

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 5, 2010
Decision: MTHO # 559
Taxpayer: *Taxpayer*
Tax Collector: City of Scottsdale
Hearing Date: None

DISCUSSION

Introduction

On December 10, 2009, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Scottsdale (“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 March 22, 2010 and indicated a written decision would be issued on or before May 6, 2010.

DECISION

In 2004 Taxpayer purchased a lot at *110th Way Property* in the City. Taxpayer hired a contractor to build a single-family residence. A building permit was issued on December 2, 2004. Taxpayer was unable to sell his existing home and as a result offered the new home being built at *110th Way Property* for sale. On June 23, 2005, the unfinished structure at *110th Way Property* was sold to a third party. On November 2, 2009, the City issued an assessment against Taxpayer for his sale of the improvements on *110th Way Property* pursuant to City Code Section 416 (“Section 416”). The City assessment was for taxes due in the amount of \$10,879.36, interest up through October 2009 in the amount of \$3,176.46, and penalties totaling \$2,719.84. Subsequently, the City waived the penalties. As to Taxpayer’s request to waive the interest, the City argued that City Code Section 540(a) (“Section 540(a)”) provides that interest on taxes may not be waived unless the underlying taxes on which the interest is based is waived. Accordingly, the City requested the interest assessment to be upheld.

Taxpayer indicated he was not a builder or a speculator but simply a homeowner looking to upgrade his home. Taxpayer further indicated that he accepted the City’s explanation of the City Code and did not protest the tax assessment. Taxpayer did protest the interest assessment in this matter. Taxpayer opined that the City had the means of determining the *110th Way Property* was sold within weeks of the sale. Taxpayer asserted the interest assessment was unreasonable, unfair, and punitive since Taxpayer was unaware of the speculative builder tax. Taxpayer also asserted that City Code Section 546 (“Section

546”) provides a mechanism for waiving the interest when there is extensive misunderstanding of provisions of the City Code.

The only issue to be resolved in this matter is whether or not the interest on the tax assessment may be waived. We find that Section 540(a) makes it clear that “interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 570.” In this case, there was no tax abatement as Taxpayer did not protest the underlying tax. While we understand Taxpayer’s frustration with a process that does not assess the tax at the time of sale, we have no evidence that the City willfully delayed the assessment in order to maximize the interest assessed. We note that Section 546 does not apply until the Tax Collector has a public hearing to determine that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws. We are unaware of any such public hearing being held by the Tax Collector involving speculative builder sales. Based on all the above, we conclude Taxpayer’s protest should be denied.

FINDINGS OF FACT

1. On December 10, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. In 2004 Taxpayer purchased a lot at *110th Way Property* in the City.
3. Taxpayer hired a contractor to build a single-family residence.
4. A building permit was issued on December 2, 2004.
5. Taxpayer was unable to sell his existing home and as a result offered the new home being built at *110th Way Property* for sale.
6. On June 23, 2005, the unfinished structure at *110th Way Property* was sold to a third party.
7. On November 2, 2009, the City issued an assessment against Taxpayer for his sale of the improvements on *110th Way Property*.
8. The City assessment was for taxes due in the amount of \$10,879.36, interest up through October 2009 in the amount of \$3,176.46, and penalties totaling \$2,719.84.
9. Subsequently, the City waived the penalties.

10. There was no evidence to demonstrate the City knowingly delayed the assessment of Taxpayer.

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 was assessed for the sale of the improved 110th Way in June 2005 pursuant to Section 416.
3. Taxpayer did not protest the assessment of the tax.
4. Section 540(a) makes it clear that “interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 570.”
5. There has been no public hearing held by the Tax Collector pursuant to Section 546 to determine that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws.
6. Taxpayer’s protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the December 10, 2009 protest by *Taxpayer* of a tax assessment made by the City of Scottsdale 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