

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: February 19, 2013

Decision: MTHO # 734

***Taxpayer:***

Tax Collector: City of Tucson

Hearing Date: December 10, 2012

### **DISCUSSION**

#### **Introduction**

On July 10, 2012, ***Taxpayer*** filed a letter of protest for a tax assessment made by the City of Tucson (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on December 10, 2012. Appearing for the City was the ***Tax Auditor, Finance Manager, Revenue Administrator, and staff*** from the City Attorney’s Office. Appearing for Taxpayer was a ***Member***. On December 11, 2012, the Hearing Officer granted Taxpayer until January 24, 2013 in which to file additional documentation that City taxes had been previously paid by another entity. On January 29, 2013, the Hearing Officer indicated no response had been received from Taxpayer. As a result, the Hearing Officer closed the record and indicated a written decision would be issued on or before March 15, 2013.

### **DECISION**

The City had performed a desk audit of Taxpayer and issued a June 26, 2012 assessment to Taxpayer for additional taxes in the amount of \$11,815.50, interest up through May 2012 in the amount of \$9,863.62, and penalties in the amount of \$2,953.88. The audit period was for the months of February 2002, March 2002, and May 2002. The assessment was based on unreported income from speculative building activity pursuant to City Code Section 416 (“Section 416”).

Taxpayer purchased some acreage in the early 2000’s. Subsequently, Taxpayer developed five lots and remodeled two other homes. The improved lots/homes were sold during the months of February, March, and May of 2002. On June 3, 2005, the City sent a notice to Taxpayer regarding the taxability of the sales of the improved real property. Since Taxpayer had never filed any tax returns, the City requested Taxpayer to submit tax returns for months in which it had speculative builder income. The City indicated that if

Taxpayer failed to submit any tax returns by June 12, 2005 then the City would issue an official billing. Taxpayer testified that it never received the City's June 3, 2005 letter. The assessment was for additional taxes due in the amount of \$5,208.98, interest up through June of 2005 in the amount of \$1,823.14, and penalties totaling \$1,302.25. The only month assessed at that time was for February 2002. Subsequently, the City allowed the matter to remain dormant for over seven years until issuing the June 26, 2012 assessment which is the subject of this case.

Taxpayer argued that the City's assessment was precluded because the Statute of Limitations ("SOL") had run on the sales made by Taxpayer. Further Taxpayer asserted that all documents related to these sales have been destroyed and *NWD Development* no longer exists. Taxpayer also indicated that it believed the title company was to collect all taxes at the time of closing of a sale.

It is clear to the Hearing Officer that Taxpayer's sales of improved real property in February, March, and May of 2002 were speculative builder sales pursuant to Section 416. Taxpayer was an owner of real property in which it had improvements constructed on to the real property. Subsequently, those improved properties were sold by Taxpayer and thus the sales were taxable pursuant to Section 416. As to the assessment being precluded by the SOL, we note that the general SOL set forth in City Code Section 550 ("Section 550") is four years after the date on which the return is required to be filed, or within four years after the date on which the return is filed, whichever period expires later. Since Taxpayer never filed any tax returns as a speculative builder, the SOL of four years has not run. Based on all the above, we conclude Taxpayer's protest of the tax assessment should be denied.

The City assessed Taxpayer for penalties for failure to timely file or timely pay taxes pursuant to City Code Section 540 ("Section 540"). The City also assessed Taxpayer for interest on the underlying taxes that were due. Taxpayer had requested waiver because of its belief that the title company was to collect and remit all taxes to the City. Taxpayer has not provided the Hearing Officer with any citation to support its claim that the title company was responsible for collecting and remitting the speculative builder tax. However, we are concerned that the City allowed this matter to remain dormant for over seven years which has resulted in a significant increase in the amount of penalties and interest. While Taxpayer did not recall receiving the City's June 3, 2005 letter regarding the speculative builder tax, the City's certified receipt demonstrated that someone at the company had signed for it. With that said, Taxpayer still had the right to rely on the June 3, 2005 letter that Taxpayer's failure to submit any tax returns prior to June 12, 2005 would result in the City issuing an official billing. We conclude that the City provided written erroneous or misleading information pursuant to City Code Section 541 ("Section 541") that was detrimental to the Taxpayer regarding the amount of interest and penalties that have been assessed. Accordingly we shall waive all interest and penalties assessed during the period of June 12, 2005 through June 26, 2012. Based on all the above, we conclude that Taxpayer's protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

## **FINDINGS OF FACT**

1. On July 10, 2012, Taxpayer filed a letter of protest for a tax assessment made by the City.
2. On June 26 2012, the City issued an assessment to Taxpayer for additional taxes in the amount of \$11,815.50, interest up through May 2012 in the amount of \$9,863.62, and penalties in the amount of \$2,953.88.
3. The desk audit period was for the months of February, March, and May 2002.
4. The assessment was based on unreported income from speculative builder sales.
5. The City utilized Pima County records to determine the sale prices of each of Taxpayer's properties.
6. Taxpayer purchased some acreage in the early 2000's and began to develop the *AS Subdivision*.
7. Taxpayer developed five lots and remodeled two others in the *AS Subdivision*.
8. The improved lots/homes were sold during the months of February, March, and May of 2002.
9. On June 3, 2005, the City sent a notice to Taxpayer regarding the taxability of the sale of the improved real property.
10. Since Taxpayer had never filed any tax returns, the City requested Taxpayer to submit tax returns for months in which it had speculative builder income.
11. The City indicated that if Taxpayer failed to submit any tax returns by June 12, 2005 then the City would issue an official billing.
12. The City's June 3, 2005 certified letter was signed for by someone at Taxpayer's offices.
13. The June 3, 2005 assessment was for additional taxes due in the amount of \$5,208.98, interest up through June of 2005 in the amount of \$1,823.14, and penalties totaling \$1,302.25.
14. The only month assessed at that time was for February 2002.

15. The City allowed the assessment to remain dormant for over seven years until issuing the June 26, 2012 assessment which is the subject of this case.
16. Taxpayer has never filed any tax returns as a speculative builder.

### **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. City Code Section 416 imposes a tax on the business activity of speculative builder.
3. Taxpayer was an owner of real property in which it had improvements constructed on to the real property.
4. The improved real properties were sold by Taxpayer and thus were taxable pursuant to Section 416.
5. The general SOL set forth in Section 550 is four years after the date on which the return is required to be filed, or within four years after the date on which the return is filed, whichever period expires later.
6. Since Taxpayer has failed to file any tax returns as a speculative builder, the SOL of four years has not run.
7. Because no tax forms were filed or taxes paid, the City was authorized pursuant to Section 540 to assess penalties and interest.
8. The City provided written erroneous or misleading information in the City's June 3, 2005 letter pursuant to Section 541.
9. All interest and penalties assessed for the period of June 12, 2005 through June 26, 2012 should be waived.
10. Taxpayers protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

11. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

**ORDER**

It is therefore ordered that the July 10, 2012 protest by *Taxpayer* of a tax assessment made by the City of Tucson is hereby partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Tucson shall remove all penalties and interest assessed for the period of June 12, 2005 through June 26, 2012.

It is further ordered that this Decision is effective immediately.

***Municipal Tax Hearing Officer***