

DECISION OF MUNICIPAL TAX HEARING OFFICER

November 27, 2012

Taxpayers

Taxpayer's Address

Taxpayers
MTHO #711

Dear Taxpayers:

We have reviewed the evidence and arguments presented by the *Taxpayers* and the City of Scottsdale (Tax Collector or City) at the hearing on October 26, 2012. The review period covered was June 2009. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City of Scottsdale privilege tax under the speculative builder classification. Taxpayer is protesting the interest included in the assessment based on the unreasonable amount of time the Tax Collector took to inform Taxpayer of the tax due.

Tax Collector's Response

Taxpayer was assessed for unreported taxes on the speculative sale of improved real property. The property was sold on June 11, 2009 and the assessment was issued on March 19, 2012. Taxpayer has paid the assessment in full and has requested a refund of the interest. The assessment was timely issued and interest was properly imposed under Scottsdale Tax Code (STC) § 540.

Discussion

Taxpayer was assessed by the City for taxes due under the speculative builder classification. The assessment included interest. No penalties were assessed. Taxpayer paid the assessment but requested a refund of the interest. Taxpayer contends that the City took an unreasonable amount of time to inform Taxpayer that taxes were due.

Under the Scottsdale Tax Code, the City generally has four years after a return has been filed to issue an assessment. There is no limitation period if a return was not filed. Here, even though Taxpayer did not file a return, the assessment was issued less than three years after the tax period at issue. The assessment was timely.

STC § 540(a) imposes interest on any taxpayer who does not pay taxes which were due or found to be due before the delinquency date. Interest continues to accrue until the tax is paid. Interest is not a penalty, but is compensation to the City for the lost time-value of money received after the due date. *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256, (1998). As the court noted, non-punitive interest is nothing more than compensation for the use of money. The taxpayers had the benefit of using the funds before paying the tax claim and, in

the legal sense, suffer no loss by reason of paying interest on the money it retained in its possession.

Interest accrues if taxes are unpaid. The Tax Collector waived all penalties for Taxpayer not filing a return or not paying privilege taxes for the period at issue. It is not necessary to address whether or not the City was aware that taxes were owed by Taxpayer earlier than shortly before the assessment was issued.¹ As long as the taxes are unpaid, interest accrues.

Based on all the above, we conclude Taxpayer's protest of the denial of its refund claim for the interest should be denied. The City's denial of Taxpayer's refund request was proper.

Findings of Fact

1. Taxpayer sold improved real property located in the City in June 2009.
2. Taxpayer did not pay privilege taxes on the sale of the property.
3. The Tax Collector issued an assessment under the speculative builder classification in March 2012.
4. The assessment included privilege tax and accrued interest.
5. Taxpayer paid the assessment and filed a request for refund of the accrued interest.
6. Taxpayer requested a hearing before the Municipal Tax Hearing Office in the event the City denied its refund claim.
7. The City denied Taxpayer's refund claim.

Conclusions of Law

1. Taxpayer's sale of the property was subject to the privilege tax on speculative builders.
2. Taxpayer did not pay the privilege tax for the period June 2009 before those taxes became delinquent.
3. The City may assess taxes for periods for which a return was not filed at any time without regard to audit statute of limitations. STC § 550(c)
4. STC § 540(a) imposes interest on any taxpayer who fails to pay any of the taxes which were due or found to be due before the delinquency date until the tax is paid.
5. TCC § 540(a) recognizes the time value of money, and thus requires a taxpayer that is holding or using money that rightfully belongs to the City to pay interest for the use of that money. *See, Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d 1256, (1998).
6. Taxpayer is liable to pay interest on the taxes that are unpaid from the date the taxes were due until paid.
7. The Hearing Officer does not have the authority to waive the interest.
8. The City's denial of Taxpayer's refund claim of the interest was proper.

¹ No evidence was presented that the City was aware of the potential tax liability before late 2011.

Ruling

Taxpayer's protest of the City's denial of its refund claim for the period June 2009 is denied.

The City's denial of Taxpayer's refund claim for the period June 2009 is upheld

Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

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c: ***City of Scottsdale***
Municipal Tax Hearing Office