

DECISION OF MUNICIPAL TAX HEARING OFFICER

July 11, 2016

Taxpayer

Taxpayer's Address

Taxpayer

MTHO # 902

Dear Taxpayer:

We have reviewed the arguments presented by *Taxpayer* and by the City of Phoenix (Tax Collector or City) at the hearing held on June 22, 2016. The review periods covered were September 2004 and July 2005 through the report period of April 2014. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City of Phoenix privilege tax for taxes owed by a prior business. Taxpayer did not purchase the prior business. Taxpayer only purchased the assets of the business consisting of four old high mileage vehicles, embalming equipment and furniture. There was no purchase agreement for the business. The seller was going to close his doors. When Taxpayer opened its new business, it obtained a new business registration at the Arizona State Board and applied for a city privilege tax license. Taxpayer should not be liable for the taxes of another business not owned by Taxpayer.

Tax Collector's Response

The seller of the business was assessed by the City for unpaid privilege taxes. The seller did not protest the assessment. Later Taxpayer purchased the assets of the seller, filed an application for a privilege tax license with the City stating that Taxpayer was the new owner of an existing business and began operating at the same location as the seller. Taxpayer did not obtain a Certificate of Good Standing from the City showing that the seller does not have any tax liability with the City. The City assessed Taxpayer for the seller's outstanding privilege tax liability under Phoenix City Code (PCC) § 14-595 as the successor to the seller. Taxpayer is liable for the tax that was assessed.

Discussion

Taxpayer purchased the assets of the seller for \$50,000 and began operating a business similar to the seller's at the same location and under a similar business name. At the time of the sale the seller owed the City privilege taxes, penalty and interest in the amount of \$20,651.66. Taxpayer stated that it purchased the assets of the business because the seller was going to close his doors. Taxpayer did not obtain a Certificate of Good Standing from the City showing that the seller had no tax liability with the City. The City assessed Taxpayer for the seller's tax liability as the

seller's successor under PCC § 14-595. Taxpayer contends it only purchased the assets of the seller, not the business and therefore should not be liable for the seller's taxes.

PCC § 14-595 states in part:

(b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

* * * *

(d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

* * * *

(2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

The purpose of successor liability statutes is to prevent the seller from avoiding his tax liability by imposing a derivative liability on purchasers of a business who are generally in a better financial position to collect or pay the tax from the sale price. Here, Taxpayer was the purchaser of the seller's business within the meaning of the successor liability provision by buying the major operating assets of the seller and continuing to operate the business using some of the assets. The purchase money was sufficient to cover the tax due by the seller. By failing to withhold a sufficient amount of the purchase price to satisfy the seller's tax liability, Taxpayer became personally liable for the tax under PCC § 14-595.

Taxpayer argued that it was not aware of the successor liability provisions. However, it is taxpayers' responsibility to be familiar with the code of the jurisdiction where they operate and every person is presumed to know the law and its requirements. A mistake as to such requirements is no excuse for failure to meet them.

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 engaged in the business of providing services and merchandise in the City.
2. When Taxpayer started operating the business, it obtained a City privilege tax license.

3. Prior to Taxpayer starting to operate the business, a business at that location was operated by another entity.
4. Taxpayer purchased the assets of the prior operator for \$50,000 and continued to provide services and merchandise sales at the location. Taxpayer continued to use some of the assets it purchased and sold the other assets.
5. Taxpayer purchased the assets of the business because the prior operator was going to close his doors.
6. Taxpayer changed the name of the business from *Taxpayer One* to *Taxpayer Two Service*.
7. At the time Taxpayer purchased the assets of the business the prior business owed unpaid privilege taxes of \$20,651.66 to the City based on an assessment that was not protested.
8. Taxpayer did not obtain a certificate from the City showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector.
9. Taxpayer did not withhold from the purchase money an amount sufficient to cover the taxes, interest and penalties due by the prior operator.
10. The Tax Collector issued Taxpayer an assessment dated October 8, 2015 under PCC § 14-595 in the amount of \$20,651.66 for City privilege taxes due from the prior operator.
11. Taxpayer timely protested the assessment stating it did not purchase a business, only the assets of the prior business.

Conclusions of Law

1. The taxes imposed by Chapter 14 of the City Code are a lien on the property of any person subject to the Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business. PCC § 14-595(b).
2. The City had a lien on the seller's assets purchased by Taxpayer for the amount of City privilege tax, interest and penalty owed by the seller.
3. A person's successors or assignees are required to withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. PCC § 14-595(d).
4. If the purchaser of a business or stock of goods fails to obtain a certificate as provided by PCC § 14-595, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees. PCC § 14-595(d)(2).
5. The purpose of successor liability statutes is to secure collection of taxes by imposing derivative liability on purchasers of a business who are generally in a better financial position to collect or pay the tax from the sale price than the seller quitting the business. *In re McKeever v. City of Prescott*. 169 Ariz. 312, 819 P.2d 482 (1991).

6. Taxpayer was the successor to the seller in that Taxpayer acquired the major operating assets of the seller and continued to operate the business. *See, Knudsen Dairy Products Co. v. State Board of Equalization*, 12 Cal.App.3d 47, 90 Cal.Rptr. 533 (1970).
7. 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).
8. By failing to withhold a sufficient amount of the purchase price to satisfy the seller's liability, Taxpayer became personally liable for the seller's tax, penalty and interest under PCC § 14-595(d)(2).
9. The City's privilege tax assessment against Taxpayer was proper.

Ruling

The protest by Taxpayer of an assessment made by the City of Phoenix for the periods September 2004 and July 2005 through the report period of April 2014 is denied.

The Tax Collector's Notice of Assessment dated October 8, 2015 is upheld.

The 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: ***Assistant City Attorney***
Municipal Tax Hearing Office