



To: City Council

Through: Jim Smith, City Attorney

From: Kelly Gregan, Assistant City Attorney

Date: June 21, 2016

Subject: City Council Study Session June 23, 2016
Direction on Potential Appeal
City of Phoenix, et al. v. Orbitz Worldwide Inc., et al. (TX2014-000470)

The City Attorney's Office is seeking direction from the City Council as to whether the City of Mesa ("Mesa") should join in the potential appeal of the case titled *City of Phoenix, et al. v. Orbitz Worldwide Inc., et al.* ("Tax Court Case"). Mesa is currently a plaintiff in the Tax Court Case, along with ten other Arizona cities (collectively "Plaintiffs"); the defendants in the litigation are certain online travel companies ("OTCs"). The lawsuit raises the question of whether the OTCs are engaged in a taxable business activity under the Model City Tax Code.

On April 20, 2016, the judge in the Tax Court Case issued a ruling on motions for summary judgment filed by both parties. The court's ruling found, in pertinent part: (i) that the actions of the OTCs - facilitating reservations at hotels - fell within the definition of a "broker" under the Model City Tax Code and was therefore a taxable business activity; and (ii) the Plaintiffs could not assess any tax, penalty or interest retroactively before 2013. The Plaintiffs filed a motion for the issue of the retroactivity to be reconsidered by the Tax Court Case judge. To date, neither party has filed an appeal in the case, but there is potential for either party to file an appeal.