

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 2, 2014

Decision: MTHO # 817

Taxpayer:

Tax Collector: City of Sedona

Hearing Date: February 28, 2014

DISCUSSION

Introduction

On August 6, 2013, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Sedona (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on February 28, 2014. Appearing for the City were a ***City Tax Auditor***, and a ***City Accounting Technician***. Appearing for Taxpayer was ***himself***. On March 1, 2014, the Hearing Officer indicated the record was closed and a written decision would be issued on or before April 14, 2014.

DECISION

The City issued an amended assessment to Taxpayer pursuant to City Code Section 8-445 (“Section 445”). The assessment was for \$2,219.05 plus interest until paid. Taxpayer paid the amount of \$1,796.15 but did not pay the penalty amount of \$422.90. The assessment was for the period of December 2009 through March 2013. The assessment was for unreported rental income.

Taxpayer owns property at ***ABCD Lane*** in the City. The Property is occupied by ***Taxpayer (“Dentist”)***, a related entity. The Dentist paid Taxpayer \$1,409.60 per month for the use of the Property during the audit period.

Taxpayer protested the entire assessment as not being applicable. Taxpayer asserted that Taxpayer and the Dentist were owned by the same person. Taxpayer also argued that A.R.S. Section 42-5069 (“Section 5069”) applied and exempts leasing from one corporation to another.

Section 445 imposes a tax on the gross income from the business activity upon every person engaging in the business of leasing or renting real property located within the City for a consideration. City Code Section 8-100 (“Section 100”) defines “person” broadly to include an individual, firm, partnership, joint venture, association, corporation, estate,

trust, etc. The definition further provides that a person shall 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. Taxpayer established the LLC based on professional advice. While Taxpayer was free to use whatever form of business it chose, it must also accept its advantages and disadvantages. In this case, Taxpayer and Dentist were separate legal entities pursuant to Section 100. Further Taxpayer owned the Property while another entity, the Dentist, used the property. The Dentist paid Taxpayer a monthly rental amount which would constitute consideration. We do not find Section 5069 applies to the City Code. Even if Section 5069 did apply, there were not two corporations involved in this transaction. Based on the above, the City properly assessed Taxpayer pursuant to Section 445.

Lastly, the City was authorized to assess penalties pursuant to City Code Section 8-540 (“Section 540”) since Taxpayer failed to file tax returns or timely pay taxes. Those penalties may be waived if there is reasonable cause. “Reasonable cause” is defined in Section 540 to mean the taxpayer exercised ordinary business care and prudence. In this case, Taxpayer relied on professional advice. Accordingly, we do find Taxpayer has demonstrated reasonable cause to have the penalties waived. Consistent with the Discussion, Findings, and Conclusions, herein, we conclude Taxpayer’s August 6, 2013 protest should be denied with the exception of the penalties.

FINDINGS OF FACT

1. On August 6, 2013, Taxpayer filed a protest of a tax assessment made by the City.
2. The City issued an amended assessment to Taxpayer pursuant to Section 445.
3. The assessment was for taxes and penalties totaling \$2,219.05 plus interest until paid.
4. Taxpayer paid the amount of \$1,796.15 but did not pay the penalty amount of \$422.90.
5. The assessment was for the period of December 2009 through March 2013.
6. Taxpayer owns Property in the City.
7. The Property is occupied by the Dentist.

8. The Dentist paid Taxpayer \$1,409.60 per month for the use of the Property during the audit period.
9. Taxpayer asserted that Taxpayer and the Dentist were owned by the same person.
10. Taxpayer argued that Section 5069 applied which exempts leasing from one corporation to another.
11. During the audit period, Taxpayer did not file tax returns or pay City taxes on the rental income from the Property.
12. Taxpayer established the LLC based on professional advice.

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. Section 445 imposes a tax on the gross income from the business activity of rental of real property.
3. Pursuant to Section 100, Taxpayer and the Dentist were separate persons.
4. The Dentist was receiving the benefit of using Taxpayer's real property.
5. Taxpayer was in the business activity of rental of real property pursuant to Section 445.
6. Neither Taxpayer nor the Dentist were corporations.
7. While Taxpayer was free to use whatever form of business it chose, it must also accept its advantages and disadvantages.
8. The City properly assessed Taxpayer pursuant to Section 445.
9. The City was authorized pursuant to Section 540 to assess penalties for failure to timely file and failure to timely pay taxes.

10. Taxpayer has demonstrated reasonable cause to have the penalties waived.
11. Taxpayer's August 6, 2013 protest should be partly denied, with the exception of the penalties, consistent with the Discussion, Findings, and Conclusions, herein.
12. The parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

ORDER

It is therefore ordered that the August 6, 2013 protest by *Taxpayer* of a tax assessment made by the City of Sedona should be denied, with the exception of the penalties, consistent with the Discussion, Findings, and Conclusions, herein.

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

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer