

DECISION OF MUNICIPAL TAX HEARING OFFICER

November 28, 2015

Taxpayer's Representative
Address of Taxpayer's Representative

Taxpayer
MTHO #895

Dear Taxpayer's Representative:

We have reviewed the evidence and arguments presented by *Taxpayer, LLC* (Taxpayer) and the Town of Wickenburg (Tax Collector or Town) for reconsideration. The review period covered was November 1, 2008 through March 31, 2015. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer is a limited liability company (LLC) whose members are two dentists who operate their dental practices on property owned by the LLC. Taxpayer was assessed Town privilege tax under the commercial lease classification for lease of the property to the two dental practices. The LLC was created to hold title to the property as a means to combine three parcels of property for county property tax assessment purposes. No sale occurred, no money exchanged hands, Taxpayer has no bank accounts and pays no expenses. Taxpayer is a disregarded entity for federal income tax and has not filed any type of income tax return. Taxpayer requests that the assessment be reversed.

Tax Collector's Response

The disregarded entity treatment allowed under federal income tax law does not apply to the application of the Town's privilege tax. The property is owned by the LLC, a distinct legal entity. The property is occupied by different persons. Therefore the LLC is conducting a business activity within the Town that is subject to the Town's privilege tax.

Discussion

The Tax Collector conducted an audit of Taxpayer and issued an assessment. The Tax Collector considered Taxpayer taxable under the commercial lease classification. Taxpayer timely protested the assessment.

Taxpayer LLC holds title to the real property at issue. The property is occupied by two dentists who conduct their dental practices on the property. The members of the LLC are the two dentists and their wives. There was no lease agreement between Taxpayer and the dentists and the dentists did not make lease payments to Taxpayer. The question is whether Taxpayer is subject to tax under Wickenburg Tax Code (WTC) § 9A-445.

Taxpayer is subject to the tax under WTC § 9A-445.

WTC § 9A-445 imposes the Town privilege tax on the business activity of renting, leasing or licensing for use real property located in the Town for a consideration. Taxpayer contends that it is not taxable under the commercial lease classification because it did not enter into a lease agreement, did not receive any lease payments, has no bank account and does not pay any expenses. However, no particular form of words are necessary to create the relationship of landlord and tenant or the obligation to pay rent. The occupancy of premises by one person with the consent or permission of the owner can create between the parties the relation of landlord and tenant. An implied contract may thus be created which yields the necessary foundation for a landlord and tenant relationship. *Kransky v. Hensleigh*, 146 Mont. 486, 490, 409 P.2d 537, 539 (1965). Here, Taxpayer owned the property. Other persons, two dentists, used the property and paid expenses relating to the property. Taxpayer was thus engaged in the activity of leasing real property located in the Town for a consideration.

Taxpayer is a separate person under the privilege tax.

WTC § 9A-100 defines “person” to mean an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. The definition further provides that a person is to be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated.

While WTC § 9A-100 does not specifically include the term “limited liability company” in the definition of “person”, A.R.S. § 29-857 provides:

A limited liability company established under this chapter or a foreign limited liability company transacting business in this state pursuant to this chapter shall pay the taxes that are imposed by the laws of this state or any political subdivision of this state on domestic and foreign limited partnerships on an identical basis, except that, for purposes of title 43 [Arizona income tax], a domestic or foreign limited liability company and its members shall be taxed as if the limited liability company is either a partnership or a corporation or is disregarded as an entity as determined pursuant to the internal revenue code as defined in section 43-105.

Under A.R.S. § 29-857, except for income tax purposes, LLC’s are to be taxed as a limited partnership. Partnerships are specifically included in the definition of “person” in WTC § 9A-100.

Including LLC’s in the definition of “person” even when it is not specifically enumerated is also consistent with authorities holding that the definition of “person” should be broadly construed. See, e.g. *Arizona Department Of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 181 P.3d 188 (2008); *Kmart Michigan Property Services, LLC v. Department Of Treasury*, 283 Mich.App. 647, 770 N.W.2d 915 (2009); *Utah Advisory Opinion No. 01-009*, 05/18/2001.

Taxpayer also argued that it was a disregarded entity for income tax purposes. Taxpayer’s treatment for federal or state income tax purposes does not dictate its treatment for privilege tax purposes. Under A.R.S. § 29-857, a limited liability company is required to pay taxes that are imposed on limited partnerships other than for income tax purposes. It is for state income tax purposes that a limited liability company may be disregarded and taxed in the same manner as determined under the internal revenue code. For privilege tax purposes the Town can thus tax an

LLC that is otherwise disregarded for federal income tax purposes. The LLC was created for property tax assessment purposes. The parties must accept the consequences of creating the LLC..

Based on all the above, we conclude Taxpayer's protest should be denied. The Town's privilege tax assessment against Taxpayer was proper.

Findings of Fact

1. Taxpayer is a limited liability company.
2. Taxpayer is disregarded for federal income tax purposes.
3. Taxpayer was created for property tax assessment purposes.
4. Taxpayer was title owner to real property within the Town during the review period.
5. The members of the LLC are two dentists and their spouses.
6. The two dentists conduct their dental practice on the property owned by the LLC.
7. There is no executed lease agreement between Taxpayer and the dentists and the dentists make no lease payments to Taxpayer.
8. The property related expenses are paid by the dentists.
9. It is the Town's position that Taxpayer is leasing the property to the two dentists.
10. Taxpayer did not pay Town privilege tax on the lease of the property to the two dentists.
11. The Tax Collector conducted an audit assessment of Taxpayer for the period November 1, 2008 through March 31, 2015 and issued an assessment.
12. The Tax Collector considered Taxpayer taxable under the commercial lease classification.
13. The assessment was based on the Tax Collector's estimate of the value of the lease from Taxpayer to the two dentists.
14. Taxpayer timely protested the assessment.
15. Taxpayer contends that the Town's position constitutes form over substance because no lease transaction actually occurred.

Conclusions of Law

1. WTC § 9A-445 imposes the Town privilege tax on the business activity of renting, leasing or licensing for use real property located in the Town.
2. The occupancy of premises by one person with the consent or permission of the owner may create between the parties an implied contract which yields the necessary foundation for a landlord and tenant relationship. *Kransky v. Hensleigh*, 146 Mont. 486, 490, 409 P.2d 537, 539 (1965)
3. Consideration is some right, interest, profit or benefit accruing to one party or some detriment, loss or responsibility, given, suffered or undertaken by the other. *Black's Law Dictionary*, Sixth Edition.
4. Taxpayer received consideration when the dentists paid expenses related to the property.

5. Person means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. WTC § 9A-100.
6. A person is considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. WTC § 9A-100.
7. A limited liability company transacting business in Arizona is required to pay the taxes that are imposed by the laws of Arizona or any political subdivision of Arizona on domestic and foreign limited partnerships on an identical basis, except that, for purposes of Title 43, A.R.S. a domestic or foreign limited liability company and its members shall be taxed as if the limited liability company is either a partnership or a corporation or is disregarded as an entity as determined pursuant to the internal revenue code as defined in section 43-105. A.R.S. § 9A-29-857.
8. Taxpayer's tax treatment for federal and state income tax purposes is not relevant to Taxpayer's tax treatment for privilege tax purposes.
9. Taxpayers are free to use whatever form of business they choose, but in choosing a form they must accept its advantages and disadvantages. *Higgins v. Smith*, 308 U.S. 473 (1940).
10. Taxpayer LLC is a separate and distinct person from its members.
11. Taxpayer leased the property to the two dentists. Taxpayer's lease is subject to the Town privilege tax under WTC § 9A-445.
12. The Town's privilege tax assessment against Taxpayer was proper. Taxpayer's protest should be denied.

Ruling

The protest by Taxpayer of an assessment made by the Town of Wickenburg for the period November 1, 2008 through March 31, 2015 is denied.

The Tax Collector's Notice of Assessment is upheld.

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: ***Auditor for Town of Wickenburg***
Municipal Tax Hearing Office