

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 20, 2004

Decision: MTHO #185

Tax Collector: City of Tucson

Hearing Date: July 26, 2004

DISCUSSION

Introduction

On April 1, 2004, *Taxpayer*, LLC (“Taxpayer”) filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on April 6, 2004, that the protest was timely and in the proper form. On April 14, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response on or before May 31, 2004. On May 11, 2004, the City filed a response. On May 17, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before June 7, 2004. A Notice of Tax Hearing (“Notice”) was issued scheduling the matter for hearing commencing on July 26, 2004. The Taxpayer failed to appear for the July 26, 2004 hearing. On July 28, 2004, the Hearing Officer granted the Taxpayer an opportunity until August 27, 2004 to provide good cause for failing to appear at the July 26, 2004 hearing. On September 1, 2004, the Hearing Officer indicated no reply had been received from the Taxpayer 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 of the Taxpayer for the period December 1997 through October 2003. The City assessed the Taxpayer for taxes due in the amount of \$125,538.98 plus interest. The assessment was for speculative builder sales of improved lots pursuant to City Code Section 19-416 (“Section 416”) and sales of manufactured houses pursuant to City Code Section 19-427 (“Section 427”). Because of lack of documentation, the City estimated the sales price of property using the average price of the improved vacant lots. The City asserted that a reasonable estimate was allowed pursuant to City Code Section 19-545 (b) (“Section 545 (b)”). The City acknowledged that Section 416 (b) (2) allows for the exclusion of the seller’s original purchase price of land. According to the City, the Taxpayer failed to provide any reliable documentation to ascertain the original land cost to the Taxpayer.

In response to the Taxpayer’s argument on tax credits, the City asserted that the Taxpayer never obtained a Business Privilege License (“License”) and never paid any taxes to the City relating to the speculative home sales. As to the manufactured home sales, the City did allow a tax credit pursuant to Section 416 (c) (3) (b) for the City portion of tax on the payments made by the Taxpayer to the building contractor.

According to the City, the records of the Arizona Corporation Committee (“ACC”) show that the LLC was still active as of April 30, 2004. Further, the City noted that the Pima County Assessors (“County”) records show that undeveloped lots are still held in a trust account with the Taxpayer as beneficiary. The City asserted that ARS Section 29-708 (“Section 708”) deals with distribution of assets upon dissolution of an LLC and states as follows:

“On winding up of a limited liability company, its assets shall be applied and distributed in the following order:

1. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities for the limited liability company other than liabilities for distributions to members and former members under section 29-703 or 29-707.”

ARS 29-706 (“Section 706”) discusses Limitation on distributions and states:

“A. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company would exceed the fair value of the assets of the limited liability company...”

“D. If a member receives a distribution with respect to his interest in a limited liability company in violation of this chapter or an operating agreement, he is liable to the limited liability company for a period of six years thereafter for the amount of the wrongful distribution.”

Based on all the above, the City argued that the Taxpayer is liable for the tax and interest assessed in the audit.

Taxpayer Position

The Taxpayer argued the City failed to deduct the cost of land and failed to provide credits for taxes paid. In addition, the Taxpayer indicated the company has been liquidated and its partners are liable only to investments or assets. The Taxpayer asserted there are no investments or assets.

ANALYSIS

There was no dispute that the Taxpayer had speculative builder sales of improved lots and sales of manufactured houses during the audit period. Further, because the Taxpayer failed to provide necessary documentation, the City was authorized to make a reasonable estimate. While given the opportunity, the Taxpayer provided no arguments/documentation on why the City estimate was not reasonable. Accordingly, we approve the City’s estimate as being reasonable. As to the land deduction, the burden of proof is on the Taxpayer to provide documentation to support a land deduction. The Taxpayer failed to meet that burden of proof and as a result lost the opportunity for a land deduction. While the Taxpayer argued the City had failed to provide credits for taxes paid, we again conclude that the burden of proof is on the Taxpayer to

demonstrate that additional taxes were paid that the City failed to provide a credit. The Taxpayer provided no such documentation.

Based on the records of the ACC, the Taxpayer is still an active company. Further, there has been no demonstration that the LLC was properly “winded up” and its assets applied and distributed according to Section 708 and 706. Lastly, the records also indicate the Taxpayer is still the beneficiary of assets held in a trust account. As a result, the Hearing Officer concludes the City’s assessment was proper and the Taxpayer is liable for that assessment.

FINDINGS OF FACT

1. On April 1, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on April 6, 2004, that the protest was timely and in proper form.
3. On April 14, 2004, the Hearing Officer ordered the City to file a response on or before May 31, 2004.
4. On May 11, 2004, the City filed a response.
5. On May 17, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before June 7, 2004.
6. A Notice was issued scheduling the matter for hearing commencing on July 26, 2004.
7. The Taxpayer failed to appear for the July 26, 2004 hearing.
8. On July 28, 2004, the Hearing Officer granted the Taxpayer an opportunity until August 27, 2004 to provide good cause for failing to appear at the July 26, 2004 hearing.
9. On September 1, 2004, the Hearing Officer indicated no reply had been received from the Taxpayer and as a result the record was closed and a written decision would be issued on or before October 18, 2004.
10. The City conducted an audit of the Taxpayer for the period December 1997 through October 2003.
11. The City assessed the Taxpayer for taxes due in the amount of \$125,538.98 plus interest.
12. The assessment was for speculative builder sales of improved lots and sales of manufactured homes.
13. Because of lack of documentation, the City estimated the sales price of property using the average price of the improved vacant lots.

14. The Taxpayer failed to provide any reliable documentation to ascertain the original land cost to the Taxpayer.
15. The Taxpayer never obtained a License and never paid any taxes to the City relating to the Speculative home sales.
16. The City did allow a tax credit on the manufactured home sales for the City portion of tax on payments made by the Taxpayer to the building contractor.
17. The records of the ACC show the Taxpayer was still active as of April 30, 2004.
18. County records show that undeveloped lots are still held in a trust account with the Taxpayer as beneficiary.

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 Taxpayer sold manufactured houses pursuant to Section 427.
4. The City was authorized to make a reasonable estimate pursuant to Section 545 (b).
5. There was no evidence to show the City's estimate was not reasonable.
6. The Taxpayer failed to provide reliable documentation to support a land deduction.
7. There was no evidence to demonstrate that the City failed to allow all tax credits permitted under the City Code.
8. Based on the records of the ACC, the Taxpayer is still an active company.
9. There was no evidence to demonstrate that the Taxpayer was properly "winded up" and its assets applied and distributed according to Section 708 and 706.
10. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the April 1, 2004 protest of *Taxpayer*, LLC of a tax assessment made by the City of Tucson is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer