

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: January 23, 2012

Decision: MTHO # 663

Taxpayer:

Tax Collector: City of Scottsdale

Hearing Date: December 8, 2011

DISCUSSION

Introduction

On July 25, 2011, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Scottsdale (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on December 8, 2011. Appearing for the City were *the Assistant City Attorney, the Tax Audit Supervisor, and Senior Tax Auditor*. Appearing for Taxpayer were *themselves*. On December 8, 2011, the Hearing Officer indicated the record was closed and a written decision would be issued on or before January 24, 2012.

DECISION

On June 30, 2011, the City issued an audit assessment of Taxpayer for the period of June 2006 through June 2010. Taxpayer was assessed for additional taxes in the amount of \$27,037.67, interest up through June 2011 in the amount of \$11,779.64, and penalties totaling \$2,858.75. Subsequently, the City waived the penalties.

During the audit period, Taxpayer was in the job printing business. Many of Taxpayer’s customers would place an order for job printing which included Taxpayer mailing the printed materials to a list of addresses provided by Taxpayer’s customers. Taxpayer would then bill that customer for the printed materials and a separate charge for postage and/or freight costs. Taxpayer would directly pay for the postage and/or freight costs to the provider of such service. The City taxed Taxpayer on the total customer bill (materials and postage and/or freight).

Taxpayer protested the inclusion of the postage and freight costs. Taxpayer relied on ARS Section 42-5002(A)(2) (“Section 5002”) which stated “Freight costs billed to and collected from a purchase by a retailer for tangible personal property are excluded from the calculation of gross income for sales tax purposes.” Taxpayer also asserted that

companies located in the City such as FedEx and the United States Post Office (“Post Office”) did not pay privilege taxes on their income from freight and/or postage costs.

The City noted that City Code Section 425 (“Section 425”) authorizes a tax on the gross income from every person engaged in the business of job printing. The City asserted that Section 425 includes a list of specific deductions against gross income and that charges for freight and postage are not included in the listing of allowable deductions. The City noted that City Code Section 400 (“Section 400”) provides that all gross income is subject to tax until the contrary is established by Taxpayer and that deductions set forth in the Code shall be limited to the specific activity or transaction described. The City argued that Taxpayer’s citation of Section 5002 pertains to treatment of gross income for State of Arizona (“State”) privilege tax purposes and does not pertain to City privilege taxes.

There was no dispute that during the audit period Taxpayer was in the job printing business and thus taxable pursuant to Section 425. There was also no dispute that pure shipping companies such as FedEx and the Post Office do not pay privilege taxes on their services. The only issue is whether the income Taxpayer received for shipping and freight costs would be includable as part of Taxpayer’s taxable gross income for its job printing business. Unfortunately for Taxpayer, we must conclude its gross income included the shipping and freight costs. Section 425 imposes a tax on the gross income with some listed deductions. Those listed deductions do not include shipping and freight costs. The fact that other Code Sections do specify freight and postage are allowable deductions provide support for the City’s argument. City Code Section 360 (“Section 360”) indicates that the burden of proof is on Taxpayer to provide adequate proof and documentation for all claimed deductions. We conclude that Taxpayer has failed to meet that burden of proof in this matter. We also conclude that Section 5002 is not relevant to the tax imposed by Section 425. Based on all the above, we conclude Taxpayer’s protest should be denied. We would encourage Taxpayer to meet with the City and discuss changes to their billing structure in order to remove the postage/freight costs from their job printing gross income for future tax purposes.

FINDINGS OF FACT

1. On July 25, 2011, Taxpayer filed a letter of protest of a tax assessment made by the City.
2. On June 30, 2011, the City issued an audit assessment of Taxpayer for the period of June 2006 through June 2010.
3. Taxpayer was assessed for additional taxes in the amount of \$27,037.67, interest up

through June 2011 in the amount of \$11,779.64, and penalties in the amount of \$2,858.75.

4. Subsequently, the City waived the penalties.
5. During the audit period, Taxpayer was in the job printing business in the City.
6. Many of Taxpayer's customers would place an order for job printing which included Taxpayer mailing the printed materials to a list of addresses provided by Taxpayer's customers.
7. Taxpayer would bill its customers for the printed materials and a separate charge for postage and/or freight costs.
8. Taxpayer would directly pay for the postage and/or freight costs to the provider of such service.
9. Pure shipping companies such as FedEx and the Post Office do not pay City tax on their services.

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 425 imposes a tax on the gross income from the business activity of job printing.
3. Section 425 has some listed deductions which do not include freight and/or postage.
4. Taxpayer's gross income from job printing included freight and postage costs.
5. Section 360 provides the burden of proof is on Taxpayer to provide adequate proof and documentation for all claimed deductions.
6. Taxpayer failed to meet the burden of proof as set forth in Section 360.
7. Section 5002 is not relevant to the tax imposed by Section 425.

8. Taxpayer's July 25, 2011 protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the July 25, 2011 protest by the *Taxpayer* of a tax assessment made by the City of Scottsdale should be denied consistent with the Discussion, Findings, and Conclusions, herein.

Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section-575.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer