

DECISION OF MUNICIPAL TAX HEARING OFFICER

September 30, 2011

Taxpayer

Taxpayer's address

Taxpayer

MTHO # 630

Dear *Taxpayer*:

We have reviewed the arguments presented by *Taxpayer* in its protest and by the City of Tucson (Tax Collector or City) in its Response to the Protest and at the hearing held on August 15, 2011. Taxpayer did not appear at the hearing and the hearing was held in Taxpayer's absence. Taxpayer's explanation for its absence at the hearing established good cause. Therefore the additional evidence submitted by Taxpayer and the Tax Collector's response were included as part of the record. The review period covered was November 2006 through October 2010. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer did not receive the privilege tax reporting forms from the City for twelve months, eight of which were within the audit period. Taxpayer's payable system cannot authorize payment without proper invoices. Taxpayer should not be liable for taxes for months it did not receive a privilege tax return form. In addition, trash charges are individually billed to and collected from the tenant and those receipts should not be a part of the tax base. Finally, City privilege taxes should be deducted from the taxable amount.

Tax Collector's Response

The City's records show that the privilege tax return forms were mailed to Taxpayer. It is Taxpayer's responsibility to report and pay his taxes even if no tax return form was received. Separate charge to the tenant for trash collection is not an allowable deduction. Trash charges are not separately billed utility charges. Taxpayer was allowed a factored tax deduction in the assessment. The Tax Collector waived penalties for months that Taxpayer said it did not receive the privilege tax form. The City's assessment should be upheld as issued.

Discussion

Taxpayer is licensed with the City, files privilege tax returns and pays privilege taxes. Taxpayer did not receive privilege tax return forms from the City for eight of the months during the audit period and did not file returns or pay taxes for those months. The City's records indicate that it did mail Taxpayer the return forms for the months Taxpayer said it did not receive the forms. The Tax Collector audited Taxpayer for the period November 2006 through October 2010 and issued an assessment under the commercial lease classification for privilege taxes in the amount of \$6,141.78, interest through December 31, 2010 in the amount of \$400.48 and combined

penalties in the amount of \$320.54. The Tax Collector waived penalties for the periods Taxpayer stated it did not receive the tax reporting forms.

Taxpayer timely protested the assessment contending that it should not be taxable for the months it did not receive the tax reporting forms, that Taxpayer should not be taxable for trash charges it separately bills to its tenants and Taxpayer should be allowed a deduction for City privilege taxes paid. For the reasons that follow, Taxpayer's protest is denied.

Taxes are due even if Taxpayer does not receive the tax reporting forms

Under the Tucson City Code (TCC), it is the taxpayer's responsibility to cause his return and payment to be timely received by the Tax Collector. TCC § 19-530(c). Generally, it is a taxpayer's responsibility to be familiar with the code of the jurisdiction where it will be operating. Every person is 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). Taxpayer has not cited any authority that would allow us to abate the taxes for periods Taxpayer did not receive tax return forms.

Charges for trash removal

Taxpayer argues that trash charges of \$350 per month are individually billed to the tenant and are paid separately. Taxpayer contends those charges are not part of the rent and should not be taxable.

The City privilege tax is imposed on the business activity of renting or leasing real property in the City. The tax is measured by Taxpayer's income from the business. Taxpayer's income from the business encompasses more than amounts denominated as rent. Income from the business of leasing or renting real property also includes charges for property taxes, repairs, telecommunications, utilities, pet fees, maintenance and other services that may be provided by the landlord in connection with the lease.

Trash removal is one of those services Taxpayer provides in connection with the lease. Therefore charges by the landlord to the tenants for trash removal constitutes income from the activity of leasing or renting real property. The Tucson City Code does not provide for a deduction or exclusion for trash removal charges. Therefore those charges are included in the measure of the City privilege tax.

Deduction for City privilege tax

Taxpayer contends it is entitled to a deduction for City privilege taxes. Under TCC § 19-250 Taxpayer was entitled to and the assessment allowed a deduction in the amount of \$17,940.53 for City privilege taxes. Taxpayer has not shown entitlement to any additional deductions.

Tucson City Code (TCC) § 19-540(a) imposes interest on any taxpayer who does not pay taxes which were due or found to be due before the delinquency date. Interest continues to accrue until the tax is paid. Interest is not a penalty, but is simply compensation to the City for the lost time-value of money received after the due date. *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256, (1998) (Non-punitive interest is, after all, nothing more than compensation for the use of money. The Taxpayers had the benefit of using the funds

before paying the tax claim and, in the legal sense, suffers no loss by reason of paying interest on the money it retained in its possession).

The proposed assessment included a penalty for failure to file and to pay tax. The penalty for failure to file and to pay tax may be waived if the taxpayer can demonstrate reasonable cause for its failure to file a return or pay the tax. The Tax Collector waived penalties for the periods Taxpayer stated it did not receive the tax reporting forms. Taxpayer has not shown reasonable cause for the other periods included in the assessment.

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 the owner of real property that it leases to its tenant.
2. Taxpayer stated it did not receive tax reporting forms for some of the months during the period November 2006 through October 2010.
3. Taxpayer did not file privilege tax returns or pay privilege taxes to the City for the periods it did not receive a tax reporting form from the City.
4. During the periods Taxpayer filed privilege tax returns, Taxpayer reported to the City the amount it received from its tenant for rent.
5. Taxpayer did not include as taxable amounts it received for common area maintenance (CAMS).
6. The CAMS received by Taxpayer included reimbursement for Taxpayer's expenses for trash removal.
7. Taxpayer stated the amount received from the tenant for trash removal was \$350 per month.
8. The City audited Taxpayer for the period November 2006 through October 2010.
9. The Tax Collector issued an assessment to Taxpayer for the period November 2006 through October 2010 for privilege taxes in the amount of \$4,722.80, interest through December 31, 2010 in the amount of \$400.48, combined penalties in the amount of \$320.54 and an account receivable balance of \$963.79.
10. The Tax Collector waived penalties in the amount of \$697.96 for the periods Taxpayer stated it did not receive the tax reporting forms.
11. The Tax Collector allowed deductions for city privilege tax in the amount of \$17,940.53.
12. Taxpayer timely protested the assessment contending that it should not be taxable for the months it did not receive the tax reporting forms, that trash charges are separately billed to its tenants and Taxpayer should not be taxable for those charges and Taxpayer should be allowed a deduction for City privilege taxes paid.

Conclusions of Law

1. TCC § 19-445 imposes a privilege tax on the business activity of renting, leasing or licensing for use real property located in the City to the tenant in actual possession or to the final licensee for a consideration.
2. The amount of the tax is measured by the income Taxpayer receives from the business activity. TCC § 19-445(a).
3. Taxable income from the business activity of leasing or renting real property includes charges for property taxes, repairs, telecommunications, utilities, pet fees, maintenance and other services that may be provided by the landlord in connection with the lease. TCC § 19-445(a); *Tucson Elec. Power Co. v. Arizona Dept. of Revenue*, 170 Ariz. 145, 822 P.2d 498 (Ariz. App., 1991).
4. Taxpayer's charge for trash removal was income received from the business activity of leasing or renting real property and was subject to the City privilege tax under the commercial lease classification.
5. The Tucson City Code does not provide a deduction or exclusion for trash removal charges.
6. It is the taxpayer's responsibility to cause his return and payment to be timely received by the Tax Collector. TCC § 19-530(c).
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. Taxpayer was liable for the payment of privilege taxes to the City for periods Taxpayer did not receive tax reporting forms.
9. Taxpayer was entitled to and the assessment allowed a deduction for City privilege taxes under TCC § 19-250.
10. TCC § 19-540(a) imposes interest on any taxpayer who fails to pay any of the taxes which were due or found to be due before the delinquency date until the tax is paid.
11. Taxpayer is liable to pay interest on the taxes that are unpaid from the date the taxes were due until paid.
12. TCC § 19-540(b) imposes penalties for failure to timely file and to pay tax.
13. The penalties may be waived if the taxpayer demonstrates reasonable cause for its failure to file a return or pay the tax. TCC § 19-540.
14. Taxpayer has not demonstrated reasonable cause for its failure to timely file a return and to timely pay tax.
15. The Tax Collector's assessment to Taxpayer was proper.

Ruling

Taxpayer's protest of an assessment made by the City of Tucson for the period November 2006 through October 2010 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period November 2006 through October 2010 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: ***Tax Audit Administrator***
Municipal Tax Hearing Office