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Pending Ohio Exempt-Facility Certificates? Be Sure To File Your Final Assessment Request Before The Assessment Becomes Final By Operation Of Law

Phyllis J. Shambaugh
Columbus
(614) 281-3824

A recent decision of the Supreme Court of Ohio reinforced that the Tax Commissioner cannot consider a refund of personal property taxes unless a request for final assessment ("Final Assessment Request") is filed before the assessment becomes final pursuant to R.C. 5711.25, even if an exempt-facility certificate is still pending. *SCM Chemicals, Inc. v. Wilkins*, 106 Ohio St.3d 43 (2005).

What are Exempt-Facility Certificates?

Companies that install equipment to control air and water pollution at their facilities often seek exempt-facility certificates for these devices. Exempt-facility certificates, once granted, exempt the air and pollution control equipment from personal property taxes.¹ Because approval of exempt-facility certificates requires investigation and approval by the Ohio Environmental Protection Agency, certificates are frequently not issued until many years after an application has been filed.

Pursuant to R.C. 5709.21(B), the exemption becomes effective on the effective date of the exempt-facility certificate or the date of construction of the exempt facility, whichever is earlier. The length of the approval process combined with the effective date of the certificate may result in an overpayment of personal property tax for earlier years. Therefore, a taxpayer must be vigilant and file its Final Assessment Request for all tax years that might be affected by the exempt-facility certificates, or risk the loss of the tax exemption for such years.

Facts

SCM Chemicals, Inc. ("SCM") operates a manufacturing facility in Ashtabula County, Ohio. In order to control air and water pollution at its manufacturing facility, SCM installed depth collectors, pumps and other devices. In 1990 and 1994, SCM filed applications for exempt-facility certificates pursuant to R.C. 5709.20 through 5709.27. SCM received three exempt-facility certificates. The first was issued on July 27, 1995 with an effective date of March 19, 1990. The certificate was reissued on July 16, 1996,

¹ The provisions regarding exempt-facility certificates are in R.C. 5709.20 through 5709.27

with a new effective date of November 30, 1983. The second certificate was issued on August 1, 1995 with an effective date of October 1, 1974 and the third certificate was issued on August 29, 1997, with an effective date of October 1, 1989.

Refund Request Process

In order to obtain a refund of personal property tax previously paid, a taxpayer must file a Final Assessment Request pursuant to R.C. 5711.26. The Final Assessment Request must be filed prior to the time the Tax Commissioner's assessment becomes final by operation of law in R.C. 5711.25. That provision states that the taxable value of personal property "shall become final on the second Monday of August of the second year after the filing of a return with the county auditor." Therefore, pursuant to R.C. 5711.25, SCM's 1994 assessment became final in August 1996 and the 1995 assessment became final in August 1997. Since SCM did not file a Final Assessment Request for these years until 2001, the Tax Commissioner found that he could not consider SCM's refund request.

The Board of Tax Appeals ("Board") found that the Tax Commissioner should have considered the refund request for the exempt-facility certificate issued on August 29, 1997 because the exempt-facility certificate was not issued until after the time for filing a Final Assessment Request had expired. In so holding, the Board found that the Tax Commissioner should have overlooked the filing deadline because compliance with that deadline was impossible.

Supreme Court Held that Final Assessment Request Must be Filed per the Limitations Period in R.C. 5711.25, Even If Exempt-Facility Certificates Are Not Issued Until After that Deadline has Passed.

The Supreme Court reversed the Board and held:

The Tax Commissioner may not consider a taxpayer's application for a rebate of personal property tax payments when the application was filed after the expiration of the filing deadline set forth in R.C. 5711.25 even though the grounds on which the taxpayer relied did not arise until after that statutory time limit had passed.

Id. at ¶ 16.

While acknowledging that the exempt-facility certificate provisions in the Ohio Revised Code could result in the issuance of exempt-facility certificates with an effective date years earlier than the date of issue, the Court noted that R.C. 5711.25 and 5711.26 are the only provisions that provide a vehicle for refunds of personal property tax. Since these provisions do not include any language that would allow an untimely Final Assessment Request to be filed in the event that an exempt-facility certificate is issued after the time in 5711.25 expired, the Tax Commissioner could not consider SCM's request.

The Court noted that SCM could have prevented the loss of the tax benefit from these exempt-facility certificates by filing timely Final Assessment Requests with the Tax Commissioner prior to the issuance of the exempt-facility certificates. Further, the Court pointed out that SCM had sufficient information to file timely Final Assessment Requests before the statutory deadline because they applied for the exempt-facility certificates in 1990 and 1994, and were aware that tax exemptions might be granted that could affect its 1994 and 1995 returns.

The Bottom Line

A taxpayer that has pending exempt-facility applications must be sure to file Final Assessment Requests prior to the expiration of the two-year period in R.C. 5711.25. Failure to do so may result in the loss of benefit of valuable tax exemptions.■



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