

DECISION OF MUNICIPAL TAX HEARING OFFICER

April 6, 2011

Taxpayer's Representative
Representative's Address

Taxpayer
MTHO #596
Account no. 123456789

Dear Taxpayer's Representative:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Scottsdale (Tax Collector or City).¹ The review periods covered were September 2006 and June 2007. 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. Taxpayer is a contractor who built residential properties on speculation for individual customers. The property at issue is a speculative house, which Taxpayer constructed and used as his personal residence for over a year following completion. Taxpayer is not a speculative builder and the tax does not apply to sales of personal residences. In addition, the gross income attributed to the property sales is incorrect.

Tax Collector's Response

Taxpayer is the president of a construction company and is also manager/member of a limited liability company (LLC). The construction company built two single-family homes on properties owned by the LLC. The construction company did not pay City privilege taxes on the construction of either home. The LLC transferred the two homes to Taxpayer. The LLC paid no privilege taxes to the City on its two transfers to Taxpayer. An assessment was issued to the LLC for the two transfers. The assessment was not protested by the LLC and became final. The LLC failed to pay the assessments and Taxpayer was assessed under Scottsdale Tax Code § 595 as the successor to the LLC. Taxpayer is liable for the tax that was assessed.

Discussion

Taxpayer was manager/member of *Marketing Group LLC (LLC)*. *Custom Homes, Inc.* constructed two homes for the LLC. *Custom Homes* did not pay any City privilege taxes on the construction of the homes.

The two homes were then transferred by the LLC to Taxpayer. Home 1 was conveyed from the LLC to Taxpayer by deed dated September 15, 2006. Home 1 was simultaneously transferred by

¹ Taxpayer did not submit a Reply Memorandum.

Taxpayer to *New Buyers*. The affidavit of value recorded with the sale of the property to *New Buyers* stated a sales price of \$1,850,000.

Home 2 was conveyed from the LLC to Taxpayer by deed dated June 11, 2007. Taxpayer had obtained a loan on the property in the amount of \$1,320,000.

The Tax Collector issued an assessment to *Marketing Group LLC* for City privilege taxes due on the two transfers to Taxpayer. The LLC did not protest the assessment and the assessment became final. The LLC did not pay the assessment.

Because the assessment was not paid by the LLC, the Tax Collector issued an assessment to Taxpayer under STC § 595 as successor to *Marketing Group LLC*. STC § 595(c) states:

(c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Sections 416 and 417.

Taxpayer acquired improved real property from the LLC on which the City privilege tax was not paid. Taxpayer, as the successor to the LLC, is responsible pursuant to STC § 595(c) for payment of the tax that was not paid by the LLC.

Taxpayer contends that he used the home as his personal residence for over a year following completion.² A sale of a custom home is considered a homeowner's bona fide non-business sale and not subject to the speculative builder tax if, among other requirements, the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale. The homeowner's bona fide non-business sale exception does not apply here. Taxpayer was not assessed as a speculative builder for a sale of Home 2. Taxpayer was taxed as the successor to the LLC for unpaid taxes due from the LLC.

Taxpayer also argues that the gross income attributed to the property sales is incorrect. First, the amount of tax due was established in the assessment issued to the LLC. The amount of that assessment is final and not subject to challenger here.

Second, even if it were proper for the successor to question the basis of the assessment, the Tax Collector's estimates for gross income were reasonable. For Home 1 the Tax Collector estimated gross income on the amount stated in the affidavit of value for the sale immediately after the LLC's transfer to Taxpayer. For Home 2 the Tax Collector assumed that the amount of the loan on the property represented eighty percent of the value of the property. Taxpayer presented no evidence that the Tax Collector's methods were unreasonable.

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

² This argument could only be applicable to the tax on Home 2. Taxpayer sold Home 1 at the time it was transferred to him by *Marketing Group LLC*.

1. Taxpayer was manager/member of **Marketing Group LLC**.
2. **Custom Homes, Inc.** constructed two homes for the LLC.
3. **Custom Homes** did not pay any City privilege taxes on the construction of the homes.
4. The LLC transferred the two homes to Taxpayer.
5. The LLC conveyed the first home to Taxpayer by deed dated September 15, 2006.
6. The home was transferred by Taxpayer at that time to **New Buyers**.
7. The affidavit of value recorded with the sale of the property to **New Buyers** indicated a sales price of \$1,850,000.
8. The LLC conveyed the second home to Taxpayer by deed dated June 11, 2007.
9. Taxpayer had obtained a loan on the property in the amount of \$1,320,000.
10. The LLC did not pay City privilege taxes due on the two transfers to Taxpayer.
11. The Tax Collector issued an assessment to **Marketing Group LLC** for City privilege taxes due on the two transfers to Taxpayer.
12. The assessment for the first home was based on the recorded affidavit of value amount of \$1,850,000.
13. The Tax Collector estimated the value for the second home at \$1,650,000 by assuming the loan on the property of \$1,320,000 represented eighty percent of the value of the property.
14. The LLC did not protest the assessment and the assessment became final.
15. The LLC did not pay the assessment.
16. The Tax Collector issued an assessment dated July 20, 2010 to Taxpayer under STC § 595 as successor to the LLC.
17. The Tax Collector assessed city privilege tax deficiency in the amount of \$32,161.04. The assessment to Taxpayer did not include any related interest or penalties that had been assessed to the LLC.
18. Taxpayer timely protested the assessment.
19. Taxpayer presented no evidence to show that the Tax Collector's method of estimating the value of either property was unreasonable.

Conclusions of Law

1. A person who acquires improved real property by any method for which the City privilege tax has not been paid is responsible for payment of such tax as a speculative builder as provided in STC § 416. STC § 595(c).
2. Taxpayer acquired improved real property from the LLC.
3. City privilege taxes were not paid on either property by the LLC.

4. The Tax Collector's assessment to the LLC for City privilege taxes due on the two transfers of improved real property to Taxpayer is final.
5. Taxpayer cannot challenge the basis of the assessment to the LLC in this proceeding.
6. Taxpayer is responsible for payment of the unpaid City privilege tax that was assessed to the LLC. STC § 595(c).
7. A sale of a custom home is considered a homeowner's bona fide non-business sale and not subject to the speculative builder tax if, among other requirements, the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale. Regulation 416.1(a)(1).
8. The exception for a homeowner's bona fide non-business sale does not apply here.
9. STC § 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.
10. The Tax Collector was authorized to base the tax on the value of each property for the transfer of each property from the LLC to Taxpayer, the LLC's manager/member.
11. The Tax Collector's estimate of gross income for the first sale based on the amount stated in the affidavit of value for the sale immediately after the LLC's transfer to Taxpayer was reasonable.
12. The Tax Collector's estimate of gross income for the second sale based on the assumption that the loan taken out on the property represented eighty percent of the value of the property was reasonable.
13. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate of fair market value is not reasonable and correct. STC § 545(b).
14. Even if Taxpayer could challenge the Tax Collector's estimates of fair market value, Taxpayer failed to meet his burden of proving the Tax Collector's estimates of market value were not reasonable. STC § 545.
15. The City's privilege tax assessment against Taxpayer was proper.

Ruling

The August 31, 2010 protest by Taxpayer of a jeopardy assessment made by the City of Scottsdale for the periods September 2006 and June 2007 is denied.

The Tax Collector's Notice of Jeopardy Assessment dated July 20, 2010 for the periods September 2006 and June 2007 is upheld.

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