

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: February 5, 2003  
Decision: MTHO #65  
Tax Collector: City of Scottsdale  
Hearing Date: None

**DISCUSSION**

**Introduction**

On August 28, 2002, *Taxpayer* filed a protest of a tax assessment of the City of Scottsdale ("City"). After review, the City concluded on September 9, 2002, that the protest was timely and in proper form. On September 9, 2002, the City requested the protest be held in abeyance until October 11, 2002. On September 16, 2002, Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before November 25, 2002. The response deadline included the delay requested by the City. On November 20, 2002 the City filed its response. On November 25, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before December 27, 2002. The Taxpayer filed its reply on December 26, 2002. On December 30, 2002, the Hearing Officer issued a letter indicating a written ruling would be issued on or before February 10, 2003.

During the audit period, the Taxpayer sold three newly built homes in the City. The City assessed the Taxpayer as a speculative builder pursuant to Section 416 of the City Revised Code. The tax assessment totaled \$30,089.48 plus interest and penalties totaling \$8,072.71.

**City Position**

According to the City, the Taxpayer was an owner-builder that had improvements constructed on real property and then sold the improved real property to various buyers. As a result, the City assessed the Taxpayer on the total selling price from the sale of the improved properties pursuant to Section 416 of the City Code. The City asserted that they utilized the gross receipt amounts taken from the affidavits signed by the Taxpayer and buyers and filed with the Maricopa County Recorder ("County"). Those amounts were \$1,225,000.00, \$1,181,625.00, and \$1,175,000.00 for the respective properties located at E. \_\_\_\_\_ ("*Property One*"), E. \_\_\_\_\_ ("*Property Two*"), and E. \_\_\_\_\_ ("*Property Three*").

The City assessed the Taxpayer for a five percent penalty for failure to file, a ten percent penalty for failure to timely pay the taxes, and another ten percent penalty for negligence. They assessed penalties for the following reasons: 1) The Taxpayer did not obtain a privilege tax license; 2) The Taxpayer did not attempt to pay the privilege tax due on the speculative sales; 3) The Taxpayer did not provide the information requested by the City; and, 4) The Taxpayer was previously audited and assessed for a speculative activity in September of 1999. Based on the above, the City concluded that the Taxpayer had no reasonable basis for believing that the tax did not apply because they had been previously audited and assessed for the same activity.

## Taxpayer Position

The Taxpayer asserted that the August 2000 tax assessment overstates gross receipts by \$100,000 and the October 2000 assessment overstated gross receipts by \$20,000. According to the Taxpayer, the auditor's work papers reflect the original contract price. However, the Taxpayer indicated it did not receive the full contract price. The Taxpayer provided a copy of the settlement sheet for the sale of the *Property Two* property showing that \$100,000 of the contract price was not paid to the Taxpayer. The \$100,000 amount is currently in litigation. The Taxpayer also provided a settlement sheet for the sale of the *Property Three* property showing \$20,000 of the contract price not paid. As a result, the Taxpayer requested the gross receipts for August and October 2000 be reduced by \$100,000 and \$20,000, respectively. The Taxpayer also requested the penalties be abated on the grounds that the failure to file these returns and pay the liabilities was based on reasonable cause and not negligence.

## ANALYSIS

The primary issue raised by the protest is whether or not the gross income from the sale of the improved properties is the contract amount or some reduced amount. The City has relied upon the contract amount as well as Affidavits filed by the Taxpayer and the buyers. The Taxpayer argued that the contract amounts should be reduced because of disputes with the buyers regarding completion of the work. On the sale of the *Property Two* property, the Taxpayer has provided evidence that \$100,000 of the contract price was not paid to the Taxpayer and that amount is currently in litigation. As a result the Hearing Officer concludes that the \$100,000 amount should not be included in taxable gross income for the Taxpayer at this time. If the Taxpayer wins in litigation, then the Taxpayer would owe the City additional taxes on the \$100,000 amount at that time. In order to assist the City in monitoring the finality of the East Sands contract, we shall order the Taxpayer to provide an update to the City every six months until the litigation is finalized. The first update shall be due on or before September 1, 2003. The second update, if necessary, shall be due on or before March 1, 2004. If the Taxpayer fails to submit timely updates, then the City shall be authorized to issue a tax assessment on the additional \$100,000 of gross income. As to the \$20,000 amount on the *Property Three* property, it is unclear as to the current status of that amount. Based on the information provided by the Taxpayer, it is clear that \$20,000 was held back at the time of settlement in October 2000. The Taxpayer did not provide any current status of that disputed amount. As a result, the Hearing Officer assumes that the \$20,000 amount has still not been paid to the Taxpayer. Based on that assumption, the Hearing Officer concludes that the \$20,000 amount should not be included in gross income for the Taxpayer at this time. However, similar to the \$100,000 amount, if the Taxpayer has received some or all of the \$20,000 amount since the October closing then the Taxpayer shall owe City tax on the additional amount received. As a result, we shall also order the Taxpayer to provide an update on the status of the \$20,000 amount every six months until the dispute is finalized. If the Taxpayer fails to submit timely updates, then the City shall be authorized to issue a tax assessment on the additional \$20,000 of gross income.

As to the penalties, Section 540 authorizes the City to assess a penalty for failure to file a tax return, a penalty for failure to timely pay the taxes, and a penalty for negligence unless the Taxpayer shows that the failure was due to reasonable cause and not willful neglect. The Hearing Officer concludes that the Taxpayer has failed to demonstrate reasonable cause for failing to timely file tax returns and for failing to timely pay taxes. Further, since the Taxpayer was previously audited and assessed for a speculative activity, the Hearing Officer concludes the Taxpayer was negligent for failing to file and pay taxes for the same activity. Accordingly, the Taxpayer's request to abate the penalties is denied.

## FINDINGS OF FACT

1. On August 28, 2002, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on September 9, 2002 that the protest was timely and in proper form.
3. On September 9, 2002, the City requested the protest be held in abeyance until October 11, 2002.
4. On September 16, 2002, the Hearing Officer ordered the City to file a response to the protest on or before November 25, 2002.
5. On November 20, 2002, the City filed its response.
6. On November 25, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before December 27, 2002.
7. The Taxpayer filed its reply on December 26, 2002.
8. On December 30, 2002, the Hearing Officer issued a letter indicating a written ruling would be issued on or before February 10, 2003.
9. During the audit period, the Taxpayer sold three newly built homes in the City.
10. The City assessed the Taxpayer as a speculative builder pursuant to Section 416 of the City Revised Code.
11. The tax assessment totaled \$30,089.48 plus interest and penalties totaling \$8,072.71.
12. The City utilized the gross receipt amounts taken from the affidavits signed by the Taxpayer and buyers and filed with the County.
13. Those amounts were \$1,225,000.00, \$1,181,625.00, and \$1,175,000.00 for the respective properties located at **Property One**, Property Two, and **Property Three**.
14. The Taxpayer was an owner-builder that had improvements constructed on real property and then sold the improved real property to various buyers.
15. The Taxpayer did not obtain a privilege tax license.
16. The Taxpayer did not attempt to pay the privilege tax due on the speculative sales.
17. The Taxpayer did not provide the information requested by the City.
18. The Taxpayer was previously audited and assessed for a speculative activity in September of 1999.
19. The Taxpayer was not paid for \$100,000 of the contract price on the settlement date for the sale of the **Property Two** property.

20. The \$100,000 dispute on the sale of the *Property Two* property is currently in litigation.
21. The Taxpayer was not paid for \$20,000 of the contract price on the settlement date for the sale of the *Property Three* property.

### 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 taxes the gross income of speculative builders within the City.
3. Section 100 defines speculative builder as an owner-builder who sells or contracts to sell improved real property before the expiration of 24 months after the improvements of the real property sold are substantially complete.
4. The Taxpayer was a speculative builder for the sale of properties located at *Property One, Property Two, and Property Three*.
5. It is uncertain at this time if the gross income from the sale of properties at *Property Two* and *Property Three* include amounts of \$100,000 and \$20,000, respectively.
6. Section 540 authorizes the City to assess a penalty for failure to file a tax return, a penalty for failure to timely pay the taxes, and a penalty for negligence unless the Taxpayer shows that the failure is due to reasonable cause and not willful neglect.
7. The Taxpayer has failed to demonstrate reasonable cause for failing to timely file tax returns and for failing to timely pay taxes.
8. Since the Taxpayer was previously audited and assessed for a speculative activity, the Hearing Officer concludes the Taxpayer was negligent for failing to file and pay taxes for the same activity.
9. The Taxpayer's protest should be granted to the extent it is consistent with Conclusion of Law No. 5 and the Discussion contained herein.

### ORDER

It is therefore ordered that the August 28, 2002 protest of *Taxpayer* is hereby denied with the exception of adjustments to the gross income consistent with the Discussion herein and Conclusion of Law No. 5.

It is further ordered that the City of Scottsdale shall adjust the taxes, interest, and penalties in this matter for a reduction in gross income in the amount of \$120,000 consistent with the Discussion contained herein and Conclusion of Law No. 5.

It is further ordered that *Taxpayer* shall provide an updated status every six months to the City of Scottsdale on the disputed \$100,000 for the *Property Two* sale and the disputed \$20,000 on the *Property Three* property.

It is further ordered that the first updated status is due on or before September 1, 2003.

It is further ordered that if *Taxpayer* fails to provide updated status reports in a timely manner, the City is authorized to immediately issue a tax assessment on the additional amounts of \$100,000 and \$20,000, respectively.

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

Jerry Rudibaugh  
Municipal Tax Hearing Officer