

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 30, 2009

Decision: MTHO # 535

Taxpayer: *Family Trust*

Tax Collector: City of Mesa

Hearing Date: None

### DISCUSSION

#### Introduction

On July 9, 2009, a letter of protest was filed by *Family Trust* (“Taxpayer”) of a tax assessment made by the City of Mesa (“City”). At the request of Taxpayer, this matter was classified as a redetermination. After final submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on November 11, 2009 and indicated a written decision would be issued on or before December 28, 2009.

### DECISION

On May 28, 2009, the City issued a non-audit compliance review of Taxpayer for the period February 2009. As a result of that review, the City assessed Taxpayer for additional taxes in the amount of \$4,122.49, interest up through May 2009 in the amount of \$27.48, penalties totaling \$1,030.62, and a license fee of \$45.00. Taxpayer had purchased a lot and *Trustee(s)* had planned to build their dream home at *Mesa Property* located in the City. Taxpayer hired *General Contractor*, a related business entity of *Trustee(s)* to build the home. *General Contractor* pulled a permit and started construction. During the course of construction, the housing market plummeted. According to Taxpayer, the construction lender requested additional equity that Taxpayer did not have. As a result, Taxpayer had to sell the *Mesa Property* on February 19, 2009 for \$564,000.00.

City Code Section 5-10-416 (“Section 416”) imposes a tax on the gross income of each person engaged in the speculative builder activity in the City. City Code Section 5-10-100 (“Section 100”) defines “owner-builder” as an owner of real property on which they construct or have constructed improvements. Section 100 defines “speculative builder” as an owner-builder who sells or contracts to sell improved real property consisting of a custom home, regardless of the stage of completion of such home. In this case, Taxpayer clearly was an owner-builder who was having a custom home being constructed on real property that Taxpayer owned. While the custom home was only partially completed, it would fall within the definition of a speculative builder in Section 100. As a result, we

conclude Taxpayer was a speculative builder. Section 416 imposes a tax on the gross income of a speculative builder. In this case, the gross income would be the \$564,000.00 sale price.

In its protest, Taxpayer indicated it had lost over \$200,000.00 as well as lost *Trustee(s)* dream home. Unfortunately for Taxpayer, Section 416 imposes a tax on the total selling price of the improved real property without regard to profit or losses incurred. Based on all the above, Taxpayer's protest should be denied.

### FINDINGS OF FACT

1. On July 9, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. On May 28, 2009, the City issued a non-audit compliance review of Taxpayer for the period of February 2009.
3. The City assessed Taxpayer for additional taxes in the amount of \$4,122.49, interest up through May 2009 in the amount of \$27.48, penalties totaling \$1,030.62, and a license fee of \$45.00.
4. Taxpayer had purchased a lot and *Trustee(s)* had planned to build their dream home on the *Mesa Property* located in the City.
5. Taxpayer hired *General Contractor*, a related business entity of *Trustee(s)* to build the home.
6. *General Contractor* had pulled a permit and started construction.
7. During the course of construction, the housing market plummeted.
8. Taxpayer's construction lender requested additional equity that Taxpayer did not have.
9. Taxpayer had to sell the *Mesa Property* on February 19, 2009 for \$564,000.00.
10. Taxpayer lost over \$200,000.00 on the sale of the *Mesa Property* and *Trustee(s)* lost their dream home.

## 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 gross income of each person engaged in the speculative builder activity in the City.
3. Section 100 defines “owner-builder” as an owner of real property on which they construct or have constructed improvements.
4. Section 100 defines “speculative builder” as an owner-builder who sells or contracts to sell improved real property consisting of a custom home, regardless of the stage of completion of such home.
5. Taxpayer was an owner-builder who was having a custom home being constructed on real property that Taxpayer owned.
6. The partially constructed custom home would fall within the definition of a speculative builder in Section 100.
7. Taxpayer was a speculative builder for the sale of the *Mesa Property*.
8. Taxpayer’s protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

## ORDER

It is therefore ordered that the July 9, 2009 protest by *Family Trust* of a tax assessment made by the City of Mesa is hereby denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer