

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: May 29, 2012

Decision: MTHO # 678

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: April 24, 2012

DISCUSSION

Introduction

On October 14, 2011, ***Taxpayer*** filed a letter of protest for a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on April 24, 2012. Appearing for Taxpayer was ***his representative***. Appearing for the City were the ***Tax Audit Supervisor, Tax Auditor***, and an ***intern***. On April 25, 2012, the Hearing Officer closed the record and indicated a written decision would be issued on or before June 8, 2012.

DECISION

Taxpayer filed a protest of a tax assessment issued by the City for the tax period of September 2006 through August 2010. Taxpayer protested the City’s disallowance for an exemption taken for postage. Taxpayer also protested an amount due for Service Labor deductions. The City subsequently agreed with Taxpayer’s protest on the Service Labor deductions. As a result, on January 26, 2012, the City issued a revised assessment with additional taxes due in the amount of \$116,371.73, interest up through January 2012 in the amount of \$15,766.63, and penalties totaling \$23,274.48. At the same time, the City waived all the penalties. Taxpayer also made a payment of \$34,136.02 which left a balance due as of January 2012 in the amount of \$98,002.34.

Taxpayer was in the printing business during the entire audit period. As part of its services for its clients, Taxpayer offered to use its equipment to affix postage on the client’s documents to be mailed. By using Taxpayer’s equipment, the clients were able to receive a discounted postage rate. Taxpayer would charge its clients for the exact postage rate plus a fee for folding and inserting the materials and for metering and sealing. Taxpayer would send its clients one invoice which would include the breakdown for printed documents, supplies, postage, and the various postage processing fees. The City

as part of its audit assessment included the entire invoice amount as taxable gross income from printing pursuant to City Code Section 425 (“Section 425”).

Taxpayer argued that it received no revenues from postage and requested all postage be removed from its taxable income. Taxpayer asserted that it only generates revenues from Data Processing, Job Printing, and Mail Services provided for its clients. According to Taxpayer, it was acting as an agent for its client by having the client annually sign a Postal Service Form 6014 (Certification of Move Update Compliance). Taxpayer relied on Advo System, Inc. v. City of Phoenix 942 P. 2d 1187 (1997).

The City argued that Section 425 imposes a tax on the gross income from the activity of job printing. The City noted there is no provision in Section 425 that allows for a deduction for postage. Further the City indicated that pursuant to City Code Section 500 (“Section 500”), the City must follow any written guidance issued by the Arizona Department of Revenue (“DOR”) when the state statute and the model city code are the same. The City indicated that the DOR issued TPR 94-2 which concluded that mailing was a part of the business of job printing. The City noted at that time the State Statute and City Code were the same for job printing. As a result, the City asserted that it must tax the postage as part of the gross income of Taxpayer’s printing activity.

There was no dispute that Taxpayer was in the business of job printing which is taxable pursuant to Section 425. There was also no dispute that Taxpayer would be taxed on the gross income from its printing activity. The issue is whether or not separately charged postage is includable in the gross income from the printing activity. City Code Section 360 (“Section 360”) makes it clear that the burden of proof is on Taxpayer for any claimed exemption, deduction, or exclusion. While the City relied on TPR 94-2, we are not clear that it applies to postage. It refers to mailing to be part of the gross income from job printing but it is not clear to the Hearing Officer that the term includes postage. In this case, Taxpayer has not disputed that it is taxable on the income received from folding, inserting, and sealing of the mail. We also reviewed the Advo case and do not find it supports Taxpayer’s position. Based on the evidence presented, we conclude that the provision of providing postage at a discounted rate to its clients is an integral part of Taxpayer’s printing business. The clients have a choice to purchase their own postage or to do a package deal with Taxpayer whereby the client receives discounted postage by having Taxpayer affix the postage. Lastly, we have been provided no evidence to support Taxpayer’s claim that the Certification of Move Update Compliance results in a legal agency agreement. As a result, we conclude the postage cost was properly included as part of Taxpayer’s gross income from the business activity of job printing. Based on all the above, we conclude that Taxpayer has failed to meet its burden of proof pursuant to Section 360 to support its claim for an exemption for postage costs. Based on the Discussion, Conclusions, and Findings, herein, Taxpayer’s protest should be denied.

FINDINGS OF FACT

1. On October 14, 2011, Taxpayer filed a letter of protest of a tax assessment made by the City for the audit period of September 2006 through August 2010.
2. Taxpayer protested the City's disallowance for an exemption for postage.
3. Taxpayer protested an amount due for Service Labor deductions.
4. The City subsequently agreed with Taxpayer's protest on the Service Labor deductions.
5. On January 26, 2012, the City issued a revised assessment with additional taxes due in the amount of \$116,371.73, interest up through January 2012 in the amount of \$15,766.63, and penalties totaling \$23,274.48.
6. At the same time, the City waived all the penalties.
7. Taxpayer also made a payment of \$34,136.02 which left a balance due as of January 2012 in the amount of \$98,002.34.
8. Taxpayer was in the printing business during the entire audit period.
9. As part of its services for its clients, Taxpayer offered to use its equipment to affix postage on the client's documents to be mailed.
10. By using Taxpayer's equipment, the clients were able to receive a discounted postage rate.
11. Taxpayer charged the clients the exact postage cost plus a fee for folding and inserting the materials and for metering and sealing.
12. Taxpayer would send its clients one invoice which would include the breakdown for printed documents, supplies, postage, and the various postage processing fees.
13. The City as part of its audit assessment included the entire invoice amount as taxable gross income.

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 360 makes it clear that the burden of proof is on Taxpayer for any claimed deduction, exemption, or exclusion.
4. The provision of providing discounted postage to its clients is an integral part of Taxpayer's printing business activity.
5. There was no evidence to support Taxpayer's claim that a Move Update Compliance results in a legal agency agreement.
6. Taxpayer has failed to meet its burden of proof pursuant to Section 360 to support its claim for an exemption for postage costs.
7. Taxpayer's October 14, 2011 protest should be denied.
8. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the October 14, 2011 protest by *Taxpayer* of tax assessment made by the City of Chandler is hereby denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer