# Attachment 1

Noel Marquis, Assistant Director,
Administrative Services – Finance

# Decision and Findings in re:

# Business Tax Assessment Hearing

Specialty Surgical Center, LLC and
Specialty Surgical Center of Beverly Hills, L.P.

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|---|---|
| Hearing Date: | April 11, 2012 (continued through May 15, 2012 for submission of supplemental material) |
| Taxpayers: | Specialty Surgical Center, LLC (not in attendance) and Specialty Surgical Center of Beverly Hills, L.P. (not in attendance) |
| Hearing before: | Noel Marquis, Assistant Director<br>Department of Administrative Services |
| Also in Attendance: | Patrick K. Bobko, Esq., City Attorney's Office<br>Allan Cooper, Esq., Ervin, Cohen & Jessup<br>Phil Starr, Esq., Ervin, Cohen & Jessup<br>Pantea Yashar, Esq., Ervin, Cohen & Jessup |

## I. Summary of Assessment History

Taxpayers Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. (hereafter collectively "Specialty") operate outpatient surgery centers in the City of Beverly Hills ("City"). The City began investigating Specialty's operations a number of years ago and has conducted numerous discussions with its counsel and employees. As recently as August of 2011, City representatives met with

representatives of Specialty's management and ownership to exchange information regarding Specialty's operations.

There is little dispute regarding the specific facts of Specialty's operations. Instead, Specialty disputes the City's analysis and administrative treatment of those facts under controlling provisions of the Beverly Hills Municipal Code ("BHMC" or "Municipal Code").

Based on information Specialty provided to the City, the City informed Specialty that it determined Specialty was required to register and pay business taxes in the City's Classification "F" ("Class F") for registrants "engaged in the business of leasing or renting any commercial property." (BHMC Section 3-1-219). Specialty has objected to this determination and refused to register in Class F.

On January 9, 2012, the City issued an assessment for business taxes due in and for calendar years 2003 through 2011. On January 18, 2012, Specialty, through its counsel Ervin, Cohen & Jessup, requested a hearing on the assessment pursuant to BHMC Section 3-1-213.

The City scheduled and conducted a hearing on the assessment on April 12, 2012, before Noel Marquis, Assistant Director of Administrative Services. No representatives of Specialty appeared at the hearing. Instead, Specialty was represented by its counsel, Allan Cooper, Phil Starr and Pantea Yashar of Ervin, Cohen & Jessup. Specialty presented argument at the hearing as to why it believes it was not required to register and pay taxes in the City's Class F.

During the hearing, Mr. Marquis offered to maintain the hearing open until April 20, 2012, for the purpose of allowing Specialty to submit any additional documentation that it would like considered. At Specialty's request that deadline twice was extended to maintain the hearing open for supplemental document submission: first to April 27, 2012 and subsequently to May 15, 2012. Specialty submitted a letter brief ("Hearing Brief") dated April 12, 2012, which was received by the City on April 13, 2012. Further, Specialty submitted a letter dated May 8, 2012, which was received by the City on May 9, 2012, and which contained information on Specialty's gross receipts. Specialty made no further supplemental submissions, and the hearing closed on May 15, 2012.

## II. Documents Considered in Regard to Assessment and Hearing

The City has considered all correspondence and documents exchanged by Specialty or its counsel and the City, including, without limitation, the following:

Letter brief dated April 12, 2012, from Ervin, Cohen & Jessup

Letter dated May 8, 2012, from Ervin, Cohen & Jessup

## III. Summary of Taxpayer Operations and Arguments

The salient facts of Specialty's operation are not materially in dispute. Specialty operates two outpatient surgery centers. The centers provide fee-based surgical facility space for independent doctors to perform certain types of surgeries on their patients. These procedures do not require overnight recovery stays.

The doctors that perform the surgical procedures are not employed by Specialty. They maintain their own separate practices. When the doctor determines in his or her professional judgment that a surgical procedure is warranted, the doctor arranges with their patient to perform that procedure at Specialty's facilities. The doctor's office schedules the procedure at Specialty's facilities and provides Specialty the patient's name and medical information. (Hearing Brief, at p. 2.) Specialty, in turn, confirms that the patient has insurance, or other medical care coverage such as Medicare, that will pay Specialty's fee.

On the day of the surgery, the patient arrives at Specialty's facility and completes an admission process. Prior to the surgery, the patient may be attended to by a nurse. These nurses may be employed by Specialty or they may be independent contractors. The doctor separately arrives at Specialty's facility and performs the scheduled surgery in one of Specialty's surgical facilities. After the surgery is completed, the patient is taken to a recovery room, where he or she typically is attended to by a nurse who may be employed by Specialty. Upon appropriate recovery, the patient is discharged.

The patient is billed separately for both components of the procedure. The doctor charges a professional fee for his surgery (as do other physicians necessary to the procedure, such as an anesthesiologist). Independently, Specialty charges a facility fee for the procedure. These charges typically are paid directly by the patient's insurance at rates contracted with the charging party. Thus, Specialty has contracts with insurers that set a schedule of fees for different surgical uses of its facilities.

Specialty provided City staff the foregoing description of its operations, which description is consistent with the facts as described in Specialty's Hearing Brief. Based on these facts, the City determined that Specialty's business function is to provide surgical facility space for a fee. In this space doctors, who are not employed by Specialty, will perform surgical procedures upon patients that have no relationship to Specialty other than having been instructed by their doctors to appear at Specialty's facilities at a certain time.

To date, Specialty has registered its business and paid taxes in the City's Classification "C" ("Class C") for "professions and semiprofessions" as provided in BHMC Section 3-1-219. Such registration is proper because Specialty employs a number of nurses to provide care in aspects of the patient stay at Specialty's facility. Such services, however, are not the dominant, or even a substantial, component of the

facility product Specialty provides. Instead, they are supplemental services that support Specialty's core function of providing the surgical facility space in which doctors and patients can complete a surgical procedure.

BHMC Section 3-1-208(a) requires every business to register in, and pay a tax for, each type of business it performs. That section provides, in relevant part, as follows:

> "Unless otherwise provided in this article, every person who engages in any business within the city must register with the department of finance administration and pay a separate business tax for:
>
> * * *
>
> 2. Each type of business as set forth in section 3-1-219 of this article which a registrant conducts at every primary and branch establishment within the city."

In short, the registration and payment of business tax in multiple classes is required where a taxpayer engages in different types of business defined by the City's business classifications.

The City's Municipal Code places the "administrative function" of determining a business' classification upon city staff. (BHMC Section 3-1-212). Exercising that function, the City has determined that Specialty's dominant business activity – provision of surgical facility space for a fee – falls within Class F for "leasing or renting any commercial property."

During both the City's investigation and the assessment hearing, Specialty has denied that it is required to register in business tax Class F. Although cast in various forms, Specialty asserts two basic arguments in support of its position. First, it asserts (incorrectly) that the City has changed its administrative policy for the improper purpose of raising Specialty's taxes in violation of the California Constitution as reflected in the amendment passed by the voters as Proposition 218. Second, it asserts that as a definitional matter its operations do not fall within the terms of business tax Class F. Specialty's arguments are set forth in its Hearing Brief and are not repeated herein.

## IV. Analysis of Specialty's Arguments Against Assessment

### A. Administrative Investigation and Tax Classification Determination.

Specialty devotes a significant portion of its Hearing Brief attempting to mischaracterize the City's investigation and tax classification determination as a purposeful decision to change the tax treatment of surgery centers. In so doing,

Specialty relies heavily upon the fact that it always has registered only in Class C, but does not critically evaluate whether such a single class registration was appropriate. Specialty's argument essentially reduces to the assertion that the City should have discovered its incomplete registration earlier.

Specialty's argument fundamentally ignores the fact that the City's business tax is a self-reported tax. Under the Municipal Code, Specialty has the obligation to register in each defined classification in which it transacts business and to voluntarily report the appropriate measurement focus for such classification, *i.e.*, payroll hours for Class C and gross receipts for Class F. As with most taxes, the City has the right to investigate and audit taxpayers and, if necessary, assess additional taxes where registration and reporting have not been completed properly. There is no process, nor is there any requirement, for the City to analyze each taxpayer and its registration form for accuracy when filed each year.

Surgery centers are relatively new businesses. The nature of their operations is not generally known by the public and business models differ even among surgery centers. Until the City investigated Specialty, the City did not know the role Specialty played in the outpatient surgical process and that such role consisted of providing surgical facility space for a fee so that independent parties could perform surgical procedures. Once these operations were investigated the City determined that Specialty was required also to register in business Class F.

Specialty produced no evidence at the hearing (because none exists) that the City previously investigated Specialty, or similarly operated businesses, and determined that a single Class C registration for business tax was appropriate. Specialty's argument that the City changed its position to require multiple business class registration lacks the necessary predicate: evidence that the City ever took or endorsed the position that a single Class C registration was appropriate. The City took no position on Specialty's operations or its self-reported tax until the City investigated.

BHMC Section 3-1-208(a) plainly requires multiple tax classification registration where a taxpayer performs multiple defined business activities. The City's determination that registration in multiple tax classifications was appropriate simply applies pre-existing requirements of the City's Municipal Code. Specialty's repeated references to its filing of a single Class C registration for many years reflects nothing more than a pattern of non-compliance. The City's discovery of this non-compliance and subsequent assessment constitutes routine enforcement of the Municipal Code that rationally cannot be construed as a "change" of position.

Absent a change in position, Specialty's claim that the assessment violates the California Constitution as reflected in Proposition 218 carries no weight. Specialty cites as support the opinion in *AB Cellular LA, LLC v. City of Los Angeles*, 150 Cal.App.4th 747 (2007) involving utility taxation of cellular service. In that case, the City of Los

Angeles initially prepared and circulated to taxpayers a formal written position excluding certain transactions from taxation. That policy was submitted to the Los Angeles City Council for review in connection with other City decisions. The City of Los Angeles subsequently sought to reverse its position and tax the previously excluded transactions in response to federal legislation that it believed sanctioned broader taxation of cellular service. The Court of Appeal ruled that such a change in officially sanctioned methodology constituted an increase in taxation and required a vote for approval.

The facts of *AB Cellular* are critically different from the issues herein and undercut Specialty's arguments. The City has never issued any policy or instruction to Specialty sanctioning single Class C registration for Specialty; this observation absolutely precludes any possibility for a "change in methodology." Unlike *AB Cellular*, where the City of Los Angeles changed exclusions affecting the computation of taxable transactions within a utility tax framework, the City's methodology here is and has always been consistent: Taxpayers that transact businesses in two classes must register and pay taxes in each. Here, Specialty must (i) register and pay a per employee tax for Class C professionals and (ii) register and pay a gross receipts tax for Class F leasing or renting of commercial space. Contrary to Specialty's assertion, what has changed is not the City's treatment or the methodology of tax computation in the respective classifications, but rather, the fact that the City discovered Specialty's failure to properly register.

Specialty's numerous references to extraneous facts, and its accusations of improper motives, do not alter the analysis above. For example, Specialty accuses the City of investigating it and assessing additional taxes in order to increase revenue. That observation is irrelevant because BHMC Section 3-1-201(c) states in relevant part, "The required business tax is imposed pursuant to the taxing power of the city of Beverly Hills solely for the purpose of obtaining revenue." One of the main purposes of the City's power to investigate and assess is precisely to recover revenue due to the City but unpaid because taxpayers (such as Specialty) have failed to properly register and have underpaid their taxes.

Specialty's references to the fact the City staff considered an option of creating a new surgical center classification is similarly irrelevant because the City had no obligation to do so. City staff's consideration of alternatives is a prudent analytical step and the creation of a new tax classification could have addressed many concerns not at issue here, such as utilizing an alternate tax measurement focus for such a hypothetical class. Ultimately, staff concluded that multiple class registration within the existing classifications was appropriate. Whether Specialty would prefer a separate surgical center class is irrelevant.

In sum, Specialty has introduced no evidence that the City ever disseminated any official position that single Class C registration was appropriate for operations such

as those Specialty conducts. Hence, there has been no improper "change" of position. Specialty's attempt to buttress its incomplete argument with extraneous observations does not alter this analysis.

B. Specialty's Operations Fall Within the Terms of Class F for Leasing or Renting of Commercial Property.

Specialty argues alternatively that even if the City has not engaged in an improper change of policy, Specialty nonetheless is not obligated to register in Class F because its operations do not constitute "leasing or renting" of commercial property. To this end, it makes a number of strained definitional arguments. More importantly, it wholly ignores the fact that its sole reason for its existence is to provide surgical facility space in exchange for a fee.

The analysis of Class F begins with its own language, which applies to taxpayers in the business of "leasing or renting" commercial property. Specialty spends considerable effort in its Hearing Brief attempting to conflate the two terms with the intent of limiting the classification with concepts that apply predominantly to leasing. This approach, however, ignores the plain language that sets forth these two terms in the disjunctive. Use of the term "or" indicates the definition is intended to apply beyond whatever Specialty may consider to be formal leasing to the more general concept of "renting." Assuming for the sake of this analysis only that Specialty's activities do not fall within the concept of "leasing," such activities clearly fall within any ordinary understanding of the term "renting."

In common usage, the term "rent" ordinarily is understood as compensation or a fee for the use of property. The transaction or arrangement whereby people exchange this consideration is known as "renting." Consistent with this observation, Black's Law Dictionary (cited by Specialty) defines rent as: "Consideration paid, usu. periodically, for the use or occupancy of property (esp. real property)."

The two critical components of rent and renting are (i) "consideration" that is exchanged for (ii) "use" of property. Specialty's operations satisfy both requirements.

There is no reasonable dispute that Specialty receives consideration in its transactions. The "Facility Fee" it charges for the use of its facilities forms the gross receipts that are the subject of the City's assessment. Specialty even concedes on the second page of its Hearing Brief that at the time a procedure is scheduled, its staff confirms that Specialty has a contract for payment with the patient's insurance or other medical coverage provider, such as Medicare.

Specialty points to the fact that it does not charge a fee to the doctors performing the surgeries as rebutting the conclusion that it is "renting." Initially, such a fact is

irrelevant as neither the common understanding of "renting" nor the Class F definition are dependent on who pays the rent. It is enough that "rent" (*i.e.,* compensation for use of property) is paid to Specialty to establish it is in the business of renting.

More importantly, Specialty's argument ignores the practical reality of compensation for medical care. A specific patient's entire medical treatment, from diagnosis and consultation through treatment and follow-up typically is paid by third-party insurance or governmental medical coverage. Billing for all aspects of the care tends to be submitted separately by providers to these third-parties who, in turn, directly remit payment back to the providers. This payment arrangement does not alter the fundamental fact that Specialty is compensated a facility fee for use of its surgical space.

A simple review of Specialty's role in the transaction confirms that its facility fee is compensation for "use" of its surgical facility space. At the point Specialty is contacted to schedule a procedure, the doctor-patient relationship is already established: the patient has consulted the doctor who, in turn, has determined that a surgical procedure is necessary. What both doctor and patient need at that time is a space to perform the procedure and it is for this reason alone that they contact Specialty.

Specialty has no role in the performance of professional surgical services. Patients cannot go to the surgery center independently for treatment because Specialty does not employ any doctors to perform such surgeries. Instead, the patient's surgery will be performed by an independent doctor. The only reason a patient enters Specialty's facilities is because the patient's doctor has instructed him or her to meet there for the surgery.

Based on these facts, it is clear that the provision of surgical facility space is Specialty's overwhelmingly dominant business activity. Seeking to deflect attention on this point, Specialty observes that it provides a number of support functions, such as waiting room facilities, provision of medical supplies, *etc.* This observation does not alter the analysis. Specialty's reason for existence is the provision of the surgical facility space. Patients do not go to its office solely for the hospitality of the waiting room or to obtain a roll of medical tape. Patients go for surgery performed in surgical space. Other services are wholly dependent upon and support the surgical facility function, much like housekeeping services and cosmetic consumables are part of the rental fee charged for a hotel room.

Finally, Specialty seeks to distract attention from the fact that it is renting commercial space by focusing on its contention that neither the doctor nor the patient has an exclusive right to occupy the surgical facility and that they utilize certain common facilities. Assuming for the sake of argument only that exclusive possession was a requirement for a "lease" there is no such requirement for the broader term "renting" as

it is commonly understood. Many common rental arrangements, such as hotels, include within the rent the right to use common areas with others.

Further, Specialty's argument that neither the doctor nor the patient is entitled to exclusive possession likely overstates the practical reality. Surgical environments are highly controlled settings and it is unlikely that non-essential personnel are entitled to just walk-into the middle of a surgical procedure. Even Specialty's personnel likely are not allowed to enter the surgical environment unless they have the doctor's consent and are necessary to the surgical procedure. In this regard, the transaction is similar to a number of common rental transactions - such as office, residence and hotel renting - whereby the owner has the right to enter the rented space for certain functions (such as maintenance, security and inspection) but the parties have an agreement regarding non-disturbance during its use.

A plain analysis of Specialty's operations demonstrates that its provision of surgical facility space for a fee conforms at a minimum to the ordinary and common meaning of the broad term "renting."

C. Registration and Allocation of Gross Receipts to Class F

The City's assessment of business taxes for Specialty allocated seventy-five percent (75%) of Specialty's gross receipts to Class F. Specialty introduced no evidence during the assessment hearing supporting an alternate percentage allocation to Class F. Accordingly, Specialty has waived any claim to have the Hearing Officer consider an alternate allocation.

Rather than provide evidence of an alternate allocation of gross receipts, Specialty argues that the requirement to register in Class C somehow subsumes all "renting" activity and, therefore, no allocation to Class F should be required. In this regard, Specialty misconstrues both the requirements of the City's Municipal Code and the effect of Specialty's multiple operations.

The Municipal Code plainly requires registration and payment of taxes in multiple classifications for each type of business operation described in the classifications of BHMC Section 3-1-219. As set forth above, Specialty's activity consists predominantly of making surgical facility space available for a fee – conduct which, at a minimum, falls within the Class F definition of "renting." The existence of a professional component merely adds an additional classification in which Specialty must register and pay taxes. The registration and tax obligations are additive and the observation that professional services are provided through employee nurses only operates to increase those obligations.

Based on the City's dialogue with Specialty and all information submitted in connection therewith, the City has determined that Specialty's renting of surgical facility space is its overwhelmingly dominant operation. Such professional services as are provided by Specialty's nurses are performed in support of that dominant operation. The City finds that Specialty's operations are consistent with an allocation to Class F of not less than seventy-five percent (75%) of its gross receipts, and that the corresponding reduction of gross receipts by twenty-five percent (25%) on account of its professional activities is fair and reasonable.

D. Submission of Gross Receipts Data

The City held the assessment hearing open until May 15, 2012, pursuant to multiple requests by Specialty to allow for the submission of supplemental data for the Hearing Officer's consideration. By letter dated May 8, 2012, Specialty's attorneys submitted additional information regarding the calculation of Specialty's gross receipts for the years under assessment.

The May 8, 2012, letter was signed by Specialty's counsel who certified that it contained "true and correct" information regarding gross receipts. The Hearing Officer has reviewed the May 8, 2012, letter and accepts the accuracy of the data therein based on the representations of Specialty's counsel. Accordingly, the assessment amount set forth in the Hearing Officer's findings herein has been revised to reflect this supplemental information.

E. Objection to Hearing Officer

Specialty objects in its Hearing Brief to the undersigned acting as Hearing Officer due to participation in the City's investigation of surgery centers and the resulting assessment of business taxes against Specialty. This objection is not well-founded. The Municipal Code specifically contemplates that this hearing be conducted before a final assessment is rendered by staff who have been investigating this matter. BHMC Section 3-1-213(h) indicates that a purpose of the hearing is for the registrant to "submit evidence why the assessed tax interest and penalties should not be fixed." The hearing is an opportunity for the Hearing Officer to receive input from a taxpayer and is not adversarial. No person played any prosecutorial role in the hearing. The Hearing Officer has received all submitted evidence and is in the best position to consider such evidence pursuant to City administrative policy. As set forth below, if Specialty disagrees with the findings herein, it may appeal the final assessment to the City Council.

## V. Findings

By this letter Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. are hereby informed that the City of Beverly Hills makes a finding of assessment as follows:

1. Specialty Surgical Center, LLC is conducting business in the City of Beverly Hills at 9675 Brighton Way, Suite 100, Beverly Hills, CA 90210.

2. Specialty Surgical Center of Beverly Hills, L.P. is conducting business in the City of Beverly Hills at 8670 Wilshire Blvd., Suite 301, Beverly Hills, CA 90211.

3. Surgical Centers such as Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. conduct business operations in "Classification F: Commercial Property Renting And Leasing" and "Classification C: Professions And Semiprofessions" under the City's Municipal Code. (Municipal Code Section 3-1-219).

4. Businesses in Classification F must pay an annual gross receipts tax for each one thousand dollars ($1,000) of gross receipts, based on the annualized actual gross receipts of the prior calendar year. (Municipal Code Section 3-1-219).

5. The tax rate in Classification F is $23.50 per one thousand dollars ($1,000) of gross receipts.

6. Businesses in Classification C must pay an "annual tax for each professional and semiprofessional employee, based on the annualized average number of professional and semiprofessional persons employed in the prior calendar year . . . plus a per employee tax for each nonprofessional employee, based on the annualized average number of nonprofessional persons employed in the prior calendar year. . . ." (Municipal Code Section 3-1-219).

7. The current tax rate for Classification C is $1,322.90 for the first 2,080 hours of professional and semiprofessional payroll and 0.63606 per each additional hour of professional and semiprofessional hours plus 0.12778 for each hour of nonprofessional employee payroll.

8. Gross receipts is defined, in relevant part, as the "total amount of the sales price of all sales, the total amount charged or received for the performance of any act, service or employment of whatever nature it may be" and "without any deductions therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever." (Municipal Code Section 3-1-205).

9. The City's Municipal Code Section 3-1-205 provides the following relevant definitions:

   "NUMBER OF PROFESSIONAL AND SEMIPROFESSIONAL PAYROLL HOURS; PROFESSIONAL BUSINESS CLASSIFICATIONS: One of the following:

   a. Where the professional business being registered bills its clientele based on total professional and/or semiprofessional hours of service provided, the total number of professional and semiprofessional hours charged to client accounts, whether compensation of any form whatsoever has been received, in the previous calendar year.

   b. Where the professional business being registered does not bill its clientele based on total professional and/or semiprofessional hours of service provided, the total number of professional and semiprofessional payroll hours recorded, including, but not limited to, regular, overtime, part time, vacation, compensated absences, and all other hours for which compensation of any form is provided, of professional and semiprofessional persons employed in the registrant's business within the city of Beverly Hills, in the previous calendar year."

   "NUMBER OF PAYROLL HOURS; NONPROFESSIONAL BUSINESS CLASSIFICATIONS: The total number of payroll hours recorded, including, but not limited to, regular, overtime, part time, vacation, compensated absences, and all other hours for which compensation of any form is provided, of persons employed in the registrant's business within the city of Beverly Hills in the previous calendar year."

10. Based on the information available to the City of Beverly Hills, Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. are providers of space for the performance of outpatient surgical procedures and providers of professional services related to the care of patients during such procedures.

11. Based on the information available to the City of Beverly Hills, Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. were required to register in both Classification C and Classification F and pay business taxes required by each classification, but failed to do so.

12. The City of Beverly Hills finds that not less than seventy-five percent (75%) of the gross receipts of Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. are attributable to Classification F operations.

13. Based on the best information available to the City of Beverly Hills, Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. have tax liability to the City of Beverly Hills for business taxes due in and for calendar years 2003 through 2011 in the amount of $5,536,365.48 as follows:

**Classification F Tax**

| Tax Basis Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | |
|---|---|---|---|---|---|---|---|---|---|---|
| For Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
| Speciality Surgical Center LLC | | | | | | | | | | |
| Gross Receipts | 11,208,125.00 | 12,484,318.00 | 8,403,947.00 | 5,301,167.00 | 5,020,620.00 | 5,434,673.00 | 6,767,949.00 | 7,137,213.00 | 7,089,476.00 | 68,847,488.00 |
| Allocation to F Class | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | |
| Tax Bases | 8,406,093.75 | 9,363,238.50 | 6,302,960.25 | 3,975,875.25 | 3,765,465.00 | 4,076,004.75 | 5,075,961.75 | 5,352,909.75 | 5,317,107.00 | 51,635,616.00 |
| Tax | 197,543.20 | 220,036.10 | 148,119.57 | 93,433.07 | 88,488.43 | 95,786.11 | 119,285.10 | 125,793.38 | 124,952.01 | 1,213,436.98 |
| Payments | - | - | - | - | - | - | - | - | - | - |
| Tax Due: | 197,543.20 | 220,036.10 | 148,119.57 | 93,433.07 | 88,488.43 | 95,786.11 | 119,285.10 | 125,793.38 | 124,952.01 | 1,213,436.98 |
| Peanlty Rate | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | |
| Penalty | 98,771.60 | 110,018.05 | 74,059.78 | 46,716.53 | 44,244.21 | 47,893.06 | 59,642.55 | 62,896.69 | 62,476.01 | 606,718.49 |
| Interest Rate | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | |
| Tax due date | 1/31/2003 | 1/31/2004 | 1/31/2005 | 1/31/2006 | 1/31/2007 | 1/31/2008 | 1/31/2009 | 1/31/2010 | 1/31/2011 | |
| Months of Interest | 113 | 101 | 89 | 77 | 65 | 53 | 41 | 29 | 17 | |
| Interest Charge | 334,835.73 | 333,354.70 | 197,739.62 | 107,915.18 | 85,276.22 | 76,149.96 | 73,360.34 | 54,720.12 | 31,862.76 | 1,296,214.64 |
| Total Due: | 631,150.53 | 663,408.86 | 419,918.97 | 248,064.80 | 219,008.86 | 219,829.13 | 252,287.99 | 243,410.19 | 219,290.79 | 3,116,370.10 |
| Specialty Surgical Center of Beverly Hills, L.P. | | | | | | | | | | |
| Gross Receipts | - | 24,895.00 | 5,513,662.00 | 11,332,599.00 | 10,208,073.00 | 7,334,861.00 | 9,131,254.00 | 8,417,143.00 | 7,870,143.00 | 59,832,630.00 |
| Allocation to F Class | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | |
| Tax Bases | - | 18,671.25 | 4,135,246.50 | 8,499,449.25 | 7,656,054.75 | 5,501,145.75 | 6,848,440.50 | 6,312,857.25 | 5,902,607.25 | 44,874,472.50 |
| Tax | - | 438.77 | 97,178.29 | 199,737.06 | 179,917.29 | 129,276.93 | 160,938.35 | 148,352.15 | 138,711.27 | 1,054,550.10 |
| Payments | - | - | - | - | - | - | - | - | - | - |
| Tax Due: | - | 438.77 | 97,178.29 | 199,737.06 | 179,917.29 | 129,276.93 | 160,938.35 | 148,352.15 | 138,711.27 | 1,054,550.10 |
| Peanlty Rate | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | |
| Penalty | - | 219.39 | 48,589.15 | 99,868.53 | 89,958.64 | 64,638.46 | 80,469.18 | 74,176.07 | 69,355.64 | 527,275.05 |
| Interest Rate | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | |
| Tax due date | 1/31/2003 | 1/31/2004 | 1/31/2005 | 1/31/2006 | 1/31/2007 | 1/31/2008 | 1/31/2009 | 1/31/2010 | 1/31/2011 | |
| Months of Penalty | 113 | 101 | 89 | 77 | 65 | 53 | 41 | 29 | 17 | |
| Interest Charge | - | 664.74 | 129,733.02 | 230,696.30 | 175,419.35 | 102,775.16 | 98,977.09 | 64,533.18 | 35,371.37 | 838,170.22 |
| Total Due: | - | 1,322.90 | 275,500.46 | 530,301.89 | 445,295.28 | 296,690.54 | 340,384.61 | 287,061.40 | 243,438.28 | 2,419,995.37 |

**Classification C Tax**

| Tax Basis Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | |
|---|---|---|---|---|---|---|---|---|---|---|
| For Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
| Speciality Surgical Center LLC | | | | | | | | | | |
| Tax | 21,846.60 | 14,966.13 | 8,866.96 | 8,866.96 | 8,570.08 | 12,131.47 | 13,684.46 | 13,725.53 | 15,050.15 | 117,708.34 |
| Payments | (21,846.60) | (14,966.13) | (8,866.96) | (8,866.96) | (8,570.08) | (12,131.47) | (13,684.46) | (13,725.53) | (15,050.15) | (117,708.34) |
| Tax Due | - | - | - | - | - | - | - | - | - | - |
| Specialty Surgical Center of Beverly Hills, L.P | | | | | | | | | | |
| Tax | 2,402.02 | 19,416.62 | 26,676.01 | 26,676.01 | 25,324.32 | 34,092.04 | 31,751.61 | 29,996.85 | 28,348.41 | 224,683.89 |
| Payments | (2,402.02) | (19,416.62) | (26,676.01) | (26,676.01) | (25,324.32) | (34,092.04) | (31,751.61) | (29,996.85) | (28,348.41) | (224,683.89) |
| Tax Due | - | - | - | - | - | - | - | - | - | - |

| For Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
|---|---|---|---|---|---|---|---|---|---|---|
| Total due | | | | | | | | | | |
| Speciality Surgical Center LLC and Speciality Surgical Center of Beverly Hills L.P | 631,150.53 | 664,731.76 | 695,419.43 | 778,366.68 | 664,304.14 | 516,519.67 | 592,672.60 | 530,471.59 | 462,729.06 | 5,536,365.48 |

These findings have determined that Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P.'s liabilities for unpaid business taxes due in and for calendar years 2003 through 2011, including penalties and interest thereon through June 30, 2012, as set forth above, is $5,536,365.48. Thereafter, a monthly interest charge of $34,019.81 (at a rate of 18% per annum) will be added to this balance until this obligation has been fully satisfied. A copy of the chart set forth above is attached hereto.

The City's Municipal Code Section 3-1-213 (L) "Appeal From The Decisions of the Director of Finance" provides you the following appeal rights to this decision:

> L. "Appeal From The Decisions Of The Director Of Finance Administration: Any registrant or person assessed not in agreement with the decision of the director of finance administration with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council as provided in title 1, chapter 4, article 1 of this code. (Ord. 96-O-2255, eff. 3-22-1996)"

Title 1, Chapter 4, Article 1 provides the following:

**1-4-101: RIGHT TO APPEAL:**

A. Where a right of appeal to council exists under this code, and a procedure is not otherwise specifically set forth in this code, an appeal may be taken to the council, in accordance with the procedures set forth in this article, from any act, ruling, or determination of any commission, board, or official or from the denial, suspension, or revocation of any permit or license.

B. No right of appeal to the council from any administrative decision made by an official of the city pursuant to any of the provisions of this code shall exist when such decision is ministerial and thus does not involve the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of this code.

C. No appeal pursuant to the provisions of this article may be taken from any administrative decision made by an official of the city, unless the decision to appeal has been first taken up with the official rendering the decision. (1962 Code § 1-6.101)

**1-4-102: TIME WITHIN WHICH APPEAL PETITIONS MUST BE FILED; WITHDRAWAL OF APPEAL PETITIONS:**

A. Any appeal petition shall be filed with the city clerk within fourteen (14) calendar days after the date of the decision. In the event the last day of the filing period falls on a nonbusiness day, the appeal period shall be extended to include the next business day. The timely filing of the appeal petition is jurisdictional. The fee schedule for appeal petitions shall be approved by the council and maintained on file by the director of finance administration.

B. If an appeal petition, filed pursuant to subsection A of this section, is withdrawn at any time prior to the council decision on the appeal petition, then subsequent to such withdrawal, the council may review the decision which was the subject of the withdrawn petition. Such review may be ordered by motion of the council duly adopted within fifteen (15) calendar days after the appeal petition is withdrawn. If the council orders a review of such a decision, the effectiveness of such decision shall be stayed until council review is final. (1962 Code § 1-6.102; amd. Ord. 94-O-2211, eff. 9-2-1994)

**1-4-103: CONTENTS OF APPEAL PETITIONS:**

Every appeal petition shall contain a statement of the facts upon which the appeal is based in sufficient detail to enable the council to understand the nature of the controversy, the basis of the appeal, and the relief requested. (1962 Code § 1-6.103)

**1-4-104: STAYS PENDING APPEALS:**

Upon the filing of an appeal petition, the effectiveness of any permit, entitlement to use, or other right granted by the decision appealed from shall be stayed pending a final decision by the council. (1962 Code § 1-6.104)

**1-4-105: CONSIDERATION OF APPEAL PETITIONS:**

After an appeal petition is filed in accordance with this article, the city clerk shall place the matter on the council agenda for council action. Based on the appeal petition and the written material presented, the council shall determine whether to refer the matter back to the commission, board, or official rendering the decision pursuant to subsection A of this section or whether to grant a hearing on the appeal pursuant to subsection B of this section. The council shall not permit oral testimony in its determination under this section.

A. If the council finds the facts in the appeal petition contain new and material evidence not previously presented to the board, commission, or official, the council may order that the board, commission, or official rehear the matter. Written notice of the rehearing shall be mailed to the appellant and to such other persons who have appeared and addressed the board, commission, or official at the prior hearing in connection with such matter, and mailing shall be at least ten (10) days before such rehearing, and such other notice as required by law for the previous hearing shall also be given.

B. Except as provided for in subsection A of this section, the council shall set the matter for a hearing. At least ten (10) days prior to the hearing, written notice shall be mailed to the appellant and to other persons who appeared and addressed the board, commission, or official at the prior hearing on the matter, and such other notice as required by law for the previous hearing shall also be given. (1962 Code § 1-6.105)

**1-4-106: HEARINGS BY THE COUNCIL:**

Unless otherwise ordered and noticed, hearings shall be held as a part of the regular meetings of the council. The hearing shall be de novo in that an independent reexamination of the matter shall be made. The appellant shall have the burden of proof in all cases, and where it appears that an appellant was served with a notice of hearing but fails to appear either in person or by counsel, or fails to present or offer evidence, the council may adopt the determination or approve the act of the board, commission, or official, or it may itself decide the matter upon the record with or without taking any additional evidence. Any oral or documentary evidence may be received, but the mayor shall exclude irrelevant, immaterial, or unduly repetitious evidence. Unless a demand is made, witnesses will not be sworn. It shall not be a ground for objection that the evidence is hearsay or secondary, however, the council's decision shall be made upon substantial evidence. (1962 Code § 1-6.106)

**1-4-107: DECISIONS BY THE COUNCIL FINAL:**

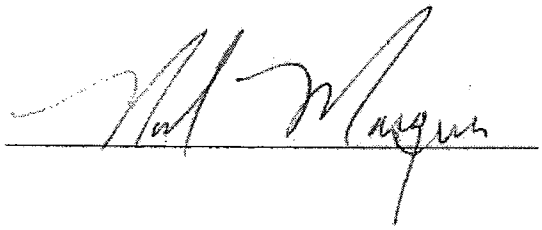
Upon the hearing of the appeal, the council may refer the matter back to the board, commission, or official, with directions for further consideration, or the council may reverse, affirm, or modify the decision or may make such decision or determination as may appear just and reasonable in the light of the evidence presented. The decision of the council shall be final and conclusive at one minute after twelve o'clock (12:01) midnight on the first day after issuance. (1962 Code § 1-6.107)

**1-4-108: FINDINGS BY THE COUNCIL:**

The council shall prepare written findings if, prior to closing the public hearing, the appellant, the applicant, or an aggrieved party requests the council to make written findings. In such event, the council shall direct the city attorney to draft a resolution containing the facts found to be true, which findings shall be considered and adopted by resolution at a subsequent regular meeting of the council. The findings shall include the reasons for the council's ruling, including, but not limited to, findings of facts, if any, required by the code sections or ordinance upon which the appeal is based. (1962 Code § 1-6.108)

**ISSUED THIS 7th DAY OF JUNE, 2012**

NOEL MARQUIS
Hearing Officer



Enclosure

## Classification F Tax

| Tax Basis Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | |
|---|---|---|---|---|---|---|---|---|---|---|
| For Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
| Speciality Surgical Center LLC | | | | | | | | | | |
| Gross Receipts | 11,208,125.00 | 12,484,318.00 | 8,403,947.00 | 5,301,167.00 | 5,020,620.00 | 5,434,673.00 | 6,767,949.00 | 7,137,213.00 | 7,089,476.00 | 68,847,488.00 |
| Allocation to F Class | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | |
| Tax Bases | 8,406,093.75 | 9,363,238.50 | 6,302,960.25 | 3,975,875.25 | 3,765,465.00 | 4,076,004.75 | 5,075,961.75 | 5,352,909.75 | 5,317,107.00 | 51,635,616.00 |
| Tax | 197,543.20 | 220,036.10 | 148,119.57 | 93,433.07 | 88,488.43 | 95,786.11 | 119,285.10 | 125,793.38 | 124,952.01 | 1,213,436.98 |
| Payments | - | - | - | - | - | - | - | - | - | - |
| Tax Due: | 197,543.20 | 220,036.10 | 148,119.57 | 93,433.07 | 88,488.43 | 95,786.11 | 119,285.10 | 125,793.38 | 124,952.01 | 1,213,436.98 |
| Peanlty Rate | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | |
| Penalty | 98,771.60 | 110,018.05 | 74,059.78 | 46,716.53 | 44,244.21 | 47,893.06 | 59,642.55 | 62,896.69 | 62,476.01 | 606,718.49 |
| Interest Rate | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | |
| Tax due date | 1/31/2003 | 1/31/2004 | 1/31/2005 | 1/31/2006 | 1/31/2007 | 1/31/2008 | 1/31/2009 | 1/31/2010 | 1/31/2011 | |
| Months of Interest | 113 | 101 | 89 | 77 | 65 | 53 | 41 | 29 | 17 | |
| Interest Charge | 334,835.73 | 333,354.70 | 197,739.62 | 107,915.19 | 86,276.22 | 76,149.96 | 73,360.34 | 54,720.12 | 31,862.76 | 1,296,214.64 |
| **Total Due:** | 631,150.53 | 663,408.86 | 419,918.97 | 248,064.80 | 219,008.86 | 219,829.13 | 252,287.99 | 243,410.19 | 219,290.79 | 3,116,370.10 |
| Specialty Surgical Center of Beverly Hills, L.P. | | | | | | | | | | |
| Gross Receipts | - | 24,895.00 | 5,513,662.00 | 11,332,599.00 | 10,208,073.00 | 7,334,861.00 | 9,131,254.00 | 8,417,143.00 | 7,870,143.00 | 59,832,630.00 |
| Allocation to F Class | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | 75% | |
| Tax Bases | - | 18,671.25 | 4,135,246.50 | 8,499,449.25 | 7,656,054.75 | 5,501,145.75 | 6,848,440.50 | 6,312,857.25 | 5,902,607.25 | 44,874,472.50 |
| Tax | - | 438.77 | 97,178.29 | 199,737.06 | 179,917.29 | 129,276.93 | 160,938.35 | 148,352.15 | 138,711.27 | 1,054,550.10 |
| Payments | - | - | - | - | - | - | - | - | - | - |
| Tax Due: | - | 438.77 | 97,178.29 | 199,737.06 | 179,917.29 | 129,276.93 | 160,938.35 | 148,352.15 | 138,711.27 | 1,054,550.10 |
| Peanlty Rate | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | |
| Penalty | - | 219.39 | 48,589.15 | 99,868.53 | 89,958.64 | 64,638.46 | 80,469.18 | 74,176.07 | 69,355.64 | 527,275.05 |
| Interest Rate | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | 1.50% | |
| Tax due date | 1/31/2003 | 1/31/2004 | 1/31/2005 | 1/31/2006 | 1/31/2007 | 1/31/2008 | 1/31/2009 | 1/31/2010 | 1/31/2011 | |
| Months of Penalty | 113 | 101 | 89 | 77 | 65 | 53 | 41 | 29 | 17 | |
| Interest Charge | - | 664.74 | 129,733.02 | 230,696.30 | 175,419.35 | 102,775.16 | 98,977.09 | 64,533.18 | 35,371.37 | 838,170.22 |
| **Total Due:** | - | 1,322.90 | 275,500.46 | 530,301.89 | 445,295.28 | 296,690.54 | 340,384.61 | 287,061.40 | 243,438.28 | 2,419,995.37 |

## Classification C Tax

| Tax Basis Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | |
|---|---|---|---|---|---|---|---|---|---|---|
| For Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
| Speciality Surgical Center LLC | | | | | | | | | | |
| Tax | 21,846.60 | 14,966.13 | 8,866.96 | 8,866.96 | 8,570.08 | 12,131.47 | 13,684.46 | 13,725.53 | 15,050.15 | 117,708.34 |
| Payments | (21,846.60) | (14,966.13) | (8,866.96) | (8,866.96) | (8,570.08) | (12,131.47) | (13,684.46) | (13,725.53) | (15,050.15) | (117,708.34) |
| Tax Due: | - | - | - | - | - | - | - | - | - | - |
| Specialty Surgical Center of Beverly Hills, L.P. | | | | | | | | | | |
| Tax | 2,402.02 | 19,416.62 | 26,676.01 | 26,676.01 | 25,324.32 | 34,092.04 | 31,751.61 | 29,996.85 | 28,348.41 | 224,683.89 |
| Payments | (2,402.02) | (19,416.62) | (26,676.01) | (26,676.01) | (25,324.32) | (34,092.04) | (31,751.61) | (29,996.85) | (28,348.41) | (224,683.89) |
| Tax Due: | - | - | - | - | - | - | - | - | - | - |

| For Calendar Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
|---|---|---|---|---|---|---|---|---|---|---|
| Total due | | | | | | | | | | |
| Speciality Surgical Center LLC and Speciality Surgical Center of Beverly Hills L.P. | 631,150.53 | 664,731.76 | 695,419.43 | 778,366.68 | 664,304.14 | 516,519.67 | 592,672.60 | 530,471.59 | 462,729.06 | 5,536,365.48 |