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AGENDA REPORT

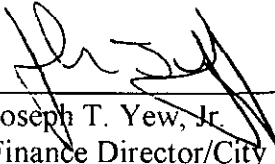
2009 OCT 29 PM 3:47

TO: Office of the City Administrator
ATTN: Dan Lindheim, City Administrator
FROM: Finance and Management Agency
DATE: November 10, 2009

RE: **Information Report on the Business Tax Board of Review Meeting for the
Second Quarter of Calendar Year 2009**

Attached is the second quarter report from the Business Tax Board of Review. A representative from the Board will be available to answer questions.

Respectfully submitted,



Joseph T. Yew, Jr.
Finance Director/City Treasurer

Prepared by: Terry Adelman
Revenue Manager
Revenue Division

Attachments

FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE



Office of the City Administrator

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Finance Committee
November 10, 2009

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FINANCE AND MANAGEMENT AGENCY • 150 FRANK H. OGAWA PLAZA, SUITE 5342 • OAKLAND, CA 94612-2093

Revenue Division

(510) 238-7317
FAX (510) 238-6431
TDD (510) 238-3254

HONORABLE CITY COUNCIL
Oakland, California

Subject: Information Report on the Business Tax Board of Review Meeting for the Second Quarter of Calendar Year 2009

Members of the City Council:

This is an informational report on the Business Tax Board of Review meeting held during the 2nd quarter of calendar year 2009. Per the request of the Finance and Management Committee, a brief narrative on the decisions by the Board, as well as appeals made by taxpayers, are outlined. The Business Tax Board of Review has convened one (1) regular meeting in the second quarter of calendar year 2009. The meeting was held on June 17, 2009. The following is a summary of the decisions rendered by the Board:

There were three (3) Board members present at this meeting, which was scheduled to hear four (4) cases. The four (4) cases heard were:

1) Shuttleport - Shuttleport identifies and asserts itself as a company that is a transporter of persons described in O.M.C. § 5.04.410 and provides shuttle bus services, AirBART services and ground transportation services for the convenience of the air traveling public and others using the airport. The company argues that it should be classified based on the underlying business activity performed at the Airport not on the contractual language presented. Shuttleport points to the language in the ordinance, O.M.C. § 5.04.410 stating that unless specifically taxed by another provision, if engaged in the transportation of people, businesses are taxed under the "L" classification. Shuttleport claims the contract it entered into with the Port is not a management contract. Rather, it is providing service to and managing itself. Therefore, Shuttleport argues that its business classification should be assigned as "L" Transportation and taxed at the rate as defined under Oakland Municipal Code (OMC) § 5.04.410.

The City presented facts based on the agreement between Port of Oakland and Shuttleport supporting and confirming that the taxpayer was contracted and hired in the capacity as an Airport Shuttle Service Management company to manage and operate and provide expertise and resources to run the shuttle services operation on behalf of the Port of Oakland. Also provided was a copy of the taxpayer's new business application which describes the business activity as follows: "Contract with the Port of Oakland for management & drivers for airport parking lot shuttles." The taxpayer entered into a management contract and is compensated under the agreement by a fixed monthly management fee plus some reimbursement of expenses. All revenues collected by the taxpayer are collected on behalf of the Port of Oakland.

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The City's position is that the denial of the refund request was due to the assignment of Shuttleport's business classification, as well as, the imposition of business tax are consistent with, and authorized by the provisions of Title 5 REVENUE AND FINANCE, Chapter 5.04 BUSINESS TAXES GENERALLY of the Oakland Municipal Code (OMC). According to the City, the operating agreement, all documents and all papers submitted support and acknowledge that Shuttleport provides management and operating services for on-airport parking shuttle bus services, AirBART shuttle bus services and curbside management services. Therefore, the City reasons that the business classification, "F" - Professional/Semi-Professional" along with the business tax rate of \$3.60/\$1000 gross receipts (O.M.C. § 5.04.350) is correctly assigned to Shuttleport.

The Board found and determined that the weight of the evidence established that Shuttleport's primary business activity is to provide shuttle bus services, AirBART services and ground transportation services and it should be classified as "L" - Transportation, and taxed at the corresponding tax rate as described pursuant to O.M.C. § 5.04.410. The Board further found that the refund request for tax year 2008, for the difference of taxes paid due to business classification by Shuttleport, be granted.

The Board voted 2 to 1 in favor of Shuttleport.

2) Five Star Parking – Five Star Parking appealed the 2005-2008 audit findings for additional tax liability. Five Star believes the inclusion of reimbursable expenses should not be included in gross receipts. They want their classification reconsidered from "F" Professional to "E" Business/Personal Services. They also request that penalties and interest are not appropriate and should be waived due to its diligent attempts to resolve this matter prior to Director of Finance and Board decisions.

Five Star provides parking management services to the Port of Oakland, Oakland Airport (Airport). It has reported and paid business taxes based on the management fee it receives for its management services, and has excluded from reported receipts reimbursable expenses. The City believes the tax ordinance does not allow for the deduction of reimbursable expenses. OMC 5.04.030 states that all receivables are part of gross receipts. Five Star receives a monthly fixed management fee plus reimbursed expenses for the management services they provide. Under the language of section 5.04.030 and according to long-standing interpretation and application of the ordinance, all receipts received directly by a management company shall be treated as taxable including reimbursements from the business owner for expenses incurred by the management company.

The tax liability due for years 2005 – 2008 is a result of excluding reimbursable expenses from the gross results tax base, and is delinquent. Therefore, the City pursues and seeks applicable penalties and interest in accordance with sections 5.04.190 – Penalty and 5.04.230 – Interest of the Oakland Municipal Code.

For this appeal, the Board found and determined that the evidence establishes that Five Star provides management services for the parking operations at the Airport and should be classified

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as "E" - Professional Services, with a corresponding tax rate of \$1.80/\$1000 pursuant to O.M.C. § 5.04.330. The Board further found that Five Star's business tax liability is properly based on the gross receipts received, inclusive of reimbursed expenses. The Board refers Five Star's request for waiver of penalties and interest back to the Finance Director for resolution.

The Board voted 2 to 1 in favor of Five Star Parking, determining that Five Star Parking should be classified as an "E".

The Board voted 3 to 0 (unanimous) in favor of the City, determining that the reimbursed expenses are to be included in the gross receipts.

The Board voted 3 to 0 (unanimous) in favor of Five Star Parking, that the City refer the issue of abating penalties and interest back to the Finance Director.

3) Interstate Management Company LLC (IMC)(Oakland Marriott) – IMC asserts it is a company in the business of operating hotels on behalf of hotel owners as described in (OMC) § 5.04.420 and that the company should be classified based on the underlying business activity performed at the Oakland Marriott. The taxpayer also references (OMC) § 5.04.330 based on the service(s) provided by IMC to operate the hotel as "Business and personal services". IMC also believes that the inclusion of reimbursable expenses should not be included in gross receipts.

The City presented facts based on the IMC's "New Business Registration" form and written correspondence describing the business agreement and activities to be provided between CIM/Oakland City Center LLC and IMC that the taxpayer contracted with and was hired in the capacity to manage the operations of the Oakland Marriott.

The City's position is that the denial of the refund request was due to the assignment of IMC's business classification, as well as, the imposition of business tax are consistent with, and authorized by the provisions of Title 5 REVENUE AND FINANCE, Chapter 5.04 BUSINESS TAXES GENERALLY of the Oakland Municipal Code (OMC). According to the City, the management agreement as described, all documents and all papers submitted support and acknowledge that IMC provides management and operating services for specified hotel operations at the Oakland Marriot. Therefore, the City concludes that the business classification, "F" - Professional/Semi-Professional" along with the business tax rate of \$3.60/\$1000 gross receipts is correctly assigned to IMC.

The evidence in the record establishes the taxpayer entered into a management agreement and is compensated by a fixed monthly management fee plus some reimbursement expenses. The tax ordinance does not allow for the deduction of reimbursable expenses. OMC § 5.04.030 states that all receivables are part of gross receipts "except as otherwise specifically provided." IMC receives a monthly fixed management fee plus reimbursed expenses for the management services they provide. Under the language of OMC § 5.04.030 and according to long-standing interpretation and application of the ordinance, all receipts received directly by a management company shall be treated as taxable, including reimbursements from the business owner for expenses incurred by the management company.

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The Board found and determined that the evidence establishes that IMC's primary business activity is to provide business services to manage the daily operations of the Oakland Marriott and should be classified as "E" - "Business and personal services", with a corresponding tax rate as described pursuant to O.M.C. § 5.04.330. The Board further found that IMC's business tax liability is properly based on the gross receipts received, inclusive of reimbursed expenses. O.M.C. § 5.04.030 allows deduction from gross receipts in computation of business taxes only where a deduction is specifically provided. No such deduction is provided in any classification O.M.C. § 5.04.330

The Board voted 2 to 1 in favor of IMC, determining that IMC should be classified as an "E".

The Board voted 3 to 0 (unanimous) in favor of the City, determining that the reimbursed expenses are to be included in the gross receipts.

4) Interstate Management Company LLC (IMC)(Courtyard by Marriott) - IMC asserts it is a company in the business of operating hotels on behalf of hotel owners as described in (OMC) § 5.04.420 and that the company should be classified based on the underlying business activity performed at the Courtyard by Marriott Oakland Downtown. The taxpayer also references (OMC) § 5.04.330 based on the service(s) provided by IMC to operate the hotel as "Business and personal services". IMC also believes that the inclusion of reimbursable expenses should not be included in gross receipts.

The City presented facts based on the IMC's "New Business Registration" form and written correspondence describing the business agreement and activities to be provided between CIM/Oakland City Center LLC and IMC that the taxpayer contracted with and was hired in the capacity to manage the operations of the Courtyard by Marriott Oakland Downtown.

The City's position is that the denial of the refund request was due to the assignment of IMC's business classification, as well as, the imposition of business tax are consistent with, and authorized by the provisions of Title 5 REVENUE AND FINANCE, Chapter 5.04 BUSINESS TAXES GENERALLY of the Oakland Municipal Code (OMC). According to the City, the management agreement as described, all documents and all papers submitted support and acknowledge that IMC provides management and operating services for specified hotel operations at the Courtyard by Marriott Oakland Downtown. Therefore, the City concludes that the business classification, "F" - Professional/Semi-Professional" along with the business tax rate of \$3.60/\$1000 gross receipts is correctly assigned to IMC.

The evidence in the record establishes the taxpayer entered into a management agreement and is compensated by a fixed monthly management fee plus some reimbursement expenses. The tax ordinance does not allow for the deduction of reimbursable expenses. OMC § 5.04.030 states that all receivables are part of gross receipts "except as otherwise specifically provided." IMC receives a monthly fixed management fee plus reimbursed expenses for the management services they provide. Under the language of OMC § 5.04.030 and according to long-standing interpretation and application of the ordinance, all receipts received directly by a management company shall be treated as the taxable including reimbursements from the business owner for expenses incurred by the management company.

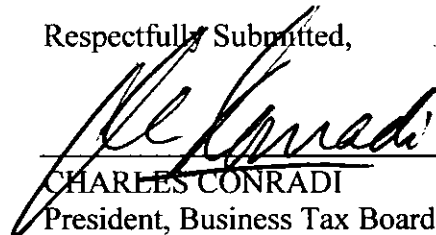
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For this appeal, the Board found and determined that the evidence establishes that IMC's primary business activity is to provide business services to manage the daily operations of the Courtyard by Marriott Oakland Downtown and should be classified as "E" - "Business and personal services", with a corresponding tax rate as described pursuant to O.M.C. § 5.04.330. The Board further found that IMC's business tax liability is properly based on the gross receipts received, inclusive of reimbursed expenses. O.M.C. § 5.04.030 allows deduction from gross receipts in computation of business taxes only where a deduction is specifically provided. No such deduction is provided in any classification O.M.C. § 5.04.330.

The Board voted 2 to 1 in favor of IMC, determining that IMC should be classified as an "E".

The Board voted 3 to 0 (unanimous) in favor of the City, determining that the reimbursed expenses are to be included in the gross receipts

Respectfully Submitted,



CHARLES CONRADI

President, Business Tax Board of Review