

BOARD OF TAX APPEALS
STATE OF LOUISIANA

LAURENCE AND MICHELLE COHEN, *

Petitioners, *

vs. *

B.T.A. NO. L02217

LOUISIANA TAX COMMISSION AND *

ORLEANS PARISH ASSESSOR'S OFFICE, *

Respondents. *

JUDGMENT

On December 5, 2024, Assessor Williams' Exceptions of No Cause of Action, No Right of Action, and Prescription came before the Board of Tax Appeals for hearing. Present were, **Reese F. Williamson**, attorney for Erroll G. Williams, Assessor, Orleans Parish ("Assessor Williams"); **Will Eunice**, attorney for the Louisiana Tax Commission ("LTC"); **Elizabeth A. Weigand**, attorney for the City of New Orleans and Romy Schofield-Samuel in her capacity as Director of the Department of Finance of the City of New Orleans; and **Laurence Cohen**, attorney for Petitioners Laurence and Michelle Cohen (collectively, "Petitioners"). Upon consideration of the evidence, pleadings, memoranda, law and arguments, and for the reasons set forth in the attached *Written Reasons for Judgment*:

IT IS ORDERED, ADJUDGED AND DECREED that Assessor Williams' exception of prescription against Petitioners is SUSTAINED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Assessor Williams' exceptions of no cause of action and no right of action and the LTC's exception of improper joinder are OVERRULED AS MOOT.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above titled and numbered action by Petitioners is hereby dismissed with prejudice.

THUS DONE AND SIGNED, this 10 day of February, 2025, at Baton Rouge, Louisiana.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

BOARD OF TAX APPEALS
STATE OF LOUISIANA

LAURENCE AND MICHELLE COHEN,	*	
Petitioners,	*	
vs.	*	B.T.A. NO. L02217
LOUISIANA TAX COMMISSION AND	*	
ORLEANS PARISH ASSESSOR'S OFFICE,	*	
Respondents.	*	

WRITTEN REASONS FOR JUDGMENT

On December 5, 2024, Assessor Williams’ Exceptions of No Cause of Action, No Right of Action, and Prescription came before the Board of Tax Appeals for hearing. Present were, **Reese F. Williamson**, attorney for Erroll G. Williams, Assessor, Orleans Parish (“Assessor Williams”); **Will Eunice**, attorney for the Louisiana Tax Commission (“LTC”); **Elizabeth A. Weigand**, attorney for the City of New Orleans and Romy Schofield-Samuel in her capacity as Director of the Department of Finance of the City of New Orleans; and **Laurence Cohen**, attorney for Petitioners Laurence and Michelle Cohen (collectively, “Petitioners”). Upon consideration of the evidence, pleadings, memoranda, law and arguments, the Board sustained the Exception and instructed the parties to submit a proposed Judgment. The Board now issues the following reasons for ruling.

BACKGROUND:

For the 2024 tax year, Assessor Williams valued Petitioners’ property at 7334 Amber St. in New Orleans, Louisiana (the “Property”) at \$255,300.00 for land and \$658,300.00 for improvements, for a total valuation of \$913,600.00. The 2024 valuation of the Property was more than 50% higher than Assessor Williams’ 2023 valuation of the Property. Assessor Williams therefore applied the phase-in provisions of La. Const. Art. VII, §18(F)(2)(a). Pursuant to the phase-in provisions, Assessor Williams calculated the 2024 tax due on the 2023 value of the property plus one-fourth of the increase in value in the 2024 valuation. As a result, Assessor Williams issued a 2024 tax bill on the Property showing tax due in the amount of \$8,222.20. This amount was paid by wire transfer without protest. Petitioners

represented to the Board that this was an automatic payment by their mortgage company.

Petitioners appealed to the Orleans Parish Board of Review, which upheld the Assessor's valuation. Petitioners then appealed to the LTC. The LTC determined the Fair Market Value ("FMV") of the Property to be \$255,300 for land and \$594,700 for improvements, for a total FMV of \$850,000. The LTC entered its final decision on July 1, 2024. On July 31, 2024, the Board received a fax copy of Petitioners' appeal. The Board received Petitioners' original appeal documents, without payment of the filing or fax fees, on August 12, 2024. The envelope in which the appeal documents arrived is postmarked August 8, 2024. On August 24, 2024, the Board received Petitioners' payment of the filing and fax fees.

Assessor Williams revised his 2024 valuation of the Property to comply with the FMV as determined by the LTC. So modified, the 2024 valuation was only 46% higher than the 2023 valuation.¹ Consequently, Assessor Williams determined that the phase-in provision in La. Const. Art. VII, §18(F)(2)(a) no longer applied. Without the phase-in, Assessor Williams calculated the total tax due on the Property to be \$10,470.55. Assessor Williams accordingly issued a Supplemental Tax Bill to the Petitioners on October 1, 2024. The amount shown due on the Supplemental Tax Bill represented the excess of the total amount due after crediting the prior payment from February 2024, for a remaining amount due of \$2,248.00.² The due date shown on the Supplemental Tax Bill was October 31, 2024. Petitioners paid the Supplemental Tax Bill amount under protest on November 12, 2024.

Assessor Williams responded by filing his Answer and Exceptions on September 26, 2024. On November 11, 2024, the LTC filed an Exception of Improper Joinder. The LTC's Exception is based on La. R.S. 47:2134(B)(3)(b), which provides that the "officer or officers designated for the collection of taxes in the parish or parishes in which the property is located and the assessor or assessors for the parish

¹ The Assessor reached this determination after application of Petitioners' Homestead Exemption.

² The Supplemental Tax Bill issued to Petitioners was not a supplemental assessment under La. R.S. 47:1966, which provides for the assessment of property that was omitted or otherwise erroneously assessed.

or district, or parishes or districts, in which the property is located shall be the sole necessary and proper party defendants in a correctness challenge under R.S. 47:1989, 1992, or 1998.” In the same pleading, the LTC incorporated a Motion to Join and Adopt the Assessor’s Exceptions. The Board granted the LTC’s Motion to Join and Adopt Assessor Williams’ Exceptions on November 15, 2024.

DISCUSSION:

Assessor Williams raises Exceptions of Prescription, No Right of Action, and No Cause of Action. All of Assessor Williams’ Exceptions arise from the payment of \$8,222.20 without protest in February 2024, the failure to pay the Supplemental Tax Bill under protest by October 31, 2024, and the failure to file an appeal within 30 days of the entry of the LTC’s decision.

La. R.S. 47:2134(B)(b) provides that a taxpayer’s payment under protest shall be considered timely if the payment is made “within the deadline to appeal to the Board of Tax Appeals or district court pursuant to R.S. 47:1856, 1857, or 1998.” Under La. R.S. 47:1998(A)(1)(a), a taxpayer’s suit for review of the LTC’s final decision must be instituted within “thirty days of the entry of any final decision” of the LTC. Here, entry of the LTC’s final decision occurred on July 1, 2024. Thus, the deadline for the Petitioners to appeal was July 31, 2024.

Petitioners’ appeal was not timely filed on July 31, 2024, because of the Petitioners’ failure to comply with the Board’s fax filing rule. Under LAC 69:I.303(C), a fax filing with the Board has no force or effect unless, within seven days after receipt of the fax, exclusive of legal holidays, the Board receives the following from the filer: the original signed documents that were fax filed and the required number of copies; the applicable filing fee, if any, under LAC 69:I.329; and the fax transmission fee of \$5 per page faxed. The use of the term “receive” in the Board’s fax filing rule means actual or constructive possession; merely placing the required documents in the mail is insufficient. *Ferguson Ent., LLC v. Department*, B.T.A. Docket No. 13416C (La. Bd. Tax App. 8/17/23); 2023 WL 9290318 (citing *Petit-Blanc v. Charles*, 2021-00094 (La. 4/20/21), 313 So.3d 1245).

Here, the Board did not receive the originals, copies, filing fee, or fax fee within the seven day fax filing period. Accordingly, Petitioners cannot rely on their fax transmission date. Without the fax transmission date, their appeal cannot be deemed filed until, at the earliest, the Petition envelope's postmark date of August 8, 2024. That postmark date is 38 days after the entry of the LTC's final decision. Petitioners' appeal is therefore not timely filed under La. R.S. 47:1998(A).

Petitioners also did not timely pay the disputed tax under protest. This is not solely because Petitioners did not pay under protest on or before July 31, 2024. That may be excusable because, as Petitioners point out, it was impossible for them to pay under protest when Assessor Williams was yet to issue the Supplemental Tax Bill. However, once the Supplemental Tax Bill had been issued, Petitioners failed to pay under protest by the due date on that notice, namely October 31, 2024. Instead, Petitioners did not pay the Supplemental Tax Bill under protest until November 12, 2024. Petitioners' failure to timely pay the Supplemental Tax Bill under protest precludes any independent correctness challenge that could hypothetically be separated from their correctness challenge to the Original Tax Bill, which is also prescribed.

CONCLUSION:

For the foregoing reasons, the Board will sustain the Exception of Prescription and dismiss the Petition with prejudice. The dismissal of the Petition renders the other exceptions filed by the Assessor and the LTC moot. The Board will accordingly modify the Judgment submitted by Assessor Williams to conform to these Written Reasons.

BATON ROUGE, LOUISIANA, THIS 10 DAY OF FEBRUARY, 2025.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE