

## Pro-Wall

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### 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)*** ) [*Editor's Note: This decision may not be a correct reflection of federal bankruptcy law in the 9<sup>th</sup> Circuit. See, e.g., Delpit v. Commissioner Internal Revenue Service, 18 F.3d 768, 769 (9th Cir. 1994) (rejecting argument that IRS cannot be considered to have instituted an administrative proceeding against the taxpayer because a notice of deficiency is exempted from the automatic stay provisions by Bankruptcy Code § 362(b)(9))*].

Scroll down for order.



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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5 . . . .

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

**CONCLUSIONS OF LAW**

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

29 It is **ORDERED**.

30 DATED: April 28, 2008.

BOARD OF INDUSTRIAL INSURANCE APPEALS

36 /s/ \_\_\_\_\_  
37 THOMAS E. EGAN Chairperson

41 /s/ \_\_\_\_\_  
42 FRANK E. FENNERTY, JR. Member

46 /s/ \_\_\_\_\_  
47 CALHOUN DICKINSON Member