

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

Decision Date: December 8, 2004

Decision: MTHO #196

Tax Collector: City of Phoenix

Hearing Date: None

### **DISCUSSION**

#### **Introduction**

On July 19, 2004, *Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Phoenix (“City”). After review, on July 21, 2004, the City concluded the protest was timely and in proper form. On July 21, 2004, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response to the protest on or before September 8, 2004. On August 2, 2004, at the request of the Taxpayer, the Hearing Officer classified this matter as a redetermination. On August 31, 2004, the City requested an extension until October 5, 2004. On September 3, 2004 the Hearing Officer granted the City an extension until October 5, 2004. On September 24, 2004 the City filed a response to the protest. On September 27, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before October 27, 2004. On November 24, 2004, the Hearing Officer indicated no reply had been filed and as a result the record was closed and a written decision would be issued on or before January 10, 2005.

#### **City Position**

The City conducted an audit of the Taxpayer for the period July 2002 through November 2003. During that period, the Taxpayer sold 22 homes. The City concluded that the Taxpayer had unreported gross speculative builder revenue pursuant to City Code Section 14-416 (Section 416”) in the amount of \$2,281,500.00. As a result, the City issued an assessment for taxes due of \$25,566.10 plus interest up through May 2004 in the amount of \$3,291.49.

The City attempted on numerous times to obtain documentation from the Taxpayer without success. As a result, the City estimated the tax liability by using the Affidavit of Property Values (“Affidavits”) from the Maricopa County Recorder’s Office (“County”). Because of the lack of records, the City did not allow any credit for taxes paid during construction. As part of the protest, the Taxpayer provided documentation identifying taxes paid by the General Contractor for the construction of the 22 homes. After review, the City concluded that the General Contractor had paid sales taxes to the City in the amount of \$12,531.94. Consequently, the City revised its assessment to reflect a credit for taxes already paid. The revised assessment resulted in taxes due of \$13,345.67 plus interest of \$1,709.38 up through May 2004. It is noted that after the revision, the Taxpayer had a tax credit because the Taxpayer had paid the full amount of the original assessment of \$28,857.59 on June 11, 2004.

## **Taxpayer Position**

The Taxpayer protested the entire assessment. According to the Taxpayer, the City has miscalculated the gross speculative builder revenue by using estimations instead of actual numbers. In addition, the Taxpayer asserted the City had omitted credits for sales taxes paid as well as omitted other exclusions.

## **ANALYSIS**

The Taxpayer did not dispute that he owed taxes as a speculative builder pursuant to Section 416. The Taxpayer did protest that the City had omitted credits for sales taxes paid as well as other omitted exclusions. We find the City's original assessment was proper at the time because the Taxpayer failed to provide any documents to support the claim of sales taxes already paid or to support other exclusions. Subsequent to the assessment, the Taxpayer did provide documentation to demonstrate the general contractor had already paid taxes of \$12,531.94 to the City for construction of the 22 homes. As a result, it was proper for the City to revise their assessment to reflect this documentation. As to the Taxpayer's claim of other omitted exclusions, we must deny that claim since there has been no documentation to show what the exclusions were and in what amounts. Based on the above, the City's revised assessment as set forth in the City's September 24, 2004 response is approved.

## **FINDINGS OF FACT**

1. On July 19, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on July 21, 2004, that the protest was timely and in proper form.
3. On July 21, 2004, the Hearing Officer ordered the City to file a response to the protest on or before September 8, 2004.
4. On August 2, 2004, at the request of the Taxpayer, the Hearing Officer classified this matter as a redetermination.
5. On August 31, 2004, the City requested an extension until October 5, 2004.
6. On September 3, 2004, the Hearing Officer granted the City an extension until October 5, 2004.
7. On September 24, 2004, the City filed a response to the protest.
8. On September 27, 2004, the Hearing Officer ordered the Taxpayer to file any reply on or before October 27, 2004.

9. On November 24, 2004, the Hearing Officer indicated no reply had been filed and as a result, the record was closed and a written decision would be issued on or before January 10, 2005.
10. The City conducted an audit of the Taxpayer for the period July 2002 through November 2003.
11. During the audit, the Taxpayer sold 22 homes.
12. The City concluded the Taxpayer had unreported gross speculative builder revenue during the audit period of \$2,281,500.00.
13. The City issued an assessment for taxes due of \$25,566.10 plus interest up through May 2004 in the amount of \$3,291.49.
14. The City attempted on numerous occasions to obtain documentation from the Taxpayer without success.
15. The City estimated the tax liability by using the Affidavits from the County.
16. Because of the lack of records, the City did not allow any credit for taxes paid during construction.
17. As part of the protest, the Taxpayer provided documentation identifying taxes paid by the General Contractor for the construction of the 22 homes.
18. After review, the City concluded that the General Contractor had paid sales taxes to the City in the amount of \$12,531.94
19. The City revised its assessment to reflect a credit for taxes paid by the General Contractor.
20. The revised assessment resulted in taxes due of \$13,345.67 plus interest of \$1,709.38 up through May 2004.

### **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 Taxpayer had unreported gross speculative builder revenue pursuant to Section 416 during the audit period.

3. The burden of proof is on the Taxpayer to provide documents to demonstrate the City had omitted tax credits and other exclusions.
4. At the time of the audit, the Taxpayer failed to provide documentation requested by the City.
5. Based on the information available at the time of the audit, the City's original assessment was proper.
6. As part of the protest, the Taxpayer provided documentation to demonstrate the General Contractor, of the 22 homes included in the audit, had paid taxes to the City in the amount of \$12,531.94.
7. As a result of the additional documentation, it was proper for the City to revise its assessment to credit the Taxpayer for taxes paid by the General Contractor.
8. The Taxpayer's protest should be denied in part and granted in part.

### **ORDER**

It is therefore ordered that the July 19, 2004 protest by *Taxpayer* of a tax assessment by the City of Phoenix is hereby granted, in part, and denied, in part, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Phoenix shall revise its assessment consistent with the recommendations contained in its September 24, 2004 letter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer