

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: February 27, 2015

Decision: MTHO # 858

Taxpayer:

Tax Collector: City of Scottsdale

Hearing Date: None

DISCUSSION

Introduction

On June 5, 2014, a letter of protest was filed by ***Taxpayer*** of a tax assessment made by the City of Scottsdale (“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 20, 2015 and indicated a written decision would be issued on or before April 6, 2015.

DECISION

On June 13, 2014, the City issued a tax assessment to Taxpayer for additional taxes due in the amount of \$20,994.89, interest in the amount of \$316.11 up through March 2014, penalties in the amount of \$5,248.72, application fee of \$96.00, annual license fees of \$387.50, and license fee penalties in the amount of \$193.75. The audit period was for August 2013.

The City indicated Taxpayer had acquired an improved lot (***Lot 00***) in ***a nice subdivision*** on December 28, 2004. On April 5, 2006, Taxpayer was issued a permit to construct a single family residence on ***Lot 00*** a.k.a. (“***Nice House***”). On October 25, 2007, the project was issued a Certificate of Occupancy (“COO”). On August 12, 2013, the ***Nice House*** was transferred from Taxpayer to a ***bank*** (“Bank”) by a Trustee’s Deed. On June 13, 2014, the City issued a tax assessment pursuant to City Code Section 416 (“Section 416”).

Subsequently, Taxpayer filed a protest of the assessment stating that it was unaware of why the tax would be assessed. Taxpayer indicated the following: The ***Nice House*** was built in 2006/2007; Taxpayer hired a construction manager to manage the project and Taxpayer paid sales tax to them; Taxpayer hired subcontractors and paid tax to them; The COO was received in October 2007; Taxpayer lived in the home for three years; Taxpayer maintained ownership for seven years; and, Taxpayer lost the ***Nice House***

home to a foreclosure.

City Code Section 416 (“Section 416”) imposes a tax on the gross income from the business activity upon every person engaging in business as a speculative builder within the City. City Code Section 100 (“Section 100”) defines “speculative builder” as an owner-builder who sells or contracts to sell, at any time, improved real property consisting of a custom or model home. Section 416 defines a “sale of improved real property” to include any form of transaction which in substance is a transfer of title of improved real property. Section 100 defines an “owner-builder” as an owner of real property who constructs or has constructed any improvements to real property. In this case, there is no dispute that Taxpayer had improvements made to the *Nice House* and was an owner-builder pursuant to the City Code. We also conclude that pursuant to Section 416 there was a sale of the *Nice House* when the property was transferred from Taxpayer to the Bank by the August 12, 2013 Trustee Deed for the amount of \$1,990,000.00. Accordingly, Taxpayer was a speculative builder pursuant to Section 100 and the property transfer would be taxable pursuant to Section 416. While there was a six year period between the issuance of the COO and the Trustee Sale, we note Section 100 indicates the sale can occur at any time. Lastly, we have Taxpayer’s argument that it had lived in the house for three years and should be exempt as a homeowner’s non-business sale of a family residence. City Regulation 416.1 (“Regulation 416.1”) provides that a speculative builder sale shall be considered as a “homeowner’s bona fide non-business sale” and not subject to the tax when the property was actually used as the principal place of family residence by the immediate family of the seller for the six months next prior to the offer for sale. Regulation 416.1(d) provides that an “owner” and “homeowner” as used in this regulation shall only mean an individual and no other entity, association, or representative shall qualify. City Code Section 100 defines a “person” to mean an individual, partnership, joint venture, etc. In this case, Taxpayer is an LLC and as a result is a separate person from any individuals that may be members of the LLC. As a result, Taxpayer cannot qualify for the homeowner’s bona fide non-business sale pursuant to Regulation 416.1. While Taxpayer has indicated some taxes have already been paid through the contractor and subcontractors, no evidence to support those claims has been provided. Based on all the above, we conclude the City’s tax assessment should be upheld.

The City assessed penalties pursuant to City Code Section 540 (“Section 540”). Those penalties may be waived for reasonable cause. Reasonable cause is defined in Section 540 to mean the taxpayer had a reasonable basis for believing that the tax did not apply to the business activity. The City has recommended all penalties be waived since Taxpayer has demonstrated reasonable cause to do so. Accordingly, we conclude Taxpayer has demonstrated reasonable cause to have all penalties waived. Based on all the above, we conclude, with the exception of the penalties, that the protest of Taxpayer should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

FINDINGS OF FACT

1. On June 13, 2014, the City issued a tax assessment to Taxpayer for additional taxes in the amount of \$20,994.89, interest in the amount of \$316.11 up through March 2014, penalties in the amount of \$5,248.72, application fee of \$96.00, annual license fees of \$387.50, and license fee penalties in the amount of \$193.75.
2. The audit period was for August 2013.
3. On June 5, 2014, a letter of protest was filed by Taxpayer.
4. Taxpayer acquired an improved lot in the *Nice Subdivision Unit 1* on December 28, 2004.
5. On April 5, 2006, Taxpayer was issued a permit to construct a single family residence for the *Nice House*.
6. On October 25, 2007, the project was issued a COO.
7. On August 12, 2013, the *Nice House* was transferred from Taxpayer to the Bank by a Trustee's Deed.
8. Taxpayer filed a protest of the assessment stating it did not know why the tax was being assessed.
9. Taxpayer hired a construction manager and subcontractors for the construction of the *Nice House*.
10. Taxpayer indicated it had paid sales taxes to the construction manager and subcontractors but provided no supporting documentation.
11. Individual family members lived in the *Nice House* for three years.
12. Taxpayer lost the *Nice House* as a result of a foreclosure.

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 upon every person engaged in business as a speculative builder within the City.
3. Taxpayer was an owner-builder pursuant to Section 100.
4. Taxpayer was a speculative builder pursuant to Section 100.
5. Pursuant to Section 416, there was a sale of the *Nice House* when the property was transferred from Taxpayer to the Bank by the August 12, 2013 Trustee Deed for the amount of \$1,900,000.00.
6. The transfer of the *Nice House* by Trustee Deed resulted in a taxable speculative builder sale pursuant to Section 416.
7. Pursuant to Section 100, a speculative builder sale can occur at any time.
8. Regulation 416.1 provides that a speculative builder sale shall be considered as a “homeowner’s bona fide non-business sale” and not subject to the tax when the property was actually used as the principal place of family residence by the immediate family of the seller for the six months next prior to the offer for sale.
9. Section 100 defines a “person” to mean an individual, partnership, joint venture, etc.
10. Taxpayer is an LLC and as a result is a separate person from any individuals that may be members of the LLC.
11. Since Taxpayer is not an individual, it does not qualify for the homeowner’s bona fide non-business sale pursuant to Regulation 416.1.
12. There was no documentation to support any City taxes have already been paid on the project.
13. The City was authorized pursuant to Section 540 to assess penalties in this matter.
14. Penalties pursuant to Section 540 may be waived for reasonable cause.
15. Taxpayer has demonstrated reasonable cause to have all penalties waived in this matter.

16. Based on all the above, Taxpayer's protest, with the exception of the penalties, should be denied, consistent with the Discussion, Conclusions, and Findings, herein.
17. 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 June 5, 2014 protest by *Taxpayer* of a tax assessment made by the City of Scottsdale is hereby partly granted and partly denied consistent with the Discussion, Findings, and Conclusions, herein.

It is therefore ordered that the City of Scottsdale shall remove all penalties assessed on the speculative builder tax in this matter.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer