

BOARD OF TAX APPEALS
STATE OF LOUISIANA

GILBERT R. BURAS, JR. AND
KAREN EDINGTON MILNER
PETITIONERS

DOCKET NO. 12453C

DEPARTMENT OF REVENUE
RESPONDENT

CONSOLIDATED WITH

GILBERT R. BURAS, JR. AND
KAREN EDINGTON MILNER
PETITIONERS

DOCKET NO. C06942C

DEPARTMENT OF REVENUE
RESPONDENT

JUDGMENT WITH WRITTEN REASONS

On March 11, 2021, this matter came before the Board for hearing on the *Motion for Summary Judgment* filed by Gilbert R. Buras, Jr. and Karen Edington Milner (“Petitioners”). Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman, and Board Members Cade R. Cole and Francis J. “Jay” Lobrano. Present before the Board were Gilbert Ru. Buras, attorney, appearing on behalf of himself and his wife Karen Edington Milner, and Miranda Scroggins, attorney for the Department of Revenue (“Department”). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues Judgment in accordance with the written reasons attached hereto.

IT IS ORDERED, ADJUDGED AND DECREED that Petitioners’ Motion for Summary Judgment BE AND IS HEREBY DENIED.

JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana, this day APRIL 15, 2021

FOR THE BOARD:



JUDGE TONY GAPHIA (RET.)
CHAIRMAN

LOUISIANA BOARD OF TAX APPEALS

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I. Facts and Background

Petitioners filed two essentially identical Petitions which the Board consolidated into docket number 12453C. Petitioners appeal from a Notice of Assessment for individual income tax for the 2015 and 2016 tax years. For 2015, the Department assessed Petitioners with tax due in

the amount of \$3,852.00, plus interest in the amount \$147.76, plus penalties in the amount of \$114.21, less payments and credits of \$3,366.00, for total period balance of \$747.97. For 2016, the Department assessed Petitioners with tax due in the amount of \$7,390.00, plus interest in the amount of \$1,964.97, plus late payment penalties in the amount of \$1,441.05, for a total period balance of \$10,796.02. Interest continues to accrue on the amounts shown in the assessments.

Petitioners argue Mrs. Milner is not subject to Louisiana personal income tax. In support, Petitioners offered several exhibits attached to their Motion and additional exhibits attached to their reply memorandum. Petitioners attempt to prove that Mrs. Milner was not a Louisiana resident and did not derive any income from Louisiana. The Department objects to all of Petitioner's exhibits. Article 966 of the Code of Civil Procedure and Article 901 of the Code of Evidence La. C.C.P. art. 966(A)(4) state that the only documents that may be filed in support of a motion for summary judgement are: "pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions."

The documents attached to the Petitioners' motion are purported to be: a deed, Mrs. Milner's 2015 and 2016 W-2's, Mrs. Milner's Pennsylvania driver's license, Petitioner's 2015 and 2016 federal tax returns, Mrs. Milner's 2015 and 2016 Pennsylvania tax return, Mr. Buras's 2015 and 2016 Louisiana tax return, and a "Fed/State Mismatch" letter from the Department to Mr. Buras for the 2016 period. These documents are not attached to any document listed in La. C.C.P art.

966(A)(4). Accordingly, they are not competent summary judgment evidence and will not be considered. In addition, La. C.C.P. art. 966(B)(3) states that “[n]o additional documents may be filed with the reply memorandum.” Therefore, the Board will not consider the exhibits attached to Petitioners’ reply memorandum. This means that Petitioners failed to introduce any competent summary judgment evidence in support of their motion.

The Department’s exhibits attached to its opposition were admitted without objection. These exhibits include Petitioners’ responses to discovery, in which they admit that they filed 2015 and 2016 federal income tax returns with the status Married Filing Jointly. The Department argues that under La. R.S. 47:294, Petitioners must use the same Married Filing Jointly status that they used on their federal returns for their Louisiana returns.

Petitioners did not do so. Mr. Buras filed separate resident returns for himself. Mrs. Milner did not file any Louisiana returns. However, the Department argues that both Petitioners did file a 2015 amended joint Louisiana income tax return. The Department introduced a letter from Petitioner’s prior counsel as evidence of an amended return. The letter proposes filing a 2015 amended joint return. This letter shows an offer to settle the dispute. The Board finds that this evidence is merely an offer of settlement, and does not show that a return was actually filed.

II. Law and Discussion

The burden of proof falls on Petitioners as the party seeking summary judgment. La. C.C.P. art. 966(D)(1). Petitioners’ argument is

premised on the fact that Ms. Milner is not a resident of Louisiana and that she has no Louisiana-sourced income. None of Petitioners' exhibits are admissible and there is no competent summary judgment evidence of Ms. Milner's residency or sources of income. Consequently, Petitioners are not entitled to summary judgment at this time. The absence of proper factual support is the sole reason for denying the Petitioners' motion.

The Board does not agree with the Department's interpretation of the law. The Department relies on La. R.S. 47:294, which provides in relevant part:

All personal exemptions and deductions for dependents allowed in determining federal income tax liability, including the extra exemption for the blind and aged, will be allowed in determining the tax liability in this Part. Taxpayers are required to use the same filing status and claim the same exemptions on their return required to be filed under this Part as they used on their federal income tax return.

The remainder of La. R.S. 47:294 lays out the permissible exemption and standard deduction amounts. The title of the statute is: "Personal exemptions and credit for dependents." The Department is relying on a statute that governs an exemption. Requiring taxpayers to adhere their federal filing status is intended to prevent taxpayers from benefitting twice from the same exemptions on the same dependents by claiming those dependents on separate returns.

There is no other statute, rule, or regulation that requires taxpayers to file a joint Louisiana return if they filed a joint federal return. To the contrary, La. R.S. 47:293(6) states that "a husband and wife may file a joint income tax return." Similarly, La. R.S. 47:101(B)(1)

provides: “In general. A husband and wife may make a single return jointly.” The word “may” is permissive, not mandatory. La. R.S. 1:3.

La. R.S. 47:290 states that purpose of Louisiana’s individual income tax code is to: “conform the Louisiana individual income tax law with the United States Internal Revenue Code, except as otherwise expressly provided, in order to simplify the taxpayer’s filing of returns, reduce the taxpayer’s accounting burden, and facilitate the collection and administration of these taxes.” Conformity with federal law is supposed to make administering the income tax easier. However, the Department’s interpretation of La. R.S. 47:294 would produce an absurd result in this case. Petitioners cannot file a joint resident return because Mrs. Milner is not a resident of Louisiana (assuming that Petitioners could prove that fact with admissible evidence). Petitioners cannot file a joint non-resident return because Mr. Buras is a Louisiana resident. The only logical filing status is married filing separately. The only thing stopping Petitioners from doing that is the Department’s interpretation of La. R.S. 47:294. This does not simplify the taxpayer’s filing of returns.

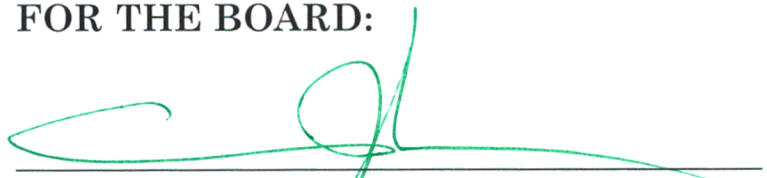
Furthermore, the Department would conclude that Mrs. Milner’s Pennsylvania income is effectively subject to Louisiana income tax. La. R.S. 47:31 imposes income tax only on the income of Louisiana residents and income from Louisiana sources. The stated purposes of enacting La. R.S. 47:294 do not include expanding the income tax beyond the state’s tax jurisdiction. Interpreting the statute in a manner that achieves that result is wrong.

III. Conclusion

Nevertheless, Petitioners have failed to prove that Mrs. Milner is a Pennsylvania resident with no Louisiana income. These facts are essential to Petitioners' case. For this reason, the Board must deny Petitioners' motion for summary judgment. However, Petitioners may re-urge their arguments at later date if supported by the documents listed in La. C.C.P. art. 966(A)(4).

Baton Rouge, Louisiana this day April 15, 2021

FOR THE BOARD:



**JUDGE TONY GRAPHIA, (RET.)
CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS**