

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: February 26, 2003  
Decision: MTHO #71  
Tax Collector: City of Scottsdale  
Hearing Date: January 13, 2003

**DISCUSSION**

**Introduction**

On September 26, 2002, *Taxpayer* filed a protest regarding a tax assessed by the City of Scottsdale ("City") during the course of a voluntary disclosure by the Taxpayer. After review of the protest, the City concluded on October 4, 2002, that the protest was timely and in the proper form. On October 11, 2002, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before November 25, 2002. The City filed a response on November 20, 2002. On November 25, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before December 16, 2002. On December 6, 2002, the Taxpayer filed a request for a one-week extension. On December 9, 2002, the Hearing Officer granted the Taxpayer an extension until December 23, 2002. The Taxpayer filed its reply on December 20, 2002. The matter was set for hearing commencing on January 13, 2003. The Taxpayer and the City both appeared and presented evidence at the January 13, 2003 hearing. On January 14, 2003 the Hearing Officer issued a letter indicating a written decision would be issued on or before February 28, 2003.

The Taxpayer is in the business of selling timeshare units at *Resort* at N. \_\_\_\_\_ in the City. On January 15, 2002, the City received a letter from *Taxpayer* requesting a voluntary disclosure of a tax due on the sale of timeshare intervals. The Taxpayer included with their request a schedule of sales, documentation of tax paid on construction, a schedule of use tax paid on furniture and fixtures and a check for \$1,239,891 to cover their estimated tax liability and interest. The City taxed the sale of the timeshare intervals as speculative sales of residential property. The final voluntary disclosure resulted in a tax liability of \$1,319,346.56, including tax of \$1,109,047.26 and interest through May of 2002 of \$210,299.30.

**City Position**

The City argued that the sale of a timeshare interest is taxable as a speculative sale of residential real property pursuant to Section 416 of the Revised City Code. Section 416 imposes a tax on being in business as a speculative builder within the City. Section 100 (1) of the Revised City Code defined speculative builder as an owner-builder who sells improved real property consisting of "custom, model, or inventory homes...". According to the City, a sale of timeshare interest is an interest in a resort condominium. The City asserted that a resort condominium is an

inventory home pursuant to Section 100 and thus subject to the speculative builder tax of Section 416. According to the City, Merriam-Webster's Collegiate Dictionary ("Collegiate Dictionary") defines timesharing as "joint ownership or rental of a vacation lodging (as a condominium) by several persons with each occupying the premises in turn for short periods". The City asserted that the Taxpayer filed documentation with the Maricopa County Recorder's Office ("County Recorder") defining the property as "Condominium Units" and the units being sold by the Taxpayer are classified as condominiums by the Maricopa County Assessor ("County Assessor") for property tax purposes. The City argued that the sale of a condominium is subject to tax under Section 416. According to the City, a sale of the entire property is taxable under the "24 month" rule while a sale of one unit of a complex is a speculative sale of a residential "inventory home".

The City argued that the furniture and fixtures purchased by *Taxpayer* to furnish the units are not "sold" to the timeshare owner and therefore not taxable as a retail sale. According to the City, the Taxpayer and the buyers of the timeshare units completed Affidavits of Property Value ("Affidavits") in which they checked "no" on the following item: "Did the sale include any tangible personal property that has a value greater than 5% of the sale price?" Further, the *Taxpayer* Timeshare Agreement ("Agreement") defines "Common Furnishings" as follows: "means all furniture, furnishings, appliances, fixtures, equipment and all other personal property from time to time owned, leased or held by the Association for use by Owners or the Associations which are located in or upon the Interval Property". The City asserted that *Taxpayer* purchased the furnishings exempt and uses them in their timeshare operation. For that reason, the furnishings are subject to a use tax on the cost of the furnishings.

### **Taxpayer Position**

The Taxpayer asserts that ownership of a timeshare interest is distinct from ownership of a residential home. Under the timeshare arrangement, each buyer acquires an individual interest in a specific timeshare unit. However, the interval owner may not make or authorize any alteration, additions, or improvements to the unit without consent. According to the Taxpayer, timeshare interests are used for recreational or vacation purposes and is not intended to be a person's permanent residence or dwelling. The Taxpayer agrees that it should be taxed as a speculative builder for the sale of all timeshare intervals that occur within twenty-four months after the improvements of the real property sold are substantially complete pursuant to Section 100 (2) of the City Code. The Taxpayer disputes the City's inclusion of sales of timeshare intervals that occurred after the twenty-four month period. The Taxpayer argued that timeshare intervals are not inventory homes as defined in Section 100 (1) of the City Code. According to the Taxpayer, a home is a place where one lives for an extended period of time. The Taxpayer indicated that the owner of a timeshare interval purchases a right to stay in a timeshare unit for a week and the buyer has no right to store belongings there for other than the one week interval purchased. Based on the above, the Taxpayer concluded the timeshares are commercial properties and sales after the twenty-four month period are not taxable under the speculative builder tax provisions. The Taxpayer asserted that Arizona case law requires uncertainty about the scope and meaning of a taxing provision to be resolved in favor of the taxpayer and against the taxing authority. Further, the Taxpayer asserted that Arizona case law requires that the words of the operative statute are to be read to gain their fair meaning, but not to gather new objects of taxation by strained construction. According to the Taxpayer, the fundamental principle requiring strict

construction of tax laws arises from Article IX, Section 3 of the Arizona Constitution, which requires that “every law imposing a tax shall state distinctively the object of the tax, to which object only it shall be applied.” The Taxpayer argued that the timeshare intervals that *Taxpayer* sells do not fall squarely within the definition of the term homes utilized in Section 100 (1). For that reason, the Taxpayer asserted that the rules of statutory construction apply and any uncertainty must be resolved in favor of the Taxpayer. The Taxpayer noted that there is no definition of the term home in the City Code. As a result, the Taxpayer looked to Webster’s New World Dictionary (“Dictionary”) and Arizona Administrative Code Regulation R 5-5-1860 (1) (“Regulation 1860”) for definitions. The Dictionary defined a home as “the place where one lives” while Regulation 1860 defined a home as “a natural person’s usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.”

The Taxpayer asserted that the City did not allow *Taxpayer* a credit for use tax paid on kitchen appliances, furniture and other furnishings that are included in the sale of the timeshare intervals. The Taxpayer argued that the sale of these items is considered a retail activity pursuant to City Regulation 415.2 (d) (“Regulation 415”). Based on the above, the Taxpayer requested the tangible personal property sold as part of the sale of the timeshare interval is separately accounted for and taxed under the retail classification. The Taxpayer further requested that it be allowed a credit for the use tax already paid on tangible personal property. According to the Taxpayer, the furnishings were included as part of the sale of timeshare interval otherwise interval owners would arrive for their vacation and find no furniture. The Taxpayers also asserted that the fact *Taxpayer* retains control over the furnishings is further evidence that these timeshare intervals are not homes.

### ANALYSIS

The City and Taxpayer were in agreement that the Taxpayer’s sale of timeshare intervals would be taxable as a speculative builder pursuant to Section 416. They disagreed as to the duration that such sales would be taxable as a speculative builder pursuant to Section 100. The City relied on Paragraph One of Section 100 which places no time limit on the sale of improved real property consisting of “inventory homes”. The Taxpayer relied on Paragraph Two of Section 100 which generally indicates the sale of improved real property other than those specified in Paragraph One will be taxable speculative builder sales for up to twenty-four months after the improvements of the real property sold are substantially complete. As a result, the primary issue in this matter is which Paragraph of Section 100 controls, One or Two. The Hearing Officer concurs with the Taxpayer’s argument that Arizona law requires uncertainty about the scope and meaning of a taxing provision to be resolved in favor of the taxpayer. We also agree with the Taxpayer that an ordinary meaning of a “home” would imply some type of permanency where one’s belongings can be stored. The buyer of a timeshare interval has the right to use the timeshare only for the interval purchased and has no right to store any belongings at the timeshare other than for the interval purchased. As a result, the Hearing Officer concludes timeshare intervals are not a “home”, as that term is commonly understood. Accordingly, Paragraph Two of Section 100 controls and the Taxpayer ceased being a speculative builder when more than twenty-four months elapsed from the time the- improvements to the real

property were substantially complete.

As to the furnishings, the Hearing Officer concurs with the City position. Based on the evidence, the furnishings are not sold to the buyers of the timeshare intervals. The buyers have the right of the use of the furnishings during their timeshare interval-but the Taxpayer maintains ownership and control over the furnishings. As a result, the furnishings are subject to the use tax and not taxable as retail sales.

### **FINDINGS OF FACT**

1. On September 26, 2002, the Taxpayer filed protest regarding a tax assessed by the City during the course of a voluntary disclosure by the Taxpayer.
2. After review of the protest, the City concluded on October 4, 2002 that the protest was timely and in the proper form.
3. On October 11, 2002, the Hearing Officer ordered the City to file a response to the protest on or before November 25, 2002.
4. The City filed a response on November 20, 2002.
5. On November 25, 2002, the Hearing Officer ordered the Taxpayer to file a reply on or before December 16, 2002.
6. On December 6, 2002, the Taxpayer filed a request for a one-week extension.
7. On December 9, 2002, the Hearing Officer granted the Taxpayer an extension until December 23, 2002.
8. The Taxpayer filed its reply on December 20, 2002.
9. The matter was set for hearing commencing on January 13, 2003.
10. The Taxpayer and City both appeared and presented evidence at the January 13, 2003 hearing.
11. On January 14, 2003, the Hearing Officer issued a letter indicating a written decision would be issued on or before February 28, 2003.
12. The Taxpayer is in the business of selling timeshare units at the Resort located in the City.
13. On January 15, 2002, the City received a letter from *Taxpayer* requesting a voluntary disclosure of a tax due on the sale of timeshare intervals.

14. The Taxpayer included with their request a schedule of sales, documentation of tax paid on construction, a schedule of use tax paid on furniture and fixtures and a check for \$1,239,891 to cover their estimated tax liability and interest.
15. The City taxed the sale of the timeshare intervals as speculative sales of residential property.
16. The final voluntary disclosure resulted in a tax liability of \$1,319,346.56, including tax of \$1,109,047.26 and interest through May of 2002 of \$210,299.30.
17. Under the timeshare arrangement, each buyer acquires an individual interest in a specific timeshare unit.
18. The interval owner may not make or authorize any alterations, additions or improvements to the unit without consent.
19. Timeshare units are used for recreational or vacation purposes and are not intended to be a person's permanent residence or dwelling.
20. The buyer of a timeshare interval has no right to store belongings at the timeshare for other than the one-week interval purchased.
21. The buyer of a timeshare interval has a right to use the furnishings in the timeshare during the interval purchased.
22. The buyer of a timeshare interval has no ownership or control over the furnishings.

### **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. Arizona case law requires uncertainty about the scope and meaning of a taxing provision to be resolved in favor of the taxpayer and against the taxing authority.
3. Article IX, Section 3 of the Arizona Constitution, which requires that "every law imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied.
4. Section 416 imposes a tax on being in business as a speculative builder within the City.
5. Section 100 (1) defines speculative builder as an owner-builder who sells improved real property consisting of "custom, model, or inventory homes...".

6. Section 100 (1) places no time limit on a speculative builder sale of improved real property consisting of “inventory homes”.
7. Section 100 (2) generally indicates the sale of improved real property other than those specified in Section 100 (1) will be taxable speculative builder sales for up to twenty-four months after the improvements of the real property sold are substantially complete.
8. Timeshare intervals are not inventory homes as set forth in Section 100 (1).
9. The sale of the timeshare intervals are controlled by Section 100 (2) and the Taxpayer ceased being a speculative builder when more than twenty-four months elapsed from the time of the improvements to the real property were substantially complete.
10. The furnishings to the timeshare units are subject to the use tax.
11. The Taxpayer’s protest on the classification of the sale of timeshare intervals should be granted.
12. The Taxpayer’s protest on the treatment of tangible personal property used to furnish the timeshare units should be denied.

### **ORDER**

It is therefore ordered that the protest of *Taxpayer* of the City of Scottsdale’s classification of the sale of timeshare intervals is hereby granted.

It is further ordered that the protest of *Taxpayer* of the City of Scottsdale’s treatment of tangible personal property used to furnish the timeshare units should be denied.

It is further ordered that the City of Scottsdale shall revise its tax assessment to reflect that the sale of timeshare intervals falls under Paragraph Two of Section 100 of the City Code and *Taxpayer* ceased being a speculative builder when more than twenty-four months elapsed from the time of improvements to the real property were substantially complete.

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

Jerry Rudibaugh  
Municipal Tax Hearing Officer