

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In re:

PRO-SERVE, INC.

Petition for Declaratory Ruling

Shelby County

FINAL DECISION AND ORDER
ON PETITION FOR DECLARATORY RULING

Statement of the case

In this declaratory proceeding petitioner Pro-Serve, Inc. ("Pro-Serve") requests the Board to reverse or modify the initial decision and order of the Board administrative judge, and to construe T.C.A. §67-5-1512 (b) so as to avoid the accrual of delinquency penalty and interest from and after the date petitioner paid undisputed taxes related to petitioner's assessment appeal to the Board for tax year 2001. The Shelby County Trustee has requested to intervene and insists petitioner is not entitled to relief from delinquency penalty and interest because the undisputed tax was not paid before the delinquency date of the 2001 county tax (March 1, 2002).

The Board reviewed the initial decision and order of the administrative judge in Nashville on January 24, 2011, before Board members Button (presiding), Hargett, Lillard, Roberts, Slatery, and Wilson. Representing Pro-Serve was Mr. John J. Cook, Esq., and representing the Intervenor Tennessee Comptroller's Division of Property Assessments was Comptroller Counsel Mr. Robert T. Lee.

Findings of fact and conclusions of law

T.C.A. §67-5-1512 (b) relieves taxpayers of delinquency penalty and interest otherwise accruing on property taxes as to property under appeal to the county and state boards of equalization, if the taxpayer pays the full amount of tax prior to the delinquency date, or pays the undisputed portion of the tax. The statute does not specify a due date for the latter option, and that is the issue here.

Apart from the interest and/or penalty that may accrue on the unpaid tax, there are other consequences if taxes are left owing while the appeal is pending. In counties larger than 770,000 in population, “no hearing shall be held on any appeal until the undisputed portion of the tax has been paid.” T.C.A. §67-5-1512 (b)(1)(C). Elsewhere, 1) it is a condition for appeal that the undisputed portion of the tax be paid before the delinquency date; and 2) failure to pay the undisputed portion of the tax by the time of hearing of the appeal results in dismissal of the appeal.¹ The administrative judge construed these additional provisions as implying a deadline to pay undisputed tax by the delinquency date to avoid delinquency penalty and interest, but we are not inclined to imply a deadline where the result is a penalty.

County property taxes in Tennessee are payable the first Monday in October (Tenn. Code Ann. §67-1-701), and delinquent after the last day of February (Tenn. Code Ann. §67-5-2010). Delinquent taxes accrue penalty and interest at the rate provided in Tenn. Code Ann. §67-5-2010, subject to the noted exceptions when an assessment appeal is pending (Tenn. Code Ann. §67-5-1512).

The Board finds that Pro-Serve did not tender the undisputed portion of the 2001 tax until May 17, 2004, but the penalty and interest provisions of §67-5-1512 do not specify

¹ The provisions for appeal postponement or forfeiture were not invoked by the county at the hearing on the merits, and are consequently not at issue here.

a date for the payment of the undisputed portion. A majority of the Board finds the taxpayer should not be penalized by the statutory ambiguity, nor should we imply a date if the consequence is a penalty.

ORDER

Based on the foregoing findings, it is ORDERED, that delinquency penalty and interest is abated from and after the date Pro-Serve paid the undisputed portion of tax due. As provided in Tenn. Code Ann. §67-5-1512, additional tax due in this matter will accrue delinquency penalty at the rate of one-half percent per month (.5%) and delinquency interest at the rate of one percent (1%) per month from the delinquency date only until May 17, 2004. Thereafter, interest only will accrue, and at the appeal rate provided in §67-5-1512.

This order is subject to request for reconsideration which may be directed to the Board within fifteen (15) days from the date hereof. Thereafter the Board will officially certify its action for purposes of judicial review. Requests for judicial review must be filed in Chancery Court within sixty (60) days of the certificate date in the manner provided in Tenn. Code Ann. §67-5-1511.

DATED: April 19, 2011

Randy Button
Presiding member *my RJ apem*

ATTEST:

Kelsie Jones
Executive Secretary

cc: ✓ Mr. John J. Cook, Esq.
Mr. Robert T. Lee, Esq.
Mr. Thomas E. Williams, Esq.
Mr. Derek F. Kelley, Trustee's office