

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 28, 2005

Decision: MTHO #212

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On September 30, 2004, *Taxpayer 1* (“*Taxpayer 1*”), *Taxpayer 2* (“*Taxpayer 2*”), and *Taxpayer 3* (“*Taxpayer 3*”) (Collectively, hereafter referred to as “Taxpayer”) filed protests of tax assessments made by the City of Phoenix (“City”). After review, the City concluded on October 12, 2004 that the protests were timely and in the proper form. On October 18, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protests on or before December 3, 2004. On November 30, 2004, the City filed a response to the protests. On December 1, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before December 27, 2004. On December 22, 2004, the Taxpayer filed a reply. On January 5, 2005, a Notice of Tax Hearing (“Notice”) scheduled the matter for a hearing commencing on February 24, 2005. On February 22, 2005, the Taxpayer requested the matter be reclassified as a redetermination. On February 24, 2005, the Hearing Officer reclassified the matter as a redetermination, closed the record, and indicated a written decision would be issued on or before April 11, 2005.

City Position

1. *Taxpayer 2*

The City performed an audit of *Taxpayer 2* for the period March 2003 through August 2003. The City determined that *Taxpayer 2* had built and sold five homes during this period which were taxable as speculative builder sales pursuant to City Code Section 14-416 (“Section 416”). The City assessed *Taxpayer 2* for taxes due of \$28,610.37, plus interest up through July 2004 of \$3,706.04, and penalties for failure to file or pay totaling \$7,152.58. The auditor contacted *Taxpayer 2* on several occasions to obtain documentation for the audit. While *Taxpayer 2* indicated they would be providing the requested documentation, none was ever provided. Because the City was unsuccessful in obtaining the documentation, the City estimated the tax liability by using Affidavits of Property Value (“Affidavits”) through the Maricopa County Recorder’s Office (“County”).

The City assessed penalties pursuant to City Code Section 540 (“Section 540”) for failing to timely file reports or timely pay taxes because *Taxpayer 1* was a Member of *Taxpayer 2*. According to the City, *Taxpayer 1* was also President of an entity that was licensed for the same business activity of speculative building. The license was obtained in April 2001. The City argued the fact that *Taxpayer 1* was involved in another speculative

builder entity demonstrates that he had knowledge of the speculative builder tax. Section 14-540(a) imposes interest on taxes which are due or found to be due before the delinquency date. The City asserted that interest may not be waived or abated by the City of the Hearing Officer unless the tax is abated.

2. Taxpayer 3

The City performed an audit of *Taxpayer 3* for the period September 2002 through March 2004. The City determined that *Taxpayer 3* built and sold three homes during the audit period which were taxable as speculative builder sales pursuant to Section 416. The City assessed *Taxpayer 3* for taxes due of \$20,581.04, plus interest of \$2,650.91 up through July 2004 and penalties for failing to file or pay totaling \$5,145.27. The auditor contacted *Taxpayer 3* on several occasions to obtain documentation for the audit. No documentation was ever provided, as a result the City estimated the tax liability by using Affidavits through the County. *Taxpayer 3* argued that the sale of the property at “*Taxpayer 3* Property” should also have been included in the assessment against *Taxpayer 3*. As explain in the *Taxpayer 1* section, the City concluded the *Taxpayer 3* Property was taxable to *Taxpayer 1*.

The City assessed penalties because *Taxpayer 1* was a Member of *Taxpayer 3*.

3. Taxpayer 1

The City performed an audit of *Taxpayer 1* for August 2002. The City determined that *Taxpayer 1* improved and sold one home during this period which was taxable as speculative builder sale pursuant to Section 416. The City assessed *Taxpayer 1* for taxes due of \$8,751.76, and interest up through July 2004 in the amount of \$1,924.44. The auditor contacted *Taxpayer 1* on several occasions to obtain documentation for the audit. Because the City was unsuccessful in obtaining the documentation, the City estimated the tax liability by using Affidavits through the County. In response to the Taxpayer’s argument that the sale of the 307 Property should be taxable to *Taxpayer 3*, the City noted the vacant land was transferred to *Taxpayer 1* from *Taxpayer 3* on September 26, 2001. According to the City, the first permit was issued for a newly constructed single family home on January 7, 2002, at which time the *Taxpayer 1* were still the owners. The City indicated that a Certificate of Occupancy (“Certificate”) was issued to *Taxpayer 3* when the home was completed in August 2002. When the home was sold on August 23, 2002, the *Taxpayer 1* were listed as the sellers and *Taxpayer 1* signed as the seller.

Taxpayer Position

1. Taxpayer 2

The Taxpayer argued that the City did not give *Taxpayer 2* credit for any taxes paid by construction contractors. The Taxpayer indicated the following contractors worked on homes for *Taxpayer 2*:

Multiple Contractors

The Taxpayer asserted that *Taxpayer 2* is entitled to a credit against its liability as a speculative builder for any taxes paid on the construction of the subject homes pursuant to City Code Section 14-316(c)(3)(B) (“Section 316(c)”). The Taxpayer indicated they

were unable to determine how much tax the contractors actually paid and that the City would be in a better position to determine the amount of such taxes. As a result, the Taxpayer argued the Hearing Officer should order the City to help determine the amount of tax credit that is due. The Taxpayer argued that ***Taxpayer 2*** did not realize its sales were subject to the City's speculative builder's tax. Accordingly, the Taxpayer requested the penalties be abated.

2. Taxpayer 3

The Taxpayer argued that the City did not give ***Taxpayer 3*** credit for any taxes paid by construction contractors. The Taxpayer indicated the following contractors worked on homes for ***Taxpayer 3***:

Multiple Contractors

The Taxpayer asserted that ***Taxpayer 3*** is entitled to a credit against its liability as a speculative builder for any taxes paid on the construction of the subject homes pursuant to Section 316(c). The Taxpayer indicated they were unable to determine how much tax the contractors actually paid and that the City would be in a better position to determine the amount of such taxes. As a result, the Taxpayer argued the Hearing Officer should order the City to help determine the amount of tax credit that is due. The Taxpayer argued that ***Taxpayer 3*** did not realize its sales were subject to the City's speculative builder's tax. Accordingly, the Taxpayer requested the penalties be abated.

The Taxpayer argued that the ***Taxpayer 3*** Property should have been assessed against ***Taxpayer 3*** and not the ***Taxpayer 1***. The Taxpayer provided a copy of the Certificate showing that ***Taxpayer 3*** was the owner of the property in August of 2002. The Taxpayer argued that ***Taxpayer 3*** did not realize its sales were subject to the City's speculative builder's tax. Accordingly, the Taxpayer requested the penalties be abated.

3. Taxpayer 1

The Taxpayer argued that the City did not give ***Taxpayer 1*** credit for any taxes paid by construction contractors. The Taxpayer indicated the following contractors worked on homes for ***Taxpayer 1***:

Multiple Contractors

The Taxpayer asserted that ***Taxpayer 1*** is entitled to a credit against its liability as a speculative builder for any taxes paid on the construction of the ***Taxpayer 3*** Property pursuant to Section 316(c). The Taxpayer indicated they were unable to determine how much tax the contractors actually paid and that the City would be in a better position to determine the amount of such taxes. As a result, the Taxpayer argued the Hearing Officer should order the City to help determine the amount of such taxes.

The Taxpayer argued that because ***Taxpayer 3*** developed the entire subdivision, ***Taxpayer 3*** should be liable for the ***Taxpayer 3*** Property and not ***Taxpayer 1***. The Taxpayer provided a copy of a Certificate that the City issued in August of 2002 showing ***Taxpayer 3*** was the owner of the ***Taxpayer 3*** Property at that time.

ANALYSIS

The primary issue in this matter is whether or not the Taxpayer was entitled to credits for taxes paid to the City by the various construction contractors. Clearly, the Taxpayer was entitled pursuant to Section 416 to a tax credit for taxes paid to the City by the various construction contractors. However, the burden of proof is on the Taxpayer to provide documentation to demonstrate that such taxes were paid. In this case, the Taxpayer has provided no such documentation and as a result there can be no tax credits.

As to the *Taxpayer 3* Property and the appropriate taxpayer, we must conclude that *Taxpayer 1* was the appropriate taxpayer. While the Certificate may have referred to *Taxpayer 3* as the owner, all the other documentation including the sales contract for the improved *Taxpayer 3* Property show *Taxpayer 1* was the owner and thus responsible for the speculative builder sale.

The last issue involves the penalties assessed *Taxpayer 2* and *Taxpayer 3*. First, it is clear that the City was authorized pursuant to City Code Section 540 to impose penalties for failing to timely pay or timely file reports. The issue is whether or not there is any basis for waiving such penalties. Section 540 provides various reasons to waive penalties which would demonstrate that the Taxpayer had reasonable cause for failing to timely pay and/or timely file reports. Previously, we have waived such penalties when Taxpayer were not aware of the speculative builder tax provisions. While both *Taxpayer 2* and *Taxpayer 3* have argued they were not aware of the speculative builder tax provisions, neither has responded to the City's argument that they had knowledge because a Member (*Taxpayer 1*) was the President of another licensed speculative builder entity.

Neither *Taxpayer 2* nor *Taxpayer 3* responded to the City's argument. As a result, we conclude that both *Taxpayer 2* and *Taxpayer 3* had knowledge of the speculative builder tax and have not demonstrated reasonable cause for failing to timely pay and timely file reports. Accordingly, the penalties are not waived.

FINDINGS OF FACT

1. On September 30, 2004, *Taxpayer 1*, *Taxpayer 2*, and *Taxpayer 3* filed protests of tax assessments made by the City.
2. After review, the City concluded on October 12, 2004 that the protest was timely and in the proper form.
3. On October 18, 2004, the Hearing Officer ordered the City to file a response to the protest on or before December 3, 2004.
4. On November 30, 2004, the City filed a response to the protest.

5. On December 4, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before December 27, 2004.
6. On December 22, 2004, the Taxpayer filed a reply.
7. On January 5, 2005, a Notice scheduled the matter for hearing commencing on February 24, 2005.
8. On February 22, 2005, the Taxpayer requested the matter be reclassified as a redetermination.
9. On February 24, 2005, the Hearing Officer reclassified the matter as a redetermination, closed the record, and indicated a written decision would be issued on or before April 11, 2005.
10. The City performed an audit of **Taxpayer 2** for the period March 2003 through August 2003.
11. The City determined that **Taxpayer 2** had built and sold five homes during this period which were taxable as speculative builder sales pursuant to Section 416.
12. The City assessed **Taxpayer 2** for taxes due of \$28,610.37, plus interest up through July 2004 of \$3,706.04, and penalties for failure to file or pay totaling \$7,152.58.
13. The auditor contacted **Taxpayer 2** on several occasions to obtain documentation for the audit.
14. While **Taxpayer 2** indicated they would be providing the requested documentation, none was ever provided.
15. The City estimated the tax liability by using Affidavits through the County.
16. **Taxpayer 1** was a Member of **Taxpayer 2**.
17. **Taxpayer 1** was President of an entity that was licensed for the same business activity of speculative building.
18. The license was obtained in April 2001.
19. The City performed an audit of **Taxpayer 3** for the period September 2002 through March 2004.
20. The City determined that **Taxpayer 3** built and sold three homes during the audit period which were taxable as speculative builder sales pursuant to Section 416.

21. The City assessed *Taxpayer 3* for taxes due of \$20,581.04, plus interest of \$3,650.91 up through July 2004 and penalties for failing to file or pay totaling \$5,145.27.
22. The auditor contacted *Taxpayer 3* on several occasions to obtain documentation for the audit.
23. No documentation was ever provided.
24. The City estimated the tax liability by using Affidavits through the County.
25. *Taxpayer 1* was a Member of *Taxpayer 3*.
26. The City performed an audit of *Taxpayer 1* for August 2002.
27. The City determined that *Taxpayer 1* improved and sold one home during the period which was taxable as speculative builder sale pursuant to Section 416.
28. The City assessed *Taxpayer 1* for taxes due of \$8,751.76, and interest up through July 2004 in the amount of \$1,924.44.
29. The auditor contacted *Taxpayer 1* on several occasions to obtain documentation for the audit.
30. The City estimated the tax liability by using Affidavits through the County.
31. The *Taxpayer 3* Property was vacant land when transferred to the *Taxpayer 1* from *Taxpayer 3* on September 26, 2001.
32. On January 7, 2002, the first permit was issued for a newly constructed home on the *Taxpayer 3* Property at which time *Taxpayer 1* was still the owner.
33. When the home on the *Taxpayer 3* Property was completed in August 2002, a Certificate was issued to *Taxpayer 3*.
34. When the house on the *Taxpayer 3* Property was sold on August 23, 2002, the *Taxpayer 1* were listed as the sellers and *Taxpayer 1* signed as the seller.
35. A variety of construction contractors worked on the homes for *Taxpayer 2*, *Taxpayer 3*, and *Taxpayer 1*.
36. No documentation was provided to demonstrate the various construction contractors paid any City tax on the homes for *Taxpayer 2*, *Taxpayer 3*, and *Taxpayer 1*.

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. During the respective audit periods, *Taxpayer 2*, *Taxpayer 3*, and *Taxpayer 1* had unreported speculative builder income pursuant to Section 416.
3. The City Code placed the burden of proof on the Taxpayer to provide documentation to demonstrate the Taxpayer is entitled to credits for taxes paid.
4. The Taxpayer has failed to meet its burden of proof of demonstrating any of the construction contractors have paid City tax.
5. *Taxpayer 1* was the owner of the *Taxpayer 3* Property both at the time the property was improved and when the improved property was sold.
6. *Taxpayer 1* was responsible for the speculative builder tax on the *Taxpayer 3* Property.
7. The City was authorized pursuant to Section 540 to impose penalties for failing to timely pay or timely file reports for *Taxpayer 2* and *Taxpayer 3*.
8. The Taxpayer has not demonstrated reasonable cause for failing to timely pay or failing to timely file tax returns.
9. The September 30, 2004 protests filed by *Taxpayer 1*, *Taxpayer 2*, and *Taxpayer 3* should be denied.

ORDER

It is therefore ordered that the September 30, 2004 protests of *Taxpayer 1*, *Taxpayer 2*, and *Taxpayer 3* of tax assessments made by the City of Phoenix are hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer