

**IN THE CHANCERY COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

PRO-SERVE, INC.)	
Plaintiff)	
v.)	
)	
DAVID LENOIR, as Trustee of Shelby)	
County, and Shelby County)	No. CH-09-1843-3
Defendants.)	(Petition for Declaratory Judgment)
)	
and)	
)	
DAVID LENOIR, as Trustee of Shelby)	
County,)	
Petitioner,)	
v.)	
)	
TENNESSEE STATE BOARD OF)	
EQUALIZATION and PRO-SERVE, INC.,)	No. CH-11-1002-3
Defendants.)	(Petition for Judicial Review)

**ORDER GRANTING PRO-SERVE, INC.'S
MOTION FOR SUMMARY JUDGMENT ON
SHELBY COUNTY'S PETITION FOR JUDICIAL REVIEW**

This matter came to be heard before the Court on May 22, 2013, upon the motion of Defendant Pro-Serve, Inc. ("Pro-Serve") for summary judgment on Shelby County's Petition for Judicial Review of An Erroneous Decision by the Tennessee State Board of Equalization (the "Petition for Judicial Review"). Upon reviewing the pleadings, and after considering the entire record of this case, and upon oral arguments of counsel, the Court makes the following findings of facts and conclusions of law and issues the following orders:

Findings of Fact

1. On April 19, 2011, the Tennessee State Board of Equalization (the "State Board") entered a Final Decision in favor of Pro-Serve. On June 13, 2011, the County Trustee filed the

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Petition for Judicial Review, requesting that this Court reverse the Final Decision of the State Board. The dispute concerned the proper statutory rate of interest to be applied to Pro-Serve's payment of the personal property taxes for the years 2001 through 2006.

2. Pro-Serve filed timely appeals for each of the tax years 2001 through 2006, and (while those appeals were pending) Pro-Serve paid the undisputed portion of taxes for those years.

3. The appeal proceedings concluded in 2008. The original tax assessments for each year were reduced, but Pro-Serve was still required to pay some additional taxes. At the time of making final payments, Pro-Serve maintained that it was entitled to the lower appeal rate of interest from and after the date of its payment of the undisputed portion for each of the appealed years under T.C.A. § 67-5-1512(b)(1)(A)(ii)(b). The County disagreed maintaining that Pro-Serve had to pay the penalty and interest rate on delinquent taxes (a combined one and one-half percent (1.5%) per month pursuant to T.C.A. § 67-5-2010(a)), because Pro-Serve did not pay the undisputed portion prior to the delinquency date.

4. The State Board ruled in favor of Pro-Serve, explaining as follows:

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 the 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. 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.

Based on the foregoing findings, it is ORDERED, that the delinquency penalty and interest is abated from and after the date Pro-Serve paid the undisputed portion of the 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 on-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 Tenn. Code Ann. §67-5-1512.

Conclusions of Law

5. The Court agrees with the State Board and concludes that the language set forth in T.C.A. §67-5-1512(b) is ambiguous with regard to the date upon which the undisputed portion of the tax must be paid during the pending appeal in order to qualify for the lower appeal rate of interest. When interpreting a tax or penalty statute like the present one, any ambiguities or doubts must be construed in favor of the taxpayer. Accordingly, the Court concludes that as provided in T.C.A. §67-5-1512, additional tax due in this matter will accrue delinquency penalty at the rate of on-half percent per month (.5%) and delinquency interest at the rate of one percent (1%) per month from the delinquency date only until the date upon which Pro-Serve paid the undisputed portion of the tax. Thereafter, interest only will accrue, and at the appeal rate provided in T.C.A. §67-5-1512 as in effect at the time of the property tax appeals.

6. The Court affirms the Final Decision of the State Board, and holds that the Final Decision (i) does not violate any constitutional or statutory provision; (ii) was not in excess of the statutory authority given to the State Board; (iii) was made upon lawful procedure; and (iv) was not arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Final Decision of the State Board of Equalization is affirmed, that Pro-Serve is granted summary judgment on all claims set forth in the Petition for Judicial Review, and that the Petition for Judicial Review is hereby dismissed with prejudice.

KENNY ARMSTRONG

CHANCELLOR

DATED: June 6, 2013

A TRUE COPY-ATTEST
Donna L. Russell, Clerk & Master
By *Donna L. Russell* D.C. & M.

Approved as to Form:


John J. Cook (17725)

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