STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 09-162

State Board of Equalization's Authority to Review Actions of Local Assessors

QUESTIONS

1. Whether actions of the local assessor that were not appealed to the county board of equalization may be collaterally attacked at the State Board of Equalization even though the assessor's action has otherwise become final?

2. What, if any, time limits would apply to these collateral attacks?

3. Whether the State Board of Equalization is authorized to act on an otherwise untimely direct appeal by a taxpayer who is aggrieved by an allegedly illegal or erroneous action of the assessor of property?

OPINIONS

1. The State Board of Equalization's authority to grant relief to a taxpayer who fails to timely appeal to the county board of equalization is limited to cases involving the correction of facially apparent errors pursuant to Tenn. Code Ann. § 67-5-509 and cases involving the lack of notice or untimely notice of an assessment increase or classification change pursuant to Tenn. Code Ann. § 67-5-1412.

2. A taxpayer seeking relief under Tenn. Code Ann. § 67-5-509 must request the local assessor to correct the error prior to March 1 of the second year following the tax year for which the correction is to be made. If the assessor refuses to make the requested correction, the taxpayer may appeal to the State Board within forty-five days of such refusal.

A taxpayer seeking relief under Tenn. Code Ann. § 67-5-1412 must appeal to the State Board within forty-five days after the assessor sends notice of an assessment increase or classification change or, if no notice is sent, within forty-five days after the tax billing date for the assessment. Under this section, the State Board may not accept appeals after March 1 of the year subsequent to the year in which the assessment was made.

3. The State Board's authority to hear direct appeals from taxpayers is limited by the foregoing statutory provisions, even in cases where the taxpayer claims to be aggrieved by an allegedly illegal or erroneous action of the assessor. Although the courts of this State are

authorized to enjoin the collection of assessments that are void, such as where the assessor lacks any statutory authority to make the assessment, the State Board does not have such power.

ANALYSIS

Your request seeks clarification of the State Board of Equalization's authority to hear untimely appeals of local property tax assessments. In a previous opinion, this Office stated that "a failure to timely appeal an order of a local board of equalization results in the order binding the parties involved," and that "[s]uch an order is not subject to collateral attack except under extraordinary circumstances – such as lack of jurisdiction, fraud or a deprivation of procedural due process." Op. Tenn. Att'y Gen. No. 92-62 (Oct. 8, 1992). Your present request seeks clarification of the circumstances under which taxpayers may collaterally attack assessments made by local property assessors when taxpayers fail to timely appeal such assessments to the local board of equalization.

At the outset, it should be noted that the term "collateral attack" has no application to challenges of assessments made by local property assessors. A collateral attack is "[a]n attack on a judgment in a proceeding other than a direct appeal; esp., an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective." *Black's Law Dictionary* 8th ed. (2004). While a county board of equalization actually issues an administrative, quasi-judicial decision that, under limited circumstances, may be subject to collateral attack, a local property assessor's action of valuing, classifying, or assessing property does not constitute an administrative or judicial decision. County assessors are elected officials who may perform executive or ministerial functions, but their actions do not represent decisions or judgments that are subject to collateral attack. Instead, a taxpayer wishing to challenge a local assessor's action must pursue one of the established remedies for seeking such relief.

A taxpayer who challenges the validity of an assessment on purely legal grounds may pay the tax under protest and file a refund suit within six months after such payment. *See Fentress County Bank v. Holt*, 535 S.W.2d 854, 857 (Tenn. 1976); *Rosewood, Inc. v. Garner*, 476 S.W.2d 273, 276 (Tenn. Ct. App. 1972); *see also* Tenn. Code Ann. §§ 67-1-901 to -912 (2006). Alternatively, a taxpayer who challenges the valuation or classification of his property may pay the undisputed portion of the assessment and file an appeal with the county board of equalization in accordance with Tenn. Code Ann. § 67-5-1407 (2006).

Under limited circumstances, a taxpayer may file an appeal directly with the State Board rather than the county board. These cases include where the assessor has failed to timely notify the taxpayer of an increase in assessment or change in classification of the taxpayer's property. *See* Tenn. Code Ann. § 67-5-1412(b) (Supp. 2008). If notice of an assessment or classification change is "sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice [is] sent." Tenn. Code Ann. § 67-5-1412(e) (Supp. 2008). If notice is not sent at all, "the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment." *Id.* The "taxpayer has the right to a hearing and determination to show reasonable cause for the

taxpayer's failure to file an appeal as provided in this section." *Id*. If the taxpayer is able to demonstrate reasonable cause, the State Board "shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run." *Id*. No authority exists, however, for the State Board to accept appeals after this March 1 deadline. Under Tenn. Code Ann. § 67-5-1412(e), March 1 of the subsequent year is the absolute deadline for the State Board to accept appeals from the previous tax year in cases involving lack of notice or untimely notice of an assessment increase or classification change.

The correction of errors statute also may provide some relief to taxpayers who fail to meet the statutory deadlines for filing an appeal with the county board. Tenn. Code Ann. § 67-5-509 authorizes the local assessor to correct certain types of errors apparent on the face of an assessment. This authority, however, is limited. Errors or omissions correctable under this statute include "only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment." Tenn. Code Ann. § 67-5-509(f) (2006). Correctable errors or omissions "do not include clerical mistakes in tax reports or schedules filed by a taxpayer with the assessor." *Id*.

Like the State Board's authority to hear untimely appeals under Tenn. Code Ann. § 67-5-1412(e), the authority to correct errors is limited by time constraints. To be corrected pursuant to Tenn. Code Ann. § 67-5-509, errors or omissions must be brought to the assessor's attention before March 1 of "the second year following the tax year for which the correction is to be made." Tenn. Code Ann. § 67-5-509(d) (2006). After that date, the assessor loses the ability to correct even obvious assessment errors. If a taxpayer timely requests the assessor to make a correction under Tenn. Code Ann. § 67-5-509, and the assessor refuses, the taxpayer may appeal to the State Board within forty-five days after such refusal.

Under some circumstances, a taxpayer who has no administrative remedy may seek relief from the courts. Where an assessment is void, such as where the assessor lacks any statutory authority to make the assessment, the courts may enjoin collection of the illegal tax. *Carter v. Olsen*, 660 S.W.2d 483, 485-86 (Tenn. 1983). In authorizing this relief, the Supreme Court observed that "[o]ne of the primary duties of the judiciary is to check other branches of the government when they exceed their constitutional or statutory authority." *Id*. at 485. If an assessor clearly has exceeded her authority, such as by assessing property located outside her taxing jurisdiction or property that is not subject to tax under the property tax statutes, then the courts may enjoin local governmental officials from collecting the tax. This remedy is not available, however, to a taxpayer who pays the tax but fails to follow the established statutory procedures for seeking a refund. In the case of a taxpayer who voluntarily pays the tax, there is nothing for the courts to enjoin, and the taxpayer's ability thereafter to challenge the legality of the tax or to seek a refund of the taxes erroneously paid will be limited by the applicable statutes of limitation. *See* Tenn. Code Ann. §§ 67-1-903, 67-5-509, 67-5-1412, 67-5-1417.

The power to enjoin the assessment or collection of taxes does not extend to the State Board of Equalization. As an administrative agency of the State of Tennessee, the State Board has no inherent or common-law powers of its own. *See In re Sentinel Trust Co.*, 206 S.W.3d

501, 519 (Tenn. Ct. App. 2005). The State Board is purely a creature of statute, and it has "only those powers expressly granted by statute and those powers required by necessary implication to enable [it] to fulfill [its] statutory mandate." *Id*. While the State Board has the express statutory authority to hear appeals of local property tax assessments and to issue official certificates reflecting the appropriate valuation and classification of properties, *see* Tenn. Code Ann. § 67-5-1512 (Supp. 2008), the Board does not have the power to order refunds of taxes or to enjoin the collection of taxes by local government officials.

Such authority likewise cannot be inferred from the statutory scheme the State Board is charged with administering. These statutes impose specific and absolute time limitations on the State Board's authority to hear challenges to actions of the local assessor, and these deadlines apply even in cases where the taxpayer claims that the assessment is illegal or duplicative. Thus, while the courts of this State have the authority to enjoin the collection of void assessments, the State Board does not have the authority to consider the legality of such assessments beyond the time constraints specified in Tenn. Code Ann. §§ 67-5-509 and 67-5-1412 (2006 & Supp. 2008).

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