DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: April 19, 2006
Decision: MTHO #228
Tax Collector: City of Phoenix
Hearing Date: August 29, 2005

DISCUSSION

Introduction

On January 31, 2005, ***Taxpayer*** ("Taxpayer") filed a protest of a tax payment made to the City of Phoenix ("City"). On April 6, 2005, the Taxpayer filed a revised protest of a denial by the City of a claim for a refund. After review, the City concluded on April 12, 2005, that the protest was timely and in the proper form. On April 18, 2005, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file any response to the protest on or before June 2, 2005. On May 3, 2005, the City filed a response to the protest. On May 5, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before May 26, 2005. On May 20, 2005, a Notice of Tax Hearing ("Notice") scheduled the matter for hearing commencing on July 25, 2005. On May 24, 2005, the Taxpayer requested the hearing be continued. On May 25, 2005, the Taxpayer filed a reply. On May 31, 2006, the Hearing Officer continued the hearing. On June 6, 2005, a Notice rescheduled the hearing to commence on July 28, 2005. On July 18, 2005, a Notice rescheduled the hearing to commence on August 29, 2005. Both parties appeared and presented evidence at the August 29, 2005 hearing. On August 30, 2005, the Hearing Officer set forth the following briefing schedule: the Taxpayer's opening brief would be filed on or before October 13, 2005; the City's response brief would be filed on or before November 28, 2005; and, the Taxpayer's reply brief would be filed on or before December 28, 2005. On October 11, 2005, the Taxpayer requested an extension for its opening brief. On October 13, 2005, the Hearing Officer granted the Taxpayer an extension until October 20, 2005. On October 20, 2005, the Taxpayer filed its opening brief. On October 24, 2005, the Hearing Officer indicated the City's response brief would be filed on or before December 5, 2005, and, the Taxpayer's reply brief would be filed on or before January 4, 2006. On November 30, 2005, the City sent an email requesting an extension to file a response brief. On December 2, 2005, the Hearing Officer extended the City's deadline until January 4, 2006, and the Taxpayer's reply deadline until February 3, 2006. On January 3, 2006, the City sent an email requesting an extension. On January 4, 2006, the Hearing Officer granted the City an extension until January 13, 2006, and the Taxpayer an extension until February 13, 2006. On January 12, 2006, the City again requested an extension. On January 12, 2006 the Hearing Officer granted the City an extension until January 19, 2006, and, the Taxpayer an extension until February 21, 2006. The City filed a response brief on January 19, 2006. On February 16, 2006, the Taxpayer sent an email requesting an extension for its reply brief. On February 21, 2006,

the Hearing Officer granted the Taxpayer an extension until March 6, 2006. On March 6, 2006, the Taxpayer filed its reply brief. On March 7, 2006, the Hearing Officer indicated the record was closed and a written decision would be issued on or before April 21, 2006.

City Position

The City indicated the Taxpayer in a letter dated October 22, 2004, had requested a private letter ruling that it was not subject to the speculative builder tax on the sale of two commercial properties. On January 19, 2005, the City concluded the Taxpayer was liable for the speculative builder tax. The Taxpayer subsequently paid the tax in the amount of $313,871.49 under protest and filed a refund request. On March 14, 2005, the City denied the refund request. The Taxpayer then filed its protest of the denial.

The City asserted the following facts applied to this matter:

1. ***Company A*** sold vacant land to ***Company B*** in 5/01. (Sole member of ***Company B*** is ***Company C.***

2. ***Company B*** sold vacant land to ***Company D*** in 7/01. (Sole member of ***Company D*** is ***Company E***, whose sole member is ***Company F***, whose sole member is ***Company C***).

3. ***Company D*** had the two shell buildings constructed by ***Company C***.

4. ***Company D*** sold the shell buildings to ***Company G*** in 11/03. ***Company D*** reported the speculative builder sale to the City on 12/03 tax return. (***Company G*** sole member is the Taxpayer.)

5. ***Company G*** sold a 15% fee interest in the property to ***Company H*** in 6/04. (***Company H*** is a foreign LLC that is owned by the ***Insurance Company***.)

6. ***Company G*** sold its remaining 100% interest in the property to ***Insurance Company*** in 6/04. (***Insurance Company*** amends the LLC articles in 6/04 to become the sole member in ***Company G***.)

7. The Taxpayer reports the sale of the two shell buildings to the City in January 2005 on a June 2004 return.

The City argued that the transaction described in the City's Fact No. 5 was a taxable transaction. The City agreed that the transaction described in its Fact No. 6 was not taxable at this time. However, the City asserted that if ***Company G***, with a new member, would sell the property within 24 months of completion that this sale would be taxable.

In response to the Taxpayer's argument that the Hearing Officer had previously held in MTHO #82 that a single member entity was not a "person" under the equivalent of City Code Section 100 ("Section 100"), the City requested the Hearing Officer review the

reasoning of that decision. The City asserted that there was no doubt that the interest of the drafters of the Model City Tax Code and thus the City Tax Code was to tax "developers" pursuant to the speculative builder provisions. The City indicated that "a statute is to be given a sensible construction that will accomplish the legislature intent and at the same time avoid an absurd result." The City argued the City Council and other legislative bodies would not have intended to exempt single member LLCs while taxing all other entities for the same activity. The City asserted that some courts have disregarded single member LLCs and taxed their single member as though the LLC did not exist but exempting a single member LLC from any taxation has not been an approach taken by the courts.

The City noted that ARS Section 29-631 ("Section 631") entitled "Formation" provides that one or more persons may form a limited liability company. Further, "Person" is defined in ARS Section 20-601.13 as "'Person' includes any individual, general partnership, limited partnership, domestic or foreign limited liability company, corporation, trust, business trust, real estate investment trust, estate and other association."

The City argued that an Arizona LLC is a partnership or a corporation depending upon the actions that it takes in its formation. Since both partnerships and corporations are included in the definition of "Person" in City Code Section 100 ("Section 100"), the City asserted it was irrelevant for City privilege tax purposes whether it was a partnership or a corporation. The City noted that the definition of ("Person") in Section 100 is very broad with a variety of entities listed including a "firm". According to the City, synonyms for "firm" included "company, business, concern, home". The City argued that certainly an LLC is a "concern".

Alternatively, the City asserted that if the Hearing Officer did not find a single member LLC is a taxable entity pursuant to the City Code, than the Hearing Officer should order the City to disregard the LLC and impose the tax on the sole member itself.

The City indicated that the City Code has three separate taxing sections in the construction contracting context. Code Section 14-415 ("Section 415") taxes "construction contractors," Code Section 14-416 ("Section 416") taxes "speculative builders," and Code Section 14-417 ("Section 417") taxes "owner-builders who are not speculative builders." The City noted that Section 100 defines a "speculative builder" as an owner-builder who sells or contracts to sell improved real property on or before the expiration of 24 months after the improvements substantial completion. Section 416 provides the tax liability for a speculative builder is based on the total selling price of the improved property.

The City asserted that the particular activities of the Taxpayer being taxed were the activity of being a "speculative" builder. Section 100 defines "speculative builder" as follows:

> "*Speculative Builder"* means either:

(1) an owner-builder who sells or contracts to sell, any time, improved real property (as provided in Section 14-416) consisting of:
    (A) customer, model, or inventory homes, regardless of the stage of completion of such homes; or
    (B) improved residential or commercial lots without a structure; or
(2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:
    (A) prior to completion: or
    (B) before the expiration of twenty-four months after the improvements of the real property sold are substantially complete.

The City argued that the Taxpayer owned real property within the geographic boundaries of the City; the Taxpayer improved the real property, by or through others, and sold the improved real property within 24 months of substantial completion. As a result, the City concluded the Taxpayer's activities fit squarely in the classification of one engaged in business as a speculative builder. The City asserted the sale by ***Company C*** was a sale of improved real property prior to completion.

According to the City, the sale of a 15 percent fee interest in the property by ***Company G*** to ***Company H*** in June of 2004 was a taxable transaction because ***Company G*** engaged in substantial improvements to the properties during the period of its ownership. The City asserted that in making the improvements to the properties, the Taxpayer's name and ***Company G*** were used interchangeably by the Taxpayer which would indicate the Taxpayer viewed the entities as identical. The City noted this supported the City's argument that the LLC could be disregarded.

In reviewing the definition of "speculative builder", the City asserted an owner builder is a speculative builder if it makes any improvements to any property which is not a custom, model, or inventory home or improved residential or commercial lots without a structure. The City argued that in this case, the commercial improvements to the shells qualify. The City indicated the improved real property was also sold within 24 months of substantial completion which is specifically defined as within 24 months of the issuance of a Certificate of Occupancy. According to the City, the Taxpayer made improvements to property upon which a structure had been constructed which would be taxable pursuant to Section 416. The City asserted that there is no requirement for the Taxpayer to have done one of the four enumerated items in Section 416 (a) (2) in order to be a speculative builder. The City indicated they can only tax a speculative builder transaction if the total selling price of the property at the time of sale consists of one of the four enumerated types of property described in Section 416 (a) (2). The City opined that the Taxpayer made improvements to property upon which a structure had been constructed.

Taxpayer Position

The Taxpayer asserted the ***Location 1*** and ***Location 2*** shell buildings were completed on January 3, 2003, and January 6, 2003, respectively. According to the Taxpayer, the

Description of Use ("Description") on the Certificates issued by the City were both for "Commercial Shell".

In November 2003, the shell buildings were sold to ***Company G***, a single member LLC. The single member and managing member of ***Company G*** was the Taxpayer. The Taxpayer indicated that after ***Company G*** purchased the shells, tenant improvements were built out on each of the buildings by independent contractors. The improvements included interior finishes such as construction of interior walls and doors, installation of ceilings, lights, electrical outlets and service, hearing and air conditioning, carpeting, painting, completion of restrooms, installation of an elevator and related construction. On June 29, 2004, ***Company G*** sold an undivided 15 percent interest in the two properties to ***Company H*** LLC, an unrelated party for $4,695,000. Also, on June 24, 2004, the Taxpayer sold its entire membership interest in ***Company G*** to ***Insurance Company***, an unrelated party, for $26,605.000. ***Company G*** retained its 85 percent interest in the properties.

The Taxpayer argued that the sale of the undivided 15 percent interest in the properties by ***Company G*** was not taxable because ***Company G*** was not a "person" under the City Code. The Taxpayer referenced the Hearing Officer's ruling in MTHO #82 which concluded that a single member LLC was not a person under the City of Scottsdale's equivalent definition. The Taxpayer asserted that single member LLCs were not anticipated by the City Council when the Code was adopted on April 1, 1987. According to the Taxpayer, the Arizona Limited Liability Company Act was not adopted by the legislature until 1992. As a result, the Taxpayer indicated it was doubtful that the Council anticipated either the existence of single member LLCs or the fact they would be disregarded for federal income tax purposes.

The Taxpayer asserted that a single member LLC cannot be a partnership merely because of the placement of the Arizona Limited Liability Act in Title 29 with the partnership provisions. Both ARS Section 29-1012 and Black's Law Dictionary define a partnership as "the" or "an" "association of two or more persons." The Taxpayer also noted that Black's Law Dictionary defines "firm" as "Partnership of two or more persons." The Taxpayer indicated that, at least, it is ambiguous whether "firm" encompasses single member LLCs. According to the Taxpayer, this is a scope issued and based on Arizona rules of statutory construction, any ambiguities in matters of scope in tax matters are to be resolved in favor of the taxpayer.

In response to the City's argument that the Taxpayer should be liable for the liabilities of ***Company G***, the Taxpayer asserted that argument would contravene the clear language of the law and the whole LLC concept. The Taxpayer argued that LLCs are entities that limit the liability of their members and there would be no point of an LLC if the members retained the City tax liability. Further, the Taxpayer indicated ARS Section 29-651 ("Section 651") provides as follows:

"Except as provided in this chapter, a member, manager, employee, officer or gent of a limited liability company is not liable, solely by reason of being a member,

manager, employee, officer or agent, for the debts, obligations and liabilities of the limited liability company whether arising in contract or tort under a judgment, decree or order, decree or order of a court or otherwise."

Based on the above, the Taxpayer argued it is clear that the Taxpayer is not liable for the tax obligations of ***Company G***. The Taxpayer asserted it had paid the tax under protest in January 2005 in its name, rather than ***Company G***, in error. While ARS Section 29-857 ("Section 857") requires that LLCs be taxed as they would be for federal income tax purposes, the Taxpayer indicated the requirement only applies to Arizona income taxes and estate taxes. According to the Taxpayer, the certificate of Occupancy showing Apollo Development as the owner of the property was erroneous because ***Company G*** was the owner of the property. The Taxpayer asserted an erroneous City issued Certificate of Occupancy is not a basis for any decision by the Hearing Officer.

Based on all the above, the Taxpayer argued the Hearing Officer should not overturn MTHO #82. If the Hearing Officer would decide to overturn the decision, the Taxpayer asserted it would have to apply prospectively pursuant to ARS Section 14-542 ("Section 542"). The Taxpayer opined that MTHO #82 was an established interpretation of the Code.

Even if ***Company G*** is determined to be a "person", they would not meet the definition of a speculative builder pursuant to Sections 100 and 416. Section 100 defines a speculative builder, in pertinent part, as an owner-builder who sells or contracts to sell improved real property. "Improved real property" is defined in Section 416 as any real property:

A. upon which a structure has been constructed; or
B. where improvements have been made to land containing no structure (such as paving or landscaping), or
C. which has been reconstructed as provided by Regulation; or
D. where, water power and streets have been constructed to the property line.

The Taxpayer argued that ***Company G*** did not meet the definition because it did not perform any of the four activities listed.

On June 29, 2004, the Taxpayer sold its 85 percent membership interest in ***Company G*** to ***Insurance Company***. The Taxpayer argued the transaction would fall outside the scope of Section 416 because it was not a speculative builder and because Arizona law provides it was a sale of intangible personal property which is wholly outside the scope of the City tax structure. The Taxpayer indicated that ARS Section 732 (A) ("Section 732") provides that "An interest in a limited liability company is personal property …". The Taxpayer noted that the City argued in their January 19, 2006 response brief that the 85 percent sale of a membership interest was a sale of an intangible and not subject to a tax pursuant to Section 416.

While the Taxpayer made the original payment under protest and filed the original pleadings, the Taxpayer asserted the actual taxpayer involved should have been ***Company***

G. The Taxpayer argued that it should be allowed to continue to handle this matter on behalf of ***Company G*** since the Taxpayer was both the single member and the managing member of ***Company G***. Pursuant to agreement, the Taxpayer directed, managed and controlled the business of ***Company G***.

The Taxpayer argued that any tax on speculative building would be the liability of ***Company C*** at the time the shells were sold to the Taxpayer. The Taxpayer indicated that City Code Section 14-100 ("Section 100") defines a speculative builder as an owner-builder who sells or contracts to sell improved real property before the expiration of twenty-four months after the improvements of the real property are substantially complete. The Taxpayer asserted that the phrase "substantially complete" is defined as meaning that construction:

1. has passed final inspection or its equivalent; or
2. certificate of occupancy or its equivalent has been issued; or
3. is ready for immediate occupancy or use.

The Taxpayer argued that the clear intent of the ordinance is to have three different tests of substantial completion, and any one of the three begin the twenty-four month timeframe. In this case, the Taxpayer asserted the buildings were completed for their intended use when the Taxpayer purchased the completed shell buildings. Further, the City had issued Certificates for the shell buildings of "substantially complete" set forth in Section 100.

ANALYSIS

Is a single member LLC a "person" pursuant to the definition contained in the City Code? We are mindful that we had previously concluded in MTHO #82 for the same definition in the City of Scottsdale that it would require constricted or unnatural meaning to include a single member LLC was a taxable "person". The City has requested we review the reasoning in that decision. We will do so at this time. The definition of "person" in the City Code provides specific examples of what is meant by a "person". Certainly there is no specific mention of a single member LLC as such an entity never came into existence until approximately five years after the City Council adopted the City Code. There has been no subsequent change to the City Code to specifically include a single member LLC. That leaves us with whether or not the existing definition of "person" is broad enough to capture this new type of entity. We concur, with the City that we do not believe the City Council intended to exempt single member LLCs from taxation simply because they did not exist at the time the City Code was adopted.

In reviewing the various State and Federal Statutes as well as articles provided by the parties, it is clear that the primary benefit of a single member LLC is the limited liability protection afforded the owner. It is also clear that a single member LLC has flexibility on how it is treated for tax purposes. In order to determine how to treat ***Company G*** in this matter, we find it appropriate to review the Operating Agreement ("Agreement") of

Company G. The Agreement provides that the Taxpayer was the sole member and the manager of ***Company G***. It is also noted that for federal and state income tax purposes, the Agreement provided that ***Company G*** would conduct itself as a disregarded entity. As a result, the Taxpayer would be liable for federal and state income taxes. Unfortunately, the Model City Tax Code provides little guidance on this matter. We must disagree with the Taxpayer's conclusion that Section 651 makes it clear that the Taxpayer is not liable for the tax obligations of ***Company G***. While Section 651 does limit the liability solely because an entity is a member, manager …", the Taxpayer was more than a member, manager, etc. In this case, the Taxpayer was the sole member, the manager, and was liable for state and federal income taxes. It is also not clear to the Hearing Officer that Section 651 would apply to a City tax liability. Based on all the circumstances of this case, we conclude that the Taxpayer as the sole member, the manager, as well as its obligations pursuant to the Agreement is legally liable for any City tax liability of ***Company G***. There simply was no other entity other than the Taxpayer that could have paid any taxes. We do not find it necessary to reverse MTHO #82 as the facts presented were different.

Next, we must decide if there was any City tax liability as a result of the ***Company G*** sale of the 15 percent fee simple interest in the buildings. We think not. We had previously concluded in MTHO #48 and 49 that under certain facts a shell building can be substantially complete pursuant to Section 100. As we previously stated, we are unable to conclude that "immediate occupancy" and "use" are equivalent as set forth in the definition.

Based on the facts presented, ***Company C*** intended to build two shell buildings and then sell them to an unrelated third party (***Company G***) to make whatever interior improvements they so desired. Consistent with that intent, ***Company C*** paid the City taxes on the sales pursuant to Section 416. The City has argued that ***Company C*** could be taxed pursuant to Section 416 for a transaction which was made prior to completion and ***Company G*** could be taxed for a transaction which was made within 24 months of substantial completion. First we disagree that the ***Company C*** transaction was made prior to completion. As stated above, we find ***Company C*** completed the two shell buildings prior to sale. We agree with the Taxpayer that in order for the improvements made by ***Company G*** to meet the definition of a speculative builder, they must meet the definition of "improved real property" set forth in Section 416 (a) (2). The improvements made by ***Company G*** do not meet any of the provisions set forth in Section 416 (a) (2). As a result, ***Company G***/Taxpayer were not speculative builders. Accordingly, the Taxpayer's refund claim should be granted. We note that the parties have agreed the sale by the Taxpayer of a membership interest in ***Company G*** to ***Insurance Company*** was not a taxable transaction. Consequently, we will issue no decision on that transaction.

FINDINGS OF FACT

1. On January 31, 2005 the Taxpayer filed a protest of a tax payment made to the City.

2. On April 6, 2005, the Taxpayer filed a revised protest of a denial by the City of a claim for a refund.

3. After review, the City concluded on April 12, 2005, that the protest was timely and in the proper form.

4. On April 18, 2005, the Hearing Officer ordered the City to file any response to the protest on or before June 2, 2005.

5. On May 3, 2005, the City filed a response to the protest.

6. On May 5, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before May 26, 2005.

7. On May 20, 2005, a Notice scheduled the matter for hearing commencing on July 25, 2005.

8. On May 24, 2005, the Taxpayer requested the hearing be continued

9. On May 25, 2005, the Taxpayer filed a reply.

10. On May 31, 2005, the Hearing Officer continued the hearing.

11. On June 6, 2005, a Notice rescheduled the hearing to commence on July 28, 2005.

12. On July 18, 2005, a Notice rescheduled the hearing to commence on August 29, 2005.

13. Both parties appeared and presented evidence at the August 29, 2005 hearing.

14. On August 30, 2005, the Hearing Officer set forth the following briefing schedule: the Taxpayer's opening brief would be filed on or before October 13, 2005; the City's response brief would be filed on or before November 28, 2005; and, the Taxpayer's reply brief would be filed on or before December 28, 2005.

15. On October 11, 2005, the Taxpayer requested an extension for its opening brief.

16. On October 13, 2005, the Hearing Officer granted the Taxpayer an extension until October 20, 2005.

17. On October 20, 2005, the Taxpayer filed its opening brief.

18. On October 24, 2005, the Hearing Officer indicated the City's response brief would be filed on or before December 5, 2005, and, the Taxpayer's reply brief would be filed on or before January 4, 2006.

19. On November 30, 2005, the City sent an email requesting an extension to file a response brief.

20. On December 2, 2005, the Hearing Officer extended the City's deadline until January 4, 2006, and the Taxpayer's reply deadline until February 3, 2006.

21. On January 3, 2006, the City sent an email requesting an extension.

22. On January 4, 2006, the Hearing Officer granted the City an extension until January 13, 2006, and the Taxpayer an extension until February 13, 2006.

23. On January 12, 2006, the City again requested an extension.

24. On January 12, 2006, the Hearing Officer granted the City an extension until January 19, 2006 and the Taxpayer an extension until February 21, 2006.

25. The City filed a response brief on January 19, 2006.

26. On February 16, 2006, the Taxpayer sent an email requesting an extension for its reply brief.

27. On February 21, 2006, the Hearing Officer granted the Taxpayer an extension until March 6, 2006.

28. On March 6, 2006, the Taxpayer filed its reply brief.

29. On March 7, 2006, the Hearing Officer indicated the record was closed and a written decision would be issued on or before April 21, 2006.

30. On October 22, 2004, the Taxpayer requested a private letter ruling from the City that the Taxpayer was not subject to the speculative builder tax on the sale of two commercial properties.

31. On January 19, 2005, the City concluded the Taxpayer was liable for the speculative builder tax.

32. The Taxpayer paid the tax in the amount of $313,871.49 under protest and filed a refund request.

33. On March 14, 2005, the City denied the refund request.

34. ***Company A*** sold vacant land to ***Company B*** in 5/01. (Sole member of ***Company B*** is ***Company .***

35. ***Company B*** sold vacant land to ***Company D*** in 7/01. (Sole member of ***Company***

D is ***Company E***, whose sole member is ***Company F***, whose sole member is ***Company C***).

36. ***Company D*** had the two shell buildings constructed by ***Company C***.

37. ***Company D*** sold the shell buildings to ***Company G*** in 11/03. ***Company D*** reported the speculative builder sale to the City on 12/03 tax return. (***Company G*** sole member is the Taxpayer.)

38. ***Company G*** sold a 15% fee interest in the property to ***Company H*** in 6/04. (***Company H*** LLC is a foreign LLC that is owned by the ***Insurance Company***.)

39. ***Company C*** completed the shell buildings and received Certificates for the buildings from the City.

40. ***Company C*** sold the shell buildings within 24 months of substantial completion.

41. ***Company C*** reported and paid speculative builder tax to the City on the income from the sale of the shell buildings.

42. After purchase of the shell buildings from ***Company C***, ***Company G*** had tenant improvements made to the shell buildings.

43. ***Company G*** sold a 15 percent interest in the buildings within 24 months of substantial completion of the tenant improvements.

44. The Code was adopted on April 1, 1987.

45. The Arizona Limited Liability Company Act was adopted by the legislature in 1992.

46. The Agreement provides that the Taxpayer was the sole member and the manager of ***Company G***.

47. The Agreement provided that ***Company G*** would conduct itself as a disregarded entity for federal and state income tax purposes.

48. The Taxpayer was liable for federal and state income taxes for the sale by ***Company G***.

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. As the sole member, the manager, as well as its obligations pursuant to the Agreement, the Taxpayer is legally liable for any City tax liability of ***Company G.***

3. ***Company C*** intended to build two shell buildings and sell them to an independent buyer.

4. Arizona rules of statutory construction require any ambiguities in matters of scope in tax matters to be resolved in favor of the taxpayer.

5. Section 416 taxes the gross income of speculative builders within the City.

6. Section 100 defines speculative builder as an owner-builder who sells or contracts to sell improved real property before the expiration of 24 months after the improvements of the real property sold are substantially complete.

7. Section 100 provides three alternative definitions of substantially complete.

8. The shell buildings were ready for their intended use when sold to ***Company G***.

9. Improved real property is defined in section 416.

10. The improvements made by ***Company G*** to the shell buildings did not meet the definition of improved real property as set forth in Section 416.

11. ***Company G*** was not a speculative builder.

12. The sale by the Taxpayer of a membership interest in ***Company G*** to ***Insurance Company*** was not a taxable transaction pursuant to the City Code.

13. The Taxpayer's refund claim should be granted.

ORDER

It is therefore ordered that the January 31, 2005 protest, as revised on April 6, 2005, filed by ***Taxpayer*** of a denial of a refund claim by the City of Phoenix is hereby granted.

It is further ordered that the City of Phoenix shall provide a refund to ***Taxpayer*** consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer