

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 26, 2011

Decision: MTHO # 392

Taxpayer:

Tax Collector: City of Mesa

Hearing Date: August 8, 2011

DISCUSSION

Introduction

On September 17, 2007, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Mesa (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on August 8, 2011. Appearing for the City were the ***Assistant City Attorney, Tax Audit Supervisor*** and a ***Senior Tax Auditor***. Taxpayer failed to make an appearance. Subsequent to the hearing, the Hearing Officer granted Taxpayer an opportunity to provide additional documentation. On September 16, 2011, the Hearing Officer indicated Taxpayer had failed to provide any additional documentation. As a result, the Hearing Officer indicated the record was closed and a written decision would be issued on or before October 31, 2011.

DECISION

On June 13, 2007, the City issued an assessment of Taxpayer as a result of a multijurisdictional audit conducted by the Arizona Department of Revenue (“DOR”). The assessment was for the period of January 2001 through December 2005. The assessment was for additional taxes in the amount of \$41,317.00, and interest up through May 2007 in the amount of \$13,981.92. While Taxpayer filed a protest in September of 2007, this matter was stayed at the request of Taxpayer until its appeal to the DOR was finalized. On October 20, 2010, Taxpayer’s protest of the DOR assessment was denied by the Office of Administrative Hearings.

Taxpayer sold and serviced a select group of high quality wireless network systems. Taxpayer specialized in the engineering, installation and support of mission critical point to point and point to multi point microwave systems. Taxpayer had argued that its activities were not subject to tax pursuant to City Code Section 5-10-110(a)(18) (“Section 110”). Section 110 provides for an exemption for the following tangible personal property: (a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100. (b) Any satellite

television or data transmission facility, if both of the following conditions are met: i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations parts 25 and 100. ii) Over two-thirds of the transmission, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

The City argued that Taxpayer sold equipment that was taxable as retail sales pursuant to City Code Section 5-10-460 (“Section 460”). The City disputed Taxpayer’s exemption claim. According to the City, the equipment sold by Taxpayer is used in high-speed communications systems that assist customers in connecting to larger public communications networks. The City argued that the equipment does not directly transmit or receive voice, data or video either to or from a satellite system as required by Section 110.

There was little dispute that Taxpayer was selling tangible personal property at retail which would be taxable pursuant to Section 460. City Code Section 5-10-360 (“Section 360”) provides that the burden of proof for an exemption is on Taxpayer. In this case, Taxpayer has failed to demonstrate that the equipment sold by Taxpayer directly transmits or receives voice, data or video either to or from a satellite system as required by Section 110. Accordingly, Taxpayer’s request for an exemption pursuant to Section 110 must be denied.

Taxpayer further claimed that various transactions were incorrect in the audit work papers and should be adjusted by the City to include 1) certain amounts were taxed incorrectly when they were actually zero balance invoices; 2) certain portions of invoices were for charges for “exempt” activity; 3) certain warranty items on invoices were incorrectly taxed; 4) “labor” charges on invoices should be removed from the assessment; 5) some customer credit amounts had been incorrectly included as taxable amounts; and 6) that Taxpayer’s accounting system had some flaws which erroneously indicated some amounts as taxable but Taxpayer’s invoices were designed to more appropriately account for the work performed.

The City noted that the DOR had made some audit revisions for the various transactions claimed by Taxpayer. The City reviewed the DOR revisions and concluded none of those affected the City assessment. The City argued that Taxpayer has failed to provide any additional documentation to support any adjustments to the City’s assessment.

As we noted above, Section 360 provides the burden of proof is on Taxpayer to demonstrate any deductions, exclusions, and exemptions are proper by providing adequate proof and documentation. In this case, Taxpayer failed to provide any rebuttal to the City. Accordingly, Taxpayer’s request for additional adjustments must be denied for failing to meet its burden of proof. Based on all the above, Taxpayer’s protest should

be denied.

FINDINGS OF FACT

1. On September 17, 2007, Taxpayer filed a protest of a tax assessment made by the City.
2. On June 13, 2007, the City issued an assessment of Taxpayer as a result of a multijurisdictional audit conducted by DOR.
3. The assessment was for the period of January 2001 through December 2005.
4. The assessment was for additional taxes in the amount of \$41,317.00, and interest up through May 2007 in the amount of \$13,981.92.
5. The matter was placed on hold at the request of Taxpayer until its appeal to the DOR was finalized.
6. On October 20, 2010, Taxpayer's protest of the DOR assessment was denied by the Office of Administrative Hearings.
7. Taxpayer sold and serviced a select group of high quality wireless network systems.
8. Taxpayer specialized in the engineering, installation and support of mission critical point to point and point to multi point microwave systems.

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 460 imposes a tax on the gross income from the business activity of selling tangible personal property at retail.
3. Taxpayers' sales during the audit period were taxable pursuant to Section 460.
4. Section 110 provides an exemption for the sale of equipment that is used to directly transmit or receive voice, data or video either to or from a satellite system.
5. Section 360 provides that the burden of proof for claimed deductions, exclusions, and exemptions is on the taxpayer.
6. Taxpayer failed to meet its burden of proof for any claimed deductions, exclusions, and/or exemptions.
7. Taxpayer's September 17, 2007 protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.
8. Taxpayer has timely appeal rights to the Arizona Tax Court pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the September 17, 2007 protest by *Taxpayer* of a tax assessment made by the City of Mesa should be denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer