

Pro-Wall

ASSESSMENTS

Bankruptcy

The filing of a bankruptcy petition prevents collection action on a debt; it does not stay actions relating to determination of the amount of taxes due and does not prevent the Board from taking further action on an appeal of an assessment.*In re Pro-Wall*, BIA Dec., 05 21844 (2008)

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1 **BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS**
2 **STATE OF WASHINGTON**

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4 **IN RE: PRO-WALL, INC., DBA PROWALL) DOCKET NO. 05 21844**
5)
6 **FIRM NO. 045,133-00) DECISION AND ORDER**

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8 **APPEARANCES:**

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10 Firm, Pro-Wall Inc., DBA ProWall, by
11 Law Office of Scott Peterson, per
12 Scott Peterson

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14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Diane Hunter-Cornell, Assistant

17 The firm, Pro-Wall, Inc., DBA ProWall (hereafter ProWall), filed an appeal with the Board of
18 Industrial Insurance Appeals on December 1, 2005, from Order and Notice Reconsidering Notice
19 and Order of Assessment of Industrial Insurance Taxes No. 0392418 of the Department of Labor
20 and Industries dated September 16, 2005. In this Order and Notice the Department modified
21 Notice and Order of Assessment No. 0392418 of the Department dated April 18, 2005, and
22 determined the firm owed the sum of \$19,627.10 to the Department for industrial insurance
23 premiums, penalties, and interest, which accrued from the first quarter of 2002 through the fourth
24 quarter of 2004, and demanded payment of that sum. The appeal is **DISMISSED**.
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28 **DECISION**

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30 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
31 and decision on a timely Petition for Review filed by the firm to a Proposed Decision and Order
32 issued on January 31, 2008, in which the industrial appeals judge dismissed the firm's appeal. All
33 contested issues are addressed in this order.
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36 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
37 no prejudicial error was committed and the rulings are affirmed.
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40 In the Petition for Review ProWall filed on February 26, 2008, the firm declared it had filed a
41 petition for bankruptcy in the United States Bankruptcy Court for the Western District of
42 Washington. ProWall asserted the filing automatically stayed any further action by this Board in
43 adjudicating its appeal of the Department's order of assessment. We granted ProWall's Petition for
44 Review on March 10, 200, in order to investigate whether further action should be stayed.
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1 In relevant part, 11 USC 362 (b) provides:

2 (b) The filing of a petition under section 301, 302, or 303 of this *title*
3 [11 USCS §301, 302, or 303], . . . does not operate as a stay—
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6 (9) under subsection (a), of—

7 (A) an audit by a governmental unit to determine tax liability;

8 (B) the issuance to the debtor by a governmental unit of a notice of
9 tax deficiency;

10 (C) a demand for tax returns; or

11 (D) the making of an assessment for any tax and issuance of a
12 notice and demand for payment of such an assessment (but any tax lien
13 that would otherwise attach to property of the estate by reason of such
14 an assessment shall not take effect unless such tax is a debt of the
15 debtor that will not be discharged in the case and such property or its
16 proceeds are transferred out of the estate to, or otherwise revested in,
17 the debtor).
18

19 This code section allows taxing authorities to conclude the process of assessing a tax even
20 after the automatic stay goes into effect. The stay precludes only action to place a lien of property
21 or to collect the debt. Accordingly, the bankruptcy petition ProWall filed does not stay this Board
22 from taking further action on the firm's appeal.
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24 The issue presented by this appeal and the evidence presented by the parties are
25 adequately set forth in the Proposed Decision and Order.
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27 After consideration of the Proposed Decision and Order and the Petition for Review filed
28 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
29 Decision and Order is supported by the preponderance of the evidence and is correct as a matter of
30 law.
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33 **FINDINGS OF FACT**

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- 35 1. On April 18, 2005, the Department of Labor and Industries issued Notice
36 of Assessment of Industrial Insurance Taxes No. 0392418 against
37 Pro-Wall, Inc., DBA ProWall (hereafter ProWall). The Notice and Order
38 of Assessment declared the firm owed the Department the sum of
39 \$21,802.28 in taxes, interest, and penalties, which accrued during all
40 four quarters of 2002, 2003, and 2004, and demanded payment of that
41 amount. ProWall protested the notice of assessment on May 18, 2005.
42 On September 16, 2005, the Department issued Order and Notice
43 Reconsidering Notice and Order of Assessment of Industrial Insurance
44 Taxes No. 0392418. The Order and Notice modified the Notice and
45 Order of Assessment by reducing the sum the Department declared
46 ProWall owed during the audit period to \$19,627.10. The Order and
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1 Notice was communicated to ProWall on November 12, 2005. On
2 December 1, 2005, ProWall filed a Notice of Appeal with the Board of
3 Industrial Insurance Appeals from the September 16, 2005 Order and
4 Notice. On December 31, 2005, the Board granted the appeal, subject
5 to proof it had been filed within the time limitation allowed by law. The
6 Board assigned Docket No. 05 21844 to the appeal and ordered that
7 further proceedings be held in the matter.

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9 2. The September 16, 2005 Notice and Order Reconsidering Order and
10 Notice of Assessment of Industrial Insurance Taxes No. 0392418 of the
11 Department was communicated to ProWall on November 12, 2005.
12 3. ProWall did not present any evidence to support its contention that the
13 Department's September 16, 2005 Notice and Order Reconsidering
14 Order and Notice of Assessment of Industrial Insurance Taxes
15 No. 0392418 was incorrect.

16 **CONCLUSIONS OF LAW**

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18 1. The Board of Industrial Insurance Appeals has jurisdiction over the
19 parties to and the subject matter of this appeal.
20 2. ProWall filed its Notice of Appeal within the time limitation allowed by
21 RCW 51.52.060.
22 3. ProWall did not present prima facie evidence, as that term is applicable
23 to the provisions of RCW 51.52.050, to require the Department of Labor
24 and Industries to produce evidence in support of its September 16, 2005
25 Notice and Order.
26 4. ProWall's appeal is dismissed.

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29 It is **ORDERED**.

30 DATED: April 28, 2008.

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32 BOARD OF INDUSTRIAL INSURANCE APPEALS

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36 /s/ _____
37 THOMAS E. EGAN Chairperson

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41 /s/ _____
42 FRANK E. FENNERTY, JR. Member

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46 /s/ _____
47 CALHOUN DICKINSON Member