

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

May 15, 2015

Opinion No. 15-45

Application of Tenn. Code Ann. § 67-5-2803 to Existing Tax Liabilities

Question

Does Tenn. Code Ann. § 67-5-2803 apply to “property taxes, penalty, interest or court costs” or first liens securing the same that accrued or were certified before the July 1, 2014, effective date of the statute?

Opinion

Yes. The statute applies to any property tax liability that existed as of the July 1, 2014, effective date, as well as any property tax liability arising after that date.

ANALYSIS

In 2014, the General Assembly enacted Public Chapter 883, which, *inter alia*, created Tenn. Code Ann. § 67-5-2803:

In order to promote equality and uniformity of taxation, except as provided in this part 28, § 67-5-1806 or § 67-5-2507, no person, public official, governmental entity or court shall have the power or authority to waive, compromise, remit, prorate, apportion or release property taxes, penalty, interest or court costs nor the first lien securing the same.

Tenn. Pub. Acts ch. 883, § 19. Public Chapter 883 provided that the “act shall take effect July 1, 2014, the public welfare requiring it.” *Id.*, § 20.

You have asked whether this statute applies to taxes, penalty, interest, and court costs, and first liens securing the same, that accrued or were certified prior to the statute’s July 1, 2014, effective date. The language of Tenn. Code Ann. § 67-5-2803, on its face, applies to all existing property tax liabilities. Nothing in the act limits its application to property taxes, penalty, interest, and court costs that accrue or are certified after the July 1, 2014, effective date. Although the General Assembly could have provided that the act applied only to property taxes accruing after its effective date, it did not do so. Accordingly, Tenn. Code Ann. § 67-5-2803 applies to any property tax liability that existed as of July 1, 2014, even if such liability accrued or was certified some time prior to that date.

Your request appears to question whether the provisions of Tenn. Code Ann. § 67-5-2803 can be applied retroactively. Applying Tenn. Code Ann. § 67-5-2803 to property tax liabilities in

existence on the statute's effective date, however, does not constitute a retroactive or retrospective application of that statute. For example, the statute imposes no retroactively effective obligation on taxpayers of real or personal property taxes. The statute merely restricts the authority of courts, governmental entities, and public officials to waive or compromise existing property tax liabilities on a going-forward basis.

Moreover, even if the literal application of Tenn. Code Ann. § 67-5-2803 could be construed as having some retroactive effect, this would not be constitutionally impermissible. The Tennessee Constitution prohibits the General Assembly from making any "retrospective law, or law impairing the obligations of contracts." Tenn. Const. art. 1, § 20. Despite this prohibition, some statutes may be applied retroactively, including procedural and remedial statutes. A remedial statute is one that does not affect the vested rights or liabilities of the parties and that is passed to correct, clarify, or modify existing law. See *In re D.A.H.*, 142 S.W.3d 267, 273 (Tenn. 2004); *Medical Educ. Assistance Corp. v. State*, 19 S.W.3d 803, 813 (Tenn. Ct. App. 1999); Tenn. Att'y Gen. Op. 08-50 (Mar. 11, 2008).

The statute under consideration is a remedial law in that it merely describes the state of the law existing prior to July 1, 2014. With the exception of the specific provisions cited in Tenn. Code Ann. § 67-5-2803, this Office is aware of no state statute that would authorize state or local officials to relieve taxpayers of their obligation to pay properly assessed property taxes, penalty, and interest. Because Tenn. Code Ann. § 67-5-2803 is a remedial statute not affecting any vested right, it applies to any property tax liability that existed as of the July 1, 2014, effective date, as well as any property tax liability arising after that date, and any associated penalty, interest, and court costs.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

MARY ELLEN KNACK
Senior Counsel

Requested by:

The Honorable Sara Kyle
State Senator
305 War Memorial Building
Nashville, Tennessee 37243-0028