

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 14, 2009

Decision: MTHO # 453

Taxpayer: *Taxpayer*

Tax Collector: City of Chandler

Hearing Date: February 23, 2009

### DISCUSSION

#### Introduction

On June 11, 2008, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on February 23, 2009. Appearing for Taxpayer were *Taxpayer Representative One* and *Taxpayer Representative Two*. Appearing for the City were *Tax Audit Supervisor*, and *Senior Tax Auditor*. At the conclusion of the February 23, 2009 hearing, the parties agreed to a briefing schedule. At the conclusion of the filing of the briefs, on September 21, 2009 the Hearing Officer closed the record and indicated a written decision would be issued on or before November 5, 2009.

### DECISION

The parties were in agreement with the basic facts in this matter. The primary issue involved the interpretation of the law regarding the taxability of a single sale of a multiple of individual buildings. The facts are summarized as follows: On October 17, 2001, Taxpayer purchased a single parcel of real property, parcel number *123*. Parcel No. *123* was subsequently renumbered as parcel number *456*. On October 6, 2003, Taxpayer applied for various building permits with the City to begin improvements to Parcel No. *456*. The improvements were completed and certificates of occupancy (“COO”) were issued in stages for thirty-six apartment buildings between January 7, 2005 and September 22, 2005. On May 24, 2007, Taxpayer sold Parcel No. *456* for \$58,000,000.00.

On April 29, 2008, the City issued a Notice of Assessment (“Notice”) against Taxpayer for additional taxes of \$257,962.00, interest up through May 2008 in the amount of \$16,355.00, and penalties totaling \$25,796.00. The audit period was for May 2007 through July 2007. The assessment was for a speculative builder sale pursuant to City Code Section 62-416 (“Section 416”). City Code Section 62-100 (“Section 100”) provides a definition of “speculative builder” that includes an owner-builder who sells improved real property before the expiration of twenty-four months after the improvements of the real property sold are substantially complete. Section 100 also has a

definition for “substantially complete” which means a COO or equivalent has been issued. There was no dispute that some of the buildings were substantially completed more than twenty-four months prior to the sale of Parcel No. **456**. The City conceded that if those apartment buildings completed more than twenty-four months prior to the sale had been sold as individual parcels or units they would not be taxable. The City relied on Section 416(a)(1) which indicated the tax was on the gross income which includes the total selling price from the sale of improved property. In the case of multiple unit projects, Section 416(a) (3) indicates a “sale of improved real property” refers to the sale of the entire project or to the sale of any individual parcel or unit. In this case, Taxpayer chose to sell the entire project of multiple units as a single sale. In the case of a single sale of a project of multiple units, we conclude Section 416 requires the City to tax the selling price from the single sale. The question then becomes how we determine when the improvements of the real property are substantially complete when there are multiple units being completed at different times. We conclude the date of substantial completion is the date the last unit is substantially completed under the following fact situation: there is a project of multiple units that are constructed on the same parcel number; once the project is completed, the units are sold as a single project; and, none of the multiple units were ever sold individually or offered for sale individually. Based on the facts of this case, we conclude the project built on Parcel No. **456** was substantially completed on the date the last apartment building was substantially completed and as a result the City’s assessment of the entire project was proper.

As we previously noted, Taxpayer was also assessed penalties totaling \$25,796.00. The City was authorized to assess a ten percent penalty for failure to timely pay taxes pursuant to City Code Section 62-540 (“Section 540”). However, that penalty may be waived when the taxpayer demonstrates reasonable cause. Taxpayer demonstrated that it was following the advice of tax counsel regarding this transaction. As a result, we conclude that Taxpayer has demonstrated reasonable cause to have all penalties waived in this matter. Based on all the above, Taxpayer’s protest should be partly approved and partly denied.

### **FINDINGS OF FACT**

1. On June 11, 2008, Taxpayer filed a protest of a tax assessment made by the City.
2. On October 17, 2001, Taxpayer purchased Parcel No. **123**.
3. Parcel No. **123** was renumbered as Parcel No. **456**.
4. On October 6, 2003, Taxpayer applied for various building permits with the City to begin improvements to Parcel No. **456**.
5. The improvements were completed and COO’s were issued in stages for thirty-six apartment buildings between January 7, 2005 and September 22, 2005.

6. On May 24, 2007, Taxpayer sold Parcel No. **456** as improved for \$58,000,000.00. .
7. On April 29, 2008, the City issued a Notice against Taxpayer for additional taxes of \$257,962.00, interest up through May 2008 in the amount of \$16,355.00, and penalties totaling \$25,796.00.
8. The audit period was for May 2007 through July 2007.
9. Some of the thirty-six apartment buildings were completed more than twenty-four months prior to the sale of Parcel No. **456**.
10. Taxpayer never sold or attempted to sell any of the apartment buildings on an individual basis.
11. Taxpayer sold the entire project of apartment buildings as a single sale.
12. Taxpayer relied on advice from tax counsel regarding the sale of Parcel No. **456**.

### 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. Section 416 imposes a tax on the total selling price of improved real property.
3. In the case of multiple unit projects, Section 416 indicates a “sale of improved real property” refers to the sale of the entire project or to the sale of any individual parcel or unit.
4. In the case of a single sale of a project of multiple units, we conclude Section 416 requires the City to tax the selling price from the single sale.
5. Based on the facts of this case, we conclude the date of substantial completion of the project is the date the last apartment building was substantially completed.
6. The City’s assessment of the total selling price of the entire project was proper.
7. The City was authorized pursuant to Section 540 to assess a penalty for late payment.
8. Taxpayer has demonstrated reasonable cause for failing to timely pay taxes.

9. All the penalties in this matter should be waived.
10. Taxpayer's protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

**ORDER**

It is therefore ordered that the June 11, 2008 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Chandler shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer