

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: September 11, 2003

Decision: MTHO #119

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On April 30, 2003, *Taxpayer* filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on May 2, 2003 that the protest was timely and in the proper form. On May 10, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file any response to the protest on or before June 25, 2003. On May 13, 2003, the Taxpayer requested the matter be reclassified from a hearing to a redetermination. On May 19, 2003 the Hearing Officer granted the Taxpayer’s request and the matter was re-classified to a redetermination. On June 24, 2003, the City filed their response to the protest. On June 26, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before July 17, 2003. On July 29, 2003, the Hearing Officer filed a letter indicating no reply had been filed and that a written decision would be issued on or before September 12, 2003.

The Taxpayer had sold twelve residential town homes at *Location* in the City from January 2001 to October 2002. The City performed an audit for the period January 2001 through December 2002 and assessed the Taxpayer additional tax of \$24,220.20 for unreported speculative builder revenue. The City also assessed penalties for failure to file timely reports and failure to timely pay with penalties of \$332.89 and \$221.93, respectively. The City included interest up through February 2002 in the amount of \$2,850.82.

City Position

The City became aware that the Taxpayer had sold twelve residential town homes. *Contractor LLC* (the construction arm) sold the homes to the Taxpayer (the marketing arm) concurrently with the sale to the end user. The sales to the end users were at a higher price. The City asserted that because the sales between *Contractor LLC* and the Taxpayer were between closely affiliated companies, the first sale price was not indicative of the market value. According to the City, the sales to the end users were representative of the actual market price and the proper value to utilize in determining the speculative builder tax liability.

The City initially contacted the Taxpayer on September 23, 2002 regarding the sale of the town

homes. Subsequently, the City spoke with the Taxpayer on seven occasions regarding documentation that was needed for the audit. The City never received the documentation and on February 27, 2003, the City issued an estimate of tax due. Again the Taxpayer failed to respond and the City finalized the assessment on March 12, 2003.

After review of the Taxpayer's protest and the additional documentation attached to the protest, the City concluded the Taxpayer had not received credit for City and State taxes paid. As a result, the City recommended the speculative builder tax be reduced to \$8,105.16 plus interest.

The City also reviewed the Taxpayer's request to waive the penalties assessed. The City indicated that City Code Section 14-540(f)(3)(c) ("Section 540(0)") states:

"The Tax Collector shall waive or adjust penalties...upon finding...serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date."

Since *Manager* prepared the tax returns and was seriously ill before and after the due date, the City recommended the penalties be waived.

Taxpayer Position

The Taxpayer requested the abatement of all penalties. The Taxpayer asserted that the Taxpayer's Manager during the audit period suffered ill health and was not capable of filing a timely report. According to the Taxpayer, the Manager suffered from acute hypertension, atrial fibrillation and uncontrolled obstructive sleep apnea, and was hospitalized twice for congestive heart failure.

The Taxpayer also protested the amount of the tax assessment. The Taxpayer argued that the City failed to allow credits for taxes paid to the City in the amount of \$15,731.60. Further, the Taxpayer argued the City failed to provide any credit for state sales tax paid in the amount of \$35,992.86.

ANALYSIS

There was no dispute that the Taxpayer was a speculative builder and thus their revenues were taxable pursuant to Section 416. The City's original assessment was reasonable because the Taxpayer failed to provide documentation requested by the City. It was also reasonable and proper for the City to revise the assessment after the Taxpayer provided documentation to demonstrate City and State taxes had been paid. The Taxpayer did not dispute the City's revised assessment. Accordingly, we approve the City's revised speculative builder tax of \$8,105.16.

Since the Taxpayer failed to timely report or timely pay taxes on a sale, the City was authorized to assess penalties pursuant to Section 540. We also concur with the City that the Taxpayer has demonstrated the preparer of the reports had a serious illness and it is proper to waive the penalties.

FINDINGS OF FACT

1. On April 30, 2003, the Taxpayer filed a protest of a tax assessment by the City.
2. After review, the City concluded on May 2, 2003 that the protest was timely and in proper form.
3. On May 10, 2003, the Hearing Officer ordered the City to file any response to the protest on or before June 25, 2003.
4. On May 13, 2003, the Taxpayer requested the matter be reclassified from a hearing to a redetermination.
5. On May 19, 2003, the Hearing Officer granted the Taxpayer's request and the matter was re-classified to a redetermination.
6. On June 24, 2003, the City filed their response to the protest.
7. On June 26, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before July 17, 2003.
8. On July 29, 2003, the Hearing Officer filed a letter indicating no reply had been filed and that a written decision would be issued on or before September 12, 2003.
9. The Taxpayer had sold twelve residential town homes at *Location* in the City from January 2001 to October 2002.
10. The City performed an audit for the period January 2001 through December 2002 and assessed the Taxpayer additional tax of \$24,220.29 for unreported speculative builder revenue.
11. The City also assessed penalties for failure to file timely reports and failure to pay timely in the amounts of \$332.89 and \$221.93, respectively.
12. The City included interest up through February 2002 in the amount of \$2,850.82.
13. *Contractor LLC* (the construction arm) sold the homes to the Taxpayer (the marketing arm) concurrently with the sale to the end user.
14. The sales to the end users were at a higher price than the transfers to the Taxpayer.
15. The City initially contacted the Taxpayer on September 23, 2002 regarding the sale of the town homes.
16. The City spoke with the Taxpayer on seven occasions regarding documentation that was

needed for the audit.

17. The City never received the documentation and on February 27, 2003, the City issued an estimate of tax due.
18. Again the Taxpayer failed to respond and the City finalized the assessment on March 12, 2003.
19. After review of the Taxpayer's protest and the additional documentation attached to the protest, the City concluded the Taxpayer had not received credit for City and State taxes paid.
20. As a result, the City recommended the speculative builder tax be reduced to \$8,105.16 plus interest.
21. **Manager** prepared the tax returns for the Taxpayer and was seriously ill before and after the due date.

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 was a speculative builder and thus their revenues were taxable pursuant to Section 416.
3. The sale prices between **Contractor LLC** and the Taxpayer were not representative of the market value.
4. The sale prices between the Taxpayer and the end users were representative of the market value.
5. The City's original assessment was reasonable because the Taxpayer failed to provide documentation requested by the City.
6. The City's revised assessment was proper after the Taxpayer provided documentation to demonstrate City and State taxes had been paid.
7. Since the Taxpayer failed to timely report or timely pay taxes on a sale, the City was authorized to assess penalties pursuant to Section 540.
8. The Taxpayer has demonstrated that the preparer of the reports had a serious illness and it is proper to waive the penalties.

9. The Taxpayer's protest should be granted to the extent it is consistent with the City's proposed revision on June 24, 2003.

ORDER

It is therefore ordered that the April 20, 2003 protest of *Taxpayer* of a tax assessment made by the City of Phoenix is hereby granted to the extent it is consistent with the City's proposed revision on June 24, 2003.

It is further ordered that the City shall revise the speculative builder tax assessment to \$8,105.16 plus interest.

It is further ordered that the City shall waive all penalties assessed in this matter. It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer