

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 13, 2009
Decision: MTHO # 507
Taxpayer: *Taxpayer*
Tax Collector: City of Chandler
Hearing Date: September 24, 2009

DISCUSSION

Introduction

On March 31, 2009, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Chandler (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on September 24, 2009. Appearing for Taxpayer was *Taxpayer*. Appearing for the City were *Tax Audit Supervisor*, and *Senior Tax Auditor*. At the conclusion of the September 24, 2009 hearing, the record was closed and the Hearing Officer indicated a written decision would be issued on or before November 9, 2009.

DECISION

Taxpayer purchased a parcel of real property located at *Chandler Property* in the City on July 11, 2006. *General Contractor* applied for a City building permit on August 24, 2006 to begin improvements on the *Chandler Property*. On March 13, 2008, the City deemed the improvements to be final and ready for use. Taxpayer had planned to move into the improved *Chandler Property* and had enrolled his children in the local school. Because of the economic downturn, and Taxpayer’s financial situation, Taxpayer was unable to move into the *Chandler Property*. Taxpayer sold the improved *Chandler Property* on August 28, 2008 for \$889,000.00. Taxpayer sold the *Chandler Property* for a loss of \$190,000.00.

On March 12, 2009, the City completed a desk review of Taxpayer and issued an assessment for taxes due of \$7,181.93, interest up through March 2009 in the amount of \$167.58, penalties totaling \$1,795.48, and \$52.50 in license fees and penalties. The City assessed Taxpayer for engaging in business as a speculative builder pursuant to City Code Section 62-416 (“Section 416”).

We note that City Code Section 62-100 (“Section 100”) provides a definition of a “speculative builder” that includes an owner-builder who sells improved real property before the expiration of twenty-four months after the improvements are substantially complete. Section 100 defines “substantially complete” to mean the improvements are

ready for immediate occupancy or use. Based on the City's review, the improvements were ready for immediate occupancy or use on March 13, 2008. Since the sale date was on August 28, 2008, the sale clearly falls within the twenty-four month period set forth in Section 100. As a result, the total selling price of the improved **Chandler Property** is taxable pursuant to Section 416. While we don't dispute Taxpayer's claim that the **Chandler Property** was originally improved to be his family home, Section 416 does not allow us to consider intent. In fact, in most situations it would be nearly impossible for the City to determine what the taxpayer's original intent was. We also don't dispute Taxpayer's claim that the improved **Chandler Property** was sold at a loss. Section 416 does not look at the profit or loss on a speculative builder sale but only at the selling price. Lastly, there is a provision in City Regulation 62-416.1 ("Regulation 416.1") which permits an exemption for a "homeowner's bona fide non-business sale". One of the requirements for such an exemption is that the improved real property must have been lived in for the six month period prior to the sale. Unfortunately, Taxpayer never lived in the improved **Chandler Property** and is not eligible for the exemption set forth in Regulation 416.1. Based on all the above, we conclude the City's tax assessment was proper.

Since Taxpayer failed to file a tax report or pay taxes on a timely basis, the City was authorized to assess penalties pursuant to City Code Section 62-540 ("Section 540"). Those penalties may be waived if a taxpayer demonstrates reasonable cause for failure to file and failure to timely pay taxes. The fact that Taxpayer did not know about the speculative builder tax and intended to build the house to live in demonstrates reasonable cause to have all penalties in this matter waived. Based on all the above, Taxpayer's protest should be partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On March 31, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. On July 11, 2006, Taxpayer purchased **Chandler Property**.
3. On August 24, 2006, **General Contractor** applied for a City building permit to begin improvements on the **Chandler Property**.
4. On March 13, 2008, the City deemed the improvements to be final and ready for use.
5. Taxpayer had planned to move into the improved **Chandler Property** and had enrolled his children in the local school.
6. Because of the economic downturn, and Taxpayer's financial situation, Taxpayer was unable to move into the **Chandler Property**.

7. Taxpayer sold the improved *Chandler Property* on August 28, 2008 for \$889,000.00.
8. Taxpayer sold the *Chandler Property* for a loss of \$190,000.00.
9. On March 12, 2009, the City completed a desk review of Taxpayer and issued an assessment for taxes due in the amount of \$7,181.93, interest up through March 2009 in the amount of \$167.58, penalties totaling \$1,795.48, and \$52.50 in license fees and penalties.
10. Taxpayer never lived in the improved *Chandler 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. Section 416 imposes a tax on the total selling price of improved real property.
3. Pursuant to Section 100, a speculative builder includes an owner-builder who sells improved real property before the expiration of twenty-four months after the improvements are substantially complete.
4. Pursuant to Section 100, substantially complete means the improvements are ready for immediate occupancy or use.
5. The sale of the improved *Chandler Property* falls within the definition of a speculative builder set forth in Section 100.
6. The total selling price of the improved *Chandler Property* is taxable pursuant to Section 416.
7. Taxpayer does not qualify for the homeowner's bona fide non-business sale exemption set forth in Regulation 416.1.
8. The City was authorized pursuant to Section 540 to assess penalties in this matter.
9. Taxpayer has demonstrated reasonable cause for failing to file and failing to timely pay taxes.
10. All the penalties in this matter should be waived.

11. Taxpayer's protest should be partly granted and partly denied, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the March 31, 2009 protest by *Taxpayer* of a tax assessment made by the City of Chandler is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Chandler shall remove all penalties assessed in this matter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer