

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 19, 2006
Decision: MTHO #295
Tax Collector: City of Tucson
Hearing Date: May 9, 2006

DISCUSSION

Introduction

On January 18, 2006, *Taxpayer* filed a protest of a tax assessment made by the City of Tucson (“City”). After review, the City concluded on February 1, 2006, that the protest was timely and in the proper form. On February 4, 2006, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before March 21, 2006. The City filed a response on March 21, 2006. On March 22, 2006, the Hearing Officer ordered the Taxpayer to file a reply on or before April 12, 2006. On April 11, 2006, a Notice of Tax Hearing (“Notice”) scheduled this matter for hearing commencing on May 9, 2006. The City appeared at the May 9, 2006 hearing and presented evidence while the Taxpayer failed to appear. On May 12, 2006, the Hearing Officer granted the Taxpayer until June 12, 2006 to present good cause for failing to appear at the May 9, 2006 hearing. On May 15, 2006, the Taxpayer provided a copy of a May 1, 2006 letter indicating it wanted the hearing cancelled. On May 17, 2006, the Hearing Officer closed the record and indicated a written decision would be issued on or before July 5, 2006.

City Position

The City assessed the Taxpayer for speculative builder income on the construction and sale of nineteen homes during the period June 2004 through September 2004. The City assessed the Taxpayer for taxes in the amount of \$16,428.00, interest in the amount of \$2334.07, and penalties pursuant to City Code Section 540 (b) (5) (“Section 540 (b) (5)”) in the amount of \$8,214.01.

The City determined the gross income from the sales by utilizing the sales prices on the affidavits recorded with the Pima County Recorder’s Office (“County”). The City allowed deductions for land valuations based on the County records, the 35 percent standard deduction, and a deduction for factored City tax. The City did not deduct state taxes, nor did it allow a tax credit for City taxes paid to the contractor since no information or documentation was provided by the Taxpayer. The City indicated it would allow a deduction for state taxes and tax credits for City taxes paid to the general contractor if the Taxpayer provided satisfactory documentation. The City also noted that since the general contractor and the Taxpayer are related entities through their *Managing*

Member, the City expected the general contractor to pay the contracting taxes due to the City before the City would allow the tax credit to the Taxpayer.

The City assessed a penalty of 50 percent pursuant to Section 540 (b) (5) due to civil fraud or evasion of the tax. According to the City, *Managing Member* was the managing member for seven businesses that have been assessed taxes since 1997. As a result of the previous contacts with *Managing Member*, the City concluded the 50 percent penalty was appropriate.

Taxpayer Position

The Taxpayer indicated that *Construction Company* was the general contractor for the Taxpayer. As a result, the Taxpayer argued that it was entitled to a deduction for the amount of state tax charged by *Construction Company*. The Taxpayer asserted it was also entitled to a tax credit equal to the amount of City tax charged to the Taxpayer. As a result, the Taxpayer argued it would only be subject to tax on its profit, rather than on the full amount of each sale.

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 managing member of the Taxpayer has been assessed taxes for seven businesses since 1997, the City was authorized to assess penalties pursuant to Section 540 (b) (5). The Taxpayer failed to provide any reasonable cause for waiving of the penalties. Accordingly, the penalties cannot be waived.

FINDINGS OF FACT

1. On January 18, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on February 1, 2006, that the protest was timely and in the proper form.
3. On February 4, 2006, the Hearing Officer ordered the City to file a response to the protest on or before March 21, 2006.

4. The City filed a response on March 21, 2006,.
5. On March 22, 2006, the Hearing Officer ordered the Taxpayer to file a reply on or before April 12, 2006.
6. On April 11, 2006, a Notice scheduled the matter for hearing commencing on May 9, 2006.
7. The City appeared at the May 9, 2006 hearing and presented evidence while the Taxpayer failed to appear.
8. On May 12, 2006, the Hearing Officer granted the Taxpayer until June 12, 2006 to present good cause for failing to appear at the May 9, 2006 hearing.
9. On May 15, 2006, the Taxpayer provided a copy of a May 1, 2006 letter indicating it wanted the hearing cancelled.
10. On May 17, 2006, the Hearing Officer closed the record and indicated a written decision would be issued on or before July 5, 2006.
11. The City assessed the Taxpayer for speculative builder income on the construction and sale of nineteen homes during the period June 2004 through September 2004.
12. The City assessed the Taxpayer for taxes in the amount of \$16,428.00, interest in the amount of \$2,334.07, and penalties pursuant to Section 450 (b) (5) in the amount of \$8,214.01.
13. The City determined the gross income from the sales by utilizing the sales prices on the affidavits recorded with the County.
14. The City allowed deductions for land valuations based on the County records, the 35 percent standard deduction, and a deduction for factored City tax.
15. The City did not deduct state taxes, nor did it allow a tax credit for City taxes paid to the contractor since no information or documentation was provided by the Taxpayer.
16. The general contractor and the Taxpayer are related entities through their, ***Managing Member***.
17. There was no evidence that the general contractor had paid any City taxes on the nineteen homes constructed.
18. ***Managing Member*** was the managing member for seven businesses that have been assessed taxes since 1997.

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 June 2004 through September 2004, 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 (b) (5) to assess penalties for evasion of the 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 January 18, 2006 protest by *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