

BEFORE THE TAX APPEAL BOARD

STATE OF DELAWARE

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| SCHOENBERG MEMORIAL CHAPEL, INC |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 1320 |
| |) | |
| DIRECTOR OF REVENUE |) | |
| |) | |
| Respondent. |) | |
| |) | |
| DELAWARE CREMATION SERVICE, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 1321 |
| |) | |
| DIRECTOR OF REVENUE |) | |
| |) | |
| Respondent. |) | |

Before: Regina Dudzic, Cynthia Hughes, Todd C. Schiltz, Esq., and Joan Winters, members of the Tax Appeal Board. Opinion by Todd C. Schiltz, Esq.

DECISION AND ORDER

The issue before the Board in these matters is whether proceeds petitioners receive as reimbursement for cash advances they make on behalf of their clients are "gross receipts" subject to taxation under 30 Del. C. § 2301(e). For the reasons that follow, we conclude that such proceeds are consideration received for services rendered and, therefore, are gross receipts subject to taxation under Section 2301(e).

FACTS

Petitioners are Delaware corporations with their principal place of business in Wilmington, Delaware. Petitioners are engaged in the business of providing funeral services, including professional services, facilities, equipment, and burial containers.

This matter arises from a dispute over the scope of the definition of "gross receipts" set forth in Section 2301(e). At issue are amounts for "cash advance" items arranged by Petitioners as a courtesy to their clients. These cash advance items include arranging for flowers for funeral services, arranging for death notices to be published in local newspapers, requesting clergy to conduct funeral services and arranging for cemetery plots and subsequent interment for the deceased.

As an accommodation, Petitioners sometimes advance the cost of the foregoing items on behalf of their clients and have the clients reimburse Petitioners for the amounts advanced. Petitioners pay the suppliers for these items and invoice the bereaved family for these products and services at their actual cost without profit or markup. Indeed, the regulations adopted by the Delaware Board of Funeral Services prohibit Petitioners from making any profit on cash advance items.

The Division of Revenue audited Petitioners in 1997 and determined that Petitioners were deficient in their payment of gross receipts tax for tax years 1994 through 1997. Specifically, the Division determined Petitioners improperly excluded the amount of cash advances from their total gross receipts and thereby understated their taxable gross receipts. The total tax in dispute for the three years is \$1,040.30. The Division also seeks interest and penalties.

ANALYSIS

The definition of gross receipts applicable to Petitioners is set forth in Section 2301(e), which provides that "'Gross Receipts' is defined as total consideration for services rendered, goods sold or other income producing transactions within this State, including fees and commissions." We conclude that the compensation Petitioners receive as reimbursement for cash advances meet this definition.

The monies received for the cash advances are part of the total consideration Petitioners receive from their clients. Moreover, when arranging for flowers, death notices, clergy and cemetery plots, Petitioners are providing a service to their clients. As the cash advance reimbursements are consideration for services rendered, these funds fall within the Section 2301(e) definition of gross receipts and are subject to taxation. See Director of Revenue v. Gove, Del. Super., C.A. No. 84A-SE-25, Balick, J. (May 22, 1985); Atlantic Richfield Co. v. Director of Revenue, 346 A.2d 184 (Del. Super. 1975).

Petitioners argue the cash advance reimbursements are not gross receipts because (i) the services provided are a mere accommodation to their clients and (ii) Section 2301(e) only covers transactions which produce a "profit." As to the first point, whether the services are provided as an accommodation or not is of no moment. While Petitioners' efforts to help their clients address the practical problems that arise in the midst of a tragedy are laudable, by doing so they are rendering a service to clients - the arrangement with the florist for flowers, etc... - for which they receive consideration.

Petitioners' second argument - that only transactions which produce income are covered by Section 2301(e) and reimbursements for the cash advances are not income because Petitioners earn no profit from the repayment of the cash advances - also is flawed. First, Section 2301(e) is not limited to taxing receipts which produce income. Section 2301(e) has three subparts - services rendered, goods sold, or other income producing transactions. If the consideration generating activity falls within any of the three subparts, then it is properly included as gross receipts. As set forth above, the funds Petitioners receive as reimbursement for their cash advances are consideration for services rendered and thus part of taxable gross receipts. Second, Petitioners' effort to equate "income" with "profit" is unavailing. Delaware's gross receipts tax is

designed to tax all receipts, not just receipts generating a profit. Indeed, the extent of a taxpayer's profit should not be considered when calculating gross receipts. See 30 Del. C. § 2120(a) (deductions for "the cost of property sold, the cost of materials used, labor costs, interest, delivery costs, federal or state taxes or any other expense whatsoever paid or accrued . . . " are not permitted when calculating gross receipts).

For the foregoing reasons we conclude that Petitioners' reading of Section 2301(e) is incorrect and that the consideration they receive for cash advances is properly included within their taxable gross receipts.

Cynthia L. Higgins

Jan M. Went

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Dated : 7-11-03