

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 18, 2004

Decision: MTHO #180

Tax Collector: City of Bullhead City

Hearing Date: None

DISCUSSION

Introduction

On November 27, 2003, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Bullhead City ("City"). On March 1, 2004, the Taxpayer filed a letter of clarification that the protest was a request for a hearing. After review, on March 4, 2004, the City concluded that the protest was timely but not in the proper form. On March 18, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to provide on or before April 1, 2004, a copy of an attachment referred to by the City in their March 4, 2004 filing. On April 15, 2004, the Hearing Officer extended the City's deadline for providing a copy of the attachment to April 29, 2004. No attachment was ever filed. On May 3, 2004, the Hearing Officer concluded the protest in conjunction with the Taxpayer's March 1, 2004 letter to be in proper form and ordered the City to file a response on or before June 17, 2004. On May 13, 2004, the Taxpayer filed a request to change from a hearing to a redetermination. On May 19, 2004, the Hearing Officer reclassified the matter as a redetermination. On June 29, 2004, the Hearing Officer extended the City's response deadline to July 13, 2004. On July 14, 2004, the City filed a response to the protest. On July 23, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before August 23, 2004. On September 1, 2004, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before October 18, 2004.

City Position

The City conducted an audit and concluded the Taxpayer had a speculative builder sale for the month of January 2001. The City assessed the Taxpayer for taxes due of \$2,101.68, penalties for failure to file and failure to pay of \$525.42, and interest up through September 2003 in the amount of \$371.66.

The City disputed the Taxpayer's argument that the sales tax factored deduction was wrong. According to the City, the tax calculation provided by the Taxpayer is wrong because he based it on the State of Arizona Combined Sales tax rate. The City asserted there is no state sales tax on the sale of the property. The City indicated it utilized the tax calculation model of the Unified Audit Committee to calculate the tax in this case.

The City disputed the Taxpayer's argument that the City did not allow the proper tax credits. According to the City, the allowable tax credits are set forth in City Tax Code Section 416 (3) ("Section 416 (3)") as follows:

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

- (A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.*
- (B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.*

The City asserted they allowed the credits pursuant to the Section 416 (3).

The City agreed to revise the fair market value of the land deduction based on additional documentation provided by the Taxpayer. In the original audit, the City allowed twenty percent of the selling price as the fair market value of the land. According to the City, the twenty percent is the rule of thumb used when there is no other documentation. As part of the protest, the Taxpayer provided an appraisal value of \$138,400, which the City finds acceptable. The City did not find support for the Taxpayer's request to increase the average percentage increase in land values from the Mohave County Tax Assessor from 1996 to 2001.

The City assessed penalties for failure to file a return and for failure to timely pay taxes when due. According to the City, the penalties are authorized pursuant to ARS Section 42-1125 (A) ("Section 42-1125 (A)") which reads as follows:

A. If a taxpayer fails to make and file a return for a tax administered pursuant to this article on or before the due date of the return or the due date as extended by the department, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, four and one-half percent of the tax required to be shown on such return shall be added to the tax for each month or fraction of month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five percent of the tax found to be remaining due.

The assessed penalties may be waived for reasonable cause. The City asserted the Taxpayer's claim of being unaware of the tax is not reasonable cause. According to the City, ignorance of the law is not an excuse. Further, the City argued the Taxpayer, as a reasonable and prudent businessman should have known of the tax consequences of the sale. As a result, the City argued the penalties should be upheld.

The City also disputed the Taxpayer's request to waive the interest. The City asserted that ARS Section 42-1123 (C) ("Section 1123 (C)") requires interest to be charged. As a result of the City's recommended adjustment for the land deduction, the City's revised assessment consisted of taxes due in the amount of \$1,507.36, penalties of \$376.84, plus interest until paid.

Taxpayer Position

The Taxpayer argued that the City had made an error in calculating the sales tax factored deduction. The Taxpayer asserted the City did not include the combined factored tax. The Taxpayer also indicated that he had provided documentation from the Arizona Department of Revenue ("DOR") that allows certain itemized deductions that the City had disallowed. The Taxpayer argued that the City's use of \$100,000 for the fair market value of land deduction was too low. The Taxpayer provided a "certified appraisal", dated November 12, 1996, showing the land valuation to be \$138,400. The Taxpayer requested the appraisal value be used along with adjustments to reflect the average increase in land values in Mohave County from 1996 to 2001. The Taxpayer also requested the penalties and interest be waived as the tax liability was unknown to him. The Taxpayer asserted that he did not know he was a speculative builder subject to the speculative builder tax.

ANALYSIS

There was no dispute that the Taxpayer sold improved property in January of 2001 that was subject to the speculative builder tax pursuant to Section 416. While the Taxpayer has disputed the City's sales tax factored deduction and the tax credits, we are not convinced the City has made an error for either the sales tax or the tax credit. We find the City's revision for the fair market value of land is appropriate based on the "certified appraisal" provided by the Taxpayer. The additional adjustment proposed by the Taxpayer would be speculative and accordingly the Hearing Officer will not approve the adjustment.

The City is authorized pursuant to Section 1125 (A) to assess penalties for failure to file and failure to timely pay. Those penalties can be waived if the failure to file and pay was due to reasonable cause and not willful neglect. The Taxpayer paid sales tax on purchases for both the materials and sub-contracted portions of the construction and believed he had paid all the taxes due when the building was constructed. The Taxpayer was not aware of the speculative builder tax. Based on the above, we find the Taxpayer did have reasonable cause for failing to file and timely pay and was not willfully negligent in his taxes. Accordingly, we will waive all penalties assessed. The interest may not be waived.

FINDINGS OF FACT

1. On November 29, 20034, the Taxpayer filed a protest of a tax assessment made by the City.

2. On March 1, 2004, the Taxpayer filed a letter of clarification that the protest was a request for a hearing.
3. After review, on March 4, 2004, the City concluded that the protest was timely but not in proper form.
4. On March 18, 2004, the Hearing Officer ordered the City to provide on or before April 1, 2004, a copy of an attachment referred to by the City in their March 4, 2004 filing.
5. On April 15, 2004, the Hearing Officer extended the City's deadline for providing a copy of the attachment to April 29, 2004.
6. No attachment was ever filed.
7. On May 3, 2004, the Hearing Officer concluded the protest in conjunction with the Taxpayer's March 1, 2004 letter to be in proper form and ordered the City to file a response on or before June 17, 2004.
8. On May 13, 2004, the Taxpayer filed a request to change from a hearing to redetermination.
9. On May 19, 2004, the Hearing Officer reclassified the matter as a redetermination.
10. On June 29, 2004, the Hearing Officer extended the City's response deadline to July 13, 2004.
11. On July 14, 2004, the City filed a response to the protest.
12. On July 23, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before August 23, 2004.
13. On September 1, 2004, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before October 18, 2004.
14. The City conducted an audit and concluded the Taxpayer had a speculative builder sale for the month of January 2001.
15. The City assessed the Taxpayer for taxes due of \$2,101.68; penalties for failure to file and failure to pay of \$525.42, and interest up through September 2003 in the amount of \$371.66.
16. The Taxpayer provided a "certificate appraisal" to show the fair market value of the land as of November 12, 1996 was \$138,400.

17. The Taxpayer was unaware that he was a speculative builder and thus subject to the speculative builder tax.

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 pursuant to Section 416.
3. The City's sales tax factored deduction and tax credits followed the law and should be approved.
4. The fair market value of land should be adjusted to reflect the "certified appraisal".
5. The City is authorized pursuant to Section 1125 (A) to assess penalties for failure to file and failure to timely pay.
6. The Taxpayer has demonstrated reasonable cause for failing to file and timely pay the speculative builder taxes.
7. All penalties should be waived.
8. The interest may not be legally waived unless the underlying taxes are denied.
9. The Taxpayer's protest should be granted in part and denied in part.

ORDER

It is therefore ordered that the November 27, 2003 protest by *Taxpayer* of a tax assessment made by the City of Bullhead City is hereby denied in part, and granted in part consistent with the Discussion, Findings, and Conclusion, herein.

It is further ordered that the City of Bullhead City shall revise the assessment to reflect the "certified appraisal" value of the land.

It is further ordered that the City of Bullhead City shall remove all penalties assessed.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer