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Tax Audit Appeal

City & Borough Of Juneau - Sales Tax Office,  
Appellee,  
vs.  
The Competitive Edge Office Systems, Inc.,  
Appellant  

Case No.: No. 212296  
Sales Tax Appeal Brief

Description Of Audit Appeal

The Competitive Edge Office Systems is a well-established Juneau business that sells office equipment and office furniture. The main suppliers are Xerox Corp. and Herman Miller. Nine months ago, Sept. 2000 during a routine sales tax audit, the city sales tax officer expressed a view that the commission on the sale was a taxable service under the CBJ ordinance. The auditor had stated that their office was understaffed, but should have the results of the audit within six weeks. However, the six weeks went by and we finally heard from the City a few months later requesting additional information. Then another two months of not hearing anything and we get a request for even more information, including contractual relationship between The Competitive Edge, Xerox, and Herman Miller. At the same time we learned that the City was still pursuing tax on
our income and they requested that the original three-year audit period be
changed because they went past the statute of limitations.

At this point we were getting rather frustrated having this audit
looming over our heads. It was the later part of May, 2001 and we still had
not received any indication from the City regarding their initial audit
findings. So I took the situation to the Assembly concerned about the poor
handling of our audit and how the tax code was being manipulated by the tax
auditors. In October 2001, the assembly passed unanimously an exemption to
the tax code pertaining to commissions on the sale of tangible items
previously subject to the CBJ.

The exemption now clarified the tax code to prevent this double tax;
however, the City tax office now used this exemption as a reason why we still
owe back tax for the audit. Stating that since there is now an exemption,
then there must have been a tax to begin with; whereas, the exemption was
created to prevent the City from accessing sales tax on income. The only
other way of preventing the income tax would have been a complete change in
the tax code. Following is explanation why The Competitive Edge is appealing
this tax on commissions.

Arguments

1) The money in question is income. Directly paid to Competitive Edge as
a portion of the sale of a tangible item. No “service/ representation
fee” is paid to The Competitive Edge as representatives of the
manufacturer.
2) Monies earned in question have been treated as income by The
Competitive Edge and have been subject to both State and Federal
"income" taxes.

3) The amount in question is subject to CBJ’s interpretation of a very
wide-reaching, fuzzy definition of a service.

4) Xerox/ Herman Miller are suppliers for The Competitive Edge only. We
receive no payment from either company for "sales expertise". From
the income received from the sale of a product, The Competitive Edge
pays employee wages & benefits, rent, advertising, community
contributions, etc. Neither Xerox nor Herman Miller pay for/
reimburse for overhead expenses.

5) The sales commission exemption was created as a way to prevent future
collection of income from commissions. The City is now trying to use
the exemption as an argument to say that if an exemption was passed
then it must mean that there was a tax on commissions in the past.
However, the exemption was passed in order to clarify the vague tax
code & prevent the City from incorrectly taxing income. The City has
never taxed for our particular commissions structure in the ten years
the we have represented Xerox in Juneau. Furthermore Aleeza St.
Clair, our original tax auditor, stated that the “tax on commissions”
has not been enforced and that The Competitive Edge was the first of
many.

6) The City exaggerated and inflated the impact of a commissions
exemption to falsely persuaded the Assembly regarding this tax on
commissions. Starting out as an impact of 42% of tax revenue or $12.4
million dollars, lumping our income in with services such as
accountants, lawyer, tour companies, etc. Then when questioned about the details, that number dropped to $354,469. Then when questioned further about relevant businesses, the expected impact dropped to $170,000. Finally the impact estimation came in at about $20,000 to $30,000 per year; however, even that financial impact to the City is an exaggeration because they have never collected this tax on commission in particular reference to the business structure of The Competitive Edge.

Conclusion

Under City tax code 69.05.180(b)(3) "The assembly may, by motion or resolution. Modify any rules adopted by the board." This "income tax" is unfair and is a prime example of a manipulation of the fuzzy tax code left to interpretation by a few city employees. We ask that the assembly appeals board waive all audit charges because of the inappropriate handling of this particular audit and for the costs incurred by The Competitive Edge over the two-year period. The Competitive Edge has hired one of the best accounting firms available and pays an office manager very well to make sure our books, taxes, etc. are done correctly. Our company strives to be a good corporate citizen for Juneau. This audit handling has been very unprofessional and a good indication that the city tax office needs to be fixed to better support the Juneau business community. When a business starts up in Juneau the owner should be able to know, in black & white, what taxes their business will be subject to.
Dated this 15th day of April, 2002

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