

MODEL CITY TAX CODE

PROGRAM CITIES' PROCEDURE

PCP 98-1

Procedure for obtaining a tax credit for city privilege taxes paid by construction contractors performing "off-site work" for speculative builders and owner-builders who construct developments or subdivisions, when the city or town does not allow a land deduction or allows a land deduction at original cost.

APPLICABLE LAW:

Model City Tax Code (MCTC) Section 418(b) authorizes city privilege tax credits to speculative builders and owner builders respectively subject to tax under Sections 416 and 417, for city privilege or use taxes paid in regard to the construction or improvement to the real property. The tax credits cannot exceed the speculative builders' or owner builders' tax liability; must be documented to the satisfaction of the department; and may not be claimed until the gross income against which the credits apply is reported to the department.

MCTC Section 565 provides that in cases where the city privilege tax was paid by the incorrect taxpayer or paid to the incorrect Arizona city or town, an assignment and waiver of tax may be executed to transfer the tax to the person who should have paid the tax.

MCTC Section 100 provides definitions for "construction contractor", "owner-builder", and "speculative builder".

MCTC Sections 200, 210, 220, and 230 address determinations of gross income subject to tax under MCTC Sections 416 and 417.

MCTC Section 560, as modified by MCTC Appendix I, provides the criteria for obtaining credits and refunds from the department.

Arizona Revised Statutes (A.R.S.) §§ 42-113, 42-115, and 42-129 provide the statutes of limitation for credit or refund claims, and additional stipulations regarding credits and refunds. These provisions are also applicable for claims regarding city privilege tax credits.

DISCUSSION:

The construction contracting tax credit available to speculative builders and owner-builders

under Section 418 of the Model City Tax Code, pertains to "off-site work" performed by construction contractors or subcontractors working within a speculative builders' or owner builders' subdivision or project. "Off-site work" consists of improving the land within a subdivision or project and encompasses such items as lot grading; installing utility (water, sewer, cable, electric, and gas) lines; paving roads; landscaping common areas; and relocating native plants. The off-site improvements are deeded over to the homeowners' association or the city by the speculative builder or owner-builder, prior to or at the time that the subdivision or project is substantially completed. The speculative builder or owner builder retains no ownership interest, security interest or control in the off-site improvements.

"Program" cities are those whose privilege taxes are administered and collected by the Arizona Department of Revenue. Program Cities whose privilege tax calculations do not allow speculative builders or owner-builders a deduction from gross income for the sale of land, or allow such a deduction only for the original cost of the land, consider the off-site work to be exempt subcontracting in regard to the city privilege tax liability of the speculative builder and owner builder.

MCTC Section 565, which provides for the assignment and waiver of city privilege tax when the incorrect taxpayer has paid the tax or the tax was paid to the incorrect Arizona city or town, may be applied to this situation for the benefit of the speculative builder or owner builder.

PROCEDURE:

A claim for tax credit must be in writing and must identify the claimant by name, address, and privilege tax identification number. Each claim must indicate the tax period, the specific amount of credit requested, and the grounds for the credit claim. The department may request additional information or documentation that will substantiate the city privilege tax credit claim.

The following documentation is required for a speculative builder's or owner builder's city privilege tax credit claim based on the above provisions of the Model City Tax Code.

For tax credit claims that do not have an assignment and waiver statement pursuant to MCTC Section 565:

1. A spreadsheet for each subdivision or project indicating by month the names of the off-site contractors, their applicable city tax license numbers, and the amount of city privilege tax remitted by each.

- If the subdivision/project is complete, a credit will result.
- If the subdivision/project is not complete, credits will

be allocated to each lot based on a reasonable allocation (i.e., square footage, actual lot value, or evenly to all lots). For example, if credits totaled \$100.00 and only 25% of the subdivision was complete, a \$25.00 credit or refund would apply. The remaining credit would be recognized as future lots are sold.

2. Supporting contracts, American Institute of Architects (AIA) draw requests or invoices for each off-site contractor by subdivision/project showing a separate amount charged for city tax or otherwise evidencing, to the department's satisfaction, that tax amounts were included and paid. If the city tax is included in a combined tax amount, a breakdown of the tax paid to each jurisdiction is required.
3. The status of each subdivision/project as to the number of lots sold/unsold.
4. The tax credit request must be signed by an owner, partner, or corporate officer, and witnessed by a notary public.
5. If the amounts submitted do not agree with the appropriate city's records, additional information may be required. Copies of invoices or canceled checks may also be requested to support certain claims.

For tax credit claims that have an assignment and waiver statement:

1. The off-site contractor may provide a Subcontractor Declaration and Assignment and Waiver of Tax Form on a notarized affidavit indicating the total tax paid by subdivision/project, by month, with an authorization to transfer the tax to the speculative builder's account. The affidavit would include the off-site contractor's name and applicable city tax license number. This method allows speculative builders to immediately recognize the credits because the off-site contractor would be treated as an exempt subcontractor from the beginning of the project.
2. The declaration should also inform the off-site contractors that they should no longer impose city tax on off-site improvement work performed on the subdivision/project.

If a tax credit claim does not initially contain all of the required documentation, such documentation must be submitted within the later of ninety days or the period stipulated by A.R.

S. §§ 42-113 and 42-115 governing the statutes of limitation.

Mark W. Killian, Director

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to department personnel. A tax procedure is a written statement issued by the department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant ordinance, statute, case law, or administrative regulation, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.