Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 19, 2003
Decision: MTHO #120
Tax Collector: City of Mesa
Hearing Date: None

DISCUSSION

Introduction

On April 11, 2003, ***Taxpayer*** ("Taxpayer") filed a protest of the City of Mesa's ("City") denial of a claim for a refund of taxes paid to the City. After review, the City concluded on April 30, 2003 that the protest was timely and in the proper form. On May 10, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before June 25, 2003 and classified the matter as a redetermination. On June 23, 2003, the City sent an email requesting an extension until July 3, 2003 in which to file a response to the protest. On June 24, 2003 the Hearing Officer granted the City's extension request. On July 2, 2003, the City filed its response. On July 10, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before August 11, 2003. On August 11, 2003, the Taxpayer filed a reply. On August 21, 2003, the Hearing Officer filed a letter indicating the record was closed and a written decision would be issued on or before October 6, 2003.

In January 1999, the former ***Old Golf Course*** property (now referred to as ***Renamed*** Golf course) ("Golf Course") was placed into trust status by the United States Government ("U.S.") on behalf of the ***Tribe*** ("***Tribe***"). At the time of the transfer, the Taxpayer was leasing and managing the Golf Course. The Taxpayer managed the Golf Course up through December 2001 and paid the City a transaction privilege tax on the business. In June 2001, the ***Tribe*** began to require the Taxpayer to collect and pay ***Tribe*** tribal transaction privilege tax. Between June 2001 and December 2001, the Taxpayer paid taxes to both the City and ***Tribe***. At the end of December 2001, the Taxpayer ceased leasing and managing the Golf Course and the ***Tribe*** assumed those responsibilities.

In March 2002, ***XYZ*** informed the City that they had remitted $69,905 to ***Tribe***. This was the same amount of tax collected and remitted to the City during the period January 1999 through June 2001. ***XYZ*** has requested a refund of the $69,905 from the City.

City Position

The general rule is that taxes can be imposed on the sale of non-Indian goods and services to a non-Indian business on a reservation (or land held in trust) when: (1) The Indian tribe does not substantially contribute to and receive the value of the goods and services sold; (2) The legal

incidence of the tax falls on non-Indians; and, (3) The tribe does not provide most of the governmental services used by the non-Indian businesses. According to the City, the goods and services sold involve a golf course in the City which was already in existence at the time of the property was placed in Trust. Further, the company leasing and managing the Golf Course was non-Indian, the legal incidence for payment of the taxes fell on non-Indians, and the taxes were imposed on non-Indian business activities.

The City asserted that the State and City governments provided the majority of the governmental services used by the Taxpayer at and around the Golf Course during the period in question. According to the City, ***Tribe*** contributed little, if anything, to the value of the Golf Course, received minimal value from the Golf Course and did not participate in business decisions until December of 2001. While the City does not dispute that ***Tribe*** had the power to impose its own transaction privilege tax, the City does not concede that the City lost the ability to tax once the Golf Course was placed in Trust. The City asserted that Maricopa County ("County") has successfully assessed a property tax on non-Indian leasehold interests of real property held by the federal government in trust for ***Tribe***. As a result, the City argued that the Taxpayer's argument that political entities other than the State lose their ability to tax upon the placement of real property into trust status for an Indian community is clearly erroneous. Based on the above, the City asserts the Taxpayer's request for a refund of taxes should be denied.

Taxpayer Position

Before the Golf course was deeded over to ***Tribe***, the golf course was considered part of the City and ***XYZ*** collected and remitted sales tax to the State of Arizona ("State") and the City. On January 25, 1999, the Golf Course was Quit Claim Deeded to the Bureau of Indian Affairs ("BIA") and the ***Tribe***. The title was held in trust for the ***Tribe*** by the BIA. The Golf Course was considered trust land when the Federal Government deeded it to ***Tribe***. The Taxpayer agrees with the City that the revenues were collected from non-Indians. The Taxpayer collected and remitted transaction privilege taxes to the State and the City. While the Taxpayer does not dispute that the revenues generated by the Golf Course were subject to State tax liability, the Taxpayer does not believe the City taxes collected belong to the City.

According to the Taxpayer, trust lands constitute Indian country, and are therefore de facto reservations. The Taxpayer asserts that the United States Supreme Court ("Court") has held on numerous occasions that an Indian tribe maintains the sovereign authority to impose taxes on such lands. The Court also held that states have the power to impose transaction privilege taxes upon the sales made on tribal lands to non-tribal customers. The Taxpayer argued that the apparent carve-out of tribal sovereignty to allow for a state's taxation of sales does not appear to apply to municipal taxation of similar transactions. The Taxpayer argued that once the Golf Course became part of the ***Tribe*** reservation, it was no longer part of the City and the City could no longer collect taxes on the revenues generated by non-Indian customers. As a result, the Taxpayer requested all the taxes remitted to the City for the period January 1999 through November 2001 in the amount of $81,516.18 be refunded.

ANALYSIS

The Taxpayer received revenues on the business activity of operating a golf course within the City during the period of January 1999 through December 2001. The Taxpayer did not dispute these revenues were taxable by the State during this period. In fact, the Taxpayer cited the Court case of Merrion v. Jicarilla Apache Tribe, 445 U.S. 130, (1982) which held that states do have the power to impose sales or transaction privilege taxes upon sales made on tribal lands to non-tribal customers. The Merrion case also held that the state's power to impose a tax did not deprive the Indian tribe of its sovereign status or its own power to tax. Without any real support, the Taxpayer concluded the states right to tax did not appear to apply to municipal or county taxation of similar transactions. We can not reach that same conclusion. The Hearing Officer concludes that if the facts were such that the State can impose a transaction privilege tax then those same facts would permit the City to also impose a transaction privilege tax. Since the Taxpayer agrees the State Tax in this situation was proper, we must conclude the City tax was also proper. We also find the City's citation of Pimalco, Inc. v. Maricopa County, 188 Ariz 550, 937 P. 2d 1198 (Ct. App.1997) supports this conclusion. We also find that consistent with Merrion, that the City tax did not affect the authority of ***Tribe*** to impose its own transaction privilege tax. Based on the above, we conclude the Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On April 11, 2003, the Taxpayer filed a protest of the City's denial of a claim for refund of taxes paid to the City.

2. After review, the City concluded on April 30, 2003 that the protest was timely and in proper form.

3. On May 10, 2003, the Hearing Officer ordered the City to file a response to the protest on or before June25, 2003 and classified the matter as a redetermination.

4. On June23, 2003, the City sent an email requesting an extension until July 3, 2003 in which to file a response to the protest.

5. On June 24, 2003, the Hearing Officer granted the City's extension request.

6. On July 2, 2003, the City filed its response.

7. On July 10, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before August 11, 2003.

8. On August 11, 2003, the Hearing Officer filed a letter indicating the record was closed and a written decision would be issued on or before October 6, 2003.

9. In January 1999, the Golf Course was placed in trust status by the U.S. on behalf of ***Tribe***.

10. At the time of the transfer, the Taxpayer was leasing and managing the Golf Course.

11. The Taxpayer managed the Golf Course up through December 2001 and paid the City a transaction privilege tax on the business.

12. In June 2001, the ***Tribe*** began to require the Taxpayer to collect and pay ***Tribe*** a tribal transaction privilege tax.

13. Between June 2001 and December 2001, the Taxpayer paid taxes to both the City and ***Tribe***.

14. At the end of December 2001, the Taxpayer ceased leasing and managing the Golf Course and the ***Tribe*** assumed those responsibilities.

15. During the period January 1999 through December 2001, the Taxpayer received revenues from non-Indians that utilized the Golf Course.

16. During the period January 1999 through December 2001, the Golf Course was operated and managed by a non-Indian business.

17. During the period January 1999 through December 2001, the State and City governments provided the majority of the governmental services used by the Taxpayer at and around the Golf Course.

18. The Taxpayer does not dispute that the revenues generated during the period January 1999 through December 2001 from the Golf Course were subject to State tax liability.

19. During the period January 1999 through December 2001, ***Tribe*** did not actively participate in the management and operation of the Golf Course.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-605 6, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.

2. During the period January 1999 through December 2001, the Taxpayer received revenues from the Golf Course located in the City.

3. Pursuant to the City Code, the revenues of the Taxpayer from its Golf Course operation were taxable by the City.

4. There is no legal basis for precluding the City from imposing a transaction privilege tax on the Taxpayer for the period January 1999 through December 2001 based on the facts of this case.

5. The Taxpayer's protest should be denied

ORDER

It is therefore ordered that the April 11, 2003 protest of ***Taxpayer*** of a denial for refund of taxes paid to the City of Mesa is hereby denied.

It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer