

From: Bill Bilyeu
Sent: Monday, November 28, 2011 3:19 PM
To: Keith Self Judge
Subject: FW: Mckinney letter regarding taxes

Greg's info.

From: Greg Hudson [mailto:ghudson@holaw.net]
Sent: Friday, November 18, 2011 11:46 AM
To: Bill Bilyeu
Subject: RE: Mckinney letter regarding taxes

Bill, I do not know where the McKinney EDC is coming from. I just don't see the County has any authority to waive the taxes as requested. They may need to prove up an exception under the law before any consideration by the Commissioners.

Greg

Greg Hudson
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From: Bill Bilyeu [mailto:bbilyeu@co.collin.tx.us]
Sent: Friday, November 18, 2011 8:31 AM
To: Greg Hudson
Subject: FW: Mckinney letter regarding taxes

One last point. I think there are plenty of AG Opinions on 31.011 of the Tax Code that indicate a taxing entity can only waive for specific reasons and this does not appear to be one of them. I don't really need a long opinion on this question unless you think there is a real decision to be made by the Commissioners Court.

Bill

Begin forwarded message:

From: "Bill Bilyeu" <bbilyeu@co.collin.tx.us>
To: "Kenneth Maun" <kmaun@co.collin.tx.us>, "TERRY WILLEY" <twilley@co.collin.tx.us>
Subject: FW: Scanned from MFP-05864640 11/15/2011 22:41

Does the County have the authority to waive these taxes? If so, does it just take an order from Commissioners Court? This is on next Monday's agenda for discussion and action.

Thanks,
Bill



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 21, 1993

Honorable Nathan B. Rheinlander
Comal County Attorney
150 North Seguin, Suite 318
New Braunfels, Texas 78130-5113

Letter Opinion No. 93-58

Re: Whether the Comal County Water
Oriented Recreation District is authorized to
waive penalties and interest due on
delinquent taxes (ID# 19913)

Dear Mr. Rheinlander:

You ask whether the Comal County Water Oriented Recreation District (the "district") is authorized to waive penalties and interest due on delinquent taxes. Apparently, the district has filed collection suits against two marinas in Comal County district court. The district's board of directors (the "board") has been involved in settlement negotiations with the defendants. The board is unsure whether the district has the authority to forgive any penalties as well as interest due on the delinquent taxes which has been demanded in both collection suits.

The district is governed by chapter 324 of the Local Government Code. Section 324.099(a) of the Local Government Code authorizes the district to levy and collect taxes and issue revenue permits. These taxes "are payable only by the purchaser or consumer of the items subject to the tax," Local Gov't Code § 324.099(c), and include a tax on the price paid for river ingress or egress, and a tax on the price paid for the rental of "any water-oriented recreational equipment," *id.* § 324.099(b)(1), (3). A person who offers such items or services must hold a revenue permit issued by the board in order to do so, and must collect the taxes imposed and "report and remit the collected taxes to the district as the district requires." *Id.* § 324.099(d).

Section 324.099 requires revenue permit holders who are delinquent in remitting taxes to pay penalties and interest as follows:

(e) If a revenue permit holder remits taxes after the due date but on or before the 30th day after the due date, the revenue permit holder shall pay the district a penalty of five percent of the amount of taxes due. If the revenue permit holder remits the taxes after the 30th day after the due date, the person who holds the permit shall pay the district a penalty of 10 percent of the amount of taxes due.

(f) Delinquent taxes and accrued penalties draw interest at the rate of 10 percent a year beginning 60 days after the date on which the taxes were due.

Id. § 324.099(e), (f).

In Attorney General Opinion JM-74 (1983), this office considered whether an appraisal district was authorized to waive or rescind penalties and interest owed on delinquent taxes, and concluded that it was not. The conclusion in that opinion rests on the general legal principle that the imposition of penalties falls within the police power of the legislature, and that penalties imposed by the legislature may be waived only if the legislature expressly authorizes an appraisal district to do so. Attorney General Opinion JM-74 (1983) at 2 (citing *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 107 (1909); *First Texas Prudential Insurance Co. v. Smallwood*, 242 S.W. 498, 505 (Tex. Civ. App.--Beaumont 1922, no writ); and *Jones v. Williams*, 45 S.W.2d 130, 137 (Tex. 1931)); see also Attorney General Opinions JM-311 (1985); JM-536 (1986). The opinion also reasoned that because an appraisal district can exercise only those powers and duties which are clearly set forth in the constitution and statutes of this state, the appraisal district at issue was without authority to waive a statutory penalty in the absence of specific statutory authority. Attorney General Opinion JM-74 (citing *Tri-City Fresh Water Supply District No. 2 of Harris County v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940)).

The reasoning of Attorney General Opinion JM-74 applies with equal force here. The district has no authority except that which is set forth in the constitution and statutes. The legislature has expressly provided for penalties and interest in section 324.099, subsections (e) and (f) of the Local Government Code. We are not aware of any statute which expressly authorizes the district to waive penalties and interest.¹ Therefore, we conclude that the district is not authorized to do so.²

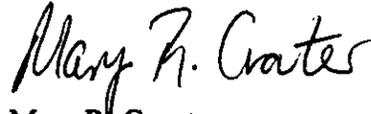
¹A letter from the district's counsel contends that the taxes at issue here are similar to sales taxes, and that because the Comptroller is authorized to waive penalties and interest under the Tax Code, the district should be able to do so as well. Because the district must have *express* authority to waive penalties and interest, we disagree. We also disagree with counsel's suggestion that because the district is not required to collect the taxes in the first place, it can waive penalties and interest. Although the district is authorized but not required to levy the taxes, see Local Gov't Code § 324.099(a) ("[t]he district *may* levy and collect taxes"), if it decides to levy taxes, it is not authorized to waive penalties and interest due on delinquent taxes.

²Because we conclude that the district is not authorized by statute to waive penalties and interest due on delinquent taxes, we do not reach the question whether article III, section 52 of the Texas Constitution would prohibit it from doing so.

S U M M A R Y

The Comal County Water Oriented Recreation District is not authorized to waive penalties and interest due on delinquent taxes.

Very truly yours,

A handwritten signature in black ink that reads "Mary R. Crouter". The signature is written in a cursive style with a large initial "M" and a distinct "R".

Mary R. Crouter
Assistant Attorney General
Opinion Committee



8 of 51 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

Letter Opinion No. 95-090

1995 Tex. AG LEXIS 134

December 22, 1995

SYLLABUS:

[*1]

Re: Whether Local Government Code section 380.001(a) authorizes a home-rule municipality to agree to abate delinquent taxes and related questions (ID# 21377)

REQUESTBY:

Kymerly K. Oltrogge, Assistant Attorney General, Opinion Committee

OPINION:

Honorable Tracey Bright
Ector County Attorney
Ector County Courthouse, Room 218
Odessa, Texas 79761

You have requested this office's opinion as to whether section 380.001(a) of the Local Government Code authorizes the City of Odessa to execute a tax abatement agreement in which the city agrees to abate a taxpayer's delinquent taxes. You premise your request on the following facts:

The City of Odessa created the South Enterprise Zone on May 6, 1991[,] and all of the other taxing entities adopted resolutions agreeing to participate in the Enterprise Zone. The City of Odessa first adopted a program to abate delinquent taxes in the City's Enterprise Zone for purposes of economic development pursuant to § 380.001(a) of the Local Government Code, and the Tax Abatement Act. Subsequently, Odessa Junior College, Ector County, Ector County Independent School District and the Ector County Hospital District also expressed an interest [in] entering into agreements [*2] with property owners to abate delinquent taxes in return for new investment by the property owners or creation of jobs in an Enterprise Zone.

We assume your question concerns the abatement of ad valorem taxes on real property.

As a preliminary matter, we note article III, section 55 of the Texas Constitution provides that the legislature "shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years." Section 55's principal purpose was to prevent the forgiveness of delinquent taxes. 1 GEORGE D. BRADEN, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 270 (1977). See generally Tex. Const. art. III, § 55 Interp. Commentary (Vernon 1984).

Similarly, nothing in chapter 33 of the Tax Code, which pertains to delinquent taxes, authorizes a municipality to forgive delinquent taxes. Section 33.05(c) of the Tax Code permits the removal of a delinquent [*3] tax from the delinquent tax roll only when the tax has been delinquent for twenty years, if the tax is on real property, or ten years, if the tax is on personal property, unless litigation is pending at the end of the specified period (or, we assume, unless the taxpayer pays the tax). This statutory limitation does not release the tax debt, but merely affects the remedy when the taxing unit seeks to enforce it. *See* Attorney General Opinion V-302 (1947) at 2 (and cases cited therein). In addition, while section 33.011 of the Tax Code expressly authorizes the governing body of a taxing unit to waive penalties and interest on a delinquent tax in certain circumstances, it does not authorize the taxing unit to waive collection of the delinquent tax itself.

We assume that the taxes in the situation you pose have been delinquent for less than twenty years. Unless another constitutional provision authorizes a municipality to abate delinquent taxes, therefore, we may not construe section 380.001(a) of the Local Government Code or chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act (the "act"), to permit the abatement of delinquent taxes. We find no such constitutional [*4] provision.

Section 380.001(a) provides as follows:

The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

Section 380.001 is the enabling legislation for article III, section 52-a of the Texas Constitution, which the electorate voted to add to the constitution in 1987. *See* Attorney General Opinion DM-185 (1992) at 2, 4. Under article III, section 52-a of the constitution, the legislature may authorize the creation of a program and the making of a loan or grant of public money "for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state." We find in article III, section 52-a no express authorization for the [*5] legislature to permit a municipality to abate delinquent taxes.

In Attorney General Opinion DM-185, this office determined that section 380.001 of the Local Government Code authorizes a municipality "to perform any of the functions that article III, section 52-a [of the Texas Constitution] permitted the legislature to delegate" to a municipality. Attorney General Opinion DM-185 (1992) at 5. While Attorney General Opinion DM-185 considered "the kind of incentives that a municipality properly may include in a program 'to promote state or local economic development'" for purposes of section 380.001(a), this office declined to consider "specifically which incentives, when offered singularly or in combination, constitute a 'program . . . to promote state or local economic development.'" n1 *Id.* Because article III, section 52-a does not expressly make an exception to article III, section 55 of the constitution, however, we conclude here that section 380.001(a) of the Local Government Code does not authorize a municipality, as part of an economic development program, to agree to abate a taxpayer's delinquent taxes.

n1 We note, however, each component of an economic development program listed in Local Government Code section 380.001(a) involves a promise on the part of a municipality to provide, *in the future*, public money, personnel, or services in return for economic development. While the list of illustrative components is not intended to be exclusive, the forgiveness or abatement of a *past* debt may be qualitatively different.

[*6]

You next ask whether the act, chapter 312 of the Tax Code, authorizes a taxing entity to execute an agreement to abate delinquent taxes. You have informed us that the City of Odessa has agreed to abate delinquent taxes for persons who participate in the city's enterprise zone. An area designated as an enterprise zone pursuant to the Texas Enterprise Zone Act, Government Code chapter 2303, is a reinvestment zone for purposes of chapter 312, subchapter B of the Tax Code. Tax Code § 312.2011.

The act serves as the enabling legislation for article VIII, section 1-g of the Texas Constitution, which permits the legislature by general law to authorize "cities, towns, and other taxing units to grant exemptions or other relief from ad

valorem taxes on property located in a reinvestment zone for the purpose of encouraging development or redevelopment and improvement of the property." *See* Bill Analysis, C.S.S.B. 17, 67th Leg., 1st C.S. (1981). We find nothing in the explicit language of article VIII, section 1-g suggesting a legislative intent to authorize a municipality to abate delinquent property taxes. n2 Thus, to construe chapter 312, and specifically section 312.204, of the Tax Code [*7] to permit a municipality to execute an agreement to abate delinquent taxes would contravene article III, section 55 of the constitution.

n2 The legislature proposed amending the constitution to add article VIII, section 1-g by the passage of Senate Joint Resolution No. 8 in 1981. *See* Tex. S.J. Res. 8, 67th Leg., 1st C.S., 1981 Tex. Gen. Laws 295. In part, the purpose of proposed article VIII, section 1-5(a) was to make Texas businesses and low-income citizens eligible for federal tax breaks under legislation pending before the United States Congress at that time. *See* Bill Analysis, C.S.S.J.R. 8 (1981); TEX. LEGIS. COUNCIL, INFO. REP. NO.81-3, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS APPEARING ON NOV. 3, 1981, BALLOT, at 4 (Sept. 1981). "Pending federal legislation, if enacted, would permit a state or a political subdivision of a state to designate part of its territory for redevelopment as an enterprise zone if it reduced property taxes or offered other financial incentives to encourage jobs and improvement of property in the zone." TEX. LEGIS. COUNCIL, INFO. REP. NO.81-3, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS APPEARING ON NOV. 3, 1981, BALLOT, at 4 (Sept. 1981).

Title 42 U.S.C. chapter 120 appears to comprise the federal legislation for which the legislature proposed enacting article VIII, section 1-g(a) of the Texas Constitution. Section 11501(a)(1) authorizes the Secretary of Housing and Urban Development to designate an area, nominated by a local government and the state in which the land is located, as an enterprise zone. The Secretary of Housing and Urban Development may not designate a nominated area as an enterprise zone, however, unless the local government and the state agree in writing that, while the area is an enterprise zone, the governments will adhere to a specified course of action designed to "reduce the various burdens borne by employers or employees in such area." 42 U.S.C. § 11501(d)(1). The course of action may include, but is not limited to, the following elements:

- (A) a reduction of tax rates or fees applying within the enterprise zone;
- (B) an increase in the level of public services or in the efficiency of the delivery of public services, within the enterprise zone;
- (C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;
- (D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;
- (E) the giving of special preference to contractors owned and operated by members of any minority; and
- (F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

Id. § 11501(d)(2). We note that 42 U.S.C. § 11505(d)(2) does not expressly address tax abatements of delinquent taxes.

[*8]

Indeed, we do not believe the legislature intended by the enactment of section 312.204 of the Tax Code to authorize the abatement of delinquent taxes. Section 312.204, which pertains to municipal tax abatement agreements, provides in pertinent part as follows:

- (a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvest-

ment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, subject to the rights of holders of outstanding bonds of the municipality, on the condition that the owner of the property make specific improvements or repairs to the property. . . .

(b) The agreements made with the owners of property in a reinvestment zone must contain identical terms for the portion of the value of the property that is to be exempt and the duration of the exemption.
n3 [Footnote added.]

n3 *But see* Act of May 27, 1995, 74th Leg., R.S., ch. 985, § 13, 1995 Tex. Sess. Law Serv. 4948, 4954 (to be codified at Tax Code § 312.204(f)) (providing that agreement made with property owner in enterprise zone that is also designated as reinvestment zone need not contain identical terms). Once a municipality has executed a tax abatement agreement regarding a particular piece of property under section 312.204 of the Tax Code, its governing body or a designated officer or employee of the municipality must notify the governing body of each other taxing unit in which the property subject to the agreement is located. Tax Code § 312.2041(a). Any taxing unit authorized by law to do so then may execute a similar tax abatement agreement with the property owner; the agreement "must contain terms identical to those contained in the agreement with the municipality providing for the portion of the property that is to be exempt from taxation under the agreement, the duration of the agreement, and the provisions included in the agreement under Section 312.205" *id.* § 312.206(a).

The Seventy-fourth Legislature amended section 312.206 by adding subsection (e). *See* Act of May 27, 1995, 74th Leg., R.S., ch. 985, § 14, 1995 Tex. Sess. Law Serv. 4948, 4954 (to be codified at Tax Code § 312.206(e)). Under subsection (e), the governing body of a taxing jurisdiction may execute an agreement with the property owner of property whose taxes a county or municipality has abated; "the agreement may," but need not, "contain terms that are identical to those contained in the agreement with the municipality, county, or both,....," except that the taxing jurisdiction may vary the portion of the property that is to be exempt from taxation and the duration of the agreement. *Id.*

[*9]

The legislative history of chapter 312 reveals no intent to permit a municipality to abate a taxpayer's delinquent taxes. The legislature enacted the act in 1981 by the passage of Senate Bill 17. *See* Act of August 10, 1981, 67th Leg., 1st C.S., ch. 5, 1981 Tex. Gen. Laws 53. The purpose of the bill was to permit a municipality to establish "reinvestment zones," within which the owners of nonproductive property may qualify for "partial or total" n4 exemption from ad valorem taxation on the condition that the owner of the property makes specified improvements or repairs to the property. Senate Finance Comm., Bill Analysis, S.B. 17, 67th Leg., 1st C.S. (1981); *see also* Bill Analysis, C.S.S.B. 17, 67th Leg., 1st C.S. (1981) (stating that bill would permit municipality to contract with individual property owners to improve their property in return for property tax reductions").

n4 Section 312.204(a) of the Tax Code authorizes a municipality to exempt from taxation under chapter 312 only "a *portion* of the value of the real property or of tangible personal property" (Emphasis added.)

[*10]

In our opinion, section 312.204 of the Tax Code permits the abatement of only ad valorem taxes to be assessed in the future. To construe the statute otherwise would, as we have suggested, violate article III, section 55 of the constitution. We therefore conclude that neither Local Government Code section 380.001 nor Tax Code section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

SUMMARY

Neither Local Government Code section 380.001 nor Tax Code section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

Legal Topics:

For related research and practice materials, see the following legal topics:

Environmental Law Zoning & Land Use Constitutional Limits Tax Law Federal Tax Administration & Procedure Tax Credits & Liabilities Credits, Overassessments & Refunds (IRC secs. 6401-6427) General Overview Tax Law State & Local Taxes Real Property Tax Assessment & Valuation General Overview



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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

Opinion No. GA-0548

2007 Tex. AG LEXIS 52

May 24, 2007

SYLLABUS:

[*1]

Authority of a local taxing unit to waive penalties and interest on taxes that became delinquent as a result of an act or omission of an officer, employee, or agent of the appraisal district (RQ-0555-GA)

REQUESTBY:

The Honorable C.E. "Mike" Thomas, III
Howard County Attorney
Post Office Box 2096
Big Spring, Texas 79721-2096

OPINIONBY:

GREG ABBOTT, Attorney General of Texas; KENT C. SULLIVAN, First Assistant Attorney General; ELLEN L. WITT, Deputy Attorney General for Legal Counsel; NANCY S. FULLER, Chair, Opinion Committee; Susan L. Garrison, Assistant Attorney General, Opinion Committee

OPINION:

On behalf of several local taxing units you ask the following question:

May local taxing units waive penalties and interest pursuant to Property Tax Code Section 33.011 (or any other provision of the Property Tax Code) on delinquent ad valorem taxes which became delinquent as a result of an act or omission of an agent of the appraisal district, which were paid in full (including all accrued penalties and interest) within 21 days after the taxpayer knew or should have known of the delinquency, when a written request for such waiver was received within such 21 day period, but [*2] not within the 181st day after the delinquency date? n1

n1 Letter from Honorable C.E. "Mike" Thomas, 111, Howard County Attorney, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Nov. 15, 2006) (on file with the Opinion Committee, *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter].

Your request relates to a specific property, which is subject to ad valorem tax by four political subdivisions. *See* Request Letter, *supra* note 1, at 1. The tax assessor for each taxing unit is required to mail tax bills to persons in whose names property is listed by October 1 or as soon thereafter as practicable. *See* TEX. TAX CODE ANN. § 31.01(a)

(Vernon Supp. 2006). Subject to narrow exceptions, "taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed." *Id.* § 31.02(a). If a tax bill is mailed after January 10, the delinquency date will be postponed until a certain [*3] date after the date of mailing to allow for paying the taxes before they become delinquent. *See id.* § 31.04(a). But if no bill is mailed to the taxpayer because his address is unknown, the February 1 delinquency date will still apply. *See Aldine Indep. Sch. Dist. v. Ogg*, 122 S.W.3d 257, 274-75 (Tex. App.--Houston [1st Dist.] 2003, no pet.) (citing Tex. Att'y Gen. Op. No. JM-1192 (1990) at 8); *see also* TEX. TAX CODE ANN. § 31.01(g) (Vernon Supp. 2006) (failure to send or receive the tax bill required by section 31.01 "does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax"). Tax Code section 33.01 provides for penalty and interest on delinquent taxes. *See* TEX. TAX CODE ANN. § 33.01 (Vernon 2001).

You inform us that taxes became delinquent on the property in question for the years 2003, 2004, and 2005 as a result of an act or omission by an agent of the appraisal office. *See* Request Letter, *supra* note 1, at 1. The taxpayer became [*4] aware of the delinquency on or about October 15, 2006, and paid under protest the delinquent taxes for all three years, including all accrued penalty and interest, on October 30, 2006. *See id.* at 1-2. The taxpayer included with the payment a written request for a waiver of penalties and interest. *See id.* at 2. You ask whether Tax Code section 33.011 may authorize the taxing units to waive penalties and interest. *See id.* at 1-2. This provision states in part:

(a) The governing body of a taxing unit:

(1) shall waive penalties and may provide for the waiver of interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid not later than the 21st day after the date the taxpayer knows or should know of the delinquency[.]

TEX. TAX CODE ANN. § 33.011(a)(l) (Vernon Supp. 2006); *see also id.* § 33.011(b) (waiver of interest and penalties if a tax bill is returned undelivered to the governmental [*5] body, subject to additional conditions), (h) (waiver of interest and penalties if a tax payable by electronic funds transfer was delinquent because of an error in the transmission).

The section 33.011 waiver provisions are, however, subject to the following limitation:

A request for a waiver of penalties and interest under Subsection (a)(l), (b), or (h) must be made before the 181st day after the delinquency date. . . . *To be valid, a waiver of penalties or interest under this section must be requested in writing. If a written request for a waiver is not timely made, the governing body of a taxing unit may not waive any penalties or interest under this section.*

Id. § 33.011(d) (emphasis added). The italicized language of section 33.011(d) was adopted by an act of the Seventy-ninth Legislature that included the following transition clause:

Section 33.011, Tax Code, as amended by this Act, applies only to a request for a waiver of penalty or interest made on or after the [September 1, 2005] effective date of this Act. A request for a waiver made before the effective date of this Act is governed by the law as it existed immediately [*6] before the effective date of this Act, and the former law is continued in effect for that purpose.

Act of May 29, 2005, 79th Leg., R.S., ch. 1126, § 29(g), 2005 Tex. Gen. Laws 3717, 3730. *See also id.* § 15, at 3723 (amending Tax Code section 33.011(d)); *id.* § 30, at 3731 (effective September 1, 2005).

Section 33.011(d) of the Tax Code, as amended in 2005, applies to the taxpayer's written request for a waiver of penalties and interest made on October 30, 2006. *See id.* § 29(g), at 3730. You have stated that the taxpayer's written request for a waiver of penalties and interest was not made before the 181st day after the delinquency date for each of the three years in which taxes were delinquent. *See* Request Letter, *supra* note 1, at 2. **The plain language of section 33.011(d) compels us to conclude that the taxing units may not waive penalties or interest on the delinquent taxes.**

You ask whether any other statute or constitutional provision authorizes taxing units to waive the penalties and interest on this account. *See id.* at 1-2. Because you provide no specifics about the act or [*7] omission causing the taxpayer's failure to pay his taxes on time, we will answer your questions in general terms.

We note initially that a taxpayer is charged with knowledge of the law. *See Mexia Indep. Sch. Dist. v. City of Mexia*, 133 S.W.2d 118, 121 (Tex. 1939); *see also Texaco, Inc. v. Short*, 454 U.S. 516, 532 (1982) (property owners are especially charged with knowledge of laws relating to taxation). Moreover, a political subdivision may not waive penalties and interest imposed by statute absent statutory authority. *See* Tex. Att'y Gen. LO-93-58, at 2 (special district may not waive penalties and interest due on delinquent taxes); *see also* Tex. Att'y Gen. Op. No. JM-74 (1983) at 2 (appraisal district may not waive penalties and interest imposed upon taxing units that are delinquent in paying their share of the district's expenses). Tax Code section 41.41 entitles a property owner to protest certain actions before the appraisal review board, including "any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects [*8] the property owner," and section 41.411 authorizes a property owner to "protest before the appraisal review board the failure of the chief appraiser or the appraisal review board to provide or deliver any notice to which the property owner is entitled." TEX. TAX CODE ANN. §§ 41.41(a)(9), 41.411(a) (Vernon 2001). A notice of the protest must be filed with the appraisal review board according to the applicable deadlines of section 41.44. *See id.* § 41.44 (Vernon Supp. 2006); *see also id.* § 41.44(c) (notice of protest authorized by section 41.411 must be filed before the date when the taxes become delinquent). Whether any remedies are available to a particular taxpayer depends on the facts of that case.

SUMMARY

Tax Code section 33.011 requires a taxing unit to waive penalties and authorizes it to waive interest on a delinquent tax if the taxpayer's failure to pay the tax before delinquency resulted from an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates and if the tax was paid not later than the 21st day after [*9] the date the taxpayer knew or should have known of the delinquency. Section 33.011 requires such a request for a waiver of penalties and interest to be made before the 181st day after the delinquency date.

Legal Topics:

For related research and practice materials, see the following legal topics:

Administrative Law
Judicial Review
Reviewability
Standing
Banking Law
Bank Activities
Electronic Banking
General Overview
Computer & Internet Law
Taxation
General Overview



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*** Federal case annotations: July 14, 2011 postings on Lexis ***
*** State case annotations: July 2, 2011 postings on Lexis ***

TAX CODE
TITLE 1. PROPERTY TAX CODE
SUBTITLE E. COLLECTIONS AND DELINQUENCY
CHAPTER 33. DELINQUENCY
SUBCHAPTER A. GENERAL PROVISIONS

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Tex. Tax Code § 33.011 (2011)

§ 33.011. Waiver of Penalties and Interest

(a) The governing body of a taxing unit:

(1) shall waive penalties and may provide for the waiver of interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid not later than the 21st day after the date the taxpayer knows or should know of the delinquency;

(2) may waive penalties and provide for the waiver of interest on a delinquent tax if:

(A) the property for which the tax is owed is acquired by a religious organization; and

(B) before the first anniversary of the date the religious organization acquires the property, the organization pays the tax and qualifies the property for an exemption under Section 11.20 as evidenced by the approval of the exemption by the chief appraiser under Section 11.45; and

(3) may waive penalties and provide for the waiver of interest on a delinquent tax if the taxpayer submits evidence showing that:

(A) the taxpayer attempted to pay the tax before the delinquency date by mail;

(B) the taxpayer mailed the tax payment to an incorrect address that in a prior tax year was the correct address for payment of the taxpayer's tax;

(C) the payment was mailed to the incorrect address within one year of the date that the former address ceased to be the correct address for payment of the tax; and

(D) the taxpayer paid the tax not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

(b) If a tax bill is returned undelivered to the taxing unit by the United States Postal Service, the governing body of the taxing unit shall waive penalties and interest if:

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(1) the taxing unit does not send another tax bill on the property in question at least 21 days before the delinquency date to the current mailing address furnished by the property owner and the property owner establishes that a current mailing address was furnished to the appraisal district by the property owner for the tax bill before September 1 of the year in which the tax is assessed; or

(2) the tax bill was returned because of an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates and the taxing unit or appraisal district did not send another tax bill on the property in question at least 21 days before the delinquency date to the proper mailing address.

(c) For the purposes of this section, a property owner is considered to have furnished a current mailing address to the taxing unit or to the appraisal district if the current address is expressly communicated to the appraisal district in writing or if the appraisal district received a copy of a recorded instrument transferring ownership of real property and the current mailing address of the new owner is included in the instrument or in accompanying communications or letters of transmittal.

(d) A request for a waiver of penalties and interest under Subsection (a)(1) or (3), (b), or (h) must be made before the 181st day after the delinquency date. A request for a waiver of penalties and interest under Subsection (a)(2) must be made before the first anniversary of the date the religious organization acquires the property. To be valid, a waiver of penalties or interest under this section must be requested in writing. If a written request for a waiver is not timely made, the governing body of a taxing unit may not waive any penalties or interest under this section.

(e) Penalties and interest do not accrue during the period that a bill is not sent under Section 31.01(f).

(f) A property owner is not entitled to relief under Subsection (b) of this section if the property owner or the owner's agent furnished an incorrect mailing address to the appraisal district or the taxing unit or to an employee or agent of the district or unit.

(g) Taxes for which penalties and interest have been waived under Subsection (b) of this section must be paid within 21 days of the property owner having received a bill for those taxes at the current mailing address.

(h) The governing body of a taxing unit shall waive penalties and interest on a delinquent tax if:

(1) the tax is payable by electronic funds transfer under an agreement entered into under Section 31.06(a); and

(2) the taxpayer submits evidence sufficient to show that:

(A) the taxpayer attempted to pay the tax by electronic funds transfer in the proper manner before the delinquency date;

(B) the taxpayer's failure to pay the tax before the delinquency date was caused by an error in the transmission of the funds; and

(C) the tax was properly paid by electronic funds transfer or otherwise not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 769 (H.B. 2434), § 1, effective June 14, 1985; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 31, effective June 15, 1989; am. Acts 1991, 72nd Leg., ch. 836 (S.B. 772), § 5.1, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 579 (S.B. 642), § 11, effective January 1, 1996 (renumbered from Sec. 31.015); am. Acts 1999, 76th Leg., ch. 606 (S.B. 779), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 817 (H.B. 1604), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 768 (S.B. 1736), § 1, effective June 30, 2001; am. Acts 2003, 78th Leg., ch. 151 (S.B. 725), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 15, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 413 (S.B. 1063), § 1, effective June 15, 2007.

NOTES:

Applicability. --

Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 29(g) provides: "Section 33.011, Tax Code, as amended by this Act, applies only to a request for a waiver of penalty or interest made on or after the effective date of this Act. A request for a waiver made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose."

2005 amendment,

added (A) and (B) designations to (a)(2); rewrote (a)(2)(B), which read: "that qualifies the property for exemption under Section 11.20 before the first anniversary of the date the religious organization acquires the property"; rewrote (d), which read: "A request for a waiver of penalties and interest under this section must be made before the 181st day after the delinquency date."; and made stylistic changes throughout.

2007 amendment,

added (a)(3); added "or (3)" in (d); and made related changes.

LexisNexis (R) Notes:

CASE NOTES

1. In a suit for collection of past due real property tax, where the current landowner intervened for refund of penalties and interest paid under protest, Tex. Tax Code Ann. § 33.011(a), (d) did not bar the current landowner's intervention; the taxing authorities waived the issue of avoidance by not pleading it as an affirmative defense under Tex. R. Civ. P. 94. *WHM Props. v. Dallas County*, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco 2003).
2. In a suit against a corporation for collection of real property taxes, Tex. Tax Code Ann. § 33.011(a), (d) did not bar the current landowner from intervening in the suit to seek to recover a refund of penalties and interest on ad valorem taxes it paid under protest, because the taxing authorities waived the issue of avoidance by not pleading it as an affirmative defense, as required by Tex. R. Civ. P. 94. *WHM Props. v. Dallas County*, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco 2003).
3. Property owner was not entitled to a waiver of penalties pursuant to Tex. Tax Code 33.011(a)(1) as no evidence showed the reduction in the valuation of its property caused or resulted in its failure to pay the tax before the delinquency. *Richardson Indep. Sch. Dist. v. GE Capital Corp.*, 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas 2001).
4. In a suit against a corporation for collection of real property taxes, Tex. Tax Code Ann. § 33.011(a), (d) did not bar the current landowner from intervening in the suit to seek to recover a refund of penalties and interest on ad valorem taxes it paid under protest, because the taxing authorities waived the issue of avoidance by not pleading it as an affirmative defense, as required by Tex. R. Civ. P. 94. *WHM Props. v. Dallas County*, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco 2003).
5. Trial court did not err in entering a judgment for a school district in its suit brought against property owners for delinquent taxes, penalties and interest owed, and foreclosure of its tax lien, that included taxes, penalties, interest, and attorney fees where the appellate court found nothing in Tex. Tax. Code Ann. § 33.011(a) that would have required the district to have waived the penalty and interests assessed under the record in the instant case. *Coleman v. Snook Indep. Sch. Dist.*, 2004 Tex. App. LEXIS 5076 (Tex. App. Houston 14th Dist. June 10 2004).
6. Appellee corporation was entitled to a waiver of late payment tax penalties pursuant to Tex. Tax Code Ann. § 33.011 because the failure to pay the taxes before the delinquency date was the result of an error by an employee of the county

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appraisal district and not of appellee corporation. *Spring Branch Indep. Sch. Dist. v. Citicorp Nat'l Servs.*, 1995 Tex. App. LEXIS 2399 (Tex. App. Houston 1st Dist. Oct. 5 1995).

7. County mischaracterizes Tex. Tax Code Ann. § 33.011 as vesting in the taxing authority discretionary power to waive penalties; this is not an accurate reading of the statute; the statute mandates that the taxing authority "shall waive penalties" if the acts of its own agents cause the delinquency. *Inwood Dad's Club v. Aldine Indep. Sch. Dist.*, 882 S.W.2d 532, 1994 Tex. App. LEXIS 2048 (Tex. App. Houston 1st Dist. 1994), criticized in *Richards v. Mena*, 907 S.W.2d 566, 1995 Tex. App. LEXIS 1024, 95:20 Tex. Civil Op. Serv. 241 (Tex. App. Corpus Christi 1995).

8. Taxpayer was not entitled to a refund pursuant to Tex. Tax Code § 33.011 where his payment of penalties, interest, and collection fees in connection with his payment of delinquent taxes to a school board was voluntary, and not the result of duress. *Sheldon v. Jasper Indep. Sch. Dist.*, 768 S.W.2d 884, 1989 Tex. App. LEXIS 1375 (Tex. App. Beaumont 1989).

9. Taxpayers did not raise issue of fact as to their affirmative defense based on Tex. Tax Code Ann. sec. 31.04(a) because they failed to raise an issue of fact as to whether they were entitled to a postponement of the delinquency date; furthermore, because Tex. Tax. Code Ann. sec. 33.011 was discretionary, they failed to raise an issue of fact because they were not entitled to waiver of the penalties and interest. *Amoroso v. Aldine Indep. Sch. Dist.*, 808 S.W.2d 118, 1991 Tex. App. LEXIS 475 (Tex. App. Houston 1st Dist. 1991).

10. Trial court did not err in entering a judgment for a school district in its suit brought against property owners for delinquent taxes, penalties and interest owed, and foreclosure of its tax lien, that included taxes, penalties, interest, and attorney fees where the appellate court found nothing in Tex. Tax. Code Ann. § 33.011(a) that would have required the district to have waived the penalty and interests assessed under the record in the instant case. *Coleman v. Snook Indep. Sch. Dist.*, 2004 Tex. App. LEXIS 5076 (Tex. App. Houston 14th Dist. June 10 2004).

11. In a suit against a corporation for collection of real property taxes, Tex. Tax Code Ann. § 33.011(a), (d) did not bar the current landowner from intervening in the suit to seek to recover a refund of penalties and interest on ad valorem taxes it paid under protest, because the taxing authorities waived the issue of avoidance by not pleading it as an affirmative defense, as required by Tex. R. Civ. P. 94. *WHM Props. v. Dallas County*, 119 S.W.3d 325, 2003 Tex. App. LEXIS 6845 (Tex. App. Waco 2003).

12. Property owner was not entitled to a waiver of penalties pursuant to Tex. Tax Code 33.011(a)(1) as no evidence showed the reduction in the valuation of its property caused or resulted in its failure to pay the tax before the delinquency. *Richardson Indep. Sch. Dist. v. GE Capital Corp.*, 58 S.W.3d 290, 2001 Tex. App. LEXIS 6876 (Tex. App. Dallas 2001).

TREATISES AND ANALYTICAL MATERIALS

1. 4-70 Texas Real Estate Guide § 70.02, LITIGATION: GOVERNMENTAL CLAIMS, REAL PROPERTY TAX SUITS, Taxing Procedure, Texas Real Estate Guide.

2. 17-260 Dorsaneo, Texas Litigation Guide § 260.02, Pleadings in Real Estate Litigation (Chs. 250-285), Governmental Claims (Chs. 260-261), Taxing Procedure, Dorsaneo, Texas Litigation Guide.

LAW REVIEWS

1. 55 SMU L. Rev. 1315, ARTICLE: Taxation, Summer, 2002.

LexisNexis Practice Insights

LexisNexis 50 State Surveys, Legislation & Regulations

Personal Property Tax