

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 23, 2012

Decision: MTHO # 681

### ***Taxpayer:***

Tax Collector: Town of Paradise Valley

Hearing Date: March 22, 2012

## DISCUSSION

### Introduction

On October 11, 2011, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the Town of Paradise Valley (“Town”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on March 22, 2012. Appearing in person for the Town were ***members of a tax audit firm*** and the ***Town Clerk***. Appearing telephonically on behalf of Taxpayer were their ***representatives***. On March 26, 2012, the Hearing Officer indicated the record was closed and a written decision would be issued on or before May 10, 2012.

## DECISION

On August 26, 2011, the Town issued an audit assessment of Taxpayer. The assessment was for the audit period of August 2009. The assessment was for additional taxes in the amount of \$30,772.47, penalties for failure to file and failure to timely pay in the amount of \$7,693.12, and interest up through August 2011 in the amount of \$2,467.49.

***Alchemy, LLC*** (“***Alchemy***”) was an owner-builder of a home constructed at ***12345 Alchemy Drive*** (“***Alchemy Drive***”) located in the Town. After completion of the home, ***Alchemy*** became delinquent on the construction note held by ***Major Bank*** (“***Bank***”). The Town determined that the ***Alchemy Drive*** property was transferred from ***Alchemy*** to Taxpayer via a warranty deed and affidavit of property value recorded on July 17, 2009. The sales price listed was for \$2,900,000.00. The Town determined that Taxpayer transferred the ***Alchemy Drive*** property to ***New Owners*** via a warranty deed and affidavit of sale recorded on August 5, 2009. The sales price was listed as \$2,900,000.00. The Town concluded that the transfer from ***Alchemy*** to Taxpayer was a taxable speculative builder sale pursuant to Town Code Section 4A-416 (“Section 416”). Since ***Alchemy*** failed to pay the speculative builder tax on the transfer to Taxpayer, the Town assessed

Taxpayer as a successor in business pursuant to Town Code Section 4A-595 (“Section 595”).

Taxpayer asserted that any unpaid taxes should be the responsibility of *Alchemy* since they were the owner-builder. Further, Taxpayer did not take possession of the property and there was no lien on the property at the time of transfer. Taxpayer asserted that the Town had made no attempt for at least fifteen months to collect the taxes from *Alchemy* after the certificate of occupancy was issued.

Town Code Section 4A-100 (“Section 100”) defines “owner-builder” as an owner of real property who, by himself or by or through others constructs or has constructed any improvement to real property. In this case, *Alchemy* had a single family residence built at *Alchemy Drive*. As a result, *Alchemy* was an owner-builder pursuant to Section 100. Section 100 defines “speculative builder” to mean an “owner-builder” who sells improved real property consisting of a custom, model or inventory home. Section 100 defines “sale” to mean any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of property for a consideration. We conclude the transfer of the improved *Alchemy Drive* property to Taxpayer was a sale pursuant to Section 100 and would have resulted in *Alchemy* becoming a speculative builder pursuant to Section 100. Section 416 imposes a tax on the gross income from the business activity upon every person engaging in business as a speculative builder. Based on the evidence, *Alchemy* never paid the speculative builder tax on the transfer of the *Alchemy Drive* property to Taxpayer. Section 595 provides that: “Any person who purchases, or 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 Section 416.” As a result, Taxpayer is responsible for the speculative builder tax on the transfer of the *Alchemy Drive* property pursuant to Section 595.

Subsection (d) of Section 595 provides that a successor can withhold monies to cover the taxes until the former owner produces a receipt from the Town showing all Town taxes have been paid or a certificate stating no Town taxes are due. Taxpayer has failed to provide any certificate stating no Town taxes were due from *Alchemy*. Based on all the above, we conclude Taxpayer was properly assessed on the transfer from *Alchemy* pursuant to Sections 416 and 595.

Lastly, we have the matter of penalties. The Town assessed Taxpayer for penalties pursuant to Town Code Section 4A-540 (“Section 540”) for failure to file, and failure to timely pay. The penalties for failure to timely file and failure to timely pay may be waived for “reasonable cause”. Reasonable cause is defined in Section 540 that a taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity. While we did not approve Taxpayer’s protest of the underlying taxes, we do conclude that Taxpayer exercised ordinary business care and prudence. As a result, we conclude Taxpayer has

demonstrated reasonable cause to have all penalties waived. Based on all the above, we conclude Taxpayer's protest should be partly granted, and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

### **FINDINGS OF FACT**

1. On October 11, 2011, Taxpayer filed a protest of a tax assessment made by the Town.
2. On August 26, 2011, the City issued an audit assessment of Taxpayer.
3. The assessment was for the audit period of August 2009.
4. The assessment was for additional taxes in the amount of \$30,772.47, interest up through August 2011 in the amount of \$2,467.49, and penalties totaling \$7,693.12.
5. *Alchemy* was an owner-builder of a home constructed at *Alchemy Drive* in the Town.
6. After completion of the home, *Alchemy* became delinquent on the construction note held by the Bank.
7. The *Alchemy Drive* property was transferred to Taxpayer via a warranty deed and affidavit of property value recorded on July 17, 2009.
8. The sales price listed was for \$2,900,000.00.
9. Taxpayer transferred the *Alchemy Drive* property to *New Owners* via a warranty deed and affidavit of sale recorded on August 5, 2009.
10. The sales price was listed as \$2,900,000.00.
11. *Alchemy* did not pay any Town taxes on the transfer to 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. Pursuant to Section 100, *Alchemy* was an “owner-builder” for the *Alchemy Drive*.
3. The transfer of the improved *Alchemy Drive* property resulted in *Alchemy* becoming a speculative builder pursuant to Section 100.
4. The sale of improved *Alchemy Drive* property to Taxpayer was a taxable speculative builder sale pursuant to Section 416.
5. Taxpayer was a successor pursuant to Section 595 and became responsible for payment of speculative builder taxes not paid by Portspec pursuant to Section 416.
6. Taxpayer failed to provide any receipt showing *Alchemy* had paid the speculative builder tax or a certificate from the Town stating no Town taxes are due.
7. The Town was authorized pursuant to Section 540 to assess penalties.
8. Taxpayer demonstrated reasonable cause to have the penalties waived for failing to timely file or timely pay taxes.
9. Taxpayer’s October 11, 2011 protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.
10. The parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section-575.

### **ORDER**

It is therefore ordered that the October 11, 2011 protest by *Taxpayer* of a tax assessment made by the Town of Paradise Valley should be partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the Town of Paradise Valley shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer