

DECISION OF MUNICIPAL TAX HEARING OFFICER

September 30, 2010

Taxpayer

Taxpayer's Address

Taxpayer
MTHO #581

Dear *Taxpayer*:

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Mesa (Tax Collector or City). The review period covered was May 2003 through May 2009. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer was assessed City of Mesa privilege tax under the construction contractor and the speculative builder classifications for work performed and the sale of improved real property in the City. The Tax Collector based the gross receipts for the sale of the improved real property on an MLS list price, which was never realized.

Tax Collector's Response

Taxpayer's protest only addressed basing the tax on the sale of improved real property on an MLS list price. The rest of the assessment was based on Taxpayer's construction contracting activities, which were not addressed in Taxpayer's protest.

Taxpayer is a limited liability company. The improved real property was transferred to Taxpayer's Member. The Tax Collector based the tax on the value of the property using an MLS list price of the property to determine its fair market value. Taxpayer did not provide a copy of an appraisal or other evidence of fair market value. Taxpayer did not prove that the Tax Collector's estimate was not reasonable. Taxpayer is liable for the tax that was assessed.

Discussion

The Tax Collector conducted an audit assessment of Taxpayers for the period May 2003 through May 2009 and issued an assessment to Taxpayer under the construction contracting and speculative builder classifications. Taxpayer timely protested the assessment.

The assessment included three components:

- Speculative builder tax on the transfer of improved real property (Property) to Taxpayer's Member based on the Property's MLS list price;
- Construction contractor tax based on Taxpayer's receipts as shown by Taxpayer's bank register; and

- Construction contractor tax for constructing certain leasehold improvements, based on the value of Taxpayer's work.

While Taxpayer protested the total amount of the assessment, Taxpayer's protest only addressed the Tax Collector basing the assessment on the MLS list price of the Property. The protest petition is required to set forth the reasons for the protest. Taxpayer did not protest the assessment on its construction contracting activity. Therefore the portion of the assessment on Taxpayer's construction contracting activity is affirmed.

The question raised regarding Taxpayer's sale of the Property is whether it was appropriate for the Tax Collector to use the Property's MLS list price of \$795,000.00 as its fair market value for purposes of the privilege tax.

The Property was transferred to Taxpayer's Member by a quitclaim deed. The quitclaim deed did not specify a contract sales price. Taxpayer had entered into a loan agreement and a Deed of Trust on the Property. The loan payoff amount at time of the transfer was \$509,784.38. The Tax Collector's estimate of fair market value of the Property based on the MLS list price of \$795,000.00 was reasonable.

Taxpayer argued that the MLS list price was never realized. It is the responsibility of the Taxpayer to prove that the Tax Collector's estimate is not reasonable and correct. Taxpayer presented no evidence regarding the fair market value of the Property. Taxpayer did not prove that the Tax Collector's estimate was not reasonable. The amount of the assessment regarding Taxpayer's sale of improved real property was proper.

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

Findings of Fact

1. Taxpayer is a limited liability company.
2. Taxpayer did not have a city of Mesa privilege tax license.
3. Taxpayer performed construction projects in the City during the audit period.
4. Taxpayer owned real property in the City (Property) on which it built a single-family residence.
5. Prior to building the single-family residence, Taxpayer entered into a loan agreement and deed of trust on the Property.
6. Taxpayer transferred title to the Property by quitclaim deed to one of its Members.
7. The loan payoff amount at time of the transfer of the Property was \$509,784.38.
8. The Property was listed for sale on a Multiple Listing Service (MLS) for \$795,000.00 three months prior to transferring the Property to its Member.
9. The quitclaim deed did not specify a contract sales price for the residence.
10. Taxpayer did not report any receipts regarding the Transfer of the Property.
11. Taxpayer did not pay City privilege tax on its construction contracting activities or on its sale of improved real property.

12. The Tax Collector conducted an audit assessment of Taxpayer for the period May 2003 through May 2009 and issued an assessment for city privilege tax under the construction contracting and speculative builder classifications in the amount of \$12,715.99, interest through January 31, 2010 in the amount of \$1,540.50, combined penalties in the amount of \$3,179.02 and license fee in the amount of \$100.00.
13. The assessment included Taxpayer's construction contracting activities and Taxpayer's transfer of the Property.
14. The Tax Collector considered Taxpayer's transfer of the Property a taxable sale of improved real property.
15. The Tax Collector based the assessment on the transfer of the Property on the fair market value of the Property.
16. The Tax Collector determined the fair market value of the Property on its MLS list price.
17. The assessment on Taxpayer's construction contracting activities was based on Taxpayer's receipts and the value of Taxpayer's work regarding certain leasehold improvements.
18. Taxpayer timely protested the assessment and requested a redetermination.
19. In its protest, Taxpayer only addressed the Tax Collector basing the assessment on the MLS list price of the Property because that amount was never realized.
20. Taxpayer presented no evidence or documents in support of its protest.

Conclusions of Law

1. The protest petition is required to set forth the reasons why any correction, abatement, or refund should be granted. MTC § 5-10-570(b)(3)(A).
2. Taxpayer did not protest the assessment on its construction contracting activities.
3. A speculative builder includes an owner-builder who sells, at any time, improved real property consisting of custom, model or inventory homes regardless of the stage of completion. Mesa Tax Code (MTC) § 5-10-100.
4. Improved real property includes any real property upon which a structure has been constructed. MTC § 5-10-416(a)(2)(A).
5. The Property was improved real property.
6. Sale of improved real property includes any form of transaction which in substance is a transfer of title of improved real property. MTC § 5-10-416(a)(3).
7. Taxpayer transferred title to the Property to one of its Members by quitclaim deed.
8. Taxpayer sold improved real property when it transferred title to the Property to its Member.
9. Taxpayer was a speculative builder.
10. The quitclaim deed from Taxpayer to its Member did not specify a contract sales price for the residence.

11. Transactions in circumstances where the relationship between the parties is such that the gross income from the transaction is not indicative of the market value of the subject matter of the transaction are subject to tax based on market value. MTC § 5-10-210.
12. The Tax Collector used the MLS list price of the Property to determine the fair market value of the Property.
13. The Tax Collector's method for determining the fair market value of the transfer by Taxpayer was reasonable.
14. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct. MTC § 5-10-545(b).
15. Taxpayer did not prove that the Tax Collector's estimate of value was not reasonable.
16. Taxpayer's sale of the Property was subject to the tax on speculative builders.
17. The City's privilege tax assessment against Taxpayer was proper.

Ruling

Taxpayer's protest of an assessment made by the City of Mesa for the period May 2003 through May 2009 is denied.

The Tax Collector's Notice of Assessment to Taxpayer for the period May 2003 through May 2009 is upheld.

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

Sincerely,

Hearing Officer

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c: Tax Audit Supervisor
Municipal Tax Hearing Office