

## DECISION OF MUNICIPAL TAX HEARING OFFICER

April 29, 2013

*Taxpayer*

*Taxpayer's Address*

*Taxpayer*

MTHO #763

Dear *Taxpayer*:

We have reviewed the evidence submitted for redetermination *Taxpayer* and the City of Scottsdale (Tax Collector or City). The review period covered was March 2012. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

### Taxpayer's Protest

Taxpayer sold real property. Taxpayer was required to give credit for improvements and landscaping in the total amount of \$45,000. The credit constituted a reduction of the purchase price and the amount subject to taxation should be reduced accordingly. Also, the date of sale of the property was May 2012 and not March 2012. May 2012 is the only month for which a license would have been required. Taxpayer also requests a penalty waiver because Taxpayer suffered a loss on the sale of the property.

### Tax Collector's Response

Taxpayer engaged in taxable activity as a speculative builder. The City taxes the transfer of improved real property by a speculative builder measured by gross income less allowable exclusions, exemptions and deductions. The City took the sales price from the affidavit of value filed with the warranty deed and allowed the standard 35% deduction. Taxpayer has not provided documents to support any additional deductions, changes to the assessment or waiver of penalties. The City assessed license fees and associated penalties based on the building permit issuance date because Taxpayer was deemed to have been in business as of that date.

### Discussion

Taxpayer sold real property within the City. The City considered Taxpayer a speculative builder and assessed Taxpayer for unreported taxes on the sale. The assessment was based on a sales price of \$1,600,000, and allowed a 35% deduction of \$560,000.

The assessment assumed that Taxpayer's business activity started when a building permit was issued for the construction and the taxable period was March 2012, the date the Tax Collector contends was included in the warranty deed for Taxpayer's sale of the property. The record does not include a copy of the warranty deed, the date of the warranty deed, a copy of the building permit or the date the building permit was issued.

The assessment also included a license application fee of \$12, annual license fee of \$300 and annual license fee penalties of \$210. The record does not detail how the license fee or the license fee penalty amounts were calculated.

Taxpayer protested the assessment arguing that:

- a. The sales price should be reduced by \$45,000, the amount of credit seller was required to give for improvements and landscaping,
- b. The date of sale of the property was May 2012 and no taxes or license fees were due for periods before May 2012, and
- c. Penalties should be waived because the property was sold at a loss.

**Tax Base for the Assessment.**

The City stated in its response that the sales price was taken from the affidavit of value filed with the warranty deed. Copies of the affidavit of value and of the warranty deed were not submitted into the record.

The City's Exhibit C to its response is a copy of a Final Settlement Statement from the *Title Company*. The Statement shows that the contract sales price was \$1,600,000 and Taxpayer allowed a credit against the sales price for improvements and landscaping of \$45,500. Taxpayer did not receive as a part of the sale price the credits totaling \$45,500. The amount of \$45,500 should therefore be removed from the assessment.

**License Fee and License Fee Penalties.**

The assessment included a license application fee, license fees and license fee penalties. The City contends that Taxpayer's business activities began when the building permit for the property was issued and the fees should be calculated from that date. The record however does not contain the date the building permit was issued, a copy of the building permit or the date when any activity started.

The City's Exhibit C shows that the Settlement Date of the transaction was May 3, 2012 and the Disbursement Date was May 4, 2012. Based on the record here, whether a deed was executed in March 2012, the proper period for which a tax liability may be calculated is May 2012. That appears to be the month the disbursement was made and Taxpayer received income from the sale of the property.

Taxpayer was required to be licensed for the period May 2012. There is no evidence in the record that would support a licensing requirement for other periods or that Taxpayer was required to renew a license which it failed to timely do.

Taxpayer did engage in a taxable speculative building transaction in 2012 and was required to be licensed for that activity. Therefore the \$12 application fee and the \$50 license fee were properly included in the assessment. In addition, Taxpayer had not obtained a license for the period the taxable transaction occurred. Taxpayer was therefore subject to the penalty for failure to obtain a privilege license for one period. The City has not shown that Taxpayer was required to obtain or renew a license for any other period.

**Late Payment and Late Filing Penalties were Proper.**

Taxpayer requested that the late filing and late payment penalties be waived because the property was sold at a loss. The Tax Collector may waive penalties if reasonable cause is shown. Circumstances supporting reasonable cause are listed in STC § 540. Loss on a transaction is not one of the circumstances listed. Taxpayer has therefore not shown reasonable cause for the waiver of the late payment and late filing penalties.

Based on all the above, we conclude Taxpayer's protest should be upheld in part and denied in part. The City shall modify the assessment by excluding \$45,500 allowed as a credit and by recalculating interest, penalties and fees and other charges based on a taxable period of May 2012.

### Findings of Fact

2. Taxpayer sold real property within the City.
3. The City considered Taxpayer a speculative builder on the sale of the property and on October 2, 2012 assessed Taxpayer for unreported taxes of \$17,160 on the sale.
4. The assessment was based on a sales price of \$1,600,000, and allowed a 35% deduction of \$560,000.
5. The assessment included statutory interest, failure to file and failure to pay penalties of \$4,290, license application fee of \$12, annual license fee of \$300 and annual license fee penalties of \$210.
6. The assessment included in the record did not detail how the license fee or the license fee penalty amounts were calculated.
7. Taxpayer protested the assessment arguing that:
  - a. The sales price should be reduced by \$45,000, the amount of credit seller was required to give for improvements and landscaping,
  - b. The date of sale of the property was May 2012 and no taxes or license fees were due for periods before May 2012, and
  - c. Penalties should be waived because the property was sold at a loss.
8. The City stated in its response that the sales price for the property was taken from the affidavit of value filed with the warranty deed.
9. Copies of the affidavit of value and of the warranty deed were not submitted into the record.
10. The City stated in its response that Taxpayer's business activities began when the building permit for the property was issued.
11. The date the building permit was issued or a copy of the building permit were not included in the record.
12. The City attached to its response as exhibit C a copy of a Final Settlement Statement from *The Title Company* showing:
  - a. The contract sales price for the property was \$1,600,000.

- b. Taxpayer allowed a credit against the purchase price for improvements and landscaping of \$45,000.
  - c. The Settlement Date of the transaction was May 3, 2012.
  - d. The Disbursement Date was May 4, 2012.
13. Taxpayer did not submit a reply memorandum.

Conclusions of Law

- 1. STC § 416(a) imposes a privilege tax on persons engaging in business as a speculative builder within the City.
- 2. The tax is measured by the taxpayer's gross income from the business. STC § 416(a).
- 3. The gross income of a speculative builder considered taxable includes the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title. STC § 416(a)(1).
- 4. Gross income includes the value proceeding or accruing from the sale of property and all receipts derived from a taxable activity. STC § 200(a).
- 5. The record before the Hearing Office indicates that Taxpayer did not receive as a part of the sale price the credits totaling \$45,500 Taxpayer was required to give for improvements and landscaping.
- 6. Because the settlement date of the transaction was May, 2012, Taxpayer was required to report and pay the taxes for the period May, 2012.
- 7. Taxpayer did not timely file a return or report and pay the tax on the sale of the property.
- 8. STC § 416 assesses a tax on the gross income from the business and does not take into consideration whether or not there was any profit.
- 9. STC § 540(b) imposes penalties for failure to timely file and to timely pay tax.
- 10. The penalties may be waived if the taxpayer demonstrates reasonable cause for its failure to file a return or pay the tax. STC § 540.
- 11. Loss on a taxable transaction is not reasonable cause for the waiver of penalties under STC § 540.
- 12. Taxpayer has not demonstrated reasonable cause under STC § 540 for its failure to file a return and to pay the tax.
- 13. Every person desiring to engage or continue in business activities within the City upon which a Privilege Tax is imposed is required to apply for a Privilege License with a \$12.00 fee. STC § 300(a).
- 14. In addition to the license application fee imposed under STC § 300, persons licensed under Chapter 3 are required to pay an annual license fee of \$50.00 for each license held by such persons. STC § 310(d).
- 15. Licensees who fail to timely renew a license are subject to all penalties imposed against persons required to be licensed and operating without a license. STC § 310(e).

16. The evidence in the record does not show that Taxpayer failed to timely renew a license required to be renewed.
17. Persons required to be licensed who do not obtain a license conducting business requiring such license shall be subject to a penalty of one hundred fifty percent (150%) of the applicable fee for each event or period of time for which such fee would have been imposed. STC § 310(h).
18. Taxpayer was liable for the \$12.00 license application fee and the \$50.00 annual license fee.
19. Taxpayer is liable for a license fee penalty under STC § 310(h) for one event or period.
20. Taxpayer's protest should be granted in part and denied in part.
21. The Tax Collector shall remove from the assessment gross receipts of \$45,500 representing the credits Taxpayer was required to give for improvements and landscaping.
22. The assessment of tax, as recalculated, is upheld.
23. Related interest and late payment and late filing penalties shall be recalculated based on the reduced gross receipts for the taxable period of May 2012.
24. The Tax Collector shall remove from the assessment license fees and other charges calculated for or based on periods prior to May 2012.
25. The Tax Collector shall remove from the assessment license fee penalties calculated under STC § 310(e).
26. Any license fee penalties under STC § 310(h) in excess of the amount upheld in Conclusion of Law No. 19 shall be removed from the assessment.

### Ruling

The protest by Taxpayer of an assessment made by the City of Scottsdale for the period March 2012 is upheld in part and denied in part.

The Tax Collector shall remove from the assessment:

Gross receipts of \$45,500 representing the credits Taxpayer was required to give for improvements and landscaping. Conclusions of Law Nos. 5 and 21.

Related interest and late payment and late filing penalties shall be recalculated based on the reduced gross receipts for the taxable period of May 2012. Conclusions of Law No. 23.

License fee penalties calculated under STC § 310(e). Conclusions of Law Nos. 16 and 25.

License fee penalties calculated under STC § 310(h) in excess of the penalty that may be imposed for one event or period. Conclusions of Law Nos. 19 and 26.

The Tax Collector's Notice of Assessment is upheld in all other respects.

Taxpayer has timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

***Hearing Officer***

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c: ***Senior Tax Auditor***  
Municipal Tax Hearing Office