

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: June 25, 2003  
Decision: MTHO #98  
Tax Collector: City of Phoenix  
Hearing Date: April 29, 2003

### DISCUSSION

#### Introduction

On January 23, 2003, *Taxpayer A*, *Taxpayer B* and *Taxpayer C* (Collectively, "Taxpayers") filed a protest of a tax assessment from the City of Phoenix ("City"). After review, the City concluded on January 24, 2003, that the protest was timely and in the proper form. On January 29, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response on or before March 17, 2003. The City filed a response on March 12, 2003. On March 14, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before April 4, 2003. The Taxpayers did not file a reply. On March 20, 2003, a Notice of Hearing ("Notice") was issued for an April 29, 2003 hearing. The Taxpayers and City both appeared and presented evidence at the April 29, 2003 hearing. On April 30, 2003, the Hearing Officer ordered the City to file any response/comments to Taxpayers Exhibit No. 2 on or before May 13, 2003 and the Taxpayers would file any reply on or before May 27, 2003. The City filed a response to Exhibit No. 2 on May 9, 2003. The Taxpayers filed a reply to Exhibit No. 2 on May 12, 2003. On May 19, 2003, the Hearing Officer issued a letter indicating a written decision shall be issued on or before June 27, 2003.

Each of the Taxpayers were condominium projects managed by the same Manager. The City assessed taxes on each project for underreported speculative builder revenue. The City included interest on each assessment as well as penalties for late filing of tax returns and late payment of taxes. The respective tax assessment for *Taxpayer C*, *Taxpayer B*, and *Taxpayer A* was \$37,645.91, \$42,815.40, and \$21,999.89. The respective penalties for *Taxpayer C*, *Taxpayer B*, and *Taxpayer A* were \$9,441.49, \$10,559.02, and \$5,499.99. The Taxpayers paid all of the tax assessments and related interest but protested all of the penalties.

#### City Position

The City assessed *Taxpayer X* on August 20, 1999 for a speculative builder tax. The Notice of Assessment ("Notice") was sent to Mr. *X*, the Managing Member. No penalties were applied because the City concluded it was reasonable to assume the Taxpayer was unaware of the liability because it was the first condominium project for the Taxpayer in the City. Subsequently, the City discovered the Taxpayer has three related projects that had delinquent returns and taxes after the August 20, 1999 Notice. *Taxpayer A* had delinquent returns and taxes for the period April 2001 through January 2003. Another condominium project, *Taxpayer C*, had delinquent

returns and taxes for the period May 2001 through July 2002. The other condominium project, *Taxpayer B*, had delinquent returns and taxes for the period September 2001 through September 2002. Mr. *X* was the Managing Member for each condominium project. The City argued that the Taxpayers have been previously noticed of the speculative builder tax when the City assessed the *Taxpayer X* condominium project. For that reason, the City assessed the Taxpayers for penalties for failing to timely file a tax return pursuant to Section 14-540(b)(1) (“Section 540(b)(1)”) and failing to timely pay the tax pursuant to Section 14-540(b)(2) (“Section 540(b)(2)”). As to the waiver of penalties by Tax Accounting, the City asserted the penalties were waived based on criteria for returns filed outside of the review periods and which is not relevant to the Taxpayer’s protest.

### **Taxpayer Position**

The Taxpayers asserted they were unaware of any additional taxes due to the City since the Taxpayers had contracts with contractors whereby the Taxpayers paid taxes to the contractors. The Taxpayers indicated that a new controller was hired on March 19, 2001 and that the new controller was unaware of the speculative builder tax. As a result, the Taxpayers requested a waiver of all the penalties. Additionally, the Taxpayers argued that waiver of the penalties would be consistent with Tax Accounting’s decision to abate late filing penalties for September, October, and November of 2002. According to the Taxpayers, Tax Accounting abated the penalties for precisely the same issues the City assessed penalties in this matter.

### **ANALYSIS**

The City is authorized to assess penalties for late filing of returns and late payment of taxes pursuant to Sections 540(b)(1) and (b)(2). There was no dispute in this case that the Taxpayers filed late returns and paid taxes late. Thus the only issue is whether or not the Taxpayers had reasonable cause for filing and paying late resulting in the penalties being waived. The Hearing Officer concluded the Taxpayers did not demonstrate reasonable cause for the late filing or late payments. The Hearing Officer concludes that the Taxpayers either knew or should have known of the speculative builder tax on or after August 20, 1999 when the Notice was sent to Mr. *X* regarding *Taxpayer X*. While the new controller was not aware of the speculative builder tax, the Hearing Officer concludes the Taxpayers were aware or should have been aware of the tax. A reasonable businessman would have put in place written procedures after the *Taxpayer X* assessment to insure forms were filed timely and taxes were paid on time when new development projects were undertaken. Such procedures would insure replacement personnel were aware of the taxes. In this case, there were either no written procedures or the replacement personnel did not follow such procedures. Based on the above, the Hearing Officer concludes the facts as determined for the audit periods do not support a reason to waive any of the penalties assessed during the relevant audit periods. Therefore, the Taxpayer’s protest should be denied.

### **FINDINGS OF FACT**

1. On January 23, 2003, the Taxpayers filed a protest of a tax assessment from the City.

2. After review, the City concluded on January 24, 2003 that the protest was timely and in proper form.
3. On January 29, 2003, the Hearing Officer ordered the City to file a response on or before March 17, 2003.
4. The City filed a response on March 12, 2003.
5. On March 14, 2003, the Hearing Officer ordered the Taxpayers to file any reply on or before April 4, 2003.
6. The Taxpayers did not file a reply.
7. On March 20, 2003, a Notice was issued for an April 29, 2003 hearing.
8. The Taxpayers and City both appeared and presented evidence at the April 29, 2003 hearing.
9. On April 30, 2003, the Hearing Officer ordered the City to file any response/comments to Taxpayers Exhibit No. 2 on or before May 13, 2003.
10. The City filed a response to Exhibit No. 2 on May 9, 2003.
11. The Taxpayer filed a reply to Exhibit No. 2 on May 12, 2003.
12. On May 19, 2003, the Hearing Officer issued a letter indicating a written decision shall be issued on or before June 27, 2003.
13. Each of the Taxpayers were condominium projects managed by the same Manager.
14. The City assessed taxes on each of the condominium projects for underreported speculative builder revenue.
15. The City included interest on each assessment as well as penalties for late filing of tax returns and late payment of taxes.
16. The respective tax assessments for *Taxpayer C*, *Taxpayer B*, and *Taxpayer A* were \$37,645.91, \$42,815.40, and \$21,999.89.
17. The respective penalties for *Taxpayer C*, *Taxpayer B*, and *Taxpayer A* were \$9,411.49, \$10,559.02, and \$5,499.99.
18. The Taxpayers paid all of the tax assessments and related interest but protested all of the penalties.

19. The City assessed *Taxpayer X* on August 20, 1999 for a speculative builder tax.
20. The Notice was sent to Mr. *X*, the Managing Member.
21. No penalties were assessed on *Taxpayer X* because the Taxpayer was unaware of the liability because it was the first condominium project for the Taxpayer in the City.
22. Subsequently, it was discovered the Taxpayer had three related projects that had delinquent returns and taxes after the August 20, 1999 Notice.
23. *Taxpayer A* had delinquent returns and taxes for the period April 2001 through January 2002.
24. Another condominium project, *Taxpayer C* had delinquent returns and taxes for the period May 2001 through July 2002.
25. The other condominium project, *Taxpayer B* had delinquent returns and taxes for the period September 2001 through September 2002.
26. Mr. *X* was the Managing Member for each of the condominium projects.
27. The Taxpayers hired a new controller on March 19, 2001.
28. The new controller was unaware of the speculative builder tax.

### **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. The City assessed a speculative builder tax pursuant to Section 14-416.
3. Taxpayers had underreported speculative builder revenues during the respective audit period for each condominium project.
4. Taxpayers were aware or should have been aware of the speculative builder tax after the August 20, 1999 Notice to *Taxpayer X*.
5. The City is authorized to assess penalties for failing to timely file tax returns and failing to timely pay taxes pursuant to Sections 540(b)(1) and (b)(2), respectively.
6. The Taxpayers have failed to demonstrate reasonable cause for failing to timely file tax returns and failing to timely pay taxes for the respective audit periods.
7. The protest of the Taxpayers should be denied.

**ORDER**

It is therefore ordered that the protests filed by *Taxpayer A*, *Taxpayer B*, and *Taxpayer C* of a tax assessment by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer