

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: September 16, 2003  
Decision: MTHO #128  
Tax Collector: City of Phoenix  
Hearing Date: None

**DISCUSSION**

**Introduction**

On June 27, 2003, *the Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, the City concluded on June 30, 2003 that the protest was timely and in the proper form. On July 3, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response on or before August 18, 2003 and classified this matter as a redetermination. On July 11, 2003, the City filed a response to the protest. On July 18, 2003 the Taxpayer filed a reply to the City. On July 25, 2003, the Hearing Officer filed a letter granting the Taxpayer until August 15, 2003 to submit any supplement to its reply. On August 20, 2003, the Hearing Officer filed a letter closing the record and indicating a written decision would be issued on or before October 6, 2003.

**City Position**

The City became aware in January 2003 that the Taxpayer had purchased vacant land located at \_\_\_\_\_ (*The Property*) in the City in August 1999. Subsequently, the Taxpayer had a building constructed and sold the improved property in September 2000. The City assessed the Taxpayer for understated speculative builder income pursuant to City Code Section 415(a) (“Section 415(a)”) and calculated a tax due of \$16,508.94. In addition, pursuant to City Code Section 540(a) (“Section 540(a)”) the City assessed interest up through March 2003 of \$4,786.60. The Taxpayer paid the tax due in the amount of \$16,508.94 on April 29, 2003 and requested the interest be waived. The City called the Taxpayer and explained why the interest cannot be waived. On June 24, 2003, the Taxpayer paid the interest of \$4,786.60.

The City asserted that Section 540 provides that interest cannot be abated except as it might relate to a tax abated as provided by City Code Section 14-570 (“Section 570”). Since the Taxpayer did not dispute the tax, the interest cannot be abated. The City argued that the fact the Taxpayer stated on the April 28, 2003 check paying the tax and the April 29, 2003 accompanying letter that “full and final payment” was being made does not relieve the Taxpayer from the liability.

**Taxpayer Position**

The Taxpayer was not aware of the applicability of the speculative builder tax on the *The*

**Property** until notified by the City. After being notified by the City, the Taxpayer did not dispute the tax assessed. The Taxpayer did object to the inclusion of interest since they were not aware of the applicability of the tax and because the City waited for over two years after the sale before contacting the Taxpayer. The Taxpayer argued that the City has “discharged” the Taxpayer’s obligation to pay the interest through an “accord and satisfaction” pursuant to ARS Section 47-3311 (“Section 3311”). Section 3311 provides as follows:

“...the claim is discharged if the person against who the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full **satisfaction** of the claim.”

According to the Taxpayer, both the April 28, 2003 check and April 29, 2003 transmittal letter met the requirements of Section 3311. The April 28, 2003 check contained the following language “Payment in full-speculative builder tax due on sale of \_\_\_\_\_, Phoenix, Arizona”. The April 29, 2003 transmittal letter contained the following language:

“Enclosed is my client’s check in the amount of \$16,508.95 in full and final payment of the “speculative builder” tax liability with respect to the above-described property. It is our position that no interest should be due and owing for several reasons. ...”

Based on the above, the Taxpayer argued the City is not entitled to the interest as a result of having accepted an “accord and satisfaction”.

### ANALYSIS

There was no dispute regarding the applicability of Section 415(a) resulting in a tax assessment of \$16,508.94. It is clear that the City is authorized to assess an interest on the taxes imposed pursuant to Section 540(a). It is also clear that neither the City nor the Hearing Officer may abate any interest except as it might relate to a tax abated pursuant to Section 570. That leaves us with the issue of whether the City is not entitled to the interest because of having accepted an “accord and satisfaction”. The Hearing Officer concludes there was no “accord and satisfaction” for the interest payment. First, the auditor for the City had no authority to accept an “accord and satisfaction” for the interest pursuant to Section 540(a). In addition, we do not find the April 28, 2003 check and/or the accompanying April 29, 2003, transmittal letter contained a conspicuous statement to the effect the instrument was tendered as full satisfaction of the interest. In this case the City assessed a speculative builder tax in the amount of \$16,508.94 and an interest amount of \$4,952.70. The language on the April 28, 2003 check referred to payment in full for the “speculative builder tax” and the April 29, 2003 transmittal letter also referred to the check being for full and final payment of the “speculative builder tax liability”. While the transmittal letter does contain language that the Taxpayer disputes any interest due and owing, that is not reflected in the check language. The language does not refer to payment in full for the speculative builder tax and interest. Based on the above, the Taxpayer’s protest should be denied.

## FINDINGS OF FACT

1. On June 27, 2003, the Taxpayer filed a protest of a tax assessment by the City.
2. After review, the City concluded on June 30, 2003 that the protest was timely and in proper form.
3. On July 3, 2003, the Hearing Officer ordered the City to file a response on or before August 18, 2003 and classified this matter as a redetermination.
4. On July 11, 2003, the City filed a response to the protest.
5. On July 18, 2003, the Taxpayer filed a reply to the City.
6. On July 25, 2003, the Hearing Officer filed a letter granting the Taxpayer until August 15, 2003 to submit any supplement to its reply.
7. On August 20, 2003, the Hearing Officer filed a letter closing the record and indicating a written decision would be issued on or before October 6, 2003.
8. The Taxpayer purchased vacant land located at the *The Property* in the City in August 1999.
9. Subsequently, the Taxpayer had a building constructed on the *The Property* and sold the improved property in September 2000.
10. The City assessed the Taxpayer for understated speculative builder income and calculated a tax due of \$16,508.94.
11. The City also assessed interest up through March 2003 of \$4,786.
12. On April 29, 2003, the Taxpayer sent a transmittal letter to the City along with an April 28, 2003 check in the amount of \$4,786.60.
13. The April 28, 2003 check contained the following language "Payment in full-speculative builder tax due on sale of \_\_\_\_\_, Phoenix, Arizona".
14. The April 29, 2003 transmittal letter contained the following language: "Enclosed is my client's check in the amount of \$16,508.95 in full and final payment of the "speculative builder" tax liability with respect to the above-described property. It is our position that no interest should be due and owing for several reasons...".
15. On June 24, 2003, the Taxpayer mailed a check in the amount of \$4,812.60 for the interest assessed and a \$25.00 license fee.

## 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. Section 540 requires an interest to be imposed on additional tax determined to be due.
4. Section 540 precludes interest being abated by the City or the Hearing Officer except as it might relate to a tax abated as provided by Section 570.
5. The auditor for the City was not authorized to abate any interest.
6. There was no “accord and satisfaction” for the interest.
7. The Taxpayer’s protest should be denied.

## ORDER

It is therefore ordered that the June 27, 2003 protest of *the Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied.

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

Jerry Rudibaugh  
Municipal Tax Hearing Officer