Tax Audit Appeal

The Competitive Edge Office Systems, Inc.,
Appellant,

vs.

City & Borough Of Juneau Sales Tax Office,
Appellee

Introduction

As was stated in the city’s reply brief, the Sales Tax Board of Appeals did rule in favor of the CBJ Sales Tax Office; however, they did state “Argument was made that this taxation is unfair, which we agree with, but unfortunately it appears to be taxable.” The fact the Assembly realized that this particular section of the sales tax ordinance was unfair and amended the code to exempt CEOS from payment.

CEOS reasonably believed that these transactions were not subject to a separate tax. They believed that the transactions were one transaction and treated the amounts in question as income (paying State and Federal income tax). The Sales Tax Administrator has truncated the transaction into two
transactions. Reasonable people, such as the assembly, believed
that these were not two transactions.

CEOS did not purposely avoid collecting this tax. They
reasonably believed that they were not subject to this tax. If
they had known three years later they would be penalized, they
would have surely brought this situation to the Assembly’s
attention sooner. CEOS collected the tax on all their
transactions and paid the tax timely. Now they will have to pay
this “unfair tax” out of their own resources. They will in
effect be penalized for not collecting the tax.

Why penalize CEOS? Penalties are to change the behavior of the
person or business being penalized and to demonstrate to others
that are doing the same that they better stop or they will be
penalized. However, in this case there is no behavior to be
changed. The ordinance was written in error and was changed by
the Assembly after CEOS pointed out the unfairness of the
situation. To now penalize CEOS does not accomplish anything.
No behavior will be modified because the rules have now changed
to reflect how CEOS conducted business was in fact correct.

CEOS was randomly selected for an audit. The Sales Tax Office
could just as easily have picked any other similar type business
and found the same situation. To our knowledge the Sales Tax
office has not pursued other businesses that have similar sales situations. To single out CEOS is in effect a punishment; it serves no purpose. No tax was collected so in effect this is a penalty which serves no purpose.

Issues

1) The commission is income. The amount CEOS receives is a portion of the profit derived from the sales of the tangible product. CEOS is not part of either Xerox or Herman Miller; those two manufacturers are CEOS suppliers for the products that they sell in Southeast Alaska. The only way CEOS receives this money is if there is a product sold. CEOS would be subject to the City’s definition of a “service” if Xerox or Herman Miller paid them a set amount whether they sell a product or not. This is not the case. The amount received is part of the profit of a tangible sale and CEOS uses that money to pay rent, employee wages, community support, etc........Neither Xerox or Herman Miller pay for any of these overhead costs.

Our decision to be an “agent” for Xerox and Herman Miller should have no bearing on the decision of the Assembly. Because of this business structure we receive less profit from the sale of the products. This also should show why this amount should not be subject to a sales tax...by just simply changing the paperwork to reflect the product being
received then sold should show that this amount in question is not a service subject to the city sales tax.

2) The City again is trying to cloud the issue here on the point of paying a State Corporate and Federal tax on this “income” in question. Because this amount is income compared to a sale for services to Xerox or Herman Miller it is subject to the 15% state corporate tax and not the city’s 5% sales tax. This amount cannot be both a sale and income.

3) CEOS’ statement regarding CBJ’s interpretation of a service as being “very wide-reaching and fuzzy” was correct. Tax laws should be black & white so a business owner knows exactly what their obligation is going to be. The “vague” way the tax code is written allows a couple of individuals in the tax department to interpret the code the way they see fit. This then causes the business owner to spend two years showing where the City was incorrect in their interpretation.

4) Xerox and Herman Miller are only CEOS suppliers. They do not pay CEOS a monthly stipend for representing them here in Juneau, nor do they pay for any of the overhead of CEOS. Just because the invoice/billing is more efficient for
CEOS dealership model, it should not make the sale of that
product a "service". The tangible product being sold is
subject to the CBJ 5% sales tax and CEOS' income for that
sale should not be taxed a second time.

5) The assembly unanimously passed the sales agent commission
exemption for CEOS' particular form of business because
they saw the unfairness and double taxation taking place.
This is also why CEOS should not be subject to this
erroneous tax from the audit.

6) Taxing the commissions received by CEOS from a tangible
product which has already been subject to the CBJ tax, is
what is in question here. The Assembly has the authority
to forgive amounts if they find that it was done in error;
or in this case, unfair. The Sales Tax Board agreed that
it was unfair, but do not have the authority to forgive
this incorrect audit.

Conclusion
CEOS reasonably believes that these transactions are not
subject to a separate tax. Because the CBJ Sales Tax Code is
broad and requires the Sales Tax Administrator to interpret
the levy of the tax, the City should be more lenient on Juneau
businesses, like CEOS, that try very hard to be a good
corporate citizen. If the City interprets a unique situation like the one in question as taxable then it should be corrected for the future and CEOS should not be financially punished for a broad interpretation of the tax code. To now penalize CEOS does not accomplish anything except financially harm a local Juneau business. This in turn hurts the local Juneau economy by causing small business’ to close their doors causing fewer jobs and a smaller tax base for the City. The Assembly unanimously voted for this exemption last fall, the Appeals Board agreed this was an unfair tax, and it is a broad interpretation of the Tax Administrator. The Assembly can now fix the error of this interpretation so CEOS is not financially penalized unfairly.

Dated this 31st day of May, 2002

The Competitive Edge Office Systems, Inc.

[Signature]

Carol Johnson
President