

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 20, 2016

Decision: MTHO # 896

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: March 28, 2016

DISCUSSION

Introduction

On October 13, 2015, ***Taxpayer*** filed a letter of protest of a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on March 28, 2016. Appearing for the City were the ***City Attorney***, the ***Tax Audit Supervisor***, a ***Tax Auditor***, and a ***Lead Tax Auditor***. The ***Owner***, appeared for Taxpayer. On March 29, 2016, the Hearing Officer indicated the record was closed and a written decision would be issued to the parties on or before May 13, 2016.

DECISION

On July 15, 2015, the City issued an assessment to Taxpayer for taxes due in the amount of \$12,806.99, interest up through June 2015 in the amount of \$1,408.05, and penalties totaling \$2,561.44. The assessment period was from March 2010 through September 2014. During the assessment period, Taxpayer operated a fitness center which collected monthly membership fees from its clients. Taxpayer filed monthly tax returns with the City. However, it reported “No activity to report” and no gross income was ever reported. Subsequently, the City assessed the membership fees pursuant to City Code Section 62-410 (“Section 410”). In addition, the City assessed understated rental of tangible personal property pursuant to City Code Section 62-450 (“Section 450”) in the amount of \$701.63 in taxes. Lastly, the City assessed Taxpayer for \$3000.00 in taxes pursuant to City Code Section 62-610 (“Section 610”) for understated purchases subject to use tax.

Taxpayer did not dispute it received amusement income pursuant to Section 410. However, Taxpayer asserted that it had clearly and unambiguously reported its revenues as “All Membership”. As a result, Taxpayer argued that the City had unreasonably and unduly delayed conducting an audit and assessment. Taxpayer asserted the assessment on the understated “Rental of Tangible Property” was incorrect. Taxpayer indicated it would bring proof to the hearing that these payments were made by the property management company. Subsequent to the assessment, Taxpayer provided the City with records to substantiate all use taxes have been paid.

Taxpayer acknowledged at the hearing that its membership fees were taxable pursuant to Section 410. Before starting its business, Taxpayer had contacted several cities regarding the taxability of membership fees and was informed they were not taxable. Unfortunately, the City was not one that was contacted. The City has adopted Option H to the Model City Tax Code which clearly states membership fees from fitness centers are taxable pursuant to Section 410. While Taxpayer expressed concern that the City did not perform an earlier assessment, the law presumes a taxpayer is aware of the law and is responsible for remitting the proper taxes. There was no evidence that the City deliberately withheld conducting the assessment in a timely manner. Accordingly the assessment on the membership fees was proper. As to the “Rental of Tangible Property”, Taxpayer failed to provide any evidence that the tax had already been paid. The City acknowledged that Taxpayer had provided documentation to demonstrate all use tax has been paid and agreed to reduce the use tax assessment to zero.

City Code Section 62-540 (“Section 540”) authorizes the City to impose penalties when tax payments are not made on a timely basis. Those penalties may be waived for reasonable cause. “Reasonable cause” is defined in Section 540 as the taxpayer exercising ordinary care and prudence, i.e., having a reasonable basis for believing the tax did not apply to its business activity. In this case, Taxpayer has demonstrated that he had a reasonable basis for believing he did not owe any taxes for the assessment period. Accordingly, we have been persuaded that Taxpayer had reasonable cause as set forth in Section 540. As a result, the penalties are hereby waived.

Based on all the above, we conclude that Taxpayer’s protest should be partly denied and partly granted consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On October 13, 2015, Taxpayer filed a letter of protest of a tax assessment made by the City.

2. On July 15, 2015, the City issued an assessment to Taxpayer for taxes due in the amount of \$12,806.99, interest up through June 2015 in the amount of \$1,408.05, and penalties totaling \$2,561.44.
3. The assessment period was from March 2010 through September 2014.
4. During the assessment period, Taxpayer operated a fitness center which collected monthly membership fees from clients.
5. Taxpayer filed monthly tax returns with the City.
6. However, it reported “No activity to report” and no gross income was ever reported.
7. The City assessed Taxpayer for membership fees, for understated rental of tangible property, and for understated use tax purchases.
8. Taxpayer indicated that it had clearly and unambiguously reported its revenues as “All Membership”.
9. Taxpayer opined that the City had unreasonably and unduly delayed conducting an audit and assessment.
10. Taxpayer had indicated it would be bringing proof to the hearing that the rentals of tangible property payments were made by the property management company.
11. Taxpayer provided the City with records to substantiate all use taxes have been paid.
12. Taxpayer acknowledged that its membership fees were taxable.
13. Prior to starting the business, Taxpayer had contacted several cities regarding the taxability of membership fees and was informed they were not taxable.
14. The City was not one of the cities contacted by Taxpayer.
15. There was no evidence that the City deliberately withheld conducting the assessment in a timely manner.

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 410 authorizes the City to assess taxes on membership fees of fitness centers in the City.
3. Section 450 authorizes the City to assess taxes on rental of tangible personal property in the City.
4. Section 610 authorizes the City to assess use tax on purchases in which no transaction privilege tax has been paid.
5. There was no dispute that Taxpayer received taxable amusement income during the assessment period.
6. Taxpayer failed to provide documentation to demonstrate taxes had already been paid on the rental of tangible personal property.
7. Taxpayer provided documentation to demonstrate all use taxes have already been paid.
8. Section 540 authorizes the City to impose penalties when taxes are not paid in a timely manner.
9. Taxpayer has demonstrated reasonable cause to have all penalties waived in this matter.
10. Taxpayers' protest should be partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.
11. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the October 13, 2015 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

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

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer