

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 7, 2005

Decision: MTHO #205

Tax Collector: City of Phoenix

Hearing Date: November 22, 2004

DISCUSSION

Introduction

A protest was filed on August 26, 2004 by *Taxpayer* (“Taxpayer”) of an assessment made by the City of Phoenix (“City”). After review, the City concluded on September 2, 2004 that the protest was timely and in the proper form. On September 3, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before October 18, 2004. On October 13, 2004, the City filed a response to the protest. On October 18, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before November 8, 2004. On October 26, 2004, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on November 22, 2004. The City appeared and presented evidence at the November 22, 2004 hearing while the Taxpayer failed to appear. On November 24, 2004, the Hearing Officer ordered the Taxpayer to provide good cause for failing to appear at the hearing along with any written evidence on or before December 27, 2004. On February 5, 2005, the Hearing Officer indicated the Taxpayer failed to provide any good cause or written evidence and as a result the record was being closed and a written decision would be issued on or before March 22, 2005.

City Position

The City performed an audit of the Taxpayer for the period February 2004 through May 2004. As a result, the Taxpayer was assessed taxes of \$5,273.02 on speculative builder revenue along with interest of \$119.24 up through July 2004. According to the City, the Taxpayer had purchased properties located at _____ Road (“*A Property*” and “*B Property*”). The *A Property* had an existing house, garage, pool and fence. The *B Property* had only an existing fence. While the Taxpayer indicated his original intent was to make repairs to the *A Property* and rent out the house, the Taxpayer decided it would be too costly to make repairs. As a result, the Taxpayer demolished the existing house and built a new house. A new house was also built on the *B Property*.

As a result, the City concluded the Taxpayer was an “owner-builder” as defined in City Code Section 14-100 (“Section 100”) as an owner of real property that constructs or has constructed any improvements to real property. The City argued that when the Taxpayer sold the properties he became a speculative builder pursuant to Section 100 and 416. The

City asserted that the Taxpayer's original intent of purchasing the *A* Property to rent out is not relevant. The City argued that the City Code does not contain provisions that allow a reduction in the sales price for a speculative builder. The City indicated the Taxpayer's argument about not being taxable if he were the homeowner is without merit. According to the City, the Taxpayer does not meet the requirements of City Regulation 14-416.1 ("Regulation 416") to qualify as a homeowner's bona fide non-business sale of a family residence. Based on all the above, the City requested the assessment is valid and should be upheld.

Taxpayer Position

The Taxpayer asserted that there was an existing house, garage, pool and fence on the *A* Property. The Taxpayer estimated the value of the existing house, garage, pool and fence was \$40,000.00. The Taxpayer indicated the intent was to repair the *A* Property and use it as a rental. According to the Taxpayer, he had other rentals in the area. The Taxpayer argued that if he had been a homeowner living in a house with fire damage and decided to knock it down, replace it, and then sell it, it would not be subject to the sales tax. As a result, the Taxpayer argued he should not be taxed on the *A* Property. Even if the sale was taxable, the Taxpayer asserted there should be a deduction for the \$40,000.00 value of the pre-existing house and improvements.

ANALYSIS

The Taxpayer was the owner-builder of improved property consisting of the *A* and *B* Property. As a result, when the Taxpayer sold the *A* and *B* Property they were taxable sales pursuant to Section 416. There is nothing in Section 416 that would provide the sales were not taxable if the original intent was to rent the properties. There are some deductions available in Section 416 but those are related to taxes already paid. The City Code does not provide for any deduction for the cost or fair market value of the land. The homeowner's bona fide non-business sale set forth in Regulation 416.1 only applies if the property was actually used as the principal place of family residence by the immediate family of the seller for the six months prior to the sale. There was no evidence that the Taxpayer ever used either *A* or *B* Property as the principal place of family residence. Based on the above, the Taxpayer's protest should be denied.

FINDINGS OF FACT

1. A protest was filed on August 26, 2004 by the Taxpayer of an assessment made by the City.
2. After review, the City concluded on September 2, 2004 that the protest was timely and in the proper form.
3. On September 3, 2004, the Hearing Officer ordered the City to file a response to

- the protest on or before October 18, 2004.
4. On October 13, 2004, the City filed a response to the protest.
 5. On October 18, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before November 8, 2004.
 6. On October 26, 2004, a Notice scheduled the matter for hearing commencing on November 22, 2004.
 7. The City appeared and presented evidence at the November 22, 2004 hearing while the Taxpayer failed to appear.
 8. On November 24, 2004, the Hearing Officer ordered the Taxpayer to provide good cause for failing to appear at the hearing along with any written evidence on or before December 27, 2004.
 9. On February 5, 2005, the Hearing Officer indicated the Taxpayer failed to provide any good cause or written evidence and as a result the record was being closed and a written decision would be issued on or before March 22, 2005.
 10. The City performed an audit of the Taxpayer for the period February 2004 through May 2004.
 11. The Taxpayer was assessed taxes of \$5,273.02 on speculative builder revenue along with interest of \$119.24 up through July 2004.
 12. The Taxpayer had purchased the **A** and **B** Property.
 13. The **A** Property had an existing house, garage, pool and fence.
 14. The **B** Property had an existing fence.
 15. The Taxpayer's original intent was to make repairs to the **A** Property and rent out the house.
 16. Subsequently, the Taxpayer decided it would be too costly to make repairs.
 17. The Taxpayer demolished the existing house and built a new house.
 18. A new house was also built on the **B** Property.
 19. The Taxpayer then sold both the **A** Property and the **B** Property.
 20. The Taxpayer never used either the **A** Property or **B** Property as a principal place of family residence.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. The Taxpayer was a speculative builder pursuant to Section 416.
3. The City Code does not provide for any deduction for the cost or fair market value of the land from the speculative builder gross income.
4. The sale of the **A** and **B** Property did not qualify as homeowner's bona fide non-business sales as set forth in Regulation 416.1.
5. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the August 26, 2004 protest by *Taxpayer* of an assessment made by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer