

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: February 24, 2004  
Decision: MTHO #141  
Tax Collector: City of Tucson  
Hearing Date: None

**DISCUSSION**

**Introduction**

On September 23, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on September 30, 2003 that the protest was timely and in proper form. On October 10, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file any response to the protest on or before November 24, 2003. On November 20, 2003, the City filed its response. On December 4, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before January 5, 2004. On January 22, 2004, the Hearing Officer indicated no reply had been received and as a result the record was closed and a written decision would be issued on or before March 8, 2004.

**City Position**

The Taxpayer operated three restaurants within the City. In conjunction with the restaurant operations, the Taxpayer allows a vending machine operator to place vending machines on the premises. In exchange for allowing the vending machines to be placed at the Taxpayer’s business locations, the vending machine owner pays a percentage of the gross receipts to the Taxpayer. According to the City, the vending machine owner reports and pays taxes on 100 percent of the vending machines gross income. The City argued that the Taxpayer must also pay tax on the percentage of vending machine gross receipts paid to the Taxpayer. The City asserted this income is taxable pursuant to City Code Section 19-455 (“Section 455”) as income for the licensing for use of real property.

**Taxpayer Position**

The Taxpayer argued that it was not renting space to the vending machine operator. According to the Taxpayer, they were engaged in a joint venture with the vending machine operator. The operator would service the equipment, collect the monies, report and pay sales taxes, and pays the Taxpayer a share of gross income for their service. The Taxpayer would clean the machines, provide the electricity, and make change for customers of the vending machines. The Taxpayer

asserts there is no written agreement or lease between the parties for renting space. The Taxpayer argued that the City is attempting to collect tax on the same money twice. Based on the above, the Taxpayer requested the licensing for use tax be abated.

### **ANALYSIS**

We find the Taxpayer's description of the agreement as a joint venture to be reasonable. Under the circumstances set forth, each of the parties had certain duties and responsibilities for which they shared the gross incomes. In this case, the vending machine owner reported 100 percent of the gross receipts as taxable. As a result of finding a joint venture existed, we do not find there was any licensing for use of real property under the circumstances set forth herein. The Taxpayer's protest should be granted.

### **FINDINGS OF FACT**

1. On September 23, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on September 30, 2003 that the protest was timely and in the proper form.
3. On October 10, 2003, the Hearing Officer classified this matter as a redetermination and ordered the City to file any response to the protest on or before November 24, 2003.
4. On November 20, 2003, the City filed its response.
5. On December 4, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before January 5, 2004.
6. On January 22, 2004, the Hearing Officer indicated no reply had been received and as a result the record was closed and a written decision would be issued on or before March 8, 2004.
7. The Taxpayer operated three restaurants within the City.
8. The Taxpayer entered into an agreement with a vending machine operator to share the proceeds from the machines located at the Taxpayer's business location.
9. The operator would service the equipment, collect the monies, report and pay sales taxes, and pay the Taxpayer a share of gross income.
10. The Taxpayer would clean the machines, provide the electricity, and make change for customers of the vending machines.

11. The operator paid taxes to the City on 100 percent of the gross receipts from the machines.

### **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. The Taxpayer and the vending machine owner entered into a joint venture whereby each of the parties had certain duties and responsibilities in exchange for sharing of the gross income from the machines.
3. The City received transaction privilege tax on 100 percent of the gross income from the vending machines.
4. Under the circumstances set forth herein, there was no licensing for use of real property.
5. The Taxpayer's protest should be granted.

### **ORDER**

It is therefore ordered that the September 23, 2003 protest of *Taxpayer* of a tax assessment made by the City of Tucson is hereby granted.

It is further ordered that the City of Tucson shall revise the assessment by eliminating the gross income for licensing for use of real property.

It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer