

DECISION OF MUNICIPAL TAX HEARING OFFICER

May 17, 2010

Taxpayer

Taxpayer's Address

Taxpayer
MTHO #558

Dear Taxpayer:

We have reviewed the evidence presented by *Taxpayer* and the City of Scottsdale (Tax Collector or City) at the hearing on April 14, 2010. The review period covered was October 2006. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City of Scottsdale privilege tax under the speculative builder classification for the sale of a home Taxpayer had constructed in the City. Taxpayer does not dispute the calculation or the application of the tax, but believes other parties are liable for a part of the tax in proportion to their interest in the Property as tenants in common. Taxpayer contends he is liable for 63% of the total assessment.

Tax Collector's Response

Taxpayer was the sole owner of record to the Property on which the home was constructed and thus Taxpayer was the only person who met the definition of a speculative builder. No interest in the Property had been transferred to the other parties until after the construction of the home was completed. The City cannot assess the tax against persons who are not speculative builders under the city code. Therefore Taxpayer is liable for the total amount of the assessment.

Discussion

Taxpayer purchased a vacant lot (the Property) in *Scottsdale* from *Developer* in April 2005. Taxpayer held sole title to the Property. Taxpayer contracted with a building contractor to build the home on the Property. The building permit for the construction of the home was issued July 19, 2005. Final inspection on the construction of the home was requested on October 26, 2006 and was approved on November 6, 2006. By October 26, 2006 the home was already constructed on the Property. Taxpayer was the sole owner of the Property during the time the home was being constructed by a *Building Contractor*.

On October 27, 2006 Taxpayer transferred title to the Property by warranty deed to *Taxpayer* as to an undivided 63% interest, to *Developer* as to an undivided 17% interest and to *Building Contractor* as to an undivided 20% interest. The warranty deed stated that the Property was

subject to existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

Taxpayer, Developer and Building Contractor also executed an Acceptance of Tenants in Common of the Property dated October 26, 2006. The document provided that the parties were accepting the conveyance as tenants in common and not as community property or joint tenants. No contract sales price was stated in either the deed or in the Acceptance of Tenants in Common. Taxpayer did not have a written agreement with **Developer** or **Building Contractor** regarding the transfer of the Property other than the deed transferring the interest to them and the Acceptance of Tenants in Common.

Taxpayer, Developer and Building Contractor then transferred the Property to **final purchasers**, for a contract sales price of \$2,019,696.33. The settlement date of the sale to the final purchasers was October 31, 2006.

The Tax Collector conducted an audit assessment of Taxpayer for the period October 2006 and assessed Taxpayer for city privilege tax under the speculative builder classification in the amount of \$13,988.69, interest through September 30, 2009 in the amount of \$2,656.28 and license fees and license fee penalties in the amount of \$136.50.

The Tax Collector considered Taxpayer to be a speculative builder when he transferred title to the Property to **Taxpayer, Developer and Building Contractor**. The Tax Collector based the assessment on the estimated fair market value of the Property at the time of the transfer from Taxpayer to **Taxpayer, Developer and Building Contractor**. The Tax Collector used the contract sales price of \$2,019,696.33 to the final purchasers as its estimate of the Property's fair market value.

Taxpayer protested the assessment stating he should only be liable for a part of the tax in proportion to his interest in the Property as one of the tenants in common. Taxpayer contends he is thus liable for 63% of the total assessment. Taxpayer paid \$10,665.77 as payment of the portion of the assessment he believed he owed based on his interest in the Property as a tenant in common.

Whether and to what extent a person is taxable is governed by the Scottsdale City Code. Taxpayer was assessed as a speculative builder. A speculative builder is defined by the code as including an owner-builder who sells, at any time, improved real property consisting of custom homes regardless of the stage of completion. To be a speculative builder, a person has to be an owner-builder.

An owner-builder is defined as including an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs any improvement to real property. Only Taxpayer meets this definition. Taxpayer had title to the Property and had an improvement constructed on the Property while he owned it (held title). Neither **Developer** nor **Building Contractor** was an owner of the Property while the house was being constructed. Taxpayer purchased the Property before any construction and did not transfer title to the Property to **Taxpayer, Developer and Building Contractor** until after construction of the home was completed.

When Taxpayer executed the warranty deed to *Taxpayer, Developer* and *Building Contractor*, he transferred title to the Property. Sale of improved real property includes any form of transaction which in substance is a transfer of title of improved real property. Taxpayer therefore sold improved real property when he transferred title to the Property to *Taxpayer, Developer* and *Building Contractor*.

Only Taxpayer met the definition of a speculative builder. Neither *Developer* nor *Building Contractor* were owner-builders and were therefore not speculative builders with respect to the Property. Since Taxpayer was a speculative builder, he was subject to tax under the speculative builder classification.

The warranty deed did not specify a contract sales price. The Tax Collector therefore based its assessment on the market value of the Property at the time of the transfer. The Tax Collector's estimate of market value was based on the contract sales price of the Property to the final purchaser.

The sale to the final purchaser took place almost immediately after the sale by Taxpayer to *Taxpayer, Developer* and *Building Contractor*. The contract sale price of the Property to the final purchaser was therefore a reasonable estimate of the fair market value of the Property when Taxpayer transferred title to *Taxpayer, Developer* and *Building Contractor*. Taxpayer did not present evidence showing that the Tax Collector's estimate was not reasonable. The amount of the assessment was therefore proper.

Based on all the above, we conclude Taxpayer's protest should be denied. The City's privilege tax assessment against Taxpayer was proper.

Findings of Fact

1. Taxpayer purchased *property* in *Scottsdale* from *Developer* in April 2005.
2. *The Property* was vacant land at the time Taxpayer purchased it.
3. Taxpayer had entered into a new home construction agreement dated February 8, 2005 with *Building Contractor* to build a single-family home on the Property.
4. The building permit for the construction of the home was issued July 19, 2005.
5. Taxpayer was the sole owner of the Property during the time the home was being constructed by *Building Contractor*.
6. Final inspection on the construction was requested on October 26, 2006 and was approved on November 6, 2006.
7. By October 26, 2006 the home was already constructed on the Property.
8. A Certificate of Occupancy was issued January 16, 2007.
9. Taxpayer was listed as the owner on the Certificate of Occupancy.

10. On October 27, 2006 Taxpayer executed a warranty deed transferring title to the Property to **Taxpayer** as to an undivided 63% interest, to **Developer** as to an undivided 17% interest and to **Building Contractor** as to an undivided 20% interest.
11. The warranty deed stated that the Property was subject to existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.
12. **Taxpayer, Developer** and **Building Contractor** executed an Acceptance of Tenants in Common of the Property dated October 26, 2006.
13. No contract sales price was stated in either the deed or in the Acceptance of Tenants in Common.
14. Taxpayer did not have a written agreement with **Developer** or **Building Contractor** regarding the transfer of the Property other than the deed transferring the interest to them and the Acceptance of Tenants in Common.
15. Construction of the home was completed when Taxpayer executed the warranty deed on October 27, 2006.
16. **Taxpayer, Developer** and **Building Contractor** transferred the Property to **final purchasers**, for a contract sales price of \$2,019,696.33.
17. The settlement date of the sale to the final purchasers was October 31, 2006.
18. The Tax Collector conducted an audit assessment of Taxpayer for the period October 2006.
19. The Tax Collector assessed Taxpayer for city privilege tax under the speculative builder classification in the amount of \$13,988.69, interest through September 30, 2009 in the amount of \$2,656.28 and license fees and license fee penalties in the amount of \$136.50.
20. No other penalties were assessed.
21. The Tax Collector based the assessment on the estimated fair market value of the Property when Taxpayer transferred title to **Taxpayer, Developer** and **Building Contractor**.
22. The Tax Collector used the contract sales price of \$2,019,696.33 to the final purchasers as its estimate of the Property's fair market value.
23. Taxpayer timely protested the assessment by letter dated December 3, 2009.
24. Taxpayer paid \$10,665.77 (\$8,812.87 tax, \$1,716.40 interest and \$136.50 license fee and license fee penalties) by check dated December 21, 2009 as payment of the portion of the assessment he believed he owed based on his interest in the property as a tenant in common.

Conclusions of Law

1. An Owner-Builder is defined as an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs any improvement to real property. Sec. 100.

2. Taxpayer had title to the Property and had an improvement constructed on the Property by **Building Contractor**.
3. Taxpayer was an owner-builder.
4. Neither **Developer** nor **Building Contractor** had title to the Property during the period the improvement was being constructed.
5. Neither **Developer** nor **Building Contractor** were owner-builders.
6. A speculative builder includes an owner-builder who sells, at any time, improved real property consisting of custom homes regardless of the stage of completion. Sec. 100.
7. Improved real property includes any real property upon which a structure has been constructed. Sec. 416(a)(2)(A).
8. The Property was improved real property.
9. Sale of improved real property includes any form of transaction which in substance is a transfer of title of improved real property. Sec. 416(a)(3).
10. Taxpayer sold improved real property when he transferred title to the Property to **Taxpayer, Developer and Building Contractor**.
11. Taxpayer was a speculative builder during the audit period.
12. Because **Developer** and **Building Contractor** were not owner-builders, neither was a speculative builder with respect to the Property.
13. Neither the warranty deed from Taxpayer to **Taxpayer, Developer and Building Contractor** nor the Acceptance of Tenants in Common specified a contract sales price for the Property.
14. Section 210 requires transactions in circumstances where the relationship between the parties is such that the gross income from the transaction is not indicative of the market value of the subject matter of the transaction to be subject to tax based on market value.
15. The Tax Collector used the sale of the subject Property to the ultimate purchaser immediately after the transfer by Taxpayer to **Taxpayer, Developer and Building Contractor** to determine the market value of the transfer by Taxpayer.
16. The Tax Collector's method for determining the market value of the transfer by Taxpayer to **Taxpayer, Developer and Building Contractor** was reasonable.
17. Taxpayer failed to meet his burden of proving the Tax Collector's estimate of market value for Taxpayer's transfer to **Taxpayer, Developer and Building Contractor** was not reasonable. Sec. 545.
18. The City's privilege tax assessment against Taxpayer was proper.

Ruling

The December 3, 2009 protest by Taxpayer of an assessment made by the City of Scottsdale is denied.

The Tax Collector shall give Taxpayer credit for payments made as stated in Finding of Fact No. 24.

The Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section –575.

Sincerely,

Hearing Officer

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c: Tax Audit Manager
Municipal Tax Hearing Office