

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 29, 2012

Decision: MTHO # 703

### ***Taxpayers:***

Tax Collector: City of Mesa

Hearing Date: May 29, 2012

## DISCUSSION

### Introduction

On January 27, 2012, a letter of protest was filed by ***Taxpayers*** of a tax assessment made by the City of Mesa (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on May 29, 2012. Appearing for the City were the ***Assistant City Attorney***, the ***Tax Audit Supervisor***, the ***Revenue Collections Supervisor***, and the ***Lead Revenue Collections Officer***. Taxpayers appeared on their own behalf. On May 31, 2012, the Hearing Officer indicated the record was closed and a written decision would be issued on or before July 12, 2012.

## DECISION

On December 21, 2011, the City issued a Notice of Succession (“Notice”) to Taxpayers for taxes in the amount of \$7,475.69. The taxes had been previously assessed to ***Designer Homes*** on the speculative builder sale of improved real property located at ***12345 W. Design Circle (“DC Property”)*** in the City. The owner of ***Designer Homes*** had built the ***DC Property*** for his daughter who lived there with her husband for over one and one-half years. At that time, the daughter and her husband got into financial difficulty and were not able to purchase the home from ***Designer Homes***. The ***DC Property*** was sold by ***Designer Homes*** to Taxpayers on March 30, 2010 for \$680,000.00. The City was not successful in collecting the speculative builder tax on the ***DC Property*** sale from ***Designer Homes***. Subsequently, the City assessed Taxpayers as a successor pursuant to City Code Section 5-10-595 (“Section 595”).

Taxpayers protested the assessment as they did not believe they should be responsible for taxes of ***Designer Homes***. Taxpayers asserted they purchased the property and at the time of sale it was clear of all encumbrances. Taxpayers argued that the City should have placed a lien on the home when it was completed in 2008. Taxpayers were critical of the City for not acting more swiftly to collect the taxes from ***Designer Homes***. City Code Section 5-10-100 (“Section 100”) defines “owner-builder” as an owner of real property

who, by himself or by or through others constructs or has constructed any improvements to real property. In this case, *Designer Homes* had a single family residence built which was the *DC Property*. As a result, *Designer Homes* 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 *DC Property* to Taxpayers was a sale 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, *Designer Homes* never paid the speculative builder tax on the transfer of the *DC Property* to Taxpayers. 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, Taxpayers are responsible for the speculative builder tax on the transfer of the *DC 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 provides a receipt from the City showing no City taxes are due. Taxpayer has failed to provide any certificate stating no City taxes were due from *Designer Homes*. Based on the above, we conclude Taxpayer was properly assessed on the transfer from *Designer Homes* pursuant to Sections 416 and 595. Accordingly, Taxpayers’ January 27, 2012 protest should be denied, consistent with the Discussion, Findings, and Conclusions herein.

### FINDINGS OF FACT

1. On January 27, 2012, Taxpayers filed a protest of a tax assessment made by the City.
2. On December 21, 2011, the City issued a Notice to Taxpayers for taxes in the amount of \$7,475.69.
3. The assessment was for the period of March 2010.
4. The owner of *Designer Homes* had built a home on the *DC Property* for his daughter and her husband who lived there for over one and one-half years.
5. The daughter and her husband got into financial difficulty and were not able to purchase the home from *Designer Homes*.

6. The ***DC Property*** was sold by ***Designer Homes*** to Taxpayers on March 30, 2010 for \$680,000.00.
7. The City was not successful in collecting the speculative builder tax on the ***DC Property*** sale from ***Designer Homes***.
8. At the time of the sale to Taxpayers, the ***DC Property*** was cleared of all encumbrances by the Title Company.
9. Taxpayers failed to provide any certificate stating no City taxes were due from ***Designer Homes***.

### **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. Pursuant to Section 100, ***Designer Homes*** was an “owner-builder” for the ***DC Property***.
4. The transfer of the ***DC Property*** to Taxpayers resulted in ***Designer Homes*** becoming a speculative builder pursuant to Section 100. .
5. The sale of the ***DC Property*** to Taxpayers was a taxable speculative builder sale pursuant to Section 416.
6. Taxpayers were successors pursuant to Section 595 and became responsible for payment of speculative builder taxes not paid by ***Designer Homes*** pursuant to Section 416.
7. Taxpayers failed to provide any receipt showing ***Designer Homes*** had paid the speculative builder tax or a certificate from the City stating no City taxes are due.
8. Taxpayers January 27, 2012 protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

9. 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 January 27, 2012 protest by *Taxpayers* of a tax assessment made by the City of Mesa should be denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer