

Jerry Rudibaugh
Municipal Tax Hearing Officer

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: August 13, 2002

Decision: MTHO #44

Tax Collector: City of Phoenix

Hearing Date: None

DISCUSSION

Introduction

On May 1, 2002, "Taxpayer" filed a protest of the City of Phoenix ("City") tax assessment. After review of the protest, the City concluded the protest was timely and in proper form. On May 13, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") processed the protest as a hearing and ordered the City to file any response to the protest on or before June 27, 2002. The City filed its response on June 24, 2002. On June 28, 2002, the Taxpayer filed a request that the matter be changed from a hearing to a redetermination. On July 1, 2002, the Hearing Officer issued a letter changing the matter to a redetermination and indicating a written ruling would be issued on or before August 15, 2002.

The Taxpayer was the owner and developer of improved real property located within the City. Based on research by the City's Tax Division, it was determined the Taxpayer sold four homes during the review period of January 2001 through September 2001. The auditor experienced difficulty in obtaining documentation from the Taxpayer and as a result the auditor estimated the tax liability using the Affidavit of Property Values ("Affidavit") from the Maricopa County Recorder's Office ("County"). The City assessed taxes in the amount of \$8,256.03 for the period January 2001 through September 2001.

City Position

City Tax Code Regulation 14-416 ("Section 416") taxes the activity of a speculative builder. A speculative builder is defined as an owner-builder who sells or contracts to sell improved real property within twenty-four months after the improvements of the real property are substantially complete. The auditor attempted to obtain documentation from the Taxpayer during the audit phase in order to allow tax credits for the taxes paid during construction. No documentation was provided and the City issued its tax assessment in the amount of \$8,256.03.

The additional documentation provided by the Taxpayer with its protest was reviewed and the City concluded that the Taxpayer was due a credit in the amount of \$4,447.99 for City taxes paid by the general contractor. As a result, the City recommended the tax assessment be reduced to \$3,645.16 plus interest.

Taxpayer Position

The Taxpayer asserted that the gross receipts deductions, net taxable receipts, and computed tax are all in error. According to the Taxpayer, the general contractor, who built the four homes, has already paid tax to the City during the construction phase of the homes. As part of its protest petition, the Taxpayer submitted documentation identifying taxes paid by the general contractor. The Taxpayer concurred with the City's recommended revised assessment reflecting a credit for City taxes paid by the general contractor.

ANALYSIS

There was no dispute that the Taxpayer had taxable gross income from the activity of a speculative builder for the review period of January 2001 through September 2001. The Taxpayer disputed the assessment because the City had failed to provide a tax credit for the City tax paid by the general contractor during the construction phase of the homes. The City's original assessment was proper because the Taxpayer failed to provide documentation to substantiate the amount, if any, of City taxes paid by the general contractor. After receiving the requested documentation as part of the protest petition, it was proper for the City to review the documentation and recommend a credit for City taxes previously paid by the general contractor. Based on the above, the Hearing Officer approves the City's revised assessment as set forth in its June 24, 2002 response memorandum.

FINDINGS OF FACT

1. On May 1, 2002, the Taxpayer filed a protest of the City tax assessment.
2. After review of the protest, the City concluded the protest was timely and in the proper form.
3. The protest was processed as a hearing.
4. On May 13, 2002, the Hearing Officer ordered the City to file any response to the protest on or before June 27, 2002.
5. The City filed its response on June 24, 2002.
6. On June 28, 2002, the Taxpayer filed a request that the matter be reclassified from a hearing to a redetermination.
7. On July 1, 2002, the Hearing Officer issued a letter changing the matter to a redetermination and indicating a written ruling would be issued on or before August 15, 2002.
8. The Taxpayer was the owner and developer of improved real property located within the City.
9. During the period of January 2001 through September 2001, the Taxpayer sold four homes within twenty-four months after the improvements were substantially complete.
10. The auditor attempted to obtain documentation from the Taxpayer during the audit phase in order to allow tax credits for the taxes paid during construction.
11. No documentation was provided and the City issued its tax assessment in the amount of \$8,256.03 plus interest.
12. As part of its protest petition, the Taxpayer submitted additional documentation identifying taxes paid by the general contractor.
13. After review of the additional documentation, the City concluded that the Taxpayer was due a credit in the amount of \$4,447.99 for City taxes paid by the general contractor.
14. The City recommended the tax assessment be reduced to \$3,645.16 plus interest.
15. The Taxpayer concurred with the City's recommended revised assessment.

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. Section 416 imposes a tax on the activity of a speculative builder.
3. During the period of January 2001 though September 2001, the Taxpayer had gross income from the activity of a speculative builder.
4. Because the Taxpayer failed to provide documentation requested by the City, it was proper for the City to make a reasonable assessment of the taxes due.
5. After receiving additional documentation from the Taxpayer, it was reasonable for the City to recommend a credit for City taxes paid by the general contractor.
6. The City's revised assessment was proper and should be approved.

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ORDER

It is therefore ordered that the May 1, 2002 protest of Taxpayer is hereby granted to the extent it is consistent with the June 24, 2002 revised assessment of the City of Phoenix.

It is further ordered that the City of Phoenix shall revise its tax assessment to \$3,645.16 plus applicable interest.

It is further ordered that this decision shall be effective immediately.

Jerry Rudibaugh

Municipal Tax Hearing Officer