

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: February 28, 2005

Decision: MTHO #203

Tax Collector: City of Scottsdale

Hearing Date: None

DISCUSSION

Introduction

On July 23, 2004, *Taxpayer* ("Taxpayer") filed a protest of a tax assessment made by the City of Scottsdale ("City"). After review, the City concluded on August 10, 2004 that the protest was timely and in the proper form. On August 16, 2004, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before September 30, 2004. On August 19, 2004, the City requested the matter be stayed while the parties attempted to resolve the matter. On August 23, 2004, the Hearing Officer stayed the matter and ordered the City to provide a status report on or before September 16, 2004. On September 14, 2004, the City and Taxpayer requested the stay continue up through October 30, 2004. On September 17, 2004, the Hearing Officer continued the stay up through October 30, 2004 and ordered the City to provide a status report on or before October 30, 2004. On October 29, 2004, the City indicated the Taxpayer had failed to provide any additional documentation and the Taxpayer desired to have the matter reclassified as a redetermination. On November 2, 2004, the Hearing Officer reclassified the matter as a redetermination, lifted the stay, and ordered the City to file a response to the protest on or before December 17, 2004. The City filed a response on December 17, 2004. On December 21, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before January 21, 2005. On January 31, 2005, the Hearing Officer indicated no reply had been received and a written decision would be issued on or before March 17, 2005.

City Position

The City performed an audit of the Taxpayer for the month of April 2003. The City concluded the Taxpayer had underreported speculative builder income pursuant to City Code Section 416 ("Section 416"). The City assessed the Taxpayer for additional taxes due in the amount of \$7,321.98 and interest up through May 2004 in the amount of \$878.64

According to the City, *ABC* Development Corporation ("*ABC*") was one of the original developers of the *XYZ* Trail subdivision ("Subdivision") in the City, consisting of twenty-one lots. *XYZ* Trail Development ("*XYZ*") purchased the twenty-one lots from *ABC*. *XYZ* had a single family home built and completed in the Subdivision by *DEF*

Development (“*DEF*”). The City indicated that no State or City tax was remitted on any of the construction or transfer of the property. On April 24, 2003, the Taxpayer acquired the improved property as a successful bidder in a trustee’s sale. The City assessed the Taxpayer for speculative builder tax pursuant to City Code Section 595(c) (“Section 595(c)”) which provides as follows:

(c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improve real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Section 416 and 417.

The City argued that the assessment falls squarely within Section 595(c). According to the City, *XYZ* improved real property that was transferred to the Taxpayer through foreclosure proceedings. As a result, *XYZ* was a speculative builder that was required pursuant to City Code Section 520(2) (B) (“Section 520”) to report the gross income from the transfer to the Taxpayer.

In response to the Taxpayer, the City asserts there was no evidence of privilege tax being paid on the improved property. The City argued the Taxpayer’s argument that successor liability did not apply because the Taxpayer did not purchase a business or stock of good is not relevant to Section 595(c). Based on the above, the City requested its assessment be upheld.

Taxpayer Position

ABC constructed roads within the subdivision and constructed utilities to the individual lots. Subsequently, *ABC* sold the improved property to *XYZ* within twenty-four months of making the improvements. The Taxpayer believes *ABC* paid speculative builder tax on the sale to *XYZ*. *XYZ* hired a contractor and built homes on some of the lots. In January 2003, *XYZ* was unable to meet its financial obligations. The Taxpayer indicated it purchased one of the lots through a foreclosure sale on or about April 24, 2003. The Taxpayer asserts it has constructed no further improvements to the property.

The Taxpayer argued that pursuant to Section 416, the seller of property must have, by itself or through others, constructed or reconstructed some improvements to the property sold. The Taxpayer argued that the lender was the seller of the property to the Taxpayer through a foreclosure process. According to the Taxpayer, the lender did not construct or reconstruct improvements to the property and thus was not a speculative builder. The Taxpayer asserts that statutes imposing tax are construed narrowly against the tax collector and liberally in the Taxpayer’s favor. Accordingly, the Taxpayer argued the provision imposing successor liability must be construed liberally in favor of the Taxpayer. The Taxpayer asserted it would not owe tax until the Taxpayer improved and sold the property. The Taxpayer indicated it has not improved the property.

The Taxpayer argued that pursuant to City Code Section 530 (“Section 530”) *XYZ*’s tax was not “due and payable” until the twentieth day of the month following the month in which there was a transfer of title to the property. As a result, the Taxpayer asserted there was not tax owed when the Taxpayer took title.

Upon information and belief, the Taxpayer asserted that *ABC* paid speculative builder tax on the land, tax on construction contracting, or both with respect to the property that was subsequently purchased by the Taxpayer. As a result, the Taxpayer argued that at least a portion of the requirement for successor liability is satisfied.

According to the Taxpayer, Section 595(d), the general successor liability provision requires a “purchase” of “a business or stock of goods.” The Taxpayer argued that the transfer of the property through foreclosure to the Taxpayer was not a purchase of the “business or stock of goods” from *XYZ* or the lender. Therefore, the Taxpayer asserts there is not successor liability.

ANALYSIS

XYZ was a speculative builder pursuant to Section 416. On April 24, 2003, the Trustee sold the improved property on behalf of *XYZ*. As a result of that sale, *XYZ* had an immediate tax liability. Section 595(c) does provide that a person who acquires improved real property in a trustee sale is responsible for any speculative builder tax not paid on the acquired property. As a result, the Taxpayer is responsible for the speculative builder tax on the improved property. The Taxpayer should receive credit for any speculative builder tax and/or contracting tax already paid to the City on the improved real property. However, there was no evidence presented to demonstrate that any tax had already been paid. Accordingly, the Taxpayer’s protest is denied.

FINDINGS OF FACT

1. On July 23, 2004, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on August 10, 2004 that the protest was timely and in the proper form.
3. On August 16, 2004, the Hearing Officer ordered the City to file a response to the protest on or before September 30, 2004.
4. On August 19, 2004, the City requested the matter be stayed while the parties attempted to resolve the matter.
5. On August 23, 2004, the Hearing Officer stayed the matter and ordered the City to

- provide a status report on or before September 16, 2004.
6. On September 14, 2004, the City and Taxpayer requested the stay continue to through October 30, 2004.
 7. On September 17, 2004, the Hearing Officer continued the stay up through October 30, 2004 and ordered the City to provide a status report on or before October 30, 2004.
 8. On October 29, 2004, the City indicated the Taxpayer had failed to provide any additional documentation and the Taxpayer desired to have the matter reclassified as a redetermination.
 9. On November 2, 2004, the Hearing Officer reclassified the matter as a redetermination, lifted the stay, and ordered the City to file a response to the protest on or before December 17, 2004.
 10. The City filed a response on December 17, 2004.
 11. On December 21, 2004, the Hearing Officer ordered the Taxpayer to file a reply on or before January 21, 2005.
 12. On January 31, 2005, the Hearing Officer indicated no reply had been received and a written decision would be issued on or before March 17, 2005.
 13. The City performed an audit of the Taxpayer for the month of April 2003.
 14. The City concluded the Taxpayer had underreported speculative builder income pursuant to Section 416.
 15. The City assessed the Taxpayer for additional taxes due in the amount of \$7,321.98 and interest up through May 2004 in the amount of \$878.64.
 16. **ABC** was one of the original developers of the Subdivision in the City, consisting of twenty-one lots.
 17. **XYZ** purchased the twenty-one lots from **ABC**.
 18. **XYZ** had a single family home built and completed in the Subdivision by **DEF**.
 19. No State or City tax was remitted on any of the construction or transfer of the property.
 20. On April 24, 2003, the Taxpayer acquired the improved real property as a successful bidder in a trustee's sale

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. **XYZ** was a speculative builder pursuant to Section 416.
3. A tax liability was incurred at the time the Taxpayer took title of the improved real property at the trustee sale.
4. The Taxpayer is responsible for the speculative builder tax on the sale of the improved real property pursuant to Section 595(c).
5. There was no evidence of any speculative builder tax and/or contracting tax already paid to the City on the improved real property.
6. The Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the July 23, 2004 protest of *Taxpayer* of a tax assessment by the City of Scottsdale is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer