

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: August 24, 2013

Decision: MTHO # 691

Taxpayer

Tax Collector: City of Scottsdale

Hearing Date: June 27, 2013

DISCUSSION

Introduction

On June 29, 2011, ***Taxpayer*** filed a letter of protest for a tax assessment made by the City of Scottsdale (“City”). A hearing was scheduled before the Municipal Tax Hearing Officer (“Hearing Officer”) on August 22, 2012. That hearing was rescheduled at the request of Taxpayer. The matter was scheduled for a hearing commencing on September 12, 2012. At that time, the parties requested the hearing be continued in order to allow the parties an opportunity to attempt to resolve the matter without a hearing. Subsequently, the parties were unable to resolve the matter and the hearing was rescheduled for June 27, 2013. Appearing for the City was the ***Assistant City Attorney***, a ***Senior Tax Auditor***, and two ***interns***. Taxpayer failed to make an appearance. On June 28, 2013, the Hearing Officer granted Taxpayer until July 29, 2013 in which to file any additional documentation. On August 2, 2013, the Hearing Officer indicated that no response had been received and as a result the record was closed with a written decision to be issued on or before September 16, 2013.

DECISION

On January 21, 2011, the City issued an assessment to Taxpayer for additional taxes in the amount of \$48,215.46, penalties in the amount of \$4,821.54, and interest up through October 2010 in the amount of \$13,144.58. The assessment was issued pursuant to City Code Section 416 (“Section 416”). On September 14, 2012, the City issued an amended assessment to Taxpayer for additional taxes in the amount of \$16,241.65 and interest up through August 2012 in the amount of \$6,993.73.

On April 30, 2003, Taxpayer purchased parcels at **2468 N. Emerald Blvd. (“Property A”)** and **1357 N. Emerald Blvd. (“Property B”)** located in the City. In its original assessment, the City assessed Taxpayer on the sale of both Property A and B. Subsequently, the City agreed with Taxpayer that the sale of Property A was not taxable and removed it from the assessment. The remaining sale of Property B is still under protest in this matter.

Taxpayer entered into a Ground Lease Agreement (“Lease”) with **Twilight, Inc. (“Twilight”)** for Property B on March 26, 2003. The Lease set forth provisions for improvements to be made by Taxpayer as well as permissible use and improvements to be made by **Twilight**. Taxpayer obtained permit **#AABBCC** for water, sewer, paving, concrete, and drainage on May 4, 2004. **Twilight** was issued permit **#DDEEFF** on May 4, 2004 for the construction of a commercial structure. A certificate of occupancy (“COO”) was issued for the structure on August 9, 2004. On August 30, 2005, Taxpayer sold the improved Property B, without the commercial structure, to **Twilight** for \$1,530,614.00. The City assessed the sale as a speculative builder sale pursuant to Section 416.

Since only land was sold by Taxpayer on August 30, 2005, Taxpayer asserted the sale exceeded the twenty four month holding period required for exemption of privilege tax on the sale of real property. As a result, Taxpayer requested the sale not be included in the assessment.

City Code Section 100 (“Section 100”) defines an “owner-builder” as an owner who has constructed any improvements to real property. Section 100 defines a “speculative builder” as an owner builder who sells or contracts to sell, at any time, improved real property consisting of an improved commercial lot without a structure or the sale of other improved real property before the expiration of twenty-four months after the improvements of the real property sold are substantially complete. In this case, Taxpayer sold improved real property which did not include a structure. As a result, the twenty-four month limitation did not apply. We note that even if the twenty-four month limitation applied, Taxpayer’s sale was well within the twenty-four month period. All the improvements would have been substantially completed by August 9, 2004 when the COO was issued. The sale occurred less than thirteen months later. Section 416 imposes a tax on the gross income of a speculative builder which includes the total selling price from the sale of improved real property. Based on the above, the Taxpayer was properly assessed taxes on the sale of the improved Property B. Based on all the above, we conclude the protest of Taxpayer for the assessment on Property B should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On January 21, 2011, the City issued an assessment to Taxpayer for additional taxes in the amount of \$48,215.46, penalties in the amount of \$4,821.54, and interest up through October 2010 in the amount of \$13,144.58.
2. On September 14, 2012, the City issued an amended assessment in the amount of \$16,241.65 and interest up through August 2012 in the amount of \$6,993.73.
3. On April 30, 2003, Taxpayer purchased parcels at Property A and Property B located in the City.
4. In the City's January 21, 2011 assessment, the City assessed Taxpayer on the sale of both Property A and Property B.
5. In the City's revised September 14, 2012 assessment, the City removed all taxes and interest assessed against the sale of Property A and all penalties assessed against Taxpayer.
6. Taxpayer entered into a Lease with *Twilight* for Property B on March 26, 2003.
7. The March 26, 2003 Lease set forth provisions for improvements to be made by Taxpayer as well as permissible use and improvements to be made by *Twilight*.
8. Taxpayer obtained permit #AABBCC for water, sewer, paving, concrete, and drainage improvements on May 4, 2004.
9. *Twilight* was issued permit #DDEEFF on May 4, 2004 for the construction of a commercial structure.
10. A COO was issued for the commercial structure on August 9, 2004.
11. The water, sewer, paving, concrete, and drainage improvements to Property B were substantially completed on August 9, 2004.
12. The commercial structure constructed on Property B was substantially completed on August 9, 2004.
13. Taxpayer's sale of improved Property B on August 30, 2005 for \$1,530,614.00 did not include any amount for the commercial structure which *Twilight* had constructed.

14. The City assessed the sale of improved Property B as a speculative builder sale pursuant to Section 416.

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. Section 416 imposes a tax on the gross income from the business activity of speculative building.
3. Section 100 defines an “owner-builder as an owner who has constructed any improvements to real property.
4. Section 100 defines a “speculative builder” as an owner builder who sells or contracts to sell, at any time, improved real property consisting of improved commercial lots without a structure or the sale of other improved real property before an expiration of twenty-four months after the improvements of the real property sold are substantially complete.
5. Pursuant to Section 100, the Taxpayer was an “owner-builder” of Property B.
6. Taxpayer’s sale of Property B did not include any proceeds for the commercial structure.
7. Taxpayer’s improvements to Property B were substantially completed on August 9, 2004.
8. The commercial structure which *Twilight* had constructed was substantially completed on August 9, 2004.
9. Taxpayer’s sale of improved Property B occurred within twenty-four months of the improvements being substantially completed.
10. Taxpayer’s sale of improved Property B was properly taxed pursuant to Section 416.
11. Taxpayer’s protest of the City’s assessment on the sale of Property B should be denied, consistent with the Discussion, Findings, and Conclusions, herein.
12. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the June 29, 2011 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 the City of Scottsdale shall revise its January 21, 2011 assessment consistent with its September 14, 2012 amended assessment.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer