

## DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: October 17, 2011

Decision: MTHO # 649

***Taxpayer:***

Tax Collector: City of Scottsdale

Hearing Date: None

### DISCUSSION

#### Introduction

On May 10, 2010, 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 September 9, 2011 and indicated a written decision would be issued on or before October 24, 2011.

### DECISION

The City performed an account review of Taxpayer for the period August 2009. The City concluded Taxpayer had made a speculative builder sale on August 4, 2009. Taxpayer was assessed taxes in the amount of \$15,539.37, penalties in the amount of \$3,884.84, interest up through February 2011 in the amount of \$864.86, and annual license fees of \$87.00.

On March 5, 2007, building permit **#00000** was issued for the construction of a single family home on **Lot 72**. The permit listed Taxpayer as the owner and contractor. The address for the lot was **12345 Place** in the City. On March 13, 2007, Taxpayer acquired **Lot 72**. On March 27, 2008, a certificate of occupancy (“COO”) was issued. On July 31, **Big Bucks Bank** acquired the improved **Lot 72** as the highest bidder at the trustee’s sale for \$1,496,000.00. The City assessed the transfer as a taxable speculative builder sale pursuant to City Code Section 416 (“Section 416”). On October 21, 2009, the Bank transferred title of the property to **Great Real Estate, LLC (“GRE”)**. On April 20, 2010, **GRE** sold the property to **New Owners**.

Taxpayer asserted it had informed the Bank at the time of foreclosure that sales taxes would be due the City once the Bank sold the property. According to Taxpayer, the Bank assured Taxpayer that they were aware of the City tax that was to be paid. Taxpayer also argued the sales price should be based on the \$1,050,000.00 sale to the **New Owners**.

City Code Section 100 (“Section 100”) defines an owner-builder as an owner of real property who, by himself or through others, constructs improvements to real property. Since Taxpayer was the owner of *Lot 72* and had improvements made to the lot, Taxpayer was an owner-builder. Section 100 defines a speculative builder to be an owner-builder who sells or contracts to sell improved real property consisting of a custom, model, or inventory home. Section 100 defines sale to mean any transfer of title or possession, or both in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. We conclude that the July 31, 2009 trustee sale for \$1,496,000.00 was a speculative builder sale pursuant to Section 100. As a result, the sale was subject to the speculative builder tax pursuant to Section 416.

City Code Section 540 authorizes the City to assess penalties for failure to file and failure to timely pay taxes. As a result, the City was authorized to assess penalties in this matter. Section 540 provides that the Hearing Officer may abate the penalties when Taxpayer demonstrates reasonable cause. Reasonable cause is defined in Section 540 that a taxpayer exercised ordinary business care and prudence, i.e. had a reasonable basis for believing that the tax did not apply to the business activity. In this case, we conclude that Taxpayer made a reasonable effort to make sure all City taxes were paid by any successor. As a result, we conclude Taxpayer has demonstrated reasonable cause to have all penalties abated. Based on all the above, we conclude Taxpayer’s protest should be partly denied, partly granted, consistent with the Discussion, Conclusions, and Findings, herein.

### **FINDINGS OF FACT**

1. On May 10, 2010, 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 \$15,539.37 penalties in the amount of \$3,884.84 interest up through February 2011 in the amount of \$864.86, and annual license fees of \$87.00.
4. On March 5, 2007, building permit *#00000* was issued for the construction of a single family home on *Lot 72*.
5. The building permit listed Taxpayer as the owner and contractor.
6. On March 13, 2007, Taxpayer acquired *Lot 72*.

7. The address for *Lot 72* was *12345 Place* in the City.
8. On March 27, 2008, a COO was issued.
9. On July 31, 2009, the Bank acquired the improved *Lot 72* as the highest bidder at the trustee's sale for \$1,496,000.00.
10. On October 21, 2009, the Bank transferred title of the property to *GRE*.
11. On April 20, 2010, *GRE* sold the property to the *New Owners*.
12. Taxpayer informed the Bank at the time of foreclosure that sales taxes would be due the City once the Bank sold the property.

#### 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. Taxpayer was an owner-builder of the improved *Lot 72* pursuant to Section 100.
3. The July 31, 2009 trustee sale was a speculative builder sale pursuant to Section 100.
4. The July 31, 2009 trustee sale was subject to the speculative builder tax pursuant to Section 416.
5. The City was authorized pursuant to Section 540 to assess penalties for failure to timely file and failure to timely pay.
6. Taxpayer has demonstrated reasonable cause to have all penalties in this matter waived.
7. Based on all the above, Taxpayer's protest should be partly granted, partly denied, consistent with the Discussion, Conclusions, and Findings, herein.
8. 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 May 10, 2010 protest by *Taxpayer* of a tax assessment made by the City of Scottsdale is hereby partly denied and partly granted, consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that all penalties in this matter are hereby waived.

It is further ordered that this Decision is effective immediately.

Municipal Tax Hearing Officer