

## DECISION OF MUNICIPAL TAX HEARING OFFICER

February 6, 2013

*Taxpayers*  
c/o *ICH & D, LLC*  
925 N. Natachee  
Tucson, AZ 85710

*Taxpayers*  
MTHO #729

Dear *Taxpayers*:

We have reviewed the evidence presented by *Taxpayers* and the City of Tucson (Tax Collector or City) at the hearing on October 22, 2012 and in post hearing submissions. The review period covered was November 2007. Taxpayers' protest, Tax Collector's response, and our findings and ruling follow.

### Taxpayers' Protest

Taxpayers were assessed City of Tucson privilege tax under the speculative builder classification for the transfer of real property from Taxpayers to their wholly owned corporation. Taxpayers initially purchased the property in their name to obtain financing. There never was a sale. In addition, the estimated sales price is excessive. The property is worth, at most, half the amount estimated by the City. Taxpayers request that the assessment at issue be lowered to zero.

### Tax Collector's Response

Taxpayers were the owners of record to the property. Taxpayers pulled building permits in March 2007 and construction began soon thereafter. In November 2007 Taxpayers deeded the property to their corporation, *ICH & D, Inc.* Deeding the property to the corporation was a sale subject to the speculative builder tax. The Tax Collector's estimate of market value was determined by using Pima County Assessor value. The estimate of market value used by the Tax Collector was reasonable. The assessment should be upheld.

### Discussion

Taxpayers purchased property in 2005 to develop into condominium units. Taxpayers held title to the property to get financing. Taxpayers obtained building permits in March 2007 and began construction. In November 2007 Taxpayers deeded the property to *ICH & D, Inc.*, a corporation wholly owned by Taxpayers. *ICH & D, Inc.* completed construction in June and July 2008. Innovative did not pay any privilege taxes on the construction. *ICH & D, Inc.* still owns the property and the condominiums are rented.

In November 2007 the project was partially completed. The Tax Collector conducted an audit assessment of Taxpayers and issued a Notice of Assessment on May 31, 2012 to Taxpayers for city privilege tax under the speculative builder classification. The Tax Collector considered Taxpayers to be speculative builders when they transferred title to the property to *ICH & D, Inc.*

The Tax Collector estimated the fair market value of the property based on the Pima County Assessor's valuation of the property. The Tax Collector used the assessor's 2012 value for each parcel and increased that value by 25%. The assessor increased the value by 25% because it believed the assessor's value is usually 20 to 25% low.

Taxpayers protested the assessment stating there was no sale, and even if there were a sale, the Tax Collector's estimate of value was too high.

### **Were Taxpayers Subject to the Tax as Speculative Builders?**

A speculative builder is defined by the Tucson City Code (TCC) as including an owner-builder who sells, at any time, improved real property prior to completion or within 24 months of substantial completion. To be a speculative builder, a person has to be an owner-builder.

An owner-builder is defined as including 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. Taxpayers met this definition. Taxpayers had title to the property and were constructing improvements on the property when they owned it (held title).

Taxpayers contend that there was no sale. However, when Taxpayers deeded the property to Innovative, they transferred title to the property. Sale of improved real property includes any form of transaction which in substance is a transfer of title of improved real property. Taxpayers therefore sold improved real property for privilege tax purposes when they transferred title to the property to Innovative. Since Taxpayers were speculative builders, they were subject to tax under the speculative builder classification.

### **Was the Tax Collector's Estimate of Value Reasonable?**

Taxpayers deeded the property to their wholly owned corporation. No income or sales price was reported. 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.

The Tax Collector's estimate of market value of \$101,825 per parcel was based on the county assessor's valuation of the property for 2012. The Tax Collector increased the 2012 value by 25% reasoning that the assessor's value is low. The Tax Collector testified that the per-parcel value for tax year 2012 was 81,000. The per-parcel value for tax year 2009 was 100,000. The question is whether the Tax Collector's estimated value of \$101,825 per parcel was reasonable at the time of the transfer by Taxpayers to Innovative (November 2007).

The county assessor is required to value property at its full cash value, which is synonymous with market value. Full cash value means a property's fair market value determined by standard appraisal methods. The Tax Collector estimated the fair market value of the property at the time of the transfer by taking the assessor's value of approximately \$81,000 per parcel for 2012 and increasing that value by 25%, resulting in a per-parcel valuation of approximately \$101,000.

The Tax Collector testified that the assessor's per-parcel value for 2009 was approximately \$100,000. Valuations for tax year 2009 are determined by the value of the property as of January 1 of 2008. At that time the properties were still partially completed. The assessor's value of the property as of January 1, 2008 would be a reasonable reflection of the value of the property in November 2007 and supports the Tax Collector's estimate.

It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct. Taxpayers presented alternative valuations of the property to argue that the Tax Collector's estimate was not reasonable and correct. However, the existence of another reasonable basis of estimation does not invalidate the Tax Collector's estimate. Based on the record here we cannot conclude that the Tax Collector's estimate of the value of the property was not reasonable and correct.

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 purchased real property in the City in March 2005.
2. Taxpayers intended to build a 10 unit condominium on the property.
3. Taxpayers were the sole owners of *ICH & D, Inc.*
4. Taxpayers obtained a building permit for the construction through *ICH & D, Inc.* in March 2007.
5. Construction started soon after Taxpayers obtained the building permit.
6. Taxpayers deeded the property to *ICH & D, Inc.* in November 2007.
7. In November 2007 the condominiums were partially completed.
8. The condominiums were completed in June and July 2008.
9. *ICH & D, Inc.* still owns the property and the condominiums are rented.
10. No income or sales price was reported for Taxpayers' transfer of the property to *ICH & D, Inc.*
11. The Tax Collector conducted an audit of Taxpayers for the periods February 2007, November 2007 and May, 2008 and issued a Notice of Assessment dated May 31, 2012 to Taxpayers for city privilege tax under the speculative builder classification.<sup>1</sup>
12. The assessment included all applicable credits, exemptions and deductions.
13. The Tax Collector based the assessment on an estimate of market value of \$101,825 per parcel.
14. The Tax Collector estimated the fair market value of the property based on the Pima County Assessor's valuation of the property for tax year 2012 of approximately \$81,000 per parcel and increased that value by 25%.
15. The Tax Collector increased the value by 25% because it believed the assessor's value is usually 20 to 25% low.
16. The Tax Collector testified that the per-parcel value for 2012 was 81,000 and the per-parcel value for 2009 was approximately 100,000.
17. Taxpayers timely protested the assessment.

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<sup>1</sup> Two other properties were included in the City's assessment. The parties reached an agreement regarding those properties. Only the property transferred in November 2007 is at issue.

18. Taxpayers presented alternative valuations of the property and contended that the Tax Collector's estimate was not reasonable and correct.

#### Conclusions of Law

1. 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. TCC § 19-100.
2. Taxpayers had title to the property and were constructing an improvement on the property.
3. Taxpayers were owner-builders.
4. 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. TCC § 19-100.
5. A speculative builder also includes an owner-builder who sells, at any time, improved real property other than custom or model homes or improved residential lots without a structure, prior to completion. TCC § 19-100.
6. Improved real property includes any real property where improvements have been made to land containing no structure or upon which a structure has been constructed. TCC § 19-416(a)(2).
7. The property was improved real property.
8. Sale of improved real property includes any form of transaction which in substance is a transfer of title of improved real property. TCC § 19-416(a)(3).
9. Taxpayers sold improved real property when they deeded the property to *ICH & D, Inc.*
10. Taxpayers were speculative builders during the audit period.
11. No income or sales price was reported for the transfer of the property to Innovative.
12. TCC § 19-210 requires 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 to be subject to tax based on market value.
13. The Tax Collector estimated the fair market value of the property at the time of the transfer by taking the county assessor's value of approximately \$81,000 per parcel and increasing that value by 25%, resulting in a per-parcel valuation of approximately \$100,000.
14. The Tax Collector testified that the assessor's per-parcel value for 2009 was approximately \$100,000.
15. The county assessor is required to determine the full cash value of property subject to tax. A.R.S. § 42-13051(B).
16. Full cash value means a property's fair market value determined by standard appraisal methods. A.R.S. § 42-11001(6).

17. For property tax on real property,
  - a. Tax year means the calendar year in which the taxes are levied. A.R.S. § 42-11001(16)
  - b. Valuation year means the calendar year preceding the year in which the taxes are levied. A.R.S. § 42-11001(19)
  - c. Valuation date means January 1 of the year preceding the year in which taxes are levied. A.R.S. § 42-11001(18)
18. The valuation date for tax year 2009 was January 1, 2008.
19. The Tax Collector's method for determining the market value of the transfer by Taxpayer to ***ICH & D, Inc.*** was reasonable.
20. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct. TCC § 19-545(b).
21. Taxpayers presented alternative valuations of the property to argue that the Tax Collector's estimate was not reasonable and correct.
22. The existence of another reasonable basis of estimation does not, in any way, invalidate the Tax Collector's estimate. TCC § 19-545(b).
23. Taxpayers failed to meet their burden of proving the Tax Collector's estimate of market value for Taxpayers' transfer to ***ICH & D, Inc.*** was not reasonable. TCC § 19-545(b).
24. The City's privilege tax assessment against Taxpayers was proper.

### Ruling

Taxpayer's protest of the assessment for the period November 2007 made by the City of Tucson is denied.

The Tax Collector's Notice of Assessment 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 Administrator***  
Municipal Tax Hearing Office