.
6. The Tax Collector based the amount of the tax assessed on information provided by Taxpayer.
7. Taxpayer protested the assessment but has not submitted any documents or other evidence in support of his protest.

Conclusions of Law

1. CTC § 62-445 imposed the City privilege tax on the business activity of renting, leasing or licensing for use real property located in the City for a consideration during the audit period.
2. The tax under CTC § 62-445 applies to the rental of a single residential property to a Taxpayer's family member.

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. The occupancy of the property by Taxpayer's son with Taxpayer's consent created a landlord and tenant relationship between Taxpayer and his son.
5. Consideration is some right, interest, profit or benefit accruing to one party or some detriment, loss or responsibility, given, suffered or undertaken by the other. *Black's Law Dictionary*, Sixth Edition.
6. Taxpayer received consideration when his son made mortgage payments on the property owned by Taxpayer.
7. Taxpayer leased property in the City during the audit period and was subject to the City privilege tax under CTC § 62-445.
8. The City's privilege tax assessment against Taxpayer is upheld

Ruling

The protest by Taxpayer of the assessment made by the City of Chandler for the period January 2012 through December 2014 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

HO/7100.doc/10/03

c: ***Senior Tax Auditor***
Municipal Tax Hearing Office