

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: December 2, 2005

Decision: MTHO #254

Tax Collector: City of Scottsdale

Hearing Date: None

DISCUSSION

Introduction

On July 25, 2005, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Scottsdale (“City”). After review, the City concluded on August 10, 2005, that the protest was timely and in the proper form. On August 15, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before September 29, 2005. On August 18, 2005, the City requested clarification on whether the matter should be classified as a redetermination. On August 22, 2005, the Hearing Officer ordered the Taxpayer to respond by September 14, 2005, if they wanted the matter to be reclassified as a redetermination. On September 7, 2005, the Taxpayer requested a reclassification to a redetermination. On September 19, 2005, the Hearing Officer reclassified the matter as a redetermination. On September 28, 2005, the City filed a response to the protest. On October 3, 2005, the Hearing Officer ordered the Taxpayer to file a reply on or before November 2, 2005. On November 7, 2005, the Hearing Officer indicated no reply had been filed and a written decision would be issued on or before December 22, 2005.

City Position

The City audited the Taxpayer for the month of March 2004 for the sale of improved property at _____ (“Property”). The City assessed the Taxpayer for understated speculative builder income pursuant to City Code Section 416 (“Section 416”) with taxes due of \$16,623.84, interest up through April 2005 of \$1,994.88, and late payment penalties of \$1,662.38.

The City argued that the interest was properly assessed on the unpaid tax amount. The City noted that the Taxpayer had been audited on two previous occasions for unreported tax on speculative sales and was aware of his responsibility to report the activity and to remit taxes. The City asserted that it does not prolong or delay an audit to gain additional interest. Further, the City argued that the Taxpayer could have made a tax payment or an estimated tax payment at anytime which would have stopped the accrual of interest. According to the City, the assessed tax is due and pursuant to City Code Section 540 (a) (“Section 540”) is subject to interest until paid. The City requested the assessment be upheld.

Taxpayer Position

The Taxpayer asserted that all the information requested by the City regarding the sale of the Catalina Property was provided in a timely manner. According to the Taxpayer, the City unnecessarily delayed the process, which resulted in additional interest expense of \$1,163.69. As a result, the Taxpayer requested a reduction in the interest assessment of \$1,163.69.

Analysis

The assessed tax was due on the sale of the Property pursuant to Section 416. Further, it is clear the Taxpayer was aware of the tax since he had been audited on two previous occasions for separate speculative sales. As a result, we also conclude that the Taxpayer would have been aware that interest would continue to be accrued until the tax was paid. While the City did change auditors prior to completion of the audit, the Taxpayer would have had sufficient knowledge from previous audits to have made an estimated tax payment. Lastly, we note that Section 540 makes it clear that the Hearing Officer can not abate the interest unless the underlying tax was also abated. In this case, the Taxpayer did not protest the underlying tax and there was no evidence that the interest assessment was improperly calculated. Based on the above, the Taxpayer's protest must be denied.

FINDINGS OF FACT

1. On July 25, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on August 10, 2005 that the protest was timely and in the proper form.
3. On August 15, 2005, the Hearing Officer ordered the City to file a response to the protest on or before September 29, 2005.
4. On August 18, 2005, the City requested clarification on whether the matter should be classified as a redetermination.
5. On August 22, 2005, the Hearing Officer ordered the Taxpayer to respond by September 14, 2005, if he wanted the matter to be reclassified as a redetermination.
6. On September 7, 2005, the Taxpayer requested a reclassification to a redetermination.
7. On September 19, 2005, the Hearing Officer reclassified the matter as a redetermination.
8. On September 28, 2005, the City filed a response to the protest.
9. On October 3, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 2, 2005.
10. On November 7, 2005, the Hearing Officer indicated that no reply had been filed and as a result, the record was not closed and a written decision would be issued on or before December 22, 2005.
11. The City audited the Taxpayer for the month of March 2004 for the sale of Property.
12. The City assessed the Taxpayer for understated speculative builder income pursuant to

Section 416 with taxes due of \$16,623.84, interest up through April 2005 of \$1,994.88, and late payment penalties of \$1,662.38.

13. The Taxpayer had been audited on two previous occasions for unreported tax on speculative sales.
14. The City changed auditors before the audit was finalized.
15. There was no protest of the underlying tax assessed as a result of the audit.
16. There was no evidence that the City improperly calculated the interest assessment.
17. The Taxpayer could have paid an estimated tax at any time in order to stop the accrued of interest.

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 was authorized pursuant to Section 540 to assess interest until the underlying tax was paid.
4. The Hearing Officer does not have the authority to abate properly assessed interest.
5. There was no evidence to demonstrate that the interest was not calculated properly pursuant to Section 540.
6. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the July 25, 2005, protest of *Taxpayer* of a tax assessment made by the City of Scottsdale is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer