

**Jerry Rudibaugh
Municipal Tax Hearing Officer**

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 19, 2004
Decision: MTHO #164
Tax Collector: City of Peoria
Hearing Date: None

DISCUSSION

Introduction

On December 10, 2003, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Peoria ("City"). After review, the City concluded on December 18, 2003 that the protest was timely and in the proper form. On December 26, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before February 9, 2004. On January 8, 2004, the Taxpayer requested this matter be changed from a bearing to a redetermination. On January 12, 2004, the Hearing Officer reclassified this matter as a redetermination. The City filed its response to the protest on January 27, 2004. On January 29, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before March 1, 2004. On March 4, 2004, the Hearing Officer indicated no reply had been received and a written decision would be issued on or before April 19, 2004.

City Position

The City conducted an audit of the Taxpayer for the period of October 1, 1999 through September 30, 2003. The City assessed the Taxpayer for additional taxes due in the amount of \$5,490.99, penalties in the amount of \$625.60 for failure to pay, and interest on the unpaid balance. According to the City; the Taxpayer is a limited liability corporation operating as a construction contractor and lessor of commercial property. The City indicated the Taxpayer constructed a warehouse as an owner builder and sold the warehouse to a related party, *AB* Property Management ("*AB* Property"). Both the Taxpayer and *AB* Property are owned by *Mr. A* and *Mr. B*. According to the City a sales affidavit recorded with the Maricopa County Recorder's Office ("County Recorder") indicates that the Taxpayer sold a warehouse to *AB* Property in June 2003, which was within twenty-four months of the completion of the warehouse.

Taxpayer Position

The Taxpayer protested the assessment made by the City after reclassifying a transaction as a speculative builder sale. According to the Taxpayer, the land and building were distributed at cost to its members, *Mr. B* and *Mr. A*. The property was then recontributed at cost to *AB* Property, also owned by *Mr. B* and *Mr. A*. The Taxpayer asserted they did not attempt to avoid

sales taxes or change equitable ownership. In addition, the Taxpayer indicated they acted on the advice of legal and financial advisors.

ANALYSIS

City Code Section 12-416 ("Section 416") imposes a tax on the gross income on property sold by a speculative builder. Sales are defined in the Code as being a "transfer of title" or a "change in equitable ownership". While there was no change in equitable ownership, there was a transfer of title and thus a sale pursuant to Section 416. While there was no exchange of monies, Section 210 allows the City to estimate the market value when the exchange is between affiliated companies. We have received no evidence that the City estimate did not reflect -market value. Based on the above, we conclude that the City's assessment of the warehouse transfer as a speculative builder sale was proper. As to the assessed penalties, we find the Taxpayer relied on legal and financial experts and as a result has demonstrated reasonable cause for failing to timely pay the taxes. Accordingly, all penalties are waived.

FINDINGS OF FACT

1. On December 10, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on December 18, 2003 that the protest was timely and in proper form.
3. On December 26, 2003, the Hearing Officer ordered the City to file a response to the protest on or before February 9, 2004.
4. On January 8, 2004, the Taxpayer requested this matter be changed from a hearing to a redetermination.
5. On January 12, 2004, the Hearing Officer reclassified this matter as a redetermination.
6. The City filed its response to the protest on January 27, 2004.
7. On January 29, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before March 1, 2004.
8. On March 4, 2004, the Hearing Officer indicated no reply had been received and a written Decision would be issued on or before April 19, 2004.
9. The City conducted an audit of the Taxpayer for the period October 1, 1999 through September 20, 2003.

10. The City assessed the Taxpayer for additional taxes due in the amount of \$5,490.99, penalties in the amount of \$625.60 for failure to pay, and interest on the unpaid balance.
11. The Taxpayer is a limited liability corporation operating as a construction contractor and lessor of commercial property.
12. The Taxpayer constructed a warehouse as an owner builder and transferred the warehouse to a related party within twenty-four months of substantial completion.
13. A sales affidavit recorded with the County Recorder indicates the Taxpayer sold a warehouse to **AB** Property in June 2003.
14. The Taxpayer relied on the advice of legal and financial advisors when it transferred the warehouse to **AB** Property.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all renewals of petitions for hearing or redetermination under the Model City Tax Code.
2. Section 416 imposes a tax on the gross income on property sold by a speculative builder.
3. The Code defines a sale as being a "transfer of title" or a "change in equitable ownership."
4. The transfer from the Taxpayer to **AB** Property was a sale under the provisions of Section 416.
5. Section 210 allows the City to estimate the market value when there is an exchange between affiliated companies.
6. There was no evidence to show that the City did not utilize a reasonable estimate of the market value of the warehouse.
7. The Taxpayer has demonstrated reasonable cause for failing to timely pay taxes on the transfer of the warehouse.
8. The Taxpayer's protest should be denied with the exception of the penalties as discussed herein.

ORDER

The December 10, 2003 protest by *Taxpayer* of a tax assessment made by the City of Peoria is hereby denied with the exception of the penalties as discussed herein.

It is further ordered that the City of Peoria shall remove all penalties assessed on the speculative builder sale.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer