STATE OF MINNESOTA TAX COURT

COUNTY OF WASHINGTON REGULAR DIVISION

Washington County Agricultural Society,

Appellant,

vs.

Commissioner of Revenue,

Appellee.

ORDER

Docket No. 8305-R

Dated: January 12, 2012

The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard these Cross Motions for Summary Judgment, on November 29, 2011, at the Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota.

Julie Finch, Attorney at Law, represented the Appellant.

Rita Coyle De Meules, Assistant Attorney General, represented the Appellee.

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

ORDER

1. Appellant's Motion for Summary Judgment is hereby denied.
2. Appellee's Motion for Summary Judgment is hereby granted.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED. THIS IS A FINAL ORDER.

BY THE COURT,

Sheryl A. Ramstad, Judge
MINNESOTA TAX COURT

DATED: January 12, 2012

Memorandum

Background

This is an appeal from an assessment of sales tax on admissions charges to the Washington County Fair and on certain purchases or sales made by the Washington County Agricultural Society ("Appellant"), the County Fair's operator. The Commissioner of Revenue's ("Commissioner") audit and Order covered tax periods from April1, 2004, through September 30, 2009. The audit determined that Appellant owed $82,256.00 in sales taxes on gate admissions to the Washington County Fair, and $6,000.00 in use taxes for goods purchased for which sales taxes were not paid.[1] Appellant filed a timely appeal from the Commissioner's September 29, 2010 Notice of Change in Sales Tax.

The issues in this case are: (1) whether Appellant collected fees for

[1] The use tax liability during the period of the audit arises because some suppliers did not charge Appellant sales tax. Appellant had applied for a sales and use tax exemption in 2001, which was denied.

admission to the Washington County Fair under a representation that those admission fees included taxes imposed by Minnesota Statutes Chapter 297A, thereby requiring payment of collected taxes to the Department of Revenue; and (2) whether Appellant is entitled to an exemption from sales and use taxes under Minn. Stat. § 297A.70, subds. 4 and 14, as a society organized and operated exclusively for charitable, religious, or educational purposes.

Facts

The undisputed facts are as follows. Appellant was formed "to foster informational and educational programs in agriculture, industry, business, and recreation in Washington County," and to "encourage endeavors in human arts, development, crafts and skills, and 4-H activities." Appellant operated the annual Washington County Fair and also leased or rented buildings and ground space during the audit period to, among others: an annual Construction Expo/Construction Guide; Erikson Marine (winter boat storage); a Winter Carnival event, the St. Croix Valley Kennel Club; youth soccer clubs; horse riding clubs; gardening clubs; a motorcycle club; a rodeo; ethnic festivals; a dealership storing cars; "Prime Promotions;" a vintage baseball event; and "all star wrestling."

Appellant operates and manages the Washington County Fairgrounds, which comprise several parcels of land in Baytown, Minnesota, on which are located animal barns, exhibition and other multi-purpose buildings, outdoor arena, spectator, and other amusement facilities. Events at the annual Washington County Fair include 4-H activities and animal judging, exhibits, bingo

entertainment, power sports (i.e., demo derby, motocross), fireworks, and a carnival (rides, games).Appellant's members serve in paid and volunteer capacities to plan, organize, and operate each year's fair. Outside of the annual August county fair, Appellant leases the fairground's facilities for use by others. Appellant records annual income and expenses on its books in the following general categories: grounds rental income and expenses; County Fair income and expenses; and miscellaneous income and expenses.

Appellant charges admission to the County Fair on either a daily basis or season pass price. During the years at issue, the following language appeared on signs at fair admission gates:

ADMISSION
DAILY
ADULTS 16 & OVER [price]
6-15 YEARS [price]
UNDER 6 YEARS FREE
TAX INCLUDED

The Commissioner argues that Appellant collected fees for admission to the Washington County Fair under a representation that those admission fees included taxes imposed by Chapter 297A, thereby obligating Appellant to pay the collected taxes to the Department of Revenue. Appellant argues that it is not obligated to pay sales tax on its admission fees and its purchases and that the "tax included" language on the signs posted was simply a means to communicate to fairgoers the exact amount owed and that nothing would be added to that amount charged at the gate. Based upon the plain language of the statute, we find that Appellant is liable for the sales tax it collected as part of its admissions

charge, under the representation that the charge was "tax included." Further, we find that Appellant is obligated to pay the use tax determined by the Commissioner because Appellant is not a tax-exempt entity.

Legal Standard

This appeal is before the Court on cross-motions for summary judgment. Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show show there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law."[2]

Orders of the Commissioner are presumed correct and valid.[3] The taxpayer, therefore, bears the burden of demonstrating that the challenged Order is incorrect.[4]

In addition, all gross receipts are presumed to be subject to tax.[5] Thus, the taxpayer bears the burden of showing its entitlement to an exemption from tax, and exemptions are strictly construed.[6]

There is a presumption that all property is taxable, and exemption is the exception.[7] The burden of proof rests upon the petitioner to demonstrate that it

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[2] Minn. R. Civ. P. 56.03.
[3] See Minn. Stat. § 271.06, subd. 6 (2010); Lifer v. Commissioner of Revenue, File No. 7414 (Minn. Tax Ct. Sept. 5, 2002).
[4] Wybierala v. Commissioner of Revenue, 587 N.W.2d 832, 835 (Minn. 1998).
[5] See, Minn. Stat. § 297A.665 (2010).
[6] See, Under the Rainbow Child Care Center, Inc. v. County of Goodhue, 741 N.W.2d 880, 884 (Minn. 2007) (This decision involved a property tax exemption claimed by a non-profit organization, rather than a claimed sales tax exemption. The Supreme Court has recognized, however, that the statutory language in the sales tax exemption statute is "nearly identical" to that in the property tax exemption statutes, and, therefore, the "reasoning and principles" in property tax cases are relevant in the sales tax context. See, Mayo Found. v. Commissioner of Revenue, 236 N.W.2d 767, 771 (Minn. 1975).
[7] In re Petition of Junior Achievement of Greater Minneapolis, Inc., 135 N.W.2d 385, 387 (Minn. 1965) (footnotes omitted).

qualifies as an institution of purely public charity under Minn. Stat. § 272.02. Id. at 290.

Minnesota Statute Section 297A.70, subd. 4(a) provides that "[a]ll sales…to the following 'nonprofit organizations' are exempt: (1) a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes if the item purchased is used in the performance of charitable, religious, or educational functions…."

Finally, Minn. Stat. § 297A.70, subd. 14(a) provides that "[s]ales of tangible personal property at, and admission charges for fund-raising events sponsored by, a nonprofit organization are exempt if:

> (1) all gross receipts are recorded as such, in accordance with generally accepted accounting practices, on the books of the nonprofit organization, and
> (2) the entire proceeds, less the necessary expenses for the event, will be used solely and exclusively for charitable, religious, or educational purposes…

However, the statutory provision limits the exemption as follows:

> "[The exemption for] admission charges for fund-raising events sponsored by a nonprofit organization…is limited in the following manner:
>
> > (1) it does not apply to admission charges for events involving bingo or other gambling activities…
> > (2) all gross receipts are taxable if the profits are not used solely and exclusively for charitable, religious, or educational purposes;
> > (3) it does not apply unless the organization keeps a separate accounting record, including receipts and disbursements from each fund-raising event that documents all deductions from gross receipts with receipts and other records;
> > (4) it does not apply to any sale made by or in the name of a nonprofit corporation as the active or passive agent of a person that is not a nonprofit corporation;
> > (5) all gross receipts are taxable if fund-raising events exceed 24 days per year;

(6) it does not apply to fund-raising events conducted on premises leased for more than five days but less than 30 days; and
(7) it does not apply if the risk of the event is not borne by the nonprofit organization….[8]

Discussion

This is an appeal from an assessment of sales tax on Appellant's admission charges to the Washington County Fair that Appellant represented to be tax-inclusive and on certain purchases made by Appellant, the Fair's operator. We will first address whether Appellant is liable on fair admission charges

Appellant's Liability on Fair Admission Charges

The Commissioner assessed Appellant for sales tax on the admission fees it charged fairgoers on the basis of the Appellant's annual notice at the entrance to the fairgrounds that the admission price was "tax included." Appellant posted five admission signs at the fairgrounds notifying customers that the admission price—$6.00—was a gross price that included tax. Appellant claims, however, that it is not liable for sales taxes that it had no intent to collect, took no steps to collect, and did not collect.[9] Appellant argues that its use of the phrase "tax included" on the signs at the entry gates to the fair was only intended to communicate to fairgoers trying to enter the fair how much money to take out of their wallets, allowing people to get their money ready without confusion as to whether or not sales tax would be added on top of the admission charge.

[8] Minn. Stat. § 297A.70, subds. 14(a) and (b)(1) through (7).
[9] Appellant argues that it has had the understanding since September 20, 2002, that it was not required to collect sales taxes on gate admissions to the fair. This understanding is documented in the meeting minutes of that date. Consistent with this understanding, Appellant took no steps to create a process to collect, identify, or separate sales tax within its accounting records. In other words, Appellant's Quick Books accounting structure for recording income and expenses related to the fair had no account on the "income" side of the books for sales taxes collected. Any discussions Appellant had related to fair admissions charges addressed only a flat fee for admission, with no discussion related to the sales tax issue.

The Commissioner relies upon the plain language of Minn. Stat. § 289A.31, subd. 7(a) (2010) ("the Statute") as support for its claim that Appellant is liable to the state for amounts it collected from the fairgoers as gate admission income under a representation that those amounts included sales tax. The Statute provides that "[a]ny amounts collected, even if erroneously or illegally collected, from a purchaser under a representation that they are taxes imposed under chapter 297A are state funds from the time of collection and must be reported on a return filed with the commissioner."[10] We agree that the Statute is clear and unambiguous and that, given its clear meaning,[11] it requires the Appellant report sales tax on the gate admission charges to the annual Washington County Fair.

Here, it is undisputed that Appellant posted five signs at the site of the Washington County Fair stating that the charge for admission included tax. The only conclusion that can be drawn from Appellant's own words is that the amount collected ("admission") from a purchaser ("adults") represented that taxes imposed by Chapter 297A were collected ("tax included"). Regardless of any alleged entitlement to an exemption, the Statute requires that any amounts collected from the purchasers under a representation that taxes were collected, whether or not they were erroneously or illegally collected, are state funds at the time of collection and must be reported on a return filed with the Commissioner.

[10] See also, Igel v. Commissioner of Revenue, 566 N.W.2d 706, 708 (Minn. 1997) ("when a corporation collects sales tax from third parties, the corporation does so under an obligation to hold the tax in trust for and to pay it over to the State of Minnesota"); Trung Hua d/b/a Trung Hua Graphics & Design v. Dept. of Revenue, File No. 65969 (Wa. Bd. Tx. App. Feb. 13, 2008) ("The lesson to be learned from this case is: if you collect a tax from your customers, you must pay it to the government….'tax' is a term reserved for the government.").

[11] Green Giant Co. v. Commissioner of Revenue, 534 N.W.2d 710, 712 (Minn. 1995).

As we stated in Schober v. Commissioner of Revenue,[12] the "lesson to be learned from this case is: if you collect a tax from your customers, you must pay it to the government."[13] Thus, since Appellant collected fees for admission to the Washington County Fair under a representation that those admission fees included taxes, the collected taxes were required to be paid to the Department of Revenue.

Appellant argues that there could be no "erroneously or illegally" collected tax because there was no tax collected whatsoever. However, Appellant has not met its burden of demonstrating that the challenged Order is incorrect[14] or overcome the presumption that the gross receipts it collected as admissions fees are subject to tax.[15] The Commissioner's assessment was based upon Appellant's annual notice to fairgoers that the admission price was "tax included." The representations Appellant made are capable of only one conclusion: that Appellant was collecting sales tax as part of its admission fees. Consequently, Appellant is liable to the Department of Revenue for sales tax it represented it was collecting. A taxpayer's liability under Minn. Stat. § 289A.31, subd. 7 is clear. Based upon the plain statutory terms that it must pay on "any amounts collected" under "a representation" that those sums include sales tax, the amounts charged for gate admission collected here under a representation that those

[12] Docket No. 7935 (Minn. Tax Ct. Feb. 3, 2009).
[13] quoting Trung Minh Hua. As in the Trung Minh Hua case, the Department here is not alleging that Appellant intended to mislead fairgoers; nevertheless, "the mere use of the word 'tax'…is sufficient to create a presumption that retail sales tax was collected from a customer on behalf of the state and to impose trust and remittance responsibilities on [the taxpayer]." Holding the taxpayer liable for paying the government, that court defined "the public policy that 'tax' is a term reserved for the government. Businesses should use other terms…." Id.
[14] Wybierala.
[15] Minn. Stat. § 2997A.665 (2010).

sums included sales tax[16] are taxable. Whether Appellant actually paid the state that portion representing sales tax on its lump sum admission price is irrelevant; the statutory language requires that Appellant collected sums—gate admission fees—under a representation that those sums included sales tax ("tax included.")

Appellant also contends that it had no intent to collect sales tax. However, Appellant's intent is irrelevant under the statutory language. Any amounts collected, "even if erroneously or illegally collected," that fall within the terms of subdivision 7 are "state funds from the time of collection."[17] Since the statutory language broadly encompasses any collection, even erroneous or illegal collections, Appellant's declaration that it did not intend to collect taxes does not avoid the plain statutory language.

Finally, Appellant argues that the "tax included" language was simply a means to notify fairgoers of the exact amount owed for admission. This argument begs the question inasmuch as Appellant could have easily omitted the "tax included" phrase and still advised fairgoers of the exact amount owed. Appellant offers no credible reason to explain why it retained the "tax included" language after it was advised that sales tax was not owed on admission fees. Moreover, Appellant's claim that charging a flat fee eliminated math errors is unpersuasive. No math calculations were required whether or not the gate entrance sign included the phrase "tax included" so long as a flat fee was charged. Similarly,

[16] In 2002, Appellant reported collecting $172,000 in gate income, which at the statutory rate of 6.5% would have resulted in owing sales tax on gate receipts of approximately $11,100.00 The next month, Appellant reported that it had been discovered that the fair was not required to pay sales tax on gate tickets, saving it a payment of about $11,000. Despite this conclusion reached by Appellant's Board, it is undisputed that Appellant neither changed its admission price practices (continuing to use a lump sum price) or the language of its admission signs ("tax included.")

[17] Minn. Stat. § 289A.31, subd. 7(e).

Appellant's argument that flat fees alleviated traffic jams at the Fairgrounds is unpersuasive inasmuch as there is no evidence that the flat fee admission price with "tax included" alleviated any traffic management concerns. To the extent there were any traffic management concerns, these issues were resolved with tools other than the phrase "tax included."[18]

Next, Appellant claims an exemption on its admission charges to the fair on the grounds that it meets the requirements of Minn. Stat. § 297A.70, subd. 14(a). In order to qualify for an exemption for admission charges for fund-raising events sponsored by a nonprofit organization, Appellant must show that "the entire proceeds, less the necessary expenses for the event, will be used solely and exclusively for charitable, religious, or educational purposes."[19] Appellant has failed to demonstrate that its entire proceeds or its profits are used solely and exclusively for charitable, religious, or educational purposes. Here, the non-fair events are supported at least in part by the fair's profits. Even if Appellant could meet this condition, it cannot claim the exemption if any of the following additional requirements are missing:

> (1) it does not apply to admission charges for events involving bingo…;
> (2) all gross receipts are taxable if the profits are not used solely and exclusively for charitable, religious, or educational purposes;

[18]For example, in 2003, Appellant bought a cash register to resolve money management issues. In 2005, Appellant discussed a possible reconfiguration of exit and entrance gates during the fair to increase entry points. In 2007 and 2008, Appellant's concerns about fairgoers' arrival at the fairgrounds revolved primarily around parking and booth placement issues, as well as methods to avoid ticket counterfeiting. The only issue Appellant considered vis-à-vis fair traffic and the admission price was the timing of a fairgoer's admission payment. None of the Appellant's records demonstrate that fair day traffic jams were, could be, or are alleviated by notifying fairgoers that the admission price was "tax included." To the contrary, even though Appellant put the "tax included" language on its signs, traffic jams continued to be a source of concern and discussion.

[19] Minn. Stat. § 297A.70, subd. 14(a)(2).

(3) it does not apply unless the organization keeps a separate accounting record, including receipts and disbursements from each fund-raising event that documents all deductions from gross receipts with receipts and other records;
(4) it does not apply to any sale made by or in the name of a nonprofit corporation as the active or passive agent of a person that is not a nonprofit corporation;
(5) all gross receipts are taxable if fund-raising events exceed 24 days per year;
(6) it does not apply to fund-raising events conducted on premises leased for more than five days but less than 30 days; and
(7) it does not apply if the risk of the event is not borne by the nonprofit organization and the benefit to the nonprofit organization is less that the total amount of the state and local tax revenues forgone by this exemption….

Minn. Stat. § 297A.70, subds. 14 (1) – (7).

Under the plain language of Minn. Stat. § 297A.70 (b)(1), a taxpayer cannot claim exemption if it applies admission charges for events involving bingo or other gambling activities. Here, the fair for which admission is charged has bingo. Further, the Appellant does not keep meet the requirement that in order to be entitled to an exemption it must keep "a separate accounting record, including receipts and disbursements from each fund-raising event that documents all deductions from gross receipts with receipts and other records."[20] Here, Appellant's net income is calculated on an annual basis by accumulating income from all activities—commercial, fair, and miscellaneous—compared to expenses for all activities. Additionally, Appellant, as operator of the fair, acts as the "active or passive agent of a person that is not a nonprofit corporation"[21] when it shares in the revenues from its vendors. The gate fee Appellant gets when participants and spectators attend the fair for the Motor Cross and truck

[20] Minn. Stat. § 297A.70, subd. 14 (b)(3).
[21] Minn. Stat. § 297A.70, subd. 14 (d).

pull events, as well as the Appellant's splitting the admission charges with the Demo Derby operator are examples of the Appellant collecting gate fees in the name of a nonprofit organization as the active or passive agent of a person that is not a nonprofit organization.[22] Moreover, to the extent that Appellant's commercial activities contribute to its operating costs, those commercial activities are fund-raising events within the common meaning of that term. Under Minn. Stat. § 297A.70 (e), the exemption is not available if the taxpayer has more than 24 fund-raising events per year, which Appellant clearly does. Finally, Appellant does not bear the risk of the event because it has received funding from Washington County and, by statute, is eligible for aid from the state, the county, and local authorities.[23] Because it has benefited from payments from the state, Appellant does not satisfy the exemption requirement that the taxpayer must bear the risk of loss.

Appellant does not meet the multiple requirements of Minn. Stat. § 297A.70, subd. 14 that must be met to qualify for an exemption to paying sales tax on its gate admission fees. Given the strict construction applied to exemptions. We, therefore, uphold the Commissioner's assessment of use tax. Further, we affirm the Commissioner's September 29, 2010, assessment of sales taxes on the admission fees Appellant charged fairgoers.

Appellant's Liability for Use Tax on its Purchases

We next address whether Appellant is exempt from paying the use tax for purchases it made from entities that did not charge Appellant sales tax. Appellant

[22] Minn. Stat. § 297A.70, subd. 14 (d).
[23] See Minn. Stat. §§ 38.02, 38.18 and 38.27.

claims that it is exempt because it is a society "organized and operated exclusively for charitable, religious, or educational purposes" under Minn. Stat. § 297A.70, subd. 4. Since Appellant does not operate exclusively for charitable purposes, does not use the proceeds from its fundraising events solely and exclusively for charitable purposes, and does not otherwise meet the requirements of Minn. Stat. § 297A.70, subd. 14, we reject its claimed exemption.

When a non-profit organization such as Appellant operates for both charitable and commercial purposes, it can claim the benefit of a charitable organization's exemption "so long as [the] commercial use is incidental to the charitable use."[24]

In Afton Historical Society Press v. County of Washington, the taxpayer created, developed, and published books about Minnesota history and culture, as well as books produced on a contract basis.[25] The revenues from the contract publishing were used to support the taxpayer's general operations, a necessary contribution given that the taxpayer's Minnesota books were sold "substantially below cost" as part of its charitablepurposes.[26] The Court also found that the contract publishing was subordinate to the general publishing in terms of the number of books published each year. Thus, the taxpayer's commercial activities were both incidental to and reasonably necessary to charitable activities.

In this case, the County Fair activities and the fair's use of the fairgrounds

[24] Afton Historical Society Press v. County of Washington, 742 N.W.2d 434, 437 (Minn. 2007) (holding that "when real property is used for both commercial and arguable charitable purposes, the commercial use of the property will not prevent the property from being exempt…if the commercial use is incidental to and reasonably necessary in furtherance of the entity's charitable activities."
[25] Id. at 436.
[26] Id. at 441.

represent in total five days in the Appellant's calendar year. Other events are at the fairground in every month of the year, with many months having multiple events in the same day. In 2009 and 2010, commercial contract activities at the County Fair. Appellant has failed to show that the income from these commercial activities is reasonably necessary to the fair's operations. In addition, Appellant receives financial support from the state and has the opportunity to seek financial support from Washington County. The record shows that the income from commercial activities was unnecessary to support Appellant's charitable activities. Thus, Appellant is not entitled to an exemption from paying use tax under Minn. Stat. § 297A.70, subd. 4 and based upon the reasoning set forth in Afton.

Conclusion

For the foregoing reasons, we hereby deny Appellant's Motion for Summary Judgment. Further, we hereby grant the Commissioner's Motion for Summary Judgment and affirm the Order of September 29, 2010, in its entirety.

S. A. R.