PUBLICATION

Spotlight on Tennessee: Appellate Court Broadly Interprets Disclosure Protections

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Tennessee's Public Records Act, found at Tenn. Code Ann. Section 10-7-503, creates a presumption that government documents are open for public inspection. However, pursuant to Section 67-1-1702, tax information and tax administration information are statutory exceptions to that presumptive general rule. The state of Tennessee and its various agencies, including the Tennessee Department of Revenue (Department), typically interpret these exceptions very broadly. As a result, information pertaining to other taxpayers can be difficult to obtain from the state during the discovery process in tax litigation.

There are very few reported cases which address the issue of the proper scope of the tax information and tax administration information exceptions. Those cases have identified two purposes of such exceptions: (i) to protect the confidentiality of taxpayer information from disclosure to third parties and (ii) to facilitate the Department's ability to formulate tax policy, develop standards, criteria and audit procedures, and to administer, manage, and enforce the tax laws.

Most recently, the Tennessee Court of Appeals in Coleman v. Kisber on October 4, 2010 addressed such exceptions in the context of the Tennessee Small Business Investment Company Credit Act, found at Sections 4-28-101 et seq. (Tennessee Investment Credit Act). Under the Tennessee Investment Credit Act, the state allocated tax credits to six entities selected by the Tennessee Commissioner of Economic and Community Development and the Tennessee Commissioner of Revenue. Plaintiff Coleman applied for, but was denied, such a tax credit. He then made public records requests to the state for documentation relating to the decisions concerning the allocation of this tax credit. When the state did not supply all the documents Coleman requested, he sued both of the above-referenced commissioners to obtain that information.

Although the dispute was wide ranging, it centered on various agreements, requirements and procedures for issuing the tax credits, as well as on the specific terms and conditions for the purchase of the tax credits by particular taxpayers. The disputed information included evaluation matrices utilized by the Commissioner of Revenue to decide who would be awarded a tax credit. The trial court reviewed the requested documents and ruled that the tax information and tax administration information exceptions did not apply. The state appealed that ruling.

Even though the taxpayers whose information was to be disclosed agreed to waive any objection to its disclosure, the Court of Appeals overruled the trial court and found that this information constituted protected tax information and tax administration information. In doing so, the Court of Appeals was convinced that the mechanism for awarding tax credits was related to the Department's general duty of administering the tax laws and policies of the state of Tennessee. The Appeal Court found that the trial court's interpretation of tax administration information as only involving a past or present tax review was too narrow. Rather, the Court of Appeals considered the issue more generally, stating that so long as the withholding of such documents furthered the Department's purpose to develop and implement the Tennessee Investment Credit Act in a manner consistent with its goal, spurring economic development and raising capital, those documents would be protected from public view.[1]

Should you have any questions about this recent Tennessee Court of Appeals decision, or should you wish to discuss any other Tennessee tax related matters, please contact any attorney in the Firm's Tax Department.

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[1] The Commissioner of Revenue does have the discretion to permit disclosure of such information if the Commissioner determines that disclosure is in the best interest of the state. Tenn. Code Ann. Section 67-1-1711. However, the Revenue Commissioner in this case did not reach such determination.