

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Joe Arriola, City Manager

FROM: Jorge L. Fernandez, City Attorney

DATE: December 21, 2004

RE: Request for Legal Opinion - Inclusion of Revenues Generated from Leasing/Rental of Equipment in Franchisee's Gross Receipts (MIA 04-00011)

You have requested an opinion on substantially the following question:

IS THE CITY OF MIAMI ("CITY") ENTITLED TO THE 22% FRANCHISE FEE ("FEE") FROM COMMERCIAL SOLID WASTE HAULERS THAT ARE AUTHORIZED TO OPERATE WITHIN THE CITY LIMITS ("FRANCHISEES"), FOR THE PORTION OF REVENUES GENERATED FROM THE LEASING/RENTAL OF EQUIPMENT?

For the reasons set forth hereinafter, the answer to your question is in the affirmative. The City is entitled to receive the Fee from all Franchisees. The Fee is based on twenty-two percent (22%) of the Franchisee's monthly total gross receipts, excluding only taxes and bad debts. Neither Code nor State statutes exempt from gross receipts, revenues derived from the leasing or rental of equipment. The term "gross receipts," includes revenues from any other source related directly to waste collection services by the Franchisee. Therefore, the Franchisee's monthly gross receipts subject to the Fee, would necessarily include amounts generated from the leasing or rental of equipment which is directly related to waste collection services.

DISCUSSION

A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, which has not been preempted by the state or county.¹ Furthermore, a municipality may raise, by user charges or fees authorized by ordinance, amounts of money which are necessary for the conduct of municipal government and

¹ § 166 221, Fla. Stat (2004).

may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with the law.²

The City has the power to change, limit, or to otherwise modify franchises in its sole discretion, by ordinance.³ On October 14, 2004, the City Commission passed and adopted City Ordinance 12599, amending Chapter 22 of the Code of the City of Miami ("Code"). The Code requires a person to attain a franchise from the City prior to engaging in the activity of garbage removal from City limits.⁴ Section 22-46, Code, reiterates the franchise requirement by stating, in pertinent part:

- (a) No person, firm or corporation shall remove or transport any solid waste material over the streets or public rights-of-way of the city or its real property for hire or salvage without first applying for and receiving a franchise from the department to carry on such a business.

Once a franchise is issued, the Franchisee is required to pay a percentage of its gross monthly earnings to the City.⁵ Effective October 1, 2004, all Franchisees were required to pay twenty-two percent (22%) of the Franchisee's monthly total gross receipts.⁶ In accordance with the Code provision, the Franchisees are contractually bound to remit monthly to the City 22% of its gross receipts, exclusive of taxes.⁷ The Code defines gross receipts as all monies collected from customers or from any other source related directly from waste collection services by the Franchisee.⁸ The Code definition of "gross receipts" appears verbatim in the Commercial Solid Waste Franchise Agreement between the City and Franchisee ("Agreement").⁹ The Franchisee is contractually bound to remit Fee on its monthly total gross receipts, excluding only taxes and bad debts. Therefore, revenues obtained by a Franchisee generated by the leasing or rental of

² § 166.201, Fla. Stat. (2004).

³ § 22-46(d), Code.

⁴ No person shall engage in the business of removing or disposing of garbage, trash, or waste from any premises in the City or transport garbage, trash or waste through the public rights-of-way of the City without first having secured a franchise for such activities. All persons shall be required to obtain a franchise from the City in order to engage in commercial solid waste collection and disposal from any streets, public rights-of-way or property in the City. § 22-56(a), Code.

⁵ § 22-1, Code.

⁶ § 22-56(b), Code.

⁷ Article V, Franchise Fees, Sec. 5.2, Franchise Agreement.

⁸ The term "gross receipts" shall mean all monies, whether paid by cash, check, debit or credit, collected from customers for garbage, solid waste, fuel surcharge, construction and demolition debris, roofing materials, trash, litter, refuse and/or rubbish collection, removal and disposal services rendered, *or from any other source related directly from waste collection services by the franchise*, exclusive of taxes as provided by law, whether wholly or partially collected within the city, less bad debts. § 22-1, Code. (Emphasis added).

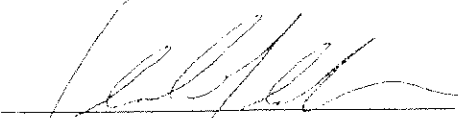
⁹ Article II, Definitions, Sec. 5.2, Franchise Agreement.

equipment used for waste collection services must be included in the gross receipt calculation of which the monthly total amount is subject to the Fee.

CONCLUSION

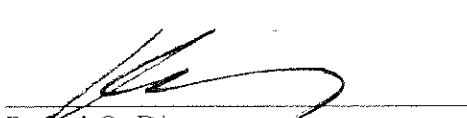
Both the Code and Agreement include, as gross receipts, all monies collected from customers or from any other source related directly from waste collection services. On the other hand, both the Code and Agreement exclude from gross receipts only taxes and bad debts. There are no other exemptions and everything else is subject to the Fee, as gross receipts. Therefore, revenues obtained by a Franchisee from the leasing or rental of equipment used for waste collection services must be included in the gross receipt calculation of which the monthly total amount is subject to the Fee. Under the Code (and Agreement), the City is entitled to receive from Franchisees the Fee amounts generated from the leasing or rental of equipment which is directly related to waste collection services.

PREPARED BY:



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