

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: August 5, 2013

Decision: MTHO # 778

Taxpayers:

Tax Collector: City of Chandler

Hearing Date: June 19, 2013

DISCUSSION

Introduction

On February 25, 2013, ***Taxpayers*** filed a letter of protest for a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on June 19, 2013. Appearing for the City was a ***Senior Tax Auditor*** and a ***Lead Auditor***. Taxpayers failed to make an appearance. On June 19, 2013, the Hearing Officer granted Taxpayers until July 19, 2013 in which to file any additional documentation. Taxpayers failed to respond. On August 2, 2013, the Hearing Officer closed the record and indicated a written decision would be issued to the parties on or before September 16, 2013.

DECISION

On November 26, 2012, the City issued an assessment to Taxpayers for additional taxes in the amount of \$2,620.38, interest up through November 2012 in the amount of \$355.04, and penalties totaling \$655.10. The assessment was based on a speculative builder sale pursuant to City Code Section 62-416 (“Section 416”).

Taxpayers purchased vacant land located at ***1234 N. Somewhere***, (“***Somewhere Property***”) in the City on April 10, 2007. Taxpayers received a permit on October 4, 2007, from the City to build a custom home. The final inspection for the completed house was issued on July 15, 2008. The ***Somewhere Property*** was sold at a trustee’s sale on February 3, 2009 to the ***Bank*** (“***Bank***”) for \$861,530.00. At the time of the trustee sale, Taxpayers owed a debt to the Bank in the amount of \$993,060.00 which was forgiven at the time of the sale. Subsequently, the Bank (thru ***EMBER Holdings, LLC***) sold the ***Somewhere Property*** to ***Mr. REH*** for \$825,000.00.

Taxpayers protested the entire assessment. Taxpayers argued they were not involved in any manner with the selling/transfer price in February 2009. Taxpayers asserted they owned the *Somewhere Property* while a custom home was being built but lost the home to the Bank when the economy turned bad. Taxpayers also argued that if the taxes were an issue, they would have been discharged at Taxpayers bankruptcy last year.

The City noted that at the time of the trustee sale, Taxpayers owed a debt to the Bank in the amount of \$993,060.00. The Bank received the *Somewhere Property* in exchange for the forgiveness of the debt. The City asserted Taxpayers bankruptcy was discharged on February 14, 2012. The City indicated they did not become aware of the tax liability until May 2012 when the first request for information was sent to Taxpayers. The City was not included as a creditor to the bankruptcy matter.

City Code Section 62-100 (“Section 100”) defines a “speculative builder” as an owner builder who sells or contracts to sell, at any time, improved real property consisting of a custom home. “Sale” is defined in Section 100 to mean any transfer of title or possession in any manner or by any means whatsoever. In this case, Taxpayers were owner builders who had a custom home constructed which was then transferred at a trustee sale. The definition of sale would include a trustee sale. While Taxpayers never received any proceeds from the trustee sale, the definition of “gross income” pursuant to City Code Section 62-200 (“Section 200”) includes the reduction or forgiveness of indebtedness. As a result, the reduction or forgiveness of indebtedness would be gross income to Taxpayers. 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, Taxpayers were properly assessed taxes on the transfer of the *Somewhere Property* at the trustee sale. We have been provided no documentation that would indicate the tax assessment was discharged in bankruptcy.

The City assessed penalties pursuant to City Code Section 62-540 (“Section 540”). Those penalties may be waived for reasonable cause. Based on the facts of this case, we conclude Taxpayers have demonstrated reasonable cause to have all penalties waived. Based on all the above, we conclude, with the exception of the penalties, that the protest of Taxpayers should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On November 26, 2012, the City issued an assessment to Taxpayers in the amount of \$2,620.38, interest up through November 2012 in the amount of \$355.04, and penalties totaling \$655.10.

2. Taxpayers purchased vacant land located at *Somewhere Property* in the City on April 10, 2007.
3. Taxpayers received a permit from the City on October 4, 2007 to build a custom home on the *Somewhere Property*.
4. The final inspection for the custom home was issued on July 15, 2008.
5. The *Somewhere Property* was sold at trustee's sale on February 3, 2009 to the Bank for \$861,530.00.
6. Taxpayers never received any proceeds from the trustee sale.
7. At the time of the trustee sale, Taxpayers owed a debt to the Bank in the amount of \$993,060.00 which was forgiven at the time of the sale.
8. Subsequently, the Bank (thru *Ember Holdings, LLC*) sold the *Somewhere Property* to *Mr. REH* for \$825,000.00.
9. Taxpayers' bankruptcy was discharged on February 14, 2012.
10. The City did not become aware of Taxpayers tax liability until May 2012 when the first request for information was sent to Taxpayers.
11. The City was not included as a creditor for Taxpayers bankruptcy matter.

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 100 defines a "speculative builder" as an owner builder who sells or contracts to sell, at any time, improved real property consisting of a custom home.
3. "Sale" is defined in Section 100 to mean any transfer of title or possession in any manner or by any means whatsoever.
4. Taxpayers were owner builders who had a custom home constructed which was then transferred at a trustee sale.
5. The definition of sale set forth in Section 100 would include a trustee sale.

6. Taxpayers were speculative builders for the *Somewhere Property*.
7. The definition of “gross income” pursuant to Section 200 includes the reduction or forgiveness of indebtedness.
8. The reduction or forgiveness of indebtedness from the trustee sale resulted in gross income to Taxpayers.
9. Section 416 imposes a tax on the gross income of a speculative builder which includes the selling price from the sale of improved real property.
10. Taxpayers were properly assessed a speculative builder tax pursuant to Section 416 on the transfer of the *Somewhere Property* at the trustee sale.
11. Section 540 authorizes the City to assess penalties.
12. Penalties assessed pursuant to Section 540 may be waived for good cause.
13. Based on the facts of this case, Taxpayers have demonstrated good cause to have all penalties waived.
14. Taxpayers protest, with the exception of the penalties, should be denied, consistent with the Discussion, Findings, and Conclusions, herein.
15. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the February 25, 2013 protest by *Taxpayers* of a tax assessment made by the City of Chandler is hereby partly denied and partly granted consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Chandler shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer