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August 8, 2016

*Via E-Mail: [dmonschke@dentonisd.org](mailto:dmonschke@dentonisd.org)*

Ms. Debbie Monschke, Assistant Superintendent of Administrative Services  
Denton Independent School District

RE: Request for Waiver of Penalty and Interest; Property Tax Account Nos. 660414DEN, 660415DEN and 660405DEN

Dear Debbie:

Pursuant to Texas Property Tax Code Section 33.011, under certain circumstances the governing body of a taxing authority either may or must waive penalty and interest otherwise due and owing on property taxes assessed against property within the taxing authority's boundaries. We, as your Property Tax Attorneys, received requests for review of penalty and interest from the Denton County Tax Office after submittal by the taxpayer making each request, copies enclosed. We offer the following opinion with respect to each request.

Each account is one of a number of tax delinquencies that have recently been placed in an "Exempt" status under the name of "TxDOT". This involved a condemnation process whereby the Texas Department of Transportation acquired property from the taxpayer in the year 2015 that is at issue here for unpaid taxes. Upon recent notification by our office that this 2015 tax was unpaid, the taxpayer timely paid same under protest, and filed this request for waiver of the penalty and interest.

**We support the request.**

Section 33.011 (a)(1), Texas Property Tax Code, provides in pertinent part that "The governing body of a taxing unit . . . 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 21<sup>st</sup> day after the date the taxpayer knows or should know of the delinquency". Per subsection (d) of Section 33.011, such a request for waiver of penalties and interest "must be made before the 181<sup>st</sup> day after the delinquency date".

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Although there may be some ambiguity and possible differing of opinion as to whether the requisite "error or omission" occurred causing the delinquency, I strongly believe under these narrow circumstances that it did. The error or omission was, in my opinion, the result of a flaw in the condemnation process whereby:

1. no accounting, pro-ration or payment was made of estimated or actual current-year taxes (the year when the condemnation closed) by TxDOT or any party out of the condemnation;
2. no substantive notice was provided to the "seller" that seller would have any responsibility to pay current-year taxes after the sale to TxDOT;
3. the property condemned was placed into an effectively dormant, "exempt" status upon transfer to TxDOT;
4. no record at the Denton Central Appraisal District or the Denton County Tax Office retained the condemnation seller's identity as a responsible party for taxes accruing during the part of the year of condemnation that seller owned same (and for which seller is now being held responsible);
5. no notice was provided or attempted to the taxpayer that taxes they were solely responsible for were assessed, billed or had fallen delinquent, having only been sent to TxDOT by the Tax Office (which is technically the required minimum notice under the Property Tax Code); and
6. under the current system, it was impossible for the taxpayer to discover their tax liability or even to pay it, as no record of their liability had heretofore been kept to identify them as a liable party on the new TxDOT-owned account.

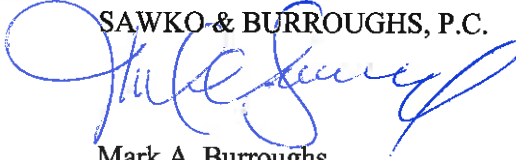
There is a provision of the Property Tax Code, Section 26.11, that indirectly provides a mechanism for estimating and pro-rating taxes on property acquired during a year by an exempt governmental entity. However, in the present situation, this was not done and no action was taken by TxDOT or any party to the condemnation process to identify or allocate the estimated and pro-rated tax liability to the prior owner as provided therein. Apparently nothing in the current condemnation process compels TxDOT to perform this function, and no tax bills received by TxDOT on the subject property were ever forwarded to the condemnee taxpayer, nor did the Tax Office send any notices of this tax indebtedness to the responsible taxpayer (as, again, no Code provision applies to compel the Tax Office to do so).

Therefore, under these circumstances, the first notice received or that was possible to be received by the taxpayer was from our office well after penalty and interest accrued against the unpaid tax. In my opinion, a flaw in the system of accounting for current-year taxes in a condemnation proceeding caused "an act or omission" by the Denton County Tax Office, the Denton Central Appraisal District and/or their agents, to prevent notice or timely payment of 2015 taxes on this tax account by the responsible taxpayer subject to the condemnation action.

All other necessary conditions to provide for waiver being present, I submit this taxpayer request for waiver of all penalties and interest for 2015 taxes on the aforesaid property tax account, and for refund of said penalties and interest that may have been paid under protest, with my endorsement supporting same. For your information, this action simultaneously removes all attorney's fees otherwise owed to us on this account as well.

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Sincerely,

SAWKO & BURROUGHS, P.C.  


Mark A. Burroughs  
Attorney at Law

MAB/CD

Enclosures

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