

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: July 29, 2003  
Decision: MTHO #115  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On April 8, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on April 16, 2003, that the protest was timely and in the proper form. On April 23, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) classified this matter as a redetermination and ordered the City to file any response to the protest on or before June 9, 2003. On May 1, 2003, the City filed its response. On May 10, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before June 10, 2003. The Taxpayer filed a reply on June 10, 2003. The Hearing Officer filed a letter on June 18, 2003 indicating that a written Decision would be issued on or before August 4, 2003.

In July of 2002, the Taxpayer sold an apartment complex located at \_\_\_\_\_ (“*Property*”) in the City. The apartment complex was issued Certificates of Occupancy (“Certificates”) in August 2001. Since the sale occurred within twenty-four months of the completion date of the project the City assessed a speculative builder tax liability on the sale of the apartment complex. The Taxpayer did not protest the speculative builder tax but did protest a failure to pay timely penalty in the amount of \$7,334.91.

**City Position**

The City became aware that the Taxpayer had sold an apartment complex located at the Property in July 2002. Since the sale occurred within twenty-four months of the completion date of the project, the Taxpayer had a speculative builder tax liability on the sale of the apartment complex. As a result, the City contacted the Taxpayer on September 20, 2002 regarding the sale of the property. The Taxpayer provided the requested documentation and a check for the amount of tax liability on October 22, 2002. The Taxpayer provided a check for the associated interest on January 31, 2003. The Taxpayer did not pay a penalty in the amount of \$7,334.91 for failing to timely pay taxes. The City opposed any waiver or abatement of the penalty. According to the City, this was the first speculative builder tax assessed on *Taxpayer*. However, the City asserted that one of the partners, *Partner 1*, has been involved in speculative builder sales of five other apartment complexes within the City.

The City concluded that even though the Taxpayer had hired a new accountant to file taxes in August of 2002, the Taxpayer was aware through its partners of the speculative builder tax liability. The City argued that City Code Section 14-540(b)(2) (“Section 540(b)”) prescribes a penalty often percent for failing to timely pay taxes unless the failure to timely pay taxes was due to reasonable cause. Further, the City indicated that City Code Section 14-540(h) (“Section 540(h)”) defines reasonable cause as exercising ordinary business care and prudence. In this case, the Taxpayer had approved the payment of the speculative builder tax in a timely manner and thus the City concluded there was no reasonable basis to believe the speculative builder tax did not apply. In addition, the City argued that “ordinary business care and prudence” would include knowing when a new staff change was made seeing that the appropriate tax schedules were provided. As a result, the City requested the assessment of the penalty for failing to timely pay taxes on the speculative builder tax be upheld.

### **Taxpayer Position**

The Taxpayer asserted that the penalties should be waived because there was reasonable cause for the return being filed late. According to the Taxpayer, the accountant charged with being responsible for all tax filings left the company in August of 2002 before the August tax return was filed. Prior to leaving the company, the accountant had requested and received approval of the amount of speculative tax on the sale of the apartment complexes at the Property. The replacement for the accountant was unaware of the requirement to file the speculative builder tax and the old accountant did not provide the replacement with the privilege sales tax schedules approved by the company. The Taxpayer also argued that it is not reasonable to expect them to be aware of all personal changes in a company of over two thousand employees in over fifteen states. The Taxpayer asserted that it was a reasonable business practice to delegate tasks and responsibilities from the corporate office to the partnerships and to assume that once a course of action is approved, the partnership personnel will accomplish the goal. Further, the Taxpayer argued that quarterly reviews are done to make sure the accruals and balance sheets are reasonable. According to the Taxpayer, the tax quarterly review in October of 2002 determined there was a problem since the accrual balance had not been paid. For that reason, the Taxpayer asserted that any unforeseen difficulties (such as a personnel change prior to taxes being paid) would be corrected internally and within a reasonable time for a large corporation. As a result, the Taxpayer argued that its current business practices reflect ordinary business care and prudence. Further, the Taxpayer argued that the failure to timely pay taxes was for reasonable cause and the penalties should be waived.

### **ANALYSIS**

Clearly, a penalty can be imposed for failure to timely pay taxes. It is also undisputed that the Taxpayer was aware or should have been aware of the speculative builder tax on the sale of apartment complexes at the Property. As a result, the failure to timely pay taxes penalty was appropriate unless the Taxpayer was able to demonstrate reasonable cause for failing to timely pay. In determining reasonable cause in this case, we must review the Taxpayer’s business practices to determine if they were reasonable and prudent to assure that appropriate taxes would be paid in a timely manner. We must conclude that the Taxpayer’s business practices for a large

multi-state company were reasonable and that the Taxpayer would have discovered in a reasonable time period that the speculative builder tax had not been paid. It is also clear that the Taxpayer had approved the taxes to be paid and but for a change in personnel the taxes would have been timely paid. Further, as soon as the Taxpayer became aware of the taxes not being paid both from the City informing them as well as internal controls, the taxes were promptly paid. Based on all the above, we find the Taxpayer has demonstrated reasonable cause for failing to timely pay the taxes on the sale of the Property.

### **FINDINGS OF FACT**

1. On April 8, 2003, the Taxpayer filed a protest of a tax assessment by the City.
2. After review, the City concluded on April 16, 2003 that the protest was timely and in proper form.
3. On April 23, 2003, the Hearing Officer classified the matter as a redetermination and ordered the City to file any response to the protest on or before June 9, 2003.
4. On May 1, 2003, the City filed its response.
5. On May 10, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before June 10, 2003.
6. The Taxpayer filed a reply on June 10, 2003.
7. The Hearing Officer filed a letter on June 18, 2003 indicating that a written Decision would be issued on or before August 4, 2003.
8. In July of 2002, the Taxpayer sold an apartment complex located at the Property in the City.
9. The apartment complex was issued Certificates in August 2001.
10. Since the sale of the apartment complex occurred within twenty-four months of the completion date of the project, the City assessed a speculative builder tax liability on the sale of the apartment complex.
11. The Taxpayer did not protest the speculative builder tax but did protest a failure to pay timely penalty in the amount of \$7,334.91.
12. The Taxpayer has over two thousand employees in over fifteen states.
13. The Taxpayer had approved payment of the speculative builder tax on the sale of the Property in a timely manner.

14. The speculative builder tax was not paid in a timely manner because of a change in personnel.
15. The Taxpayer had quarterly procedures in place that would permit them to discover the speculative builder tax was not timely paid.

### **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. The Taxpayer failed to timely pay a speculative builder tax on the sale of the Property pursuant to City Code Section 14-416.
3. The City is authorized to assess a ten percent penalty pursuant to Section 540(b) for failure to timely pay taxes.
4. Section 540(b) provides that the failure to timely pay penalty shall be waived if the Taxpayer can demonstrate reasonable cause.
5. The Taxpayer's procedures to discover unpaid taxes in a reasonable time frame for a fifteen state business was reasonable.
6. The Taxpayer has demonstrated reasonable cause for failing to timely pay the taxes on the sale of the Property.
7. The Taxpayer's protest should be approved.

### **ORDER**

It is therefore ordered that the April 8, 2003 protest of *Taxpayer* of a tax assessment made by the City of Phoenix is hereby granted.

It is further ordered that the City of Phoenix shall revise the assessment of *Taxpayer* by removing all penalties for failing to timely pay.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer