

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 30, 2009

Decision: MTHO #480

Taxpayer: *Taxpayer ABC*

Tax Collector: City of Flagstaff

Hearing Date: None

### DISCUSSION

#### Introduction

*Taxpayer ABC* (“Taxpayer”) filed a protest on December 22, 2008 of a tax assessment made by the City of Flagstaff (“City”). After review, the City concluded on January 8, 2009 that the protest was timely and in the proper form. On January 12, 2009, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before February 26, 2009. On February 20, 2009, the City filed a response and requested the matter be reclassified as a redetermination. On March 3, 2009, the Hearing Officer ordered Taxpayer to file any reply to the City’s response and to the City’s request to reclassify this matter as a redetermination on or before April 2, 2009. On April 22, 2009, the Hearing Officer indicated that no reply had been filed and as a result the matter would be reclassified as a redetermination and the record was closed and a written decision would be issued on or before June 8, 2009.

#### City Position

The City selected Taxpayer for an audit and mailed an audit intent letter in October 2008. The City issued an assessment on November 18, 2008 for additional taxes due in the amount \$17,918.09, penalties in the amount of \$4,479.51, and interest in the amount of \$582.34

According to the City, Taxpayer constructed a home a *1234 Flagstaff Way* (“*Flagstaff Property*”) in the City. The City indicated the *Flagstaff Property* passed final inspection on July 24, 2007 and was sold on February 8, 2008. As a result, the City assessed Taxpayer as a speculative builder pursuant to City Code Section 3-5-416 (“Section 416”). In response to Taxpayer, the City noted that City Regulation 3-5-416.1 (“Regulation 416.1”) establishes three criteria which must be satisfied in order for the sale to qualify as a homeowner’s bona fide non-business sale of a family residence. Those requirements are (1) the property was actually used as the principal place of family residence for the six months next prior to the offer for sale; (2) the seller has not sold more than two such residences for the six month period; and, (3) the seller has not rented the sold premises for any period within twenty-four months prior to the offer for sale. The City asserted that since Taxpayer has acknowledged the six month residency requirement was not met,

Taxpayer does not qualify for the exemption set forth in Regulation 416.1. In response to Taxpayer's statement that Taxpayer is no longer in business and can't pay the tax, the city argued neither the City nor the Hearing Officer has the authority to grant a tax exemption that is not in the City Code. As a result, the City requested that the assessment be upheld.

### **Taxpayer Position**

Taxpayer indicated that the land for the *Flagstaff Property* was purchased in December of 2004. According to Taxpayer, construction of a home began in May of 2006. Taxpayer opined that the intent was to have a family retreat in the City. Taxpayer was in the construction business and in 2007 experienced a significant financial hardship. As a result, Taxpayer had to close down the business. Because of the real estate market and construction downturns, Taxpayer worked to complete the *Flagstaff Property* and then sold it due to the financial hardships.

Taxpayer indicated that Regulation 416.1 required the *Flagstaff Property* to be occupied by Taxpayer for six months prior to listing it for sale. Taxpayer acknowledged that the requirement was not met. Taxpayer argued there was reasonable cause to determine the house to be a sale of a second residence and to abate the taxes and penalties. Taxpayer asserted that since the business was closed, there was no way to pay the taxes

### **ANALYSIS**

City Code Section 100 ("Section 100") defines a "speculative builder" as an owner-builder who sells at any time improved real property consisting of a custom home. Clearly, Taxpayer meets the definition of a speculative builder as Taxpayer built a custom home at the *Flagstaff Property* and sold it approximately six months after completion. While there is a homeowner's bona fide non-business sale exemption set forth in Regulation 416.1, Taxpayer acknowledged that the six months residency requirement was not met. As a result, we must deny Taxpayer's request to waive the tax assessment.

Since Taxpayer failed to file a return or timely pay taxes, the City was authorized pursuant to City Code Section 540 ("Section 540") to assess penalties. Those penalties may be waived if there is demonstrated reasonable cause. Under the circumstances set forth herein, we conclude that Taxpayer has demonstrated reasonable cause to have the penalties waived. Accordingly, all penalties in this matter are waived

### **FINDINGS OF FACT**

1. On December 22, 2008, Taxpayer filed a protest of a tax assessment made by the

City.

2. After review, the City concluded on January 8, 2009 that the protest was timely and in the proper form.
3. On January 12, 2009, the Hearing Officer ordered the City to file any response to the protest on or before February 26, 2009.
4. On February 20, 2009, the City filed a response and requested this matter be reclassified as a redetermination.
5. On March 3, 2009, the Hearing Officer ordered Taxpayer to file a reply to the City's response and to the City's request to reclassify this matter as a redetermination on or before April 2, 2009.
6. On April 22, 2009, the Hearing Officer indicated no reply had been filed and as a result the record was closed and written decision would be issued on or before June 8, 2009.
7. The City selected Taxpayer for an audit and mailed an audit intent letter in October 2008.
8. The City issued an assessment on November 18, 2008 for additional taxes due in the amount of \$17,918.09, penalties in the amount of \$4,479.51, and interest in the amount of \$582.34.
9. Taxpayer constructed a home at the *Flagstaff Property* in the City.
10. The *Flagstaff Property* passed final inspection on July 24, 2007 and was sold on February 8, 2008.
11. The City assessed Taxpayer's sale of the *Flagstaff Property* as a speculative builder sale.
12. Taxpayer purchased the land for the *Flagstaff Property* in December of 2004.
13. Taxpayer began construction of the home on the *Flagstaff Property* in May of 2006.
14. Taxpayer's intent was to use the *Flagstaff Property* as a family retreat.
15. The real estate market and construction business experienced downturns while Taxpayer's home was being built causing a financial hardship for Taxpayer.
16. Taxpayer did not meet the six month residency requirement for an exemption.

17. Taxpayer had to close the business.

### 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. Taxpayer acted as a speculative builder for the construction and sale of the *Flagstaff Property*.
3. Taxpayer's sale of the *Flagstaff Property* was a taxable speculative builder sale pursuant to Section 416.
4. Taxpayer failed to show the sale of the *Flagstaff Property* was an exempt non-business sale pursuant to Regulation 416.1.
5. Since Taxpayer failed to timely file a return or timely pay taxes on the *Flagstaff Property*, the City was authorized to assess penalties pursuant to Section 540.
6. Taxpayer demonstrated reasonable cause pursuant to Section 540 to have the penalties waived.
7. 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 December 22, 2008 protest by *Taxpayer ABC* of a tax assessment made by the City of Flagstaff is hereby partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

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

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer