

**Jerry Rudibaugh**  
**Municipal Tax Hearing Officer**  
**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: April 24, 2003  
Decision: MTHO #89  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On December 5, 2002, *Taxpayer*. (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). On December 6, 2002, the City reviewed the protest and concluded it was timely and in the proper form. On December 11, 2002, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to response to the protest on or before January 27, 2003. The City filed its response on January 27, 2003. On January 29, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before February 19, 2003. The Taxpayer filed its reply on February 19, 2003. The matter was scheduled for hearing commencing on March 14, 2003. On March 13, 2003, the Taxpayer requested the matter be reclassified as a redetermination. The City did not oppose the request. On March 17, 2003, the Hearing Officer cancelled the hearing and the matter was reclassified as a redetermination. The Hearing Officer indicated that a written decision would be issued on or before April 28, 2003.

The Taxpayer is in the business of short-term vehicle rental pursuant to City Code Sections 14-450 and 14-452 (“Sections 450 and 452”). The City conducted an audit for the period September 1998 through May 2001. The City assessed the Taxpayer additional taxes totaling \$6,862.39 plus interest through September 2002 in the amount of \$2,166.29. Subsequently, the Taxpayer protested tax in the amount of \$1,938.05 plus associated interest on amounts received by the Taxpayer for reimbursements for parking tickets and fees and towing charges.

**City Position**

Sections 450 and 452 impose a tax on the rental of motor vehicles. Further, City Code Section 14-200 (“Section 200”) defines “gross income” as all receipts derived from a sale, lease, or other taxable activity. The City cited a Court of Appeals (“Court”) case that held that refueling charges were subject to the privilege tax because the refueling charge was a “built-in condition” of every rental agreement. The City asserts that towing charges and parking ticket charges are a “built-in” condition of every car rental contract of the Taxpayer. According to the City, these charges are assessed on the Taxpayer as the licensed owner of the vehicle. The City argued that when the Taxpayer is reimbursed by their customer renter, those amounts become constructive gross income accruing from the business activity of leasing/renting motor vehicles and as such are taxable. Further, the City argued that City Code Section 14-540 (a) (“Section 540 (a)”) imposes interest on any unpaid tax and may not be waived by the City or Hearing Officer except as it relates to a tax abated. Based on the above, the City concluded the protest should be denied.

## **Taxpayer Position**

The Taxpayer asserted that the amounts received as reimbursements for parking tickets and fees and towing charges are not part of the “rental price” that the Taxpayer charges its customers. As such, the Taxpayer argued these amounts do not constitute payments received from a taxable activity or transaction and thus does not constitute “gross income” that is subject to the tax. While “gross income” is defined in Section 200, the Taxpayer asserts that the definitional provision does not itself levy a tax on any activity. According to the Taxpayer, the activity-giving rise to the gross income must fall under some category of taxable activity.

The Taxpayer argued that towing services and fines paid on parking violations are not related to services that the Taxpayer provides. According to the Taxpayer, this is different than the Court case cited by the City whereby every customer was required to bring the vehicle back with a full tank of gas. The Taxpayer argued that the charges at issue here do not constitute income from leasing but represent the gross income of unrelated third parties for parking and towing services. According to the Taxpayer, these services are not taxable under the City Tax Code.

The Taxpayer asserts that the courts have long held that tax imposition statutes are to be strictly construed against the state, and any ambiguities must be resolved in favor of the Taxpayer. The Taxpayer further argued that Arizona’s appellate courts have denied attempts at taxing otherwise non-taxable revenues just because it was earned by a business that also engaged in a taxable business activity. Based on the above, the Taxpayer asserts that the City may not assess privilege taxes on reimbursement amounts that the Taxpayer receives from customers who incurred towing and parking fees and parking violation fines.

## **ANALYSIS**

The sole issue in this case is whether parking tickets and fees and towing charges should be treated the same as refueling charges for a taxpayer that is in the business of renting motor vehicles. We find that the refueling charges are different. It is clear that every customer is responsible for returning the rental vehicle with the same amount of fuel that it had when the customer first rented the vehicle. As a result, customers must either re-fill the vehicle themselves or pay the Taxpayer a pre-set amount to re-fill the vehicle. We must conclude that when the customer has the Taxpayer re-fill the vehicle that such refueling charges are an integral part of the Taxpayer’s rental business.

As to the parking tickets and towing charges, the Taxpayer simply wants the vehicle returned in the same condition as it left. The customer can drive the car for unlimited miles and never be assessed any charges for parking tickets and towing charges by the Taxpayer. On the other hand, the rental and use of the vehicle will always result in the vehicle needing to be refueled. In addition, parking tickets and towing charges are not taxable activities in and of themselves. The Taxpayer only assesses the customer a reimbursement charge if the Taxpayer has to pay a third party for the actions of the customer. The Hearing Officer does not find these reimbursements are an integral part of the business of renting vehicles. Accordingly, the Taxpayer’s protest is granted.

## **FINDINGS OF FACT**

1. On December 5, 2002, the Taxpayer filed a protest of a tax assessment made by the City.
2. On December 6, 2002, the City reviewed the protest and concluded it was timely and in proper form.
3. On December 11, 2002, the Hearing Officer ordered the City to respond to the protest on or before January 27, 2003.
4. On January 29, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before February 19, 2003.
5. The matter was scheduled for hearing commencing on March 14, 2003.
6. On March 13, 2003, the Taxpayer requested the matter be reclassified as a redetermination.
7. On March 17, 2003, the Hearing Officer cancelled the hearing and the matter was reclassified as a redetermination.
8. The Hearing Officer indicated that a written decision would be issued on or before April 28, 2003.
9. The Taxpayer is in the business of short-term vehicle rental.
10. The City conducted an audit for the period September 1998 through May 2001.
11. The City assessed the Taxpayer additional taxes totaling \$6,862.39 plus interest through September 2002 in the amount of \$2,166.29
12. The Taxpayer protested tax in the amount of \$1,938.05 plus associated interest.
13. The Court has held that refueling charges were subject to the privilege tax because the refueling charge was a “built-in condition” of every rental agreement.
14. The rental and use of the vehicle will always result in the vehicle needing to be refueled.
15. The customer can drive the rental vehicle for unlimited miles and never be assessed any charges for parking tickets and towing charges.
16. The Taxpayer assesses a customer a reimbursement charge if the Taxpayer has to pay a third party for the actions of the customer.
17. Payments for parking tickets and towing charges are not taxable activities in and of themselves.

## **CONCLUSIONS OF LAW**

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. Section 450 and 452 impose a tax on the rental of motor vehicles.
3. Section 200 defines “gross income as all receipts derived from a sale, lease or other taxable activity.
4. Section 540 (a) imposes interest on any unpaid tax and may not be waived by the City or Hearing Officer except as it relates to a tax abated.
5. Parking tickets and fees and towing charges are not part of the “rental price” that the Taxpayer charges its customers.
6. The reimbursements for parking tickets and towing charges are not an integral part of the rental of motor vehicle business.
7. The Taxpayer’s protest should be granted.

## **ORDER**

It is therefore ordered that the December 5, 2002 protest of Taxpayer of a tax assessment by the City of Phoenix is hereby granted.

It is further ordered that the City of Phoenix shall revise its assessment consistent with the conclusion that the reimbursements for parking tickets and towing charges are not part of the Taxpayer’s taxable gross income.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer