

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 30, 2008

Decision: MTHO # 395

Taxpayer: *ABC Taxpayer*

Tax Collector: City of Mesa

Hearing Date: August 21, 2008

DISCUSSION

Introduction

On October 15, 2007, *ABC Taxpayer* (“Taxpayer”) filed a protest of a tax assessment made by the City of Mesa (“City”). After review, the City concluded on November 1, 2007 that the protest was timely and in the proper form. On November 13, 2007, the Municipal Tax Hearing Officer (“Hearing Officer”) ordered the City to file a response on or before December 28, 2007. On December 26, 2007, the City sent an email requesting an extension for the response. On December 31, 2007, the Hearing Officer granted the City an extension until January 31, 2008. The City sent a January 29, 2008 email requesting another extension for the response. On January 31, 2008, the Hearing Officer granted the City an extension until March 17, 2008. On March 14, 2008, the City sent an email requesting an extension. On March 17, 2008, the Hearing Officer granted the City an extension until May 16, 2008. On May 14, 2008, the City requested another extension for the response. On May 19, 2008, the Hearing Officer granted the City an extension until July 18, 2008 to file a response. On July 16, 2008, the City filed a response to the protest. On July 19, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before August 6, 2008. On July 30, 2008, a Notice of Tax Hearing (“Notice”) scheduled the matter for hearing commencing on August 21, 2008. The City appeared and presented evidence at the August 21, 2008 hearing while Taxpayer failed to appear. On August 22, 2008, the Hearing Officer granted Taxpayer until September 22, 2008 to file additional documentation. On September 29, 2008, the Hearing Officer indicated that no response had been received from Taxpayer and as a result the record was closed and a written decision would be issued on or before November 13, 2008.

City Position

The City conducted an audit of Taxpayer for the period April 2007. The City assessed Taxpayer for taxes due in the amount of \$12,393.42, interest up through July 2007 in the amount of \$94.92, and penalties for late filing and late payment in the amount of \$1,779.61. Subsequently, the City allowed a builder tax credit in the amount of \$3,112.99 and a lot tax credit in the amount of \$2,161.99. Taxpayer made a payment on October 4, 2007 in the amount of \$5,115.65 leaving an amount due of \$3,877.33.

The City assessed Taxpayer for the speculative builder sale of a residential property located at *1234 Mesa Property*. The City asserted Taxpayer was a speculative builder pursuant to City Code Sections 5-10-100 (“Section 100”) and 5-10-416 (“Section 416”). The City allowed a tax credit for taxes paid by *Builder*, to the City on the construction of the *1234 Mesa Property* pursuant to Section 416(c)(3)(b). While Taxpayer has requested additional tax credits, the City argued Taxpayer has not provided any documentation to substantiate the higher credit amounts. As a result, the City did not grant any additional credits.

Because Taxpayer failed to file tax reports and failed to timely pay taxes, the City assessed penalties pursuant to City Code Section 5-10-540(b)(1) and (2) (“Section 540”). The City asserted the penalties were proper since David Allen (Nephew of Taxpayer) handled this matter on behalf of Taxpayer and David Allen had been previously assessed on an earlier speculative builder sale. Based on all the above, the City requested the assessment be upheld.

Taxpayer Position

Taxpayer protested the amount of taxes assessed by the City. While the City allowed tax credits of \$3,112.99 for taxes paid to the City by *Builder*, Taxpayer argued that it should be entitled to a credit of \$4,959.93.

ANALYSIS

Taxpayer did not dispute that the sale of the *1234 Mesa Property* was a speculative builder sale pursuant to Section 416. Taxpayer protested that the City did not allow sufficient tax credits for taxes paid to the City. We note that City Code Section 5-10-350 (“Section 350”) places a duty on a taxpayer to keep and preserve suitable books and records to determine the amount of tax for which they are liable for. Additionally, City Code Section 5-10-360 (“Section 360”) provides that any tax credits claimed by a taxpayer are conditional upon adequate proof and documentation being provided by the taxpayer. The City reviewed the documentation provided by Taxpayer and allowed all tax credits that were supported by the documentation. While Taxpayer requested additional tax credits, Taxpayer failed to provide documentation to support additional tax credits. As a result, we conclude that Taxpayer has failed to meet its burden of proof pursuant to Section 360 to demonstrate additional tax credits should be granted.

Since Taxpayer failed to timely file a tax report and failed to timely pay taxes the City was authorized pursuant to Section 540 to assess penalties. Those penalties may be waived when a taxpayer demonstrates reasonable cause. In this case, Taxpayer failed to appear at the hearing, and failed to file additional documentation after the hearing. Lastly, Taxpayer’s protest fails to mention any protest of penalties. As a result, the penalties assessed by the City are upheld. Based on all the above, Taxpayer’s protest should be denied.

FINDINGS OF FACT

1. On October 15, 2007, Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on November 1, 2007 that the protest was timely and in the proper form.
3. On November 13, 2007, the Hearing Officer ordered the City to file a response on or before December 28, 2007.
4. On December 26, 2007, the City sent an email requesting an extension for the response.
5. On December 31, 2007, the Hearing Officer granted the City an extension until January 31, 2008.
6. The City sent a January 29, 2008 email requesting another extension for the response.
7. On January 31, 2008, the Hearing Officer granted the City an extension until March 17, 2008.
8. On March 14, 2008, the City sent an email requesting an extension.
9. On March 17, 2008, the Hearing Officer granted the City another extension until May 16, 2008.
10. On May 14, 2008, the City requested another extension for the response.
11. On May 19, 2008, the Hearing Officer granted an extension until July 18, 2008 to file the response.
12. On July 16, 2008, the City filed a response to the protest.
13. On July 19, 2008, the Hearing Officer ordered Taxpayer to file any reply on or before August 6, 2008.
14. On July 30, 2008, a Notice scheduled the matter for hearing commencing on August 21, 2008.
15. The City appeared and presented evidence at the August 21, 2008 hearing, while Taxpayer failed to appear.
16. On August 22, 2008, the Hearing Officer granted Taxpayer until September 22,

2008 to file additional documentation.

17. On September 29, 2008, the Hearing Officer indicated no response had been received from Taxpayer and as a result the record was closed and a written decision would be issued on or before November 13, 2008.
18. The City performed an audit of Taxpayer for the period April 2007.
19. The City assessed Taxpayer for taxes due in the amount of \$12,393.43, interest up through July 2007 in the amount of \$94.92, and penalties for late filing and late payment in the amount of \$1,779.61.
20. Subsequently, the City allowed a builder's tax credit in the amount of \$3,112.99 and a lot tax credit in the amount of \$2,161.99.
21. Taxpayer made a payment on October 4, 2007 in the amount of \$5,115.65.
22. The City assessed Taxpayer for the speculative builder sale of the *1234 Mesa Property*.
23. The City allowed a tax credit for taxes paid by *Builder* to the City on the construction of the *1234 Mesa Property*.

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. During the audit period, Taxpayer had a speculative builder sale pursuant to Section 416.
3. Pursuant to Section 350, Taxpayer had the duty to keep and preserve suitable book and record to determine the amount of tax for which Taxpayer is liable for.
4. Pursuant to Section 360, any credits claimed by Taxpayer are conditional upon adequate proof and documentation being provided by Taxpayer
5. The City has allowed all tax credits for which Taxpayer had provided adequate proof and documentation.
6. Taxpayer has failed to meet its burden of proof pursuant to Section 360 to demonstrate addition tax credits should be granted.
7. Since Taxpayer failed to timely file a tax report and failed to timely pay taxes, the

City was authorized pursuant to Section 540 to impose penalties.

8. Penalties assessed pursuant to Section 540 may be waived if Taxpayer demonstrates reasonable cause.
9. Taxpayer failed to demonstrate reasonable cause to have the penalties waived and failed to protest the penalties.
10. Taxpayer's protest should be denied.

ORDER

It is therefore ordered that the October 15, 2007 protest by *ABC Taxpayer* of a tax assessment by the City of Mesa is hereby denied.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer