

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

Decision Date: September 10, 2013

Decision: MTHO # 788

***Taxpayer:***

Tax Collector: Town of Marana

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On January 23, 2013, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the Town of Marana (“Town”). At the request of Taxpayer, this matter was classified as a redetermination. After submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on August 20, 2013 and indicated a written decision would be issued on or before October 4, 2013.

### **DECISION**

On October 23, 2012, the Town issued a tax assessment to Taxpayer for the period of September 2009. The assessment was for additional taxes in the amount of \$65,456.14, interest up through October 2012 in the amount of \$7,479.64, and penalties of \$16,364.04. The basis of the Town’s assessment was unreported speculative builder income pursuant to Town Code Section 9-416 (“Section 416”). Taxpayer filed a protest claiming the sale in question was an exempt sale pursuant to Town Code Section 416©(1)(D) (“Section 416(D)).

### **FINDINGS OF FACT**

1. On October 23, 2012, the Town issued a tax assessment to Taxpayer for the period of September 2009.

2. At the request of Taxpayer, this matter was classified as a redetermination.
3. The Town assessed Taxpayer for additional taxes in the amount of \$65,456.14, interest up through October 2012 in the amount of \$7,479.64, and penalties of \$16,364.04.
4. The basis of the Town's assessment was unreported speculative builder income pursuant to Section 416.
5. Taxpayer hired "**Construction Company A**" to construct improvements on property located at "**undisclosed location**" in the Town.
6. The improvements were finalized on February 24, 2009 resulting in "**Restaurant A**".
7. "**Restaurant A**" was sold by Taxpayer on September 23, 2009 for \$2,583,000.00 to "**New Owners**", LLC.
8. Taxpayer did not dispute the sale of the improved "**undisclosed location**" was a speculative builder sale.
9. Taxpayer protested he assessment arguing that the sale was exempt from taxation pursuant to Section 416(D).
10. According to Taxpayer, "**New Owners**" has two members; "**himself**" and his wife.
11. "**Himself**" also owns "**Cattle Company A**" which is an agricultural company based in Yuma, AZ.
12. Taxpayer argued the sale of the improved "**undisclosed location**" was to someone engaged in the production of agricultural products and thus the sale was exempt pursuant to Section 416(D).
13. The Town argued the sale of the improved "**undisclosed location**" was not an exempt sale pursuant to Section 416(D).
14. The Town argued that "**New Owners**" and "**Cattle Company A**" were separate persons pursuant to Town Tax Code Section 9-100 ("Section 100").

## 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 416 imposes a tax on the gross income from the business activity upon every person engaging in the business of speculative building within the Town.
3. Taxpayer's sale of the improved "***undisclosed property***" was a speculative builder sale.
4. Section 416(D) provides that the gross proceeds of a sale that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural in this state shall be exempt from the tax imposed under this Section.
5. Section 100 defines "person" to mean an individual, firm, partnership, joint venture, association, corporation, etc. A person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated.
6. "***New Owners***" and "***Cattle Company A***" were separate persons pursuant to Section 100.
7. "***New Owners***" was not engaged in the production of agricultural products and thus the sale of the improved "***undisclosed property***" was not exempt pursuant to Section 416(D).
8. A.R.S. Section 42-1125 ("Section 1125") authorized the Town to assess penalties and interest.
9. Taxpayer failed to demonstrate reasonable cause to waive the penalties that were assessed.
10. Based on all the above, Taxpayer's protest should be denied, consistent with the Discussion, Conclusions, and Findings, herein.
11. The parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section-575.

**ORDER**

It is therefore ordered that the January 23, 2013 protest by *Taxpayer* of a tax assessment made by the Town of Marana is hereby denied, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

*Municipal Tax Hearing Officer*