

DECISION OF MUNICIPAL TAX HEARING OFFICER

July 29, 2010

Taxpayer
Address 1

Taxpayer
Address 2

Taxpayer
MTHO # 571

Dear *Taxpayer*:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Chandler (Tax Collector or City). The review period covered was March 2009. Taxpayers' protest, Tax Collector's response, and our findings and ruling follow.

Taxpayers' Protest

Taxpayers were assessed City of Chandler privilege tax under the speculative builder classification for the sale of a home Taxpayers had constructed in the City. Taxpayers were not owner-builders but simply the owners of the property. The home was built by a contractor and Taxpayers had minimal input on what could be changed. Taxpayers had not intended the residence to be a speculative home but wanted it to be their personal residence. Construction delays, personal and financial issues caused Taxpayers to sell the home. Taxpayers do not believe they should be considered speculative builders.

Tax Collector's Response

Taxpayers were the owners of record to the property on which the home was constructed (Property). Taxpayers sold the completed home. Taxpayers had not lived in the home for six months before the home was sold. Taxpayers met the definition of a speculative builder. The Tax Collector cannot take into consideration Taxpayers' original intent or the circumstances leading to the sale of the home. Therefore the sale of Taxpayers' improved real property is subject to the privilege tax. Taxpayers are liable for the tax that was assessed.

Discussion

Taxpayers purchased vacant land and built a single-family residence on the property. Taxpayers hired a contractor to build the house. Taxpayers had intended to live in the house.

After construction started, Taxpayers experienced delays in construction and personal and financial issues. Because of the delays and other issues, Taxpayers' sold the house in March 2009. Taxpayers had not lived in the house. The affidavit of value for the sale showed the sale price as \$555,000.00.

The Tax Collector conducted an audit assessment of Taxpayers for the period March 2009 and issued an assessment to Taxpayers under the speculative builder classification. Taxpayers timely protested the assessment.

The Chandler City Code (CTC) governs whether and to what extent a person is taxable. Taxpayers were assessed as speculative builders. A speculative builder is defined by the code as including an owner-builder who sells, at any time, improved real property consisting of custom homes regardless of the stage of completion. To be a speculative builder, a person has to be an owner-builder and the property sold has to be improved real property.

An owner-builder is defined as an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs any improvement to real property. Improved real property includes any real property upon which a structure has been constructed. Taxpayers owned real property and had a house constructed on the property by a contractor. Taxpayers were owner-builders who sold improved real property. Taxpayers were therefore speculative builders liable for the city privilege tax under the speculative builder classification.

Taxpayers' initial intent for the house to be their principal place of residence cannot be taken into consideration. Taxpayers had not lived in the house. A sale of a custom home is considered a homeowner's bona fide non-business sale and not subject to the speculative builder tax if, among other requirements, the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale. Taxpayers' sale of the Property was not a homeowner's bona fide non-business sale.

Based on all the above, we conclude Taxpayers' protest should be denied. The City's privilege tax assessment against Taxpayers was proper.

Findings of Fact

1. Taxpayers owned real property on which they built a single-family residence.
2. Taxpayers entered into a contract for the construction of the home with Avalon Development (contractor).
3. After construction started, Taxpayers experienced delays in construction and personal and financial issues.
4. Because of the delays and other issues, Taxpayers sold the Property in March 2009.
5. Taxpayers had not lived in the house prior to the sale.
6. The affidavit of value for the sale showed the sales price as \$555,000.00.
7. The Tax Collector conducted an audit assessment of Taxpayers for the period March 2009 and issued an assessment for city privilege tax under the speculative builder classification.
8. The assessment was based on the recorded affidavit of value amount of \$555,000.00.
9. Taxpayers timely protested the assessment and requested a redetermination.

Conclusions of Law

1. A speculative builder includes an owner-builder who sells, at any time, improved real property consisting of custom homes regardless of the stage of completion. CTC § 62-100.
2. Improved real property includes any real property upon which a structure has been constructed. CTC § 62-416(a)(2)(A).
3. The Property was improved real property.
4. An Owner-Builder is defined as an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs any improvement to real property. CTC § 62-100.
5. Taxpayers were the owners of the Property and had an improvement constructed on the property by a contractor.
6. Taxpayers were owner-builders.
7. Sale of improved real property includes any form of transaction which in substance is a transfer of title of improved real property. CTC § 62-416(a)(3).
8. Taxpayers sold improved real property in March 2009.
9. Taxpayers were speculative builders during the audit period.
10. Taxpayers' sale was not a homeowner's bona fide non-business sale. Regulation 416.1(a)(1).
11. Taxpayers' sale was subject to the tax on speculative builders.
12. The City's privilege tax assessment against Taxpayers was proper.

Ruling

Taxpayers' protest of an assessment made by the City of Chandler for the period March 2009 is denied.

The Tax Collector's Notice of Assessment to Taxpayers for the period March 2009 is upheld.

Taxpayers have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Frank L. Migray
Hearing Officer

HO/7100.doc/10/03

c: **Tax Audit Supervisor**
Municipal Tax Hearing Office