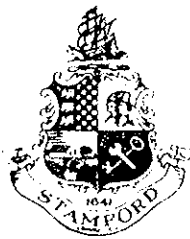


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April 16, 2008

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City of Stamford

Re: *Golf Carts — property tax — E. Gaynor Brennan Golf Course*

Gentlemen:

Apparently as a follow-up to a meeting on April 3, 2008, we have been asked for our opinion as to a matter that has been presented to us as follows:

The golf cart concessionaire at Brennan has never paid personal property taxes. She leases the carts from a vendor, and she assumed that the vendor was paying the personal property taxes. Apparently the City has determined she must pay the taxes as she is in possession of the carts (and she has paid them).

This concessionaire pays to the City 57% of her revenue from the carts. In view of this, should she only pay 43% of the personal property taxes on the carts?

The issue as presented contains at least one erroneous premise, which goes to the heart of the issue: the City does not send tax bills to the lessee of the golf carts, and the City has not determined that she must pay *any* taxes relating to the golf carts. Rather, the tax bill goes to the lessor/owner of the golf carts (and I have verified that fact with the tax office). It is the lessor/owner that has the obligation to pay taxes; it is purely a matter of contract as between lessor and lessee as to whether the lessee must *reimburse* the lessor for taxes that are paid or whether the lease price includes any taxes that may prove to be payable. The lessee's possession of the carts is relevant only to the extent that it establishes that the carts are located in the City of Stamford and therefore subject to property taxes here.

It is irrelevant whether the lessee/concessionaire submits a check to the City for the taxes or reimburses the owner/lessor after it has paid the taxes; the obligation to pay the

taxes is one imposed, by statute, on the owner. Thus, although it was our understanding that the issue arose when the lessor billed the lessee for reimbursement, the actual mechanics of payment have nothing to do with legal responsibility.

With respect to the percentage of revenues that the concessionaire pays to the City, again, that is a matter of contract (if a different one). As discussed at the meeting on April 3, it is our understanding that the concessionaire is required to pay costs of doing business out of her share of the revenues, and reimbursement for taxes is a contractual obligation that presumably was assumed in the process of leasing the carts. The percentage payable to the City appears to be based on gross revenues and not net proceeds, such that we are unaware of any basis to modify the taxes payable (or the percentage of proceeds payable to the City). Any adjustment based on contractual percentages would be tantamount to altering the contract so as to make it based, at least in part, on net income (after expenses).

Indeed, since the lessee technically is not paying taxes but rather presumably is contractually required to reimburse the lessor for taxes, the inquiry itself becomes problematic — we are not asking or telling the concessionaire to pay *any* taxes related to the carts, so we cannot adjust or reduce the amount of taxes that she is required to pay in that regard. If we were to make an adjustment — despite the lack of any authority or basis to do so — it would be a reduction in the taxes being paid by the lessor.

Coincidentally, a letter has just gone out to the Golf Authority, rejecting *its* claim that taxes cannot be imposed on the carts it leases (directly) from a leasing company, despite the fact that in *that* situation, the lessee is a tax exempt entity (unlike the concessionaire at Brennan). To quote from that letter:

“We do not disagree that, in general, the Golf Authority is entitled to claim a tax exemption for property that it *owns*. However, any property tax that may be imposed in connection with the golf carts that are leased to the Golf Authority would be a tax imposed on the owner, the leasing company. Any obligation that the Golf Authority may have, to reimburse the leasing company for taxes that the lessor pays, is a matter of contract, not a matter of tax law....

“....

“None of the materials attached to your letter suggests why the owner of property leased to the Authority might be exempt from property taxes on such property. In the absence of any such legal authority being identified, the City must adhere to the position that the golf carts leased to the Authority are

subject to property tax, with the bill for such tax going to the owner, as is statutorily required.”

To the extent that concern was expressed at the meeting on April 3 about disparate treatment, it now appears that the concessionaire is seeking disparate treatment but in her favor. The City’s position is internally consistent, and is consistent with applicable law: in the absence of an explicit statutory provision to the contrary, commercial property owned by a business and located in the City of Stamford is subject to property tax payable by the owner to the City of Stamford; any obligation existing between a lessor and lessee relating to reimbursement for taxes is a matter of contract.

We trust that this adequately addresses any remaining concerns you may have relating to the issue of taxation of golf carts that are leased for use at City golf courses.

Yours truly,

Thomas M. Cassone
Director of Legal Affairs

By 

Kenneth B. Povodator
Assistant Corporation Counsel

KBP

cc: Francis Kirwin
William Forker
Sandra Dennies