

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: May 19, 2004  
Decision: MTHO #161  
Tax Collector: City of Glendale  
Hearing Date: March 25, 2004

**DISCUSSION**

**Introduction**

On November 17, 2003, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Glendale (“City”). After review, the City concluded on December 10, 2003 that the protest was timely and in the proper form. On December 15, 2003, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before January 29, 2004. On January 27, 2004, the City filed a request for an extension of time to file a response. On January 31, 2004, the Hearing Officer granted the City an extension until February 13, 2004. On February 6, 2004, the City filed its response. On February 9, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before March 1, 2004. On March 3, 2004, a Notice of Tax Hearing (“Hearing Notice”) was issued setting this matter for hearing commencing on March 25, 2004. Both the Taxpayer and City appeared and presented evidence at the March 25, 2004 hearing. On March 29, 2004, the Hearing Officer ordered the City to file any recommendations/comments to Taxpayer Exhibit No.6 on or before April 1, 2004, the Taxpayer would file any reply on or before April 8, 2004, and a written decision would be issued on or before May 24, 2004. On March 30, 2004, the City filed its recommendations/comments to Taxpayer Exhibit No.6. On April 2, 2004, the Taxpayer fled an e-mail reply to the City.

**City Position**

The Taxpayer pulled a permit for the construction of a house in the City at \_\_\_\_\_ *M* Lane (“*M* Property”) on October 15, 2001. The final inspection date of the permit was June 4, 2002. The home was sold by the Taxpayer on February 20, 2003 for \$479,000. Subsequently, on July 16, 2003, the City issued an intent to audit letter to the Taxpayer. The City conducted an audit for the period September 1999 through June 2003 and on October 31, 2003, the City issued a Notice of Determination (“Notice”) assessing the Taxpayer for taxes in the amount of \$4,238.08, penalties for late filing and late payment in the amount of \$1,059.52, plus interest. The City asserted that the Taxpayer met the definition of “speculative builder” pursuant to City Tax Code Section 21.1-100 (“Section 100”) and thus subject to the speculative builder tax pursuant to Section 21.1-416 (“Section 416”). The City indicated that the sale did not qualify as a “homeowner’s bona fide non-business sale of a family residence” per regulation 21.1-416.1 (“Regulation 416.1”) as the

property was not “used as the principal place of family residence or vacation residence by the immediate family of the seller for the six months next prior to the offer for sale”. Based on documentation supplied by the Taxpayer, credit was allowed for city taxes paid to vendors on materials allowed in Section 21.1-416(c)(3)(A) (“Section 416(c)(3)(A)”). The City reviewed additional documentation provided by the Taxpayer at the hearing and recommended the Taxpayer receive credit for additional city tax paid in the amount of \$72.43. After hearing the Taxpayer’s evidence at the hearing, the City recommended the penalties be waived.

### **Taxpayer Position**

The Taxpayer argued that they were not a speculative builder. The *F*s started to build the house to be their principal place of a family residence while the house was being built, the *F*s became separated and eventually divorced. As a result, the *M* Property had to be sold. According to the Taxpayer, taxes were paid on all materials purchased for the construction of the house. For that reason, the Taxpayer asserted they were being doubled taxed. The Taxpayer argued that it was not fair to tax them on the lot that was paid for three years ago or to tax the profit of the house. The Taxpayer also protested the assessment of penalties and interest since they were not aware of the tax until the City audit. The Taxpayer asserted that the City had given him a final green tag approval slip which they believed demonstrated that all appropriate penalties and/or taxes had been paid. Based on the above, the Taxpayer argued the assessment was not proper.

### **ANALYSIS**

Clearly, the Taxpayer did not intend to become a speculative builder. However, once the *M* Property was sold within two years of substantial completion the Taxpayer became a speculative builder pursuant to Section 416. Since the Taxpayer never used the home as a family residence, the Taxpayer did not qualify for an exemption under Regulation 416.1. As a result, the speculative builder tax assessment is upheld. Based on the City’s review of the additional taxpayer documentation, it is proper to reduce the assessment to reflect the additional tax credit of \$72.43. Lastly, we find the Taxpayer was unaware of the speculative builder tax and had a reasonable belief it did not apply to the Taxpayer. Accordingly, we conclude the Taxpayer has demonstrated reasonable cause to have all penalties waived.

### **FINDINGS OF FACT**

1. On November 17, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on December 10, 2003 that the protest was timely and in proper form.
3. On December 15, 2003, the Hearing Officer ordered the City to file a response to the protest on or before January 29, 2004.

4. On January 27, 2004, the City filed a request for an extension of time to file a response.
5. On January 31, 2004, the Hearing Officer granted the City an extension until February 13, 2004.
6. On February 6, 2004, the City filed its response.
7. On February 9, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before March 1, 2004.
8. On March 3, 2004, a Hearing Notice was issued setting the matter for hearing commencing on March 25, 2004.
9. Both the taxpayer and City appeared and presented evidence at the March 25, 2004 hearing.
10. On March 29, 2004, the Hearing Officer ordered the City to file any recommendations/comments to Taxpayer Exhibit No.6 on or before April 1, 2004, the Taxpayer would file any reply on or before April 8, 2004, and a written decision would be issued on or before May 24, 2004.
11. On March 30, 2004, the City filed its recommendations/comments to Taxpayer Exhibit No.6.
12. On April 2, 2004, the Taxpayer filed an e-mail reply to the City.
13. The Taxpayer pulled a permit for the construction of a house in the City, *M* Property, on October 15, 2001.
14. The final inspection date of the permit was June 4, 2002.
15. The home was sold on February 20, 2003 for \$479,000.
16. On July 16, 2003, the City issued an intent to audit letter to the Taxpayer.
17. The City conducted an audit for the period September 1999 through June 2003 and on October 31, 2003, the City issued a Notice assessing the Taxpayer for taxes in the amount of \$4,238.08, penalties for late filing and late payment in the amount of \$1,059.52, plus interest.
18. The *F*s started to build the house to be their principal place of a family residence.
19. While the house was being built, the *F*s became separated and eventually divorced.
20. The *M* Property was sold prior to the *F*s ever living there.

21. Taxes were paid on all materials purchased for the construction of the house.
22. The Taxpayer was not aware of the speculative builder tax until the City audit.
23. The City allowed the Taxpayer a credit for all city taxes paid to vendors on materials used in the construction of the house.
24. The City reviewed additional documentation provided by the Taxpayer at the hearing and recommended the Taxpayer receive credit for additional city tax paid in the amount of \$72.43.

### **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 authorizes a tax on the gross income from the business activity of engaging in the business as a speculative builder.
3. The Taxpayer is a speculative builder pursuant to Section 100.
4. The sale did not qualify as a “homeowner’s bona fide non-business sale of a family residence” pursuant to Regulation 416.1.
5. The Taxpayer had taxable contracting income pursuant to Section 416.
6. The Taxpayer demonstrated reasonable cause for failing to timely file and failing to timely pay.
7. The City’s assessment should be adjusted to include credit for additional city tax paid in the amount of \$72.43 and removal of all penalties.
8. The Taxpayer’s protest should be denied with the exception of the tax credit of \$72.43 and the removal of all penalties.

**ORDER**

It is therefore ordered that the November 17, 2003 protest filed by *Taxpayer* of a tax assessment made by the City of Glendale is hereby denied with the exception of an adjustment for tax credits and the removal of all penalties.

It is further ordered that the City of Glendale shall revise the assessment to include additional tax credits of \$72.43 and removal of all penalties assessed.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer