**Jerry Rudibaugh**
**Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: September 26, 2002
Decision: MTHO #28
Tax Collector: City of Mesa
Hearing Date: June 26, 2002

## DISCUSSION

### Introduction

On December 20, 2001, ***ABC Partnership***, dba ***Park A***, ***Park B***, ***Park C***, ***Park D*** & ***Park E***. (Collectively, hereafter referred to as ("Taxpayer")) filed protest petitions of a City of Mesa ("City") tax assessment. After review, the City concluded the protests were timely and in the proper form. On January 7, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protests of the Taxpayer on or before February 21, 2002. On February 26, 2002, the Hearing Officer granted the City's request for an extension until March 1, 2002. The City filed its response to the protest on March 1, 2002. On March 7, 2002, the Taxpayer filed a request for an April deadline in which to file a reply. On March 18, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before April 18, 2002. The matter was set for hearing convening on May 14, 2002. Subsequently, at the request of the Taxpayer the hearing was rescheduled until June 26, 2002. The City and the Taxpayer both appeared and presented evidence at the June 26, 2002 hearing. At the conclusion of the hearing, a briefing schedule was set whereby the Taxpayer would file an initial brief on or before July 15, 2002, the City would file a response brief on or before August *5,* 2002, and the Taxpayer would file a reply brief on or before August 12, 2002. On June 26, 2002, the Hearing Officer issued a letter indicating a written decision would be issued on or before September 26, 2002.

The Taxpayer consists of five related entities that own, operate, and manage mobile home parks within the City. The primary business is the rental and sale of mobile homes within the City. With the exception of ***X***, the City assessed transaction privilege tax and use tax for each of the entities for the period August 1, 1996 through May 31, 2000. ***X*** was assessed for the period January 1, 1997 'through May 31, 2000. The taxes assessed for each entity were as follows:

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|---|---|
| ***Park A*** | $ 4,694.49 |
| ***Park B*** | $21,212.51 |
| ***Park C*** | $ 1,725.08 |
| ***Park D*** | $ 5,603.23 |
| ***Park E*** | $10,772.39 |

With the exception of ***Park B***, each of the entities were assessed for underreported rental of real property for failing to report several types of miscellaneous income. ***Park B*** was assessed for underreported manufactured buildings income for excluding a "Mesa development fee" and "state and title fees" on the sales of mobile homes. The Taxpayer protested each of the above

assessments. The City also assessed several of the entities for failing to report use tax on some purchases of fixed assets.

**City Position**

The Taxpayer is in the business of leasing or renting real property pursuant to City Code Section 5-10-445 ("Section 445"). As a result, the City argued that the Taxpayer is subject to a tax on the "gross income from the business activity" defined in Section 445. City Code Section 5-10-200 ("Section 200") defines "gross income" to include all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind of nature derived from a sale, lease, license for use, rental, or other taxable activity."

The City argued that Section 200 makes it clear that all monies from whatever nature or source are included in gross income. Further, the City asserted that City Code Section 5-10-100 ("Section 100") defines "business" to include "**All activities or acts**, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales." The City argued that Section 445 in conjunction with Sections 100 and 200 provides that the tax should be assessed on the "gross income of all activities or acts of every person engaged in the business of leasing or renting of real property within the City for a consideration." The City relied upon a 1985 Court of Appeals case in which it was found that incidental services, such as maid service, local telephone, utilities, cable television, etc., were deemed part of gross income for a person engaged in the business of renting.

Further, the City argued that the Code is clear and unambiguous that gross income is to be broadly defined. The City asserted that if the drafters of the Code had only intended to tax rent or income received from the use or occupancy of real property, they could have easily inserted such language. Accordingly, the City requested its assessment pursuant to Section 445 be upheld.

The City also assessed taxes pursuant to Section 5-10-427 ("Section 427") for the business activity of selling manufactured buildings within the City. According to the City, Section 427 delineates those items to be excluded from gross income and "development fees" and "state and title fees are not authorized exemptions from gross income. The City argued that all gross income from the business of selling manufactured buildings is subject to tax until the contrary is established by the Taxpayer. The City asserted that the Taxpayer failed to meet its burden of proof and as a result, the assessment should be upheld.

**Taxpayer Position**

The Taxpayer agreed that the gross income from its business of renting real property was taxable pursuant to the City Code. However, the Taxpayer argued that it also provided other services that were not part of its business of renting real property. Those services included arranging for group trash removal and sewer service, bingo, dances, laundry facilities, "click cards" which provide access to the locked entrances of the parks, cable television, advertising, newspaper delivery, a musical chorus, and educational classes. According to the Taxpayer, the City seeks erroneously to tax goods or services unrelated to the rental, use, or occupancy of real property. The Taxpayer

asserted that the residents are free to choose non-related items such as dancing and bingo, which are not part of their rent.

The Taxpayer argued that the tax is not applicable because the funds in question are not from the rental or leasing of real property. Section 445 provides as follows: The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the **gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration...**

The Taxpayer argued that the tax is only on the gross income from the business of leasing or renting real property. According to the Taxpayer, gross income does not include a tax on any income from any source whatsoever as long as the entity is engaged in any taxable activity. The Taxpayer argued that the law requires revenue statutes to be construed liberally in favor of taxpayers. According to the Taxpayer, any ambiguities in regard to the activity being taxed must be strictly construed in favor of the Taxpayer. Since the City failed to specifically define what constitutes leasing or renting, the Taxpayer argued that you need to use the common meaning of those terms. The definition contained in Corpus Juris Secundum defines "rent" as compensation paid for the use of land. According to the Taxpayer, that definition is similar to the definition contained in State statutes in which "rent" is defined "as including all consideration paid by the tenant to the landlord for the privilege of occupancy." The Taxpayer asserted that it was willing to pay taxes based on the plain meaning of the language of the Code. The Taxpayer argued that the City's position is in conflict with the plain language of the statute.

***Park B*** sells mobile homes. ***Park B*** also collects development fees and title fees that are separately itemized from the sale price of the mobile homes. The City assessed the sale of the mobile homes along with the development fees and title fees pursuant to Section 427 as follows: "The tax rate shall be at an amount equal to one and one-half percent (1.5%) of the gross income, including site preparation, moving to the site, and/or setup, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building."

According to the Taxpayer, the development fees and title fees are not the "sale of manufactured buildings" and are therefore not taxable pursuant to Section 427. The Taxpayer asserts that a sale is defined in Section 100 as a transfer of title and/or possession of property for a consideration. The Taxpayer argued that the City admitted that it would not attempt to tax the fees if there was a separate entity that collected the fees. The Taxpayer asserted that since the fees were listed separately from the sales price of the manufactured homes they should not be taxed. The Taxpayer asserted that the development fees and title fees are collected for and on behalf of the buyer who is the party responsible for payment. The Taxpayer pays the City and State on behalf of the buyer. The Taxpayer argued that a sale involves barter or exchange for consideration and not merely holding of payment for benefit of another. The Taxpayer also argued that the City is attempting to impermissibly charge a tax on top of a tax (i.e. development fees and title fees).

## ANALYSIS

There was no dispute that the Taxpayer was engaged in the business of renting real property and in the business of selling manufactured homes. There was also no dispute that if an independent entity provided the additional services and collected the development fees and title fees, the independent entity would not be assessed taxes pursuant to Sections 427 and 445.

First, we will focus on Section 445. Section 445 refers to a tax on "the gross income from the business activity of leasing or renting real property". We note that the Taxpayer has generally relied upon the language of Section 445 to conclude the tax is only on the gross income of renting real property while the City has also relied upon the language of Sections 100 and 200 to conclude that the tax is on all gross income if the Taxpayer is in the business of renting real property. The Hearing Officer concurs with the Taxpayer's interpretation. Since Section 445 is a revenue statute, the law requires the statute to be construed liberally in favor of taxpayers. A fair reading of Section 445 is that it is a tax on the gross income from only the business activity of renting real property. The Taxpayer clearly has gross income from business activities other than renting of real property. While we concur with the City that the definition of gross income in Section 200 is broad, that definition is still controlled by the phrase "from the business activity" contained in Section 445. We also find the City's broad reading of what gross income is taxable pursuant to Section 445 is not consistent with the fact that there are subparagraphs clarifying what charges are to be included as part of the taxable gross income. If the City's argument was correct that all gross income from whatever source was to be taxed pursuant to Section 445, there would be no need for the drafters to include any clarifying language of charges to be included. In reviewing the clarifying language, we would agree that at first glance the gross income from group trash removal and sewer service could be considered as utilities and thus part of the taxable gross income from the business activity of renting real property. However, we find the definition of utility service within the Code includes specific utility services and trash removal and sewer service are not included. Thus, the Hearing Officer concludes those services are not part of the gross income from the business activity of renting real property. Based on all the above, we concur with the Taxpayer that the services provided that are not renting of real property are not taxable pursuant to Section 445.

Section 427 refers to a tax on "the business activity of selling manufactured buildings". Once again the Taxpayer has relied primarily on the language contained within Section 427 while the City has also relied upon the language of Sections 100 and 200 to include all gross income if the Taxpayer is in the business of selling manufactured buildings. For similar reasons as our discussion on Section 445, the Hearing Officer concurs with the Taxpayer's interpretation. As we previously stated, the law requires revenue statutes to be construed liberally in favor of taxpayers. A fair reading of Section 427 is that it is a tax on the gross income from only the business activity of selling manufactured buildings. Section 427 also has some clarifying language that the business activity of selling manufactured buildings encompasses the related activities of "site preparation, moving to the site, and/or setup". The Hearing Officer is unable to clearly conclude that development fees and title fees would be part of the sale price, site preparation, moving to the site, and/or setup. As a result, the Hearing Officer is unable to conclude that development fees and title fees would be a part of the business activity of selling manufactured buildings. Further, since the Taxpayer has clearly segregated these fees from the

sale price of the manufactured buildings, the Hearing Officer concludes they are not taxable gross income from the business activity of selling manufactured buildings. Based on all the above, we concur with the Taxpayer that the development fees and title fees are not taxable pursuant to Section 427.

## FINDINGS OF FACT

1. On December 21, 2001 the Taxpayer filed a protest of the City tax assessment.

2. After review of the protest, the City concluded the protest was timely and in the proper form.

3. On January 7, 2002, the Hearing Officer ordered the City to file a response to the protest of the Taxpayer on or before February 21, 2002.

4. On February 26, 2002, the Hearing Officer granted the City's request for an extension until March 1, 2002.

5. The City filed its response to the protest on March 1, 2002.

6. On March 7, 2002, the Taxpayer filed a request for an April deadline in which to file a reply.

7. On March 18, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before April 18, 2002.

8. The matter was set for hearing commencing on May 14, 2002.

9. Subsequently, at the request of the Taxpayer the hearing was rescheduled until June 26, 2002.

10. The City and Taxpayer both appeared and presented evidence at the June 26, 2002 hearing.

11. At the conclusion of the hearing, a briefing schedule was set whereby the Taxpayer would file an initial brief on or before July 15, 2002, the City would file a response brief on or before August 5, 2002, and the Taxpayer would file a reply brief on or before August 12, 2002.

12. On June 26, 2002, the Hearing Officer issued a letter indicating a written decision would be issued on or before September 26, 2002.

13. The Taxpayer consists of five related entities that own, operate, and manage mobile home parks within the City.

14. The primary business of the Taxpayer is the rental and sale of mobile homes within the City.

15. With the exception of ***Park A***, the City assessed transaction privilege tax and use tax for each of the entities for the period August 1, 1996 through May 31, 2000.

16. ***Park A*** was assessed for the period January 1, 1997 through May 31, 2000.

17. Taxpayer was assessed taxes in the amount of $44,007.70 for the five related entities.

18. With the exception of ***Park B***, each of the entities were assessed for underreported rental of real property for failing to report several types of miscellaneous income.

19. ***Park B*** was assessed for underreported manufactured buildings income for excluding development fees and state and title fees from the sales of mobile homes.

20. In addition to renting real property, the Taxpayer provided other services which included arranging for group trash removal and sewer service, bingo, dances, laundry facilities, "click cards" which provide access to the locked entrances of the parks, cable television, advertising, newspaper delivery, a musical chorus, and educational classes.

21. ***Park B*** separately itemized development fees and title fees from the sale prices of the mobile homes.

## CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-605 6, 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 is in the business of renting real property pursuant to Section 445.

3. The Taxpayer is in the business of selling manufactured homes pursuant to Section 427.

4. Section 100 provides a definition of "business".

5. Section 200 provides a definition of "gross income."

6. Sections 427 and 445 are revenue statues which must be liberally construed in favor of taxpayers.

7. A fair reading of Section 445 is that it is a tax on the gross income from only the business activity of renting real property.

8. The Code provides a definition of utilities that does not include trash removal and sewer service.

9. Group trash removal and sewer service, bingo, dances, laundry facilities, "click cards" which provide access to the locked entrances of the parks, cable television, advertising, newspaper delivery, a musical chorus, and educational classes are services provided that are not renting of real property and are not taxable pursuant to Section 445.

10. A fair reading of Section 427 is that it is a tax on the gross income from only the business activity of selling manufactured homes.

11. Development fees and title fees are not part of the business activity of selling manufactured buildings.

12. Development fees and title fees are not taxable pursuant to Section 427.

13. Consistent with the discussion contained herein, the protest of the Taxpayer should be granted.

## ORDER

It is therefore ordered that the December 20, 2001 protest by the Taxpayer of the City of Mesa tax assessment is hereby granted consistent with the discussion contained herein.

It is further ordered that the City of Mesa shall revise its tax assessment to remove income from the services listed in Conclusion of Law No. 9 from the gross income taxable pursuant to Section 445.

It is further ordered that the City of Mesa shall revise its tax assessment to remove income from development fees and title fees from the gross income taxable pursuant to Section 427.

It is further ordered that this decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer