

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 20, 2005

Decision: MTHO #233

Tax Collector: City of Tucson

Hearing Date: July 19, 2005

DISCUSSION

Introduction

On January 28, 2005, *Taxpayer*, Inc. ("Taxpayer") filed a protest of a tax assessment made by the City of Tucson ("City"). After review, the City concluded on March 9, 2005 that the protest was timely and in the proper form. The City requested any response be stayed pending the completion by the City of an audit on a related company to the Taxpayer. On March 14, 2005, the Municipal Tax Hearing Officer ("Hearing Officer") stayed the matter and ordered the City to provide an updated status report on or before May 16, 2005. On May 12, 2005, the City filed a response to the protest. On May 18, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 1, 2005. On June 9, 2005, a Notice of Tax Hearing ("Notice") scheduled the matter for hearing commencing on July 19, 2005. Both parties appeared and presented evidence at the July 19, 2005 hearing. On July 20, 2005, the Hearing Officer ordered the Taxpayer to provide additional documentation by July 27, 2005 to support original land values; the City would review documentation provided at the hearing as well as additional documentation and provide comments/recommendations on or before September 2, 2005; and, the Taxpayer would provide any reply on or before September 16, 2005. On September 1, 2005, the City filed comments/recommendations. On September 29, 2005, the Hearing Officer indicated no reply had been filed by the Taxpayer and as a result the record was closed and a written decision would be issued on or before November 14, 2005.

City Position

The City conducted an audit of the Taxpayer for the period October 1996 through August 2004. The City concluded that the Taxpayer had speculative builder income pursuant to City Code Section 19-416 ("Section 416") from thirty four homes sold in the audit period. The City assessed the Taxpayer for additional tax due in the amount of \$74,553.31, penalties in the amount of \$18,671.23, plus interest. The Taxpayer was an unlicensed contractor until a license was issued on January 5, 2005 as a result of the audit. According to the City, the Taxpayer and *Builder*, Inc. ("*Builder*") had the same address and principals. Because the Taxpayer had argued that *Builder* had already paid taxes on the sale of thirty of the homes, the City reviewed the records of *Builder*. The City could find no evidence that any of the thirty four homes had been reported by either the Taxpayer or *Builder*. The City requested documentation from the Taxpayer to demonstrate that taxes had already been paid on any of the homes. Prior to the hearing,

no documentation was provided by the Taxpayer.

After review of the documentation provided at the hearing, the City concluded that **Builder** had previously paid taxes on thirteen of the homes in question. In addition, the **Buyer A** home was eliminated from the audit as it had been reported as prime contracting pursuant to License No. 139893. As a result, the City reduced the original assessment of \$74,553.31 to \$36,695.31. The interest up through August 31, 2005 totaled \$29,301.56.

The City also noted that after the hearing the Taxpayer submitted land cost figures that were higher than the City had allowed in the audit based on Pima County (“County”) records. The City requested the Taxpayer provide documentation to support the higher land costs. Since the Taxpayer failed to provide the requested documentation, the City did not agree with the increased amounts for original land costs.

Taxpayer Position

The Taxpayer argued that **Builder** had previously reported and paid taxes on the sale of thirty homes included in the audit. According to the Taxpayer, the Arizona Department of Revenue (“DOR”) conducted an audit in September of 1998 that included the thirty homes. The Taxpayer asserted the City accepted the DOR audit and assessed a lien on **Builder**. As a result, the Taxpayer argued the only question is whether or not taxes have been paid on the other four homes. The Taxpayer provided additional documentation at the hearing to demonstrate that taxes had previously been paid on thirteen of the homes in question. Subsequent to the hearing, the Taxpayer submitted land cost figures to the City that were higher than the City had utilized in the audit. The Taxpayer failed to provide additional documentation to support the higher land cost figures.

ANALYSIS

There was no dispute that the Taxpayer had speculative builder income during the audit period. The only dispute was whether or not the original assessment included home sales for which taxes had already been paid by a related company. Based on the Taxpayer’s failure to provide documentation to demonstrate which home sales, if any, had already paid City taxes, the City’s original assessment was proper. It was also proper for the City to reduce the original assessment after the Taxpayer provided additional documentation at the hearing to demonstrate City taxes had already been paid on some of the home sales.

While the Taxpayer requested the original cost land values to be adjusted, the Taxpayer failed to provide documentation to support such adjustments. As a result, it was proper for the City to not recommend any adjustments. We also find the City was authorized pursuant to City Code Section 540 to impose penalties for the Taxpayer’s failure to timely file tax reports and failure to timely pay taxes. Further, the taxpayer failed to provide any reasonable cause for failing to timely file/pay. Accordingly, the penalties are approved as adjusted with the tax adjustment.

FINDINGS OF FACT

1. On January 28, 2005, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on March 9, 2005 that the protest was timely and in the proper form.
3. The City requested any response be stayed pending the completion by the City of an audit on a related company to the Taxpayer.
4. On March 14, 2005, the Hearing Officer stayed the matter and ordered the City to provide an updated status report on or before May 16, 2005.
5. On May 12, 2005, the City filed a response to the protest.
6. On May 18, 2005, the Hearing Officer ordered the Taxpayer to file any reply on or before June 1, 2005.
7. On June 9, 2005, a Notice scheduled the matter for hearing commencing on July 19, 2005.
8. Both parties appeared and presented evidence at the July 19, 2005 hearing.
9. On July 20, 2005, the Hearing Officer ordered the Taxpayer to provide additional documentation by July 27, 2005 to support original land values; the City would review documentation provided at the hearing as well as additional documentation and provide comments/recommendations on or before September 2, 2005; and, the Taxpayer would provide any reply on or before September 16, 2005.
10. On September 1, 2005, the City filed comments/recommendations.
11. On September 29, 2005, the Hearing Officer indicated no reply and been filed by the Taxpayer and as a result the record was closed and a written decision would be issued on or before November 14, 2005.
12. The City conducted an audit of the Taxpayer for the period October 1996 through August 2004.
13. The City concluded that the Taxpayer had speculative builder income pursuant to Section 416 from thirty four homes sold in the audit period.
14. The City assessed the Taxpayer for additional tax due in the amount of \$74,553.31, penalties in the amount of \$18,671.23, plus interest.

15. The Taxpayer was an unlicensed contractor until a license was issued on January 5, 2005, as a result of the audit.
16. The Taxpayer and **Builder** had the same address and principals.
17. After review of the documentation provided at the hearing, the City concluded that **Builder** had previously paid taxes on thirteen of the homes in question.
18. In addition, the City eliminated the **Buyer A** home from the audit as it had been reported as prime contracting pursuant to License No. 139893.
19. The City reduced the original tax assessment of \$74,553.31 to \$36,695.31.
20. The Taxpayer failed to provide additional documentation to support higher original land cost figures.

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. The Taxpayer failed to report speculative builder income during the audit period.
3. The City's original assessment was proper based on the information available to the City.
4. It was proper for the City to adjust the original assessment after the Taxpayer provided documentation to demonstrate City taxes had already been paid on some of the home sales.
5. The burden of proof was on the Taxpayer to provide documentation to support an adjustment to the original cost land values.
6. The City was authorized to impose penalties pursuant to Section 540 for failure to timely file and failure to timely pay.
7. The Taxpayer failed to provide reasonable cause to waive the penalties.
8. The City's adjusted assessment as set forth in the City's September 1, 2005, letter should be approved.

ORDER

It is therefore ordered that the January 28, 2005 protest of *Taxpayer*, Inc. is hereby granted in part, and, denied in part, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that the City of Tucson shall revise its assessment consistent with the recommendations set forth in the City's September 1, 2005 letter.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer