

## **DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: June 7, 2004  
Decision: MTHO #175  
Tax Collector: City of Phoenix  
Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On January 30, 2004, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Phoenix ("City"). After review, the City concluded on January 30, 2004 that the protest was timely and in the proper form. On February 9, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") classified this matter as a redetermination and ordered the City to file a response on or before March 25, 2004. The City filed a response on March 8, 2004. On March 12, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before April 12, 2004. On May 4, 2004, the Hearing Officer indicated no reply had been filed and a written decision would be issued on or before June 18, 2004.

#### **City Position**

The Taxpayer improved and sold real property within 24 months of completion of the improvements. As a result, the City assessed the Taxpayer's sale as a speculative builder tax pursuant to City Code Section 14-416 ("Section 416"). City Code Section 14-540(a) ("Section 540(a)") imposes interest on taxes which are due or found to be due before the delinquency date. The City argued that interest cannot be waived or abated by the City or the Hearing Officer unless the tax is abated. Since the Taxpayer did not protest the assessment of the tax, the City asserted the interest is due.

#### **Taxpayer Position**

The Taxpayer asserts they were not aware of the potential tax assessment until the City made them aware through the audit process. The Taxpayer indicated they provided full and timely cooperation to the auditor by providing information and documentation to calculate the amount of tax due. Upon receiving the assessment, the Taxpayer promptly paid the taxes in the amount of \$8,079.85. As a result, the Taxpayer argued that the payment should be considered timely and the interest amount of \$1,454.40 should be abated.

### **ANALYSIS**

There was no dispute that the Taxpayer was a speculative builder and thus owed taxes pursuant to Section 416. There was also no dispute that the Taxpayer fully and timely cooperated with the City during the audit. As a result, the City did not impose any penalties. The only dispute was

whether or not the interest assessed could be waived. Section 540(a) makes it clear that neither the tax collector nor the Hearing Officer can waive the interest unless the underlying tax is abated. As a result, the Hearing Officer must conclude the interest cannot be waived. Accordingly, the protest must be denied.

### **FINDINGS OF FACT**

1. On January 30, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on January 30, 2004 that the protest was timely and in proper form.
3. On February 9, 2004, the Hearing Officer classified this matter as a redetermination and ordered the City to file a response on or before March 25, 2004.
4. On March 12, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before April 12, 2004.
5. On May 4, 2004, the Hearing Officer indicated no reply had been filed and a written decision would be issued on or before June 18, 2004.
6. The Taxpayer improved and sold real property within 24 months of completion of the improvements.
7. The Taxpayer was not aware of the potential tax assessment until the City made them aware through the audit process.
8. The Taxpayer provided full and timely cooperation to the auditor by providing information and documentation to calculate the amount of tax due.

### **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 Mode City Tax Code.
2. The City imposes a privilege tax on speculative builders pursuant to Section 416.
3. The Taxpayer was a speculative builder.
4. Section 540(a) prohibits the waiver of interest unless the underlying tax is abated.
5. The interest cannot be waived in the matter.

6. The Taxpayer's protest should be denied.

**ORDER**

It is therefore ordered that the January 30, 2004 protest of *Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied.

It is further ordered that this Decision is effective immediately.