

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: November 3, 2003
MTHO Decision: MTHO #121
Tax Collector: City of Tucson
Hearing Date: August 7, 2003

DISCUSSION

Introduction

On April 25, 2003, *Taxpayer*, (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on May 2, 2003 that the protest was timely and in the proper form. On May 12, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) filed a letter requesting the Taxpayer clarify its protest petition on or before June 3, 2003. On May 16, 2003, the Hearing Officer extended the deadline until June 6, 2003. On June 6, 2003, the Taxpayer filed a letter clarifying its protest. On June 7, 2003, the Hearing Officer ordered the City to file a response to the protest on or before July 22, 2003. On July 9, 2003, the City filed its response. A Notice of Hearing (“Notice”) was issued setting the matter for hearing commencing on August 7, 2003. On July 12, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before August 4, 2003. Both the City and Taxpayer appeared and presented evidence at the August 7, 2003 hearing. On August 11, 2003, the Hearing Officer filed a letter indicating that the Taxpayer was to provide copies of contracts to the City by August 21, 2003, the City would file any comments/recommendations on or before September 4, 2003, and the Taxpayer would file any reply to the City on or before September 18, 2003. After review of the contracts, the City filed its comments/recommendations on September 2, 2003. On September 16, 2003, the Taxpayer filed its reply. On September 18, 2003, the Hearing Officer issued a letter indicating the record was closed and that a written decision would be issued on or before November 3, 2003.

The Taxpayer had eleven houses built in the _____ Subdivision (“Subdivision”) in the _____ block of _____ Road (“Road”) in the City. The houses were built by *Construction LLC* (“*Construction*”). The Taxpayer is owned by *Construction Owner*. *Construction* is owned by *Owner 1* and *Owner 2*. The City conducted an audit of the Taxpayer for the period February 2002 through October 2002. The City assessed the Taxpayer for taxes due in the amount of \$11,073.93, penalties in the amount of \$2,768.50 for failing to timely file reports and failing to timely pay taxes, and interest.

City Position

The Taxpayer was not licensed so the City issued the Taxpayer License No. **XXXXXX** in December 2002. According to the City, the Taxpayer failed to pay any taxes during the audit period or file any tax returns. The Taxpayer failed to cooperate during the audit and as a result the City was not able to examine any of their records. The City asserted that the Taxpayer built eleven homes in the Subdivision located in the Road and then sold the homes during the audit period. As a result, the City concluded the Taxpayer was a speculative builder and therefore taxable pursuant to City Code Section 416 (“Section 416”). The City estimated the gross income by utilizing the building permits issued and from the county assessors website. The City also allowed a land cost deduction of \$3,000.00 per lot during the audit. At the hearing, the Taxpayer provided documentation the land cost per lot was \$3,000.00 plus five percent of the gross sales price. As a result, the City recommended adjusting the total land price for the eleven lots by \$44,795.75. This adjustment reduced the taxes due to \$10,499.06 and penalties to \$2,624.78. The City asserted that the contractor working for the Taxpayer is a prime contractor and that their gross income is subject to tax per City Code Section 415 (“Section 415”). The City also agreed that the Taxpayer should receive a tax credit for taxes paid to the contractor but the City argued the proposals and contracts did not name the contractor or the amount of tax paid.

The City opposed any waiver of the penalties. According to the City, the Taxpayer has operated construction companies within the City limits for a number of years and should have been aware of the licensing and reporting requirements.

Taxpayer Position

The Taxpayer argued that their gross revenues during the audit period were \$400,000 and that the tax assessment should be reduced to \$5,200.00. According to the Taxpayer, **Construction** was identified as the contracting party and the Taxpayer should be credited for taxes paid to **Construction** in the amount of \$8,748.00. The Taxpayer also argued that it would be double taxation to assess both **Construction** and the Taxpayer for the same contracting income. The Taxpayer requested the penalties be waived. According to the Taxpayer, the purpose of penalties is to encourage tax-filing compliance and the Taxpayer has agreed to comply in the future. In addition, the Taxpayer asserted its profit margins are thin and penalties would seriously impact the Taxpayer’s bottom line.

ANALYSIS

Based on the evidence presented, the Taxpayer is an owner-builder and was properly assessed as a speculative builder pursuant to Section 416. Because of the Taxpayer’s lack of cooperation during the audit, it was proper for the City to make an estimate of the gross income. The City’s estimation method was reasonable and should be approved. The Hearing Officer also concurs with the City’s revised assessment to reflect more accurate land values based on documentation presented to the City at the hearing. Based on the above, the Hearing Officer approves the City’s revised assessment. Further, the Hearing Officer concurs with the Taxpayer that **Construction**

should not also be assessed for contracting income on the construction of these same homes nor should the Taxpayer receive any credit for alleged taxes paid to **Construction** for construction of these homes.

The City was authorized pursuant to Section 540 to assess penalties for the Taxpayer's failure to timely file reports and failing to timely pay taxes. The Taxpayer failed to demonstrate reasonable cause for failing to file reports or failing to timely pay taxes. In fact, the Taxpayer aggravated the situation by failing to provide records during the audit process. Accordingly, the request to waive the penalties is denied.

FINDINGS OF FACT

1. On April 25, 2003, the Taxpayer filed a protest of a tax assessment made 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 12, 2003, the Hearing Officer filed a letter requesting the Taxpayer clarify its protest petition on or before June 3, 2003.
4. On May 16, 2003, the Hearing Officer extended the deadline until June 6, 2003.
5. On June 3, 2003, the Taxpayer filed a letter clarifying its protest.
6. On June 7, 2003, the Hearing Officer ordered the City to file a response to the protest on or before July 22, 2003.
7. On July 9, 2003, the City filed its response.
8. A Notice was issued setting the matter for hearing commencing on August 7, 2003.
9. On July 12, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before August 4, 2003.
10. Both the City and Taxpayer appeared and presented evidence at the August 7, 2003 hearing.
11. On August 11, 2003, the Hearing Officer filed a letter indicating that the Taxpayer was to provide copies of contracts to the City by August 21, 2003, the City would file any comments/recommendations on or before September 4, 2003, and the Taxpayer would file any reply to the City on or before September 18, 2003.
12. After review of the contracts, the City filed its comments/recommendations on September 2, 2003.

13. On September 16, 2003, the Taxpayer filed its reply.
14. On September 18, 2003, the Hearing Officer issued a letter indicating the record was closed and that a written decision would be issued on or before November 3, 2003.
15. The Taxpayer had eleven houses built in the Subdivision in the Road in the City.
16. The houses were built by *Construction*.
17. The Taxpayer is owned by *Construction Owner*.
18. Construction is owned by *Owner 1* and Andrea *Owner 2*.
19. The City conducted an audit of the Taxpayer for the period February 2002 through October 2002.
20. The City assessed the Taxpayer for taxes due in the amount of \$11,073.93, penalties in the amount of \$2,768.50 for failing to timely file reports and failing to timely pay taxes, and interest.
21. The Taxpayer was not licensed so the City issued the Taxpayer License No. ~~XXXXXX~~ in December 2002.
22. The Taxpayer failed to pay any taxes or file any tax returns during the audit period.
23. The Taxpayer failed to cooperate during the audit and as a result the City was not able to examine any of the Taxpayer's records.
24. The Taxpayer built eleven homes in the Subdivision located in the Road and then sold the homes during the audit period.
25. The City estimated the gross income by utilizing the building permits issued and the county assessors website.
26. The City allowed a land cost of \$3,000.00 per lot during the audit.
27. The Taxpayer provided documentation at the hearing to demonstrate the land cost per lot was \$3,000.00 plus five percent of the gross sales price.
28. The City recommended adjusting the total land price for the eleven lots by \$44,795.75.
29. The land adjustment reduced the taxes due to \$10,499.06 and the penalties \$2,624.78.
30. The Taxpayer has operated construction companies within the City limits for a number of years.

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 authorizes a tax on the gross income from the business activity of engaging in the business as a speculative builder.
3. The Taxpayer was an owner-builder pursuant to Section 100.
4. The Taxpayer was a speculative builder pursuant to Section 100.
5. The Taxpayer failed to file tax returns or timely pay taxes for its business activity during the audit period.
6. The City is authorized to use estimates when the Taxpayer fails to maintain or provide necessary books and records.
7. The City's estimation method was made on a reasonable basis.
8. The Taxpayer has failed to demonstrate reasonable cause for waiving of penalties for failure to timely file or failing to timely pay.
9. With the exception of the City's adjustment for land prices, the Taxpayer's protest should be denied.
10. There should not be an assessment for both construction contracting and as a speculative builder on the construction of the Subdivision.

ORDER

It is therefore ordered that the April 25, 2003 protest by *Taxpayer* of a tax assessment made by the City of Tucson is hereby denied with the exception of the revision recommended by the City of Tucson in its September 2, 2003 letter and consistent with the Discussion herein.

It is further ordered that the City of Tucson shall revise its assessment to reflect the revised land purchase price set forth in the City's September 2, 2003 letter.

It is further ordered that this Decision shall be effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer