

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: March 27, 2006

Decision: MTHO #272

Tax Collector: City of Tucson

Hearing Date: February 7, 2006

### **DISCUSSION**

#### **Introduction**

On September 28, 2005, *Taxpayer* filed a protest letter of a tax assessment by the City of Tucson (“City”). After review, the City concluded on October 3, 2005 that the protest was timely and in the proper form. On October 13, 2005, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response on or before November 28, 2005. On November 1, 2005, the City filed a response. On November 7, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 28, 2005. On November 25, 2005, the Taxpayer filed a reply. On November 28, 2005, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on February 7, 2006. Both parties appeared and presented evidence at the February 7, 2006 hearing. On February 8, 2006 the Hearing Officer indicated the record was closed and a written decision would be issued on or before March 27, 2006.

#### **City Position**

The City assessed the Taxpayer for speculative builder income on the sale of twenty-six homes during the period March 2005 through July 2005. The City indicated the Taxpayer was an unlicensed speculative builder. The City assessed the Taxpayer for taxes in the amount of \$37,142.88, penalties for late payment and late filing totaling \$8,112.79, and interest up through September 2005 of \$1,012.68.

According to the City, the Taxpayer is a limited liability company that was organized on March 18, 2004. The members of the Taxpayer were *Member 1* and *Member 2*. The City noted that *Member 2* had been the managing member of several entities that throughout the past fifteen years had been engaged in construction contracting activities and speculative sales of improved real properties within the City. In response to the Taxpayer’s argument that *Company A* was the general contractor for the Taxpayer, the City indicated that *Member 1* and *Member 2* were members of *Company A* as well as the Taxpayer.

After discovering that the Taxpayer had improved vacant land and sold single family residences, the City mailed a letter to the Taxpayer regarding the taxability of such sales. The letter discussed state tax deductions and City tax credit for taxes paid to the contractor subject to satisfactory documentation. After the Taxpayer failed to respond, the City calculated the amount of taxes due without any deduction for states taxes paid to the contractor and without any tax credit for City taxes paid to any contractors. The City

indicated they would allow the Taxpayer a state deduction and a City tax credit when the Taxpayer provides sufficient documentation. The City also noted that because *Company A* was closely related to the Taxpayer, the City would not allow a tax credit to the Taxpayer until *Company A* pays all the prime contracting taxes due to the City.

### **Taxpayer Position**

The Taxpayer's primary protest was to have the penalties waived. The Taxpayer asserted that City Tax Code Section 19-540 (f) ("Section 540 (f)") provides many circumstances under which the City can waive penalties. Section 540 (f) states as follows: "The tax collector shall waive or adjust penalties imposed by subsections (b) (1) or (b) (2) above upon a finding that: (1) In the past, the taxpayer has consistently filed and paid the taxes imposed by this article in a timely manner." Since no tax had previously been imposed on the Taxpayer, the Taxpayer argued it met the requirements of consistently filing and paying taxes in a timely manner. The Taxpayer also argued that it met the definition of reasonable cause contained in Section 540 (h) since it reasonably expected and relied on the fact that the tax paid by *Company A* would virtually eliminate any tax due from the Taxpayer.

If the penalties are not waived, the Taxpayer asserted the tax assessment must be reduced to reflect the amount of City tax charged to the Taxpayer by *Company A*. According to the Taxpayer, it should only be assessed taxes on its profits rather than the full amount of each sale. Based on the Taxpayer's calculation, the amount of tax due should be reduced to \$13,649.35, which included interest and penalties up through November 30, 2005, for the period from March 2005 through July 2005.

### **ANALYSIS**

There was no dispute that the Taxpayer had income from the speculative builder business activity pursuant to City Code Section 19-416 ("Section 416"). While the Taxpayer argued it was entitled to certain deductions and credits, the Taxpayer failed to provide any documentation to support such a claim. City Code Section 19-360 ("Section 360") makes it clear that deductions and credits are conditional upon adequate proof and documentation. Accordingly, the Taxpayer's request for deductions and credits must be denied because the Taxpayer failed to meet its burden of proof pursuant to Section 360.

Since the Taxpayer had failed to timely file reports or timely pay City taxes, the City was authorized pursuant to Section 540 to assess penalties. While the Taxpayer has argued that the penalties should be waived, we do not find the Taxpayer's arguments to be persuasive. There was no evidence to support the Taxpayer's argument that it has consistently filed and paid taxes in a timely manner. The fact that the Taxpayer did not previously have to pay taxes would not meet the requirements of Section 540 (f) (1) for a waiver. We also do not find that the Taxpayer has demonstrated reasonable cause for failing to timely file reports and timely pay taxes. While the Taxpayer was a new business entity, the members of the Taxpayer clearly had previous knowledge of the

speculative builder tax through involvement in other entities. As a result, we conclude the Taxpayer would have or should have had knowledge of the speculative builder tax. As a result, we conclude the Taxpayer has not demonstrated reasonable cause to have the penalties waived.

### **FINDINGS OF FACT**

1. On September 28, 2005, the Taxpayer filed a protest of penalties assessed by the City.
2. After review, the City concluded on October 3, 2005, that the protest was timely and in the proper form.
3. On October 13, 2005, the Hearing Officer ordered the City to file a response to the protest on or before November 28, 2005.
4. On November 1, 2005, the City filed a response.
5. On November 7, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before November 28, 2005.
6. On November 25, 2005, the Taxpayer filed a reply.
7. On November 28, 2005, a Notice scheduled the matter for hearing commencing on February 7, 2006.
8. Both parties appeared and presented evidence at the February 7, 2006 hearing.
9. On February 8, 2006, the Hearing Officer indicated the record was closed and a written decision would be issued on or before March 27, 2006.
10. The City assessed the Taxpayer for speculative builder income on the sale of twenty-six homes during the period of March 2005 through July 2005.
11. The Taxpayer was unlicensed at the time of the assessment.
12. The City assessed the Taxpayer for taxes in the amount of \$37,142.88, penalties totaling \$8,112.79, and interest up through September 2005 of \$1,012.66.
13. The Taxpayer is a limited liability company that was organized on March 18, 2004.
14. The members of the Taxpayer were *Member 1* and *Member 2*.

15. *Member 1* and *Member 2* had been members of several entities that throughout the past fifteen years had been engaged in construction contracting activities and speculative sales of improved properties within the City.
16. The City had previously assessed entities in which *Member 1* and *Member 2* were members for taxes and penalties on speculative builder income.
17. Because of the previous assessments, *Member 1* and *Member 2* would have been aware of the speculative builder tax.
18. *Company A* was the general contractor for the Taxpayer.
19. *Member 1* and *Member 2* were members of *Company A*.
20. There was no evidence that *Company A* had paid the City any taxes on the constructing work for the Taxpayer.
21. The Taxpayer failed to provide documentation to show any state taxes had been paid to any contractors or that any City taxes had been paid to any contractors.

#### **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. During the period of March through July 2005, the Taxpayer failed to file tax reports or pay taxes on speculative builder income pursuant to Section 416.
3. The Taxpayer failed to provide documentation pursuant to Section 360 to support claimed deductions and credits.
4. The City was authorized pursuant to Section 540 to assess penalties because of the Taxpayer's failure to timely file reports and failure to timely pay taxes.
5. The Taxpayer was aware or should have been aware of the speculative builder tax.
6. The Taxpayer has failed to demonstrate reasonable cause for failing to timely file reports or failing to timely pay taxes.
7. The Taxpayer's protest should be denied.

#### **ORDER**

It is therefore ordered that the September 28, 2005 protest of *Taxpayer* 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