

DECISION OF MUNICIPAL TAX HEARING OFFICER

June 14, 2011

Taxpayer Representative
Taxpayer Representative's address
Phoenix, AZ 85016-5344

Taxpayer
MTHO # 618

Dear Representative:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Scottsdale (Tax Collector or City).¹ The review period covered was February 2010. 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 based on the sale of a home Taxpayer was constructing in the City. Taxpayer agrees that taxes are due on the sale, but is protesting the amount allowed as credit for taxes Taxpayer paid to suppliers and contractors on the project. Taxpayer paid taxes in the total amount of \$12,617.81 but was only give credit for \$4,811.30. Taxpayer is therefore protesting the disallowance of a credit in the amount of \$7,806.51.

Tax Collector's Response

Taxpayer was the owner of record to the property on which the home was constructed. The Tax Collector met with Taxpayer before the final assessment was issued. After the assessment was issued the Tax Collector agreed to again review the documents to verify that all allowable deductions/credits were allowed. The assessment was revised to allow additional deductions/credits. The Tax Collector allowed all amounts that he could verify were paid to the City or separately charged to Taxpayer. Taxpayer was not entitled to any additional credits and is liable for the tax that was assessed.

Discussion

Taxpayer acquired vacant land in April 2007 and constructed a single-family residence on the land. A certificate of occupancy was issued on March 20, 2009. The home was sold to a third party on February 16, 2010. The Tax Collector conducted an audit assessment of Taxpayer for the period February 2010 and issued an assessment to Taxpayer under the speculative builder classification.

¹ Taxpayer did not submit a Reply Memorandum.

Taxpayer agrees that the sale was taxable. The issue presented is the amount of any credit Taxpayer is entitled to apply to the assessment under Scottsdale Revised City Code (SRCC) § 416(c)(3). That section states in part:

(3) Tax credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

It is the Tax Collector's position that credits for City taxes paid were not allowed where the documents provided by Taxpayer failed to meet one or more of the criteria specified in SRCC § 416(c)(3). The examples cited by the Tax Collector included cases where the subcontractor was not licensed with the City, or had ceased its license prior to the time of the construction or had not reported or paid tax during the period of construction. In these cases the credit is not available unless the tax was separately itemized on the invoices since the tax was not paid to the City.

The Tax Collector also cited examples where the invoices provided by Taxpayer showed an amount less than the amount claimed by Taxpayer. In those cases the Tax Collector allowed the lesser amount shown on the invoice.

The Tax Collector included in his Response to the Protest Exhibit D that detailed the amounts claimed by Taxpayer, the amounts allowed by the Tax Collector and an explanation of the allowed/disallowed amounts. Taxpayer did not submit a Reply Memorandum and thus did not address the Tax Collector's Exhibit D.

Tax statutes are strictly construed against a party who claims an exclusion or credit. Deductions, exclusions and credits are a matter of legislative grace, and the burden is on the Taxpayer to show he is entitled to a deduction, exclusion or credit. The code specifically requires that Taxpayer document to the satisfaction of the tax collector either that the tax was separately charged to Taxpayer or that the tax was paid to the City. Here, based on the record, Taxpayer has not met his burden to show he is entitled to any credit or deduction in addition to the amounts allowed by the Tax Collector.

Based on all the above, Taxpayer's protest of the Notice of Revised Audit Assessment for the period February 2010 is denied.

Findings of Fact

1. Taxpayer purchased lot *123 N. Windwood* in April, 2007.
2. Taxpayer obtained a building permit and constructed a single-family home on the lot.
3. A Certificate of Occupancy was issued for the home on March 20, 2009.
4. Taxpayer listed the home for sale on the Arizona Regional Multiple Listing Service on or before May 1, 2009.
5. Taxpayer sold the home to an unrelated third party on February 16, 2010.
6. The Tax Collector conducted an audit assessment of Taxpayer for the period February 2010 and issued an assessment for city privilege tax under the speculative builder classification on September 2, 2010.
7. Based on additional information, the Tax Collector issued a Notice of Revised Audit Assessment on November 20, 2010 for city privilege tax under the speculative builder classification in the amount of \$17,107.59, interest through October 31, 2010 in the amount of \$399.14 and application fee, license fees and license fee penalties in the total amount of \$291.75.
8. The Tax Collector did not assess any other penalties.
9. In the revised assessment the Tax Collector disallowed credits for taxes paid to the City in the amount of \$7,806.51.
10. Taxpayers timely protested the assessment and requested a redetermination.
11. Taxpayer agreed that his sale of the home was taxable, but protested the disallowance of the credits for taxes paid to the City.
12. Taxpayer did not present additional evidence or documentation showing that the material suppliers or contractors paid City privilege tax related to the construction of the home that would support the allowance of any additional credits or deductions.
13. Taxpayer did not present additional evidence or documentation showing that the amounts received by the contractors and material suppliers included a separately charged amount for the City privilege tax related to the construction of the home that would support the allowance of any additional credits or deductions.

Conclusions of Law

1. Taxpayer was a speculative builder during the audit period subject to the City's privilege tax.
2. A credit is allowed for taxes paid directly by a vendor to a taxing jurisdiction or charged separately to the speculative builder by the vendor with respect to the tangible personal property incorporated into the structure being constructed by the speculative builder. SRCC § 416(c)(3)(A).

3. A credit is allowed for taxes paid by a construction contractor to the City or charged separately to the speculative builder on the gross income derived by the contractor from the construction of any improvement to the real property. SRCC § 416(c)(3)(B).
4. Entitlement to the credit must be documented to the satisfaction of the tax collector. SRCC § 416(c)(3).
5. Tax statutes are construed strictly against a party who claims an exemption or a credit. *Davis v. Arizona Department of Revenue*, 197 Ariz. 527, 529-30, 4 P.3d 1070, 1072-73 (App. 2000).
6. The burden is on the taxpayer to show he is entitled to a deduction or exemption from tax. *See Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
7. Taxpayer did not show that privilege taxes were paid to the City or were charged separately to Taxpayer by material suppliers and construction contractors involved in the construction of the home in excess of the amounts allowed by the Tax Collector.
8. The City's revised assessment of privilege tax and interest against Taxpayer was proper.

Ruling

Taxpayer's protest of an assessment of privilege tax and interest made by the City of Scottsdale for the period February 2010 is denied consistent with Conclusion of Law number 8.

The Tax Collector's Notice of Revised Audit Assessment to Taxpayer mailed on November 20, 2010 for the period February 2010 is upheld.

Both parties have 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