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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2023-000017 08/08/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

ARIZONA CARDINALS FOOTBALL CLUB L L C — FRANK V CROCIATA

v.

ARIZONA DEPARTMENT OF REVENUE — SCOT G TEASDALE

JUDGE AGNE

MINUTE ENTRY

The Court held oral argument on June 11, 2024, regarding Plaintiff's Motion for Summary Judgment, filed October 16, 2023 ("Plaintiff's Motion), and the Arizona Department of Revenue's Cross Motion for Summary Judgment, filed December 15, 2023 ("Department's Motion"), as well as subsequent filings related thereto.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movants, respectively—hereby finds as follows regarding the Motions.

The Arizona Sports and Tourism Authority (the "Authority") was created to construct, finance, maintain, operate, own, and promote State Farm Stadium (the "Facility"). (Plaintiff's Statement of Material Facts, filed October 16, 2023 ("PSOF"), at ¶1, *undisputed*.) The Authority is statutorily authorized to impose fees for use of the Facility. (PSOF ¶2, *undisputed*.) In 2005, the Authority resolved to impose Facility Use Fees ("FUFs")—per-ticket surcharges for events at the Facility. (PSOF ¶¶4–5, *undisputed*.) The Authority sets the amount of the per-ticket FUF. (PSOF ¶6, *undisputed*.) The Authority uses the FUFs for bond repayments. (Department's Separate Statement of Facts, filed December 15, 2023 ("DSOF"), at ¶9, *undisputed*.)

The Arizona Cardinals Football Club LLC ("Cardinals" or "Taxpayer") collected FUFs from ticket purchasers for Cardinals' home games and tickets sold through the Facility box office for non-Cardinals' events. (PSOF ¶10, *undisputed*.) The Facility Use Fee Agreement, dated August 15, 2005, and the Facility Use Trust Agreement, dated August 15, 2005, set forth the Cardinals' contractual obligations regarding the collection and remittance of the FUFs to the Authority. (PSOF ¶15, *undisputed*.)

Taxpayer did not remit TPT on the collected FUFs. (DSOF ¶2, *undisputed as to this fact*.) On January 27, 2017, the Department issued a Notice of Proposed Assessment for TPT related to the FUFs that Taxpayer collected. (DSOF ¶1, *undisputed as to this fact*.) The Assessment is the subject of Taxpayer's appeal. (*See generally* Complaint, filed January 17, 2023.)

Taxpayer seeks summary judgment that the FUFs should be excluded from the TPT tax base. (Plaintiff's Mot., at 1–2.) The Department seeks summary judgment upholding the Assessment. (Department's Mot., at 23.)

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015). "In the tax field, we liberally construe statutes imposing taxes in favor of taxpayers and against the government[.]" *State ex rel. Ariz. Dep't of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447 ¶10 (2004) (citations omitted). But "[t]ax deductions, subtractions, exemptions, and credits are to be strictly construed." *Ariz. Dep't of Revenue v. Raby*, 204 Ariz. 509, 511 ¶16 (App. 2003) (citations omitted).

The State of Arizona imposes a transaction privilege tax based on "the tax base as computed for the business of every person engaging or continuing in this state in the . . . [a]musement classification." A.R.S. § 42-5010(A)(i). "[I]t is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification comprise the tax base for the business until the contrary is established." A.R.S. § 42-5023. The Court looks to the statutory definitions relevant to the facts at issue here.

"The tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business . . ." A.R.S. § 42-5073(B). "Gross income" is defined as "the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses." A.R.S. § 42-5001(4). "Gross Receipts" are defined as:

> the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. Gross receipts do not include cash discounts allowed and taken or the sale price of property returned by customers if the full sale price is refunded either in cash or by credit.

A.R.S. § 42-5001(7).

The City of Glendale also imposes a transaction privilege tax of "an amount equal to two and nine-tenths percent (2.9%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the city or takes place entirely within the City[.]" Glendale Code of Ordinances ("City Code) § 21.1-410(a).[1] The City Code defines "gross income" as:

> (1) The value proceeding or accruing from the sale of property, the providing of service, or both.
> (2) The total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.
> (3) All receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.
> (4) All other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

City Code § 21.1-200(a). "No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses,

[1] "The administration of this Chapter is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the Tax Collector." City Code § 21.1-500(a). The City Code defines "Tax Collector" as "the City Manager or his designee or agent for all purposes under this Chapter." City Code § 21.1-100. The Department is tasked with collecting and administering the transaction privilege tax pursuant to A.R.S. § 42-6001(A).

materials used, labor or service performed, interest paid, or credits granted." City Code § 21.1-200(c).

At issue is whether the FUFs are part of Taxpayer's gross income under A.R.S. § 42-5073(B) and the City Code. "In construing a statute, [the Court] look[s] to the plain language of the statute, giving effect to every word and phrase, and assigning to each word its plain and common meaning." *Ponderosa Fire Dist. v. Coconino Cty.*, 235 Ariz. 597, 602 (App. 2014) (citations omitted).

The Department contends that the definitions of gross income are broad and do not allow for the deduction of the FUFs that are paid to the Authority. (Department's Mot., at 9.) The Department asserts that the Cardinals contracted with the Authority to pay a per-ticket fee in order to sell tickets for seats at the Facility. (Department's Mot., at 10.)

On the other hand, Taxpayer contends that it acts in a fiduciary capacity and as the Authority's agent for the FUFs' collection, handling, and remittance. (Plaintiff's Mot., at 4.) Taxpayer asserts that the FUFs are imposed on the ticket purchasers and not the Cardinals. (Plaintiff's Mot., at 16.) Taxpayer also contends that the FUFs are not a business expense. (Plaintiff's Mot., at 4.) Taxpayer asserts that the FUFs are not booked as revenue or an expense for income tax purposes nor does the NFL receive any portion of the FUFs as part of the Cardinals' required ticket revenue sharing. (Plaintiff's Mot., at 16–17.)

The Court looks to the language of A.R.S. § 42-5001(7) which defines gross receipts as: "the *total* amount of the sale . . . including *all* receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser *without any deduction* from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or *any other expense*." (emphasis added). City Code § 21.1-200(a) similarly references the "total amount of the sale" and "[a]ll receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity."

The definition of the amusement classification further supports the Departments' position. "For the purposes of this section, admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements." A.R.S. § 42-5073(A).

THE COURT FINDS that the FUFs constitute part of Taxpayer's gross receipts for purposes of the transaction privilege tax and therefore should be included in the tax base. *See* A.R.S. § 42-5001(7); City Code § 21.1-200(a). Taxpayer cites to no statutory language or specific deduction that allows for the FUFs to be removed from the tax base.

Taxpayer contends that the Department seeks to alter the meaning of contracts to which it is not a party. (Plaintiffs Mot., at 16.) Taxpayer asserts that the Authority's resolutions and contracts set forth their fiduciary relationship. (Plaintiff's Mot., at 9.) Taxpayer also contends that the contract terms and course of dealing demonstrate their agency relationship. (Plaintiff's Mot., at 10–12.) However, the Department contends that contracts between the Parties disclaim any agency relationship. (Department's Mot., at 14–15.)

Cases cited by Taxpayer are distinguishable. In *Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94 (1969), the Arizona Supreme Court found that materials purchased by the builder as the purchasing agent for the owner were not part of the builder's gross receipts. "There is no inherent or common law contractual obligation on the part of the contractor requiring him to supply the materials. In the absence of such an obligation, this term of the contract will neither be construed to be, nor be treated as, consideration for the contract." *Id*. at 97. The purchasing agency contract in *Ebasco* is factually distinguishable from the Taxpayer's collection of the FUFs with each ticket sale.

In *Ariz. Dep't of Revenue v. Ormond Builders*, 216 Ariz 379 (App. 2007), the Court of Appeals found that payments made to a construction manager by the owner to pay trade contractors as the agent for the owner were not part of the construction manager's gross income. "They are excluded because in paying the trade contractors [construction manager] was acting for the [owner] by paying the [owner's] legal obligations." *Id*. at 388 ¶41. Here, the Taxpayer—not the individual ticket holders—agreed to remit the FUFs to the Authority. Therefore, *Ormond* is distinguishable.

Lastly, "It is well established that income is taxed to the party who earns it and that liability may not be avoided by an anticipatory assignment of the income." *Matter of Aloha Airlines, Inc.*, 547 P.2d 586, 587 (Haw. 1976) (*citing United States v. Basye*, 410 U.S. 441 (1973).

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment, filed October 16, 2023.

IT IS FURTHER ORDERED granting the Arizona Department of Revenue's Cross Motion for Summary Judgment, filed December 15, 2023.