

2016 WL 8919356 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

PATRICK & ROBIN MCGOEY, PETITIONERS

v.

TIM BARFIELD, SECRETARY, DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket No. 9361B

July 13, 2016

**JUDGMENT**

\*1 A hearing on the Secretary, Department of Revenue's (the "Secretary") exception of prescription and the merits of this case was heard by the Board on June 15, 2016 with Judge Tony Graphia (Ret.), Chairman and Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing was: John McMahon, representing Patrick S. and Robin R. McGoey (the "Taxpayers") and Brian Dejean, attorney for the Secretary. After the hearing, the case was taken under advisement, the Board now renders Judgment.

Taxpayers have appealed the Secretary's denial of an income tax refund of \$7,280 for 2013. Taxpayers opened three START accounts for their three children. Taxpayers made no contributions to those accounts in 2008. Taxpayer claims that they had a roll-over of \$4,800 for each of the three accounts for 2008 that could be carried over to subsequent tax years. In 2013 Taxpayers contributed \$10,000 to each of the three accounts and claimed a deduction of \$9,000 per account. The \$9,000 deductions consisted of \$4,800 annual deduction for each account as allowed and unused "roll overs" of \$4,200 for each account from 2008.

Considering Taxpayers' history of prior contributions to their children's START accounts, in order for Taxpayers to be entitled to the total \$9,000 per account 2013 deductions, Taxpayers must be entitled to roll overs of unused \$4,200 from each 2008 account.

The Secretary has filed an exception of prescription. The only defense of the Secretary is that the Taxpayers' right to roll over the unused 2008 contribution allowances have prescribed. The basis of the Secretary's exception of prescription is, that the right to use the unused 2008 contribution prescribed on December 31, 2012. The ruling on the Secretary's exception will be dispositive of the case.

The Secretary relies on R.S. 47:1623. If the Secretary is correct that R.S. 47:1623 applies, then the Secretary's exception is well founded.

The START deduction is found in Title 17 dealing with Education, as R.S. 17:3095 (A)(1)(b), and provides that if the account owners deposit less than \$4,800 per year then the difference between \$4,800 and the amount deposited "will roll over to subsequent years". Although many carry-forwards do include a time limitation, there is no provision in R.S. 17:3095, or any other provision of Louisiana law, that serves to limit or prescribe a time within which a taxpayer must use the "roll over" provided by this law. *Contrast* with La. R.S. 47:287.86(B), 297.4(B)(2), 6006(B)(2), 6015(K), 6016.1(C)(2), 6019(A)(3)(a), 6021(C)(3).

It is the contention of the Secretary that the three year prescriptive period found in R.S. 47:1623 applies to the R.S. 17:3095 (A)(1)(b) "roll over". R.S. 47:1623 provides for a three year prescriptive period for "refunds or credits" for an

“overpayment”. “Overpayment” is a term defined in R.S. 47:1621. That section does not mention or refer to in any way, either expressly or tacitly, the “roll over” described in R.S. 47:3095 (A)(1)(b). The “roll over” is not a “refund or credit” as used in R.S. 47:1621. The taxpayer in this case claims the roll over of a deduction, that action could have resulted in a refund (as it did here) but it could also have resulted in reduced liability.

\*2 As the Supreme Court has explained, in construing a statute, every word, sentence, or provision in a law is presumed to be intended to serve some useful purpose, that some effect is given to each such provision, and that no unnecessary words or provisions were employed. Consequently, courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to and preserving all words can legitimately be found. Where two statutes deal with the same subject matter, they should be harmonized if possible, as it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws.

*McGlothlin v. Christus St. Patrick Hospital*, 2010-2775 (La. 7/1/2011), 65 So.3d 1218, 1228-29 (citations omitted).

In the present case the Board finds that the Legislature clearly knew how to place a limitation on the number of years to carry forward or ‘roll over’ a tax deduction. The Board finds that the legislative mandate to roll over the deduction is clear, the Legislature knew how to place a limitation on that carry forward and made the decision not to limit the roll over.

For the reasons stated above, the Board rules that the Taxpayers' right to use the 2008 “roll over” has not prescribed.

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary's exception of prescription is overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Taxpayers petition is GRANTED, taxpayers are entitled to the requested deduction, and the Secretary is FURTHER ORDERED to issue the taxpayers' requested refund, together with all applicable interest.

Baton Rouge, Louisiana this 13 day of July, 2016.

Judge Tony Graphia, (Ret.)  
Chairman

2016 WL 8919356 (La.Bd.Tax.App.)