DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 9, 2013
Decision: MTHO # 810
Taxpayer:
Tax Collector: City of Chandler
Hearing Date: November 14, 2013

DISCUSSION

Introduction

On July 22, 2013, ***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 November 14, 2013. Appearing for the City was a Senior Tax Auditor. Appearing for the Taxpayer was the ***President*** of the company. On November 15, 2013, the Hearing Officer closed the record and indicated a written decision would be issued to the parties on or before December 30, 2013.

DECISION

On June 11, 2013, the City issued an assessment to Taxpayer for additional taxes in the amount of $1,938.74, and interest in the amount of $109.33. On June 12, 2013, the City issued a revised assessment for Taxpayer for additional taxes in the amount of $1,915.52 and interest of $108.29. The audit period was from November 2008 through October 2012.The assessment was based on underreported retail sales.

During the audit period, Taxpayer operated a tanning salon that offered the rental or "use" of tanning beds, and "spray on" tans as well as the sale of other retail items. Beginning in July 2010, Taxpayer was required to begin collecting a ten percent federal excise tax on the use of tanning beds which was then remitted to the federal government. Taxpayer excluded the federal excise tax from its taxable gross income. The City asserted that City Code Section 62-260(b)(c)(3)(5) ("Section 260") allows for the exclusion of specific federal excise taxes. According to the City, the excise tax on tanning beds is not listed as being excludable pursuant to Section 260. As a result, the City disallowed Taxpayer's exclusion from its taxable gross income. Taxpayer protested the City's

disallowance arguing the excise tax was simply a pass through to the federal government and not part of its gross income. Taxpayer charged its "spray-on" tan customers a total fee which did not break out the costs of labor and materials. The City assessed a tax on the total fee charged to customers. Taxpayer protested the tax on the cost of labor.

The first issue is whether or not the federal excise tax collected on the use of tanning beds is includable in Taxpayer's taxable gross income. While the City Code has a broad definition for gross income contained in City Code Section 19-200 ("Section 200"), we conclude the federal excise tax is not includable in Taxpayer's taxable gross income. Prior to the enactment of the federal excise tax on the use of tanning beds, Taxpayer had a gross income from its tanning business which could be used in whatever manner Taxpayer chose. Subsequent to the federal excise tax, Taxpayer collected an additional ten percent from its customers. The additional ten percent amount did not change the amount of monies that Taxpayer could use in whatever manner Taxpayer chose. Taxpayer simply collected those monies for the federal government and passed the entire amount on to the federal government. As a result, we conclude the federal excise tax should be removed from Taxpayer's taxable gross income.

The second issue is whether or not the full amount Taxpayer charged its customers for "spray-on" tan is taxable. It is clear from the record that the "spray-on" tans included both a cost for labor and a cost for materials. City Code Section 62-465 ("Section 465") and City Code Section 62-100 ("Section 100") excludes labor provided by a taxpayer to his customer at the time of transfer of tangible personal property. In this case, Taxpayer's "spray-on" tans included both a cost of labor and a cost of materials. In order to exclude the cost of labor from taxable income, Section 100 requires the charge for such labor or service to be separately billed to the customer and to be maintained separately in the taxpayer's books and records. At the hearing, Taxpayer provided a breakdown of the cost of labor and materials which could be construed as Taxpayer maintaining the costs separately in its books and records as required pursuant to Section 100. However, Section 100 also requires the charges to be separately billed to the customer. Clearly, there was no separation of the costs on the customer's bills. As a result, we conclude that Taxpayer has failed to meet its burden of proof for exclusion of the labor cost portion of the "spray-on" tan.

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

FINDINGS OF FACT

1. On June 11, 2013, the City issued an assessment to Taxpayer in the amount of $1,938.74, and interest in the amount of $109.33.

2. On June 12, 2013, the City issued a revised assessment for Taxpayer for additional taxes in the amount of $1,915.52 and interest of $108.29.

3. The audit period for the assessment was for the period from November 2008 through October 2012.

4. During the audit period, Taxpayer operated a tanning salon that offered the rental or "use" of tanning beds, and "spray-on" tans as well as the sale of other retail items.

5. On July 22, 2013, Taxpayer filed a letter of protest for a tax assessment made by the City.

6. The assessment was based on underreported retail sales.

7. Beginning in July 2010, Taxpayer was required to begin collecting a ten percent federal excise tax on the use of tanning beds which was then remitted to the federal government.

8. Taxpayer excluded the federal excise tax from its taxable gross income.

9. At the hearing, Taxpayer provided a breakdown of the cost of labor and materials for the "spray-on" tan which could be construed as Taxpayer maintaining the costs separately in its books and records.

10. There was no separation of the costs of materials and labor on the customer's bill for "spray-on" tans.

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. City Code Section 62-460 ("Section 460") imposes a tax on the gross income from the business activity upon every person engaging in the business of retail sales within the City.

3. Effective in 2010, the federal government initiated an excise tax of ten percent on the use of tanning beds.

4. Taxpayer had no right or claim on the ten percent federal excise tax it collected on the use of tanning beds.

5. The ten percent federal excise tax on the use of tanning beds was not taxable gross income for Taxpayer pursuant to Section 460.

6. Sections 465 and 100 exclude labor provided by a taxpayer to a customer at the time of transfer of tangible personal property.

7. Section 100 requires the charge for such labor or service to be separately billed to the customer and to be maintained separately in the taxpayer's books and records.

8. Taxpayer failed to meet its burden of proof pursuant to Section 100 to demonstrate that customers were billed separately for labor and materials for the "spray-on" tans.

9. The entire fee for "spray-on" tans was taxable.

10. Taxpayers protest should be partly granted and partly denied, 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 July 22, 2013 protest by ***Taxpayer*** of a tax assessment made by the City of Chandler is hereby partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Chandler shall remove all taxes assessed on the federal excise tax.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer