

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: February 27, 2012

Decision: MTHO # 673/674

Taxpayer:

Tax Collector: City of Chandler

Hearing Date: February 1, 2012

DISCUSSION

Introduction

On September 5, 2011, ***Taxpayer*** filed letters of protest for both MTHO # 673 and # 674 of tax assessments made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on February 1, 2012. Appearing for Taxpayer was ***himself***. Appearing for the City were ***Tax Audit Supervisor, Senior Tax Auditor, and Tax Auditor***. On February 2, 2012, the Hearing Officer closed the record and indicated a written decision would be issued on or before March 19, 2012.

DECISION

On July 21, 2011, the City issued an estimated assessment to Taxpayer for License No. ***ABCDEF*** (“MTHO # 673”) for additional taxes in the amount of \$5,871.74, interest up through July 2011 in the amount of \$1,200.74, penalties in the amount of \$1,467.94, and license fees in the amount of \$52.50. Based on the evidence at the hearing, the City issued a revised assessment on February 3, 2012 for additional taxes in the amount of \$5,871.74, interest up through February 2012 in the amount of \$1,334.74, \$0.00 penalties, and license fees in the amount of \$52.50.

On July 21, 2011, the City issued an assessment for Taxpayer for License No. ***LMNOPQ*** (“MTHO # 674”) for additional taxes in the amount of \$6,552.14, interest up through August 31, 2011 in the amount of \$2,558.27, penalties totaling \$1,638.04, and license fees in the amount of \$52.50. Based on the evidence at the hearing, the City issued a revised assessment on February 3, 2012 for additional taxes in the amount of \$3,350.56, interest up through February 2012 in the amount of \$1,380.92, penalties in the amount of \$0.00, and license fees in the amount of \$52.50.

Taxpayer purchased a home at ***1234 West Street*** in Tempe, AZ (“Jeanine Property”) on September 27, 2002. The Jeanine Property became the primary residence for the Taxpayer. At the time of the hearing, the Jeanine Property was still Taxpayer’s primary

residence. On July 27, 2005, Taxpayer purchased vacant land at *1234 East* in the City (“Kaibab Property”). Taxpayer hired a construction contractor to build a custom home on the property. Taxpayer built the home with the intent to be his personal residence. The structure was substantially completed on March 14, 2007 when the final inspection was completed. Taxpayer never lived in the residence full time, but spent time there after the home was substantially complete in order to do additional work on the new home. On June 6, 2007, the improved property was sold for \$950,000.00.

On May 27, 2004, Taxpayer purchased vacant property *1234 North* in the City (“Armstrong Property”). Taxpayer hired a construction contractor to build a custom home on the Armstrong Property. Taxpayer built the home with the intent to be his personal residence. The structure was substantially complete on July 13, 2005 when the final inspection was completed. Taxpayer never lived in the residence full time, but did spend some time there in order to work on the home. On July 25, 2005, the improved property was sold for \$687,500.00.

The City taxed Taxpayer on both the sale of the Kaibab Property and the Armstrong Property as speculative builder sales pursuant to City Code Section 62-416 (“Section 416”). Section 416 imposes a tax on the selling price from the sale of improved real property. City Code Section 62-100 (“Section 100”) defines a speculative builder as an owner-builder who sells or contracts to sell improved real property consisting of custom, model, or inventory homes.

Taxpayer argued the sale of both the Kaibab Property and the Armstrong Property were exempt from the speculative builder tax as they were both “homeowner’s bona fide non-business sales” pursuant to City Code Regulation 62-416.1 (“Regulation 416.1”). We note that Subsection a (1) of Section 416.1 requires the property must be used as the principal place of family residence for the six (6) months next prior to the offer for sale.

An “owner-builder” is defined in Section 100 as an owner that has constructed improvements to real property. In this case, Taxpayer was an owner-builder for both the Kaibab Property and the Armstrong Property. Since Taxpayer was an owner-builder who contracted to sell improved real property consisting of custom homes, Taxpayer was a speculative builder pursuant to Section 100. As a result, the sale of both the Kaibab Property and the Armstrong Property were taxable sales pursuant to Section 416 which imposes a tax on the selling price from the sale of improved property. We have no reason to dispute Taxpayer’s assertion that his intent when he built the custom homes was to make them his primary residence. Unfortunately, there are no provisions in the City Code to take intent into consideration for tax purposes. As to Taxpayer’s request for a “homeowner’s bona fide non-business sale” exemption pursuant to Regulation 416.1, we conclude Taxpayer does not qualify for the exemption. For both properties, Taxpayer failed to meet the requirement that the property was used as the principal place of family residence for the six months prior to the offer for sale. Based on all the above, with the exception of the adjustments set forth in the City’s February 3, 2012 revised assessments, Taxpayer’s protests should be denied.

FINDINGS OF FACT

1. On September 5, 2011, Taxpayer filed letters of protest for both MTHO #673 and #674 of tax assessments made by the City.
2. On July 21 2011, the City issued an estimated assessment to Taxpayer for MTHO #673 for additional taxes in the amount of \$5,871.74, interest up through July 2011 in the amount of \$1,200.74, penalties in the amount of \$1,467.94, and license fees in the amount of \$52.50.
3. Based on the evidence presented at the hearing, the City issued a revised assessment on February 3, 2012 for additional taxes in the amount of \$5,871.74, interest up through February 2012 in the amount of \$1,334.74, \$0.00 in penalties, and license fees in the amount of \$52.50.
4. On July 21, 2011, the City issued an assessment for MTHO #674 for additional taxes in the amount of \$6,552.14, interest up through August 31, 2011 in the amount of \$2,558.27, penalties totaling \$1,638.04, and license fees in the amount of \$52.50.
5. Based on the evidence presented at the hearing, the City issued a revised assessment on February 3, 2012 for additional taxes in the amount of \$3,350.56, interest up through February 2012 in the amount of \$1,380.92, penalties in the amount of \$0.00, and license fees in the amount of \$52.50.
6. Taxpayer purchased the Jeanine Property on September 27, 2002.
7. The Jeanine Property became the primary residence for the Taxpayer.
8. At the time of the hearing, the Jeanine Property was still Taxpayer's primary residence.
9. On July 27, 2005, Taxpayer purchased vacant land which was the Kaibab Property.
10. Taxpayer hired a construction contractor to build a custom home on the Kaibab Property.
11. Taxpayer built the custom home on the Kaibab Property with the intent to be his personal residence.
12. The custom home on the Kaibab Property was substantially completed on March 14, 2007 when the final inspection was completed.
13. Taxpayer never lived in the Kaibab Property full time, but spent time there after the

home was substantially completed in order to do additional work on the new home.

14. On June 6, 2007, the improved Kaibab Property was sold for \$950,000.00.
15. On May 27, 2004, Taxpayer purchased vacant land which was the Armstrong Property.
16. Taxpayer hired a construction contractor to build a custom home on the Armstrong Property.
17. Taxpayer built the custom home on the Armstrong Property with the intent to be his personal residence.
18. The custom home on the Armstrong Property was substantially complete on July 13, 2005 when the final inspection was completed.
19. Taxpayer never lived in the residence full time, but did spend some time there in order to work on the home.
20. On July 25, 2005, the improved property was sold for \$687,500.00.

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 selling price from the sale of improved real property in the City.
3. Taxpayer was an owner-builder for both the Kaibab Property and the Armstrong Property pursuant to Section 100.
4. Since Taxpayer was an owner-builder who contracted to sell improved real property consisting of custom homes, Taxpayer was a speculative builder pursuant to Section 100.
5. The sale of both the Kaibab Property and the Armstrong Property were taxable speculative builder sales pursuant to Section 416.

6. Taxpayer did not qualify for a “homeowner’s bona fide non-business sale” exemption for either the sale of the Kaibab Property or the Armstrong Property as neither property was used as the principal place of family residence for the six (6) months next prior to the offer for sale.
7. Based on the evidence at the hearing, it was proper for the City to issue revised assessments on February 3, 2012.
8. Taxpayer’s protests, with the exception of the adjustments set forth in the City’s February 3, 2012 revised assessments, should be denied.
9. The parties have timely appeal rights pursuant to Model City Tax Code Section 575.

ORDER

It is therefore ordered that the September 5, 2011 protests by *Taxpayer* of tax assessments (MTHO’s 673 and 674) made by the City of Chandler is hereby denied, with the exception of the revisions set forth in the February 3, 2012 revised assessments, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer