

2017 WL 5508702 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

ZUHAIR AND MARY AL-TALIB, PETITIONERS

v.

DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket No. 9986

July 12, 2017

JUDGMENT WITH WRITTEN REASONS

*1 A hearing on the Secretary, Department of Revenue's (the "Secretary") Exceptions of No Right of Action and of Lack of Subject Matter Jurisdiction was heard by the Board on February 7, 2017 with Judge Tony Graphia (Ret.), Chairman; Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were: Zuhair Al-talib (the "Taxpayers") and Miranda Y. Conner, attorney for the Secretary. After the hearing, the matter was taken under advisement, the Board now unanimously renders its ruling for the following written reasons.

Taxpayers have appealed the Secretary's denial of a tax refund request for 2012 in the amount of \$12,128. The Secretary has filed Exceptions of No Right of Action and Lack of Subject Matter Jurisdiction.

Taxpayers filed their 2012 Louisiana income tax return which showed that Taxpayers owed \$11,858. The major part of the tax was due to a house belonging to Mary Al-Talib located outside of the USA which house had been sold, resulting in a significant capital gain. On October 15, 2013 Taxpayers paid the tax in the amount of \$11,858. On October 24, 2013 the Secretary sent the Taxpayers a letter entitled "Eligibility Amnesty Periods" offering to let the Taxpayers pay the interest and penalties for 2012 for the amount of \$180.82. On October 29, 2013 Taxpayers paid the sum of \$180.82. As a result of paying the Total Amnesty Balance of \$180.82, the Taxpayers' tax liability for 2012 was satisfied.

On February 15, 2015 Taxpayers were informed by another CPA that the CPA who prepared the 2012 taxes had made a mistake on the 2012 return by neglecting to take advantage of a \$500,000 exclusion for the sale of a principal residence, which mistake gave rise to the taxes that the Taxpayers paid on their 2012 return. On February 23, 2015 Taxpayers filed an amended 2012 return requesting a refund in the amount of \$12,128. The Secretary denied the requested refund because the Taxpayers had participated in the 2013 tax amnesty program. It is the appeal of the Secretary's denial that gives rise to the matter before the Board.

Our courts have recognized that jurisdiction over the subject matter is the legal power and authority to hear and determine a particular class of actions or proceedings. *Smith v. Gretna Mach, andiron Works*, 617 So.2d 144, 145 (La. App. 5 Cir. 1993). As with all exceptions, the movant bears the burden of proving the lack of jurisdiction. *Id.*

The Supreme Court has recognized that "the Board acts as a trial court in findings of fact and applying the law". *St. Martin v. State*, 09-935, p. 6 (La. 12/1/09) 25 So.3d 736, 740. The Supreme Court also concluded that "jurisdiction to resolve tax related disputes is constitutionally and statutorily granted to the Board which is authorized to hear and decide disputes and render judgments." *Id.* at p. 8, 25 So.3d at 741.

*2 La. R.S. 47:1407(1) gives the board jurisdiction to hear “All matters relating to appeals for the determination of overpayments [refunds].” The Taxpayer appeals for a redetermination of denied refund. The Secretary's exception of lack of subject matter jurisdiction is without merit and is overruled.

In regard to the exception of no right of action, the Taxpayer is clearly the party in interest who would have a right of action to appeal the assessment, so the only analysis is whether under the Amnesty Act's provisions preclude this refund for this Taxpayer.

The Louisiana Tax Delinquency Amnesty Act of 2013 is Act No. 421 of the Regular Session of 2013, the Amnesty Program provides in Section 3 D:

“(D) Participation in the amnesty program shall be conditioned upon the agreement of the taxpayer that the right to protest or initiate an administrative or judicial proceeding is barred. The agreement shall only apply to the specific tax and the tax period for which amnesty is granted.”

The issue in dispute in this refund action is totally separate and distinct from the issue for which Taxpayer participated in the Amnesty Program. The Secretary is of the opinion that requesting amnesty on any sales tax issue prohibits the Board from hearing Taxpayer's refund denial appeal even when it is wholly unrelated to the dispute at issue in the Taxpayer's amnesty.

The Secretary is asking the Board to interpret the phrase “the tax” to mean the entire tax type (all sales tax) as opposed to actual issue that gave rise to the liability within that tax type (the tax due).

The Board's review of the Act and its associated history suggests to us that this is not what the legislature intended when it included section (3) (D) in the Act.

Section 3(1) of the Act also provides that the filing of an application makes “the tax, interest, and penalty immediately due and payable...ineligible for refund, credit, or claim against the state.” The Board finds that this provision is clearly directed to the tax liability actually at issue in the Amnesty, preventing that “tax, interest, and penalty” from being clawed back via any future refund claim.

This provision is not directed at a separate issue that was not under discussion or consideration at the time of the Amnesty, and does not relate in any way to the issue for which Taxpayer participated in the Amnesty Program.

Neither the Secretary nor the Taxpayers claim that the refund would NOT be due to the Taxpayers if it were not for the amnesty waiver. The administrative proceeding involved here was not initiated by the Taxpayers. Had the Taxpayers known that the 2012 tax return had been improperly prepared and that if properly done the Taxpayers would be entitled to a significant refund, they would not have participated in the program.

The Board is of the opinion that the Legislature did not have this situation in mind when it created the Amnesty Program. The prohibition against protesting or initiating an administrative or judicial proceeding contemplated by the Legislature meant that a Taxpayer, after participating in the Amnesty Program, could not later protest the validity of “the tax” at issue in the amnesty, not the entire tax type.

*3 Considering the foregoing:

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary's Exception of Lack of Subject Matter Jurisdiction IS OVERRULED, and that the Secretary's Exception of No Right of Action IS OVERRULED.

Baton Rouge, Louisiana, this 12 day of July, 2017.

Judge Tony Graphia (Ret.)
Chairman

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