

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 18, 2013

Decision: MTHO # 752

Taxpayer:

Tax Collector: City of Tucson

Hearing Date: None

DISCUSSION

Introduction

On October 2, 2012, a letter of protest was filed by Taxpayer of a tax assessment made by the City of Tucson (“City”). At the request of Taxpayer, this matter was classified as a redetermination. After submission of all memoranda by the parties, the Municipal Tax Hearing Officer (“Hearing Officer”) closed the record on February 4, 2013 and indicated a written decision would be issued on or before March 20, 2013.

DECISION

On September 25, 2012, the City issued a tax assessment to Taxpayer for the periods of September 2010 and March 2011. The assessment was for additional taxes in the amount of \$4,645.61, interest up through August 2012 in the amount of \$258.51, and penalties totaling \$1,161.41. Subsequently, the City waived the penalties. The City had assessed Taxpayer pursuant to City Code Section 14-416 (“Section 416”) on the gross income from the business activity of engaging in the business as a speculative builder.

The City asserted that ***SHB*** (“Builder”) was a speculative builder pursuant to City Code Section 416 (“Section 416”). Subsequently, Taxpayer acquired the improved real property by warranty deed in lieu of foreclosure. The City assessed Taxpayer pursuant to City Code Section 595c (“Section 595”). Section 595 provides as follows: “Any person who purchases, or who acquires by foreclosure, by sale under deed or warranty deed in lieu of foreclosure, or by any other method, improved real property for which the privilege tax imposed by this article has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in sections 19-416 and 19-417.”

Taxpayer disputed being assessed as a speculative builder. Taxpayer relied on MTHO Decision #665/656/657. The City relied upon MTHO Decision #203.

There was no dispute regarding Builder being a speculative builder pursuant to Section

416. The Builder made improvements to real property at *1234 S. "D" Avenue, 5678 S. "D" Avenue, 2468 S. "D" Avenue, and 3579 E. "L" Street*, all located in the City. Subsequently, all four improved properties were transferred to Taxpayer by warranty deed in lieu of foreclosure. Taxpayer, in turn, sold all four properties at foreclosure. Both of the parties cited previous decisions by this Hearing Officer to support their respective positions. The City relied upon a decision issued on February 28, 2005 while Taxpayer relied upon a decision issued on August 27, 2012. The Hearing Officer reached a different decision in MTHO # 655/656/657 after hearing new arguments. For all transactions assessed in this matter, Taxpayer acquired improved real property by warranty deed in lieu of foreclosure as set forth in Section 595. As set forth in Section 595, the person who has acquired the improved real property for which the taxes have not been paid shall be responsible for payment of such tax as a speculative builder as provided in Section 416. There was no evidence to demonstrate that Taxpayer was a speculative builder pursuant to Section 416. Section 416 clearly states that persons acquiring the improved real property will be assessed as a speculative builder. We conclude that the "plain and ordinary meaning" of Section 416c requires Taxpayer to be a speculative builder in order to be assessed. Further, we conclude the provision imposing successor liability must be construed liberally in favor of Taxpayer. Based on all the above, we conclude that Taxpayer's October 2, 2012 protest should be granted, consistent with the Discussion, Findings, and Conclusions set forth herein.

FINDINGS OF FACT

1. On October 2, 2012, Taxpayer filed a protest of a tax assessment made by the City.
2. At the request of Taxpayer, this matter was classified as a redetermination.
3. Taxpayer was assessed taxes in the amount of \$4,645.61, penalties in the amount of \$1,161.41, interest up through August 2012 in the amount of \$258.51.
4. Subsequently, the City waived the penalties that had been assessed.
5. The Builder made improvements to real property at *1234 S. "D" Avenue, 5678 S. "D" Avenue, 2468 S. "D" Avenue, and 3579 E. "L" Street*, all located in the City.
6. Subsequently, all four improved real properties were transferred to Taxpayer by warranty deed in lieu of foreclosure.

7. Taxpayer made no improvements to the properties.
8. Taxpayer, in turn, sold all four properties at foreclosure.
9. The City assessed Taxpayer on speculative builder income of \$640,000.00.

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 gross income from the business activity of speculative building.
3. The transfers of the improved real properties from the Builder to Taxpayer by warranty deed in lieu of foreclosure resulted in speculative builder sales pursuant to Section 416.
4. The Builder did not pay the speculative builder tax on the transfers to Taxpayer.
5. The provision in Section 595 imposing the tax shall be construed narrowly against the tax collector and liberally in the Taxpayer's favor
6. The "plain and ordinary meaning" of Section 595c requires Taxpayer to be a speculative builder in order to be assessed.
7. The unpaid speculative builder taxes on the transfers to Taxpayer were assessed to Taxpayer as if Taxpayer was a speculative builder pursuant to Section 595c.
8. There was no evidence of Taxpayer making any improvements to the properties in question and thus no evidence that Taxpayer was a speculative builder.
9. Consistent with the conclusion that Taxpayer had not acted as a speculative builder and the Hecla Mining Co. v. Arizona Department of Revenue, 130 Ariz. 83,85, 634 P.2d 10, 12 (App. 1981) decision, the assessment in this matter should be abated.
10. Based on all the above, Taxpayer's protest should be granted, consistent with the Discussion, Conclusions, and Findings, herein.

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

ORDER

It is therefore ordered that the October 2, 2012 protest by *Taxpayer* of a tax assessment made by the City of Tucson is hereby granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the assessment in this matter is hereby abated.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer