

**BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL DIVISION**

**CAJUN COUNTRY CAMP GROUND, INC.
PETITIONER**

VERSUS

DOCKET NO. L00172

**WEST BATON ROUGE PARISH
REVENUE DEPARTMENT
RESPONDENT**

JUDGMENT

A hearing on Cajun Country Campground, Inc.'s Petition for Refund was held before the Board of Tax Appeals-Local Division on January 9, 2017, Local Tax Judge Cade R. Cole presiding. Present before the Board were Nicole Gould, attorney for Taxpayer, and Drew Talbot, attorney for West Baton Rouge Parish Revenue Department (the "Collector"). After the hearing, the case was taken under advisement, and the Board now renders Judgment for the written reasons issued herewith.

IT IS ORDERED, ADJUDGED, AND DECREED that Cajun Country Campground Inc.'s Petition for Refund BE AND IS HEREBY DENIED, and that Judgment is rendered in favor of the West Baton Rouge Parish Revenue Department and against Cajun Country Campground, Inc. such that this case shall be dismissed with prejudice.

IT IS ORDERED, ADJUDGED, AND DECREED that the Collector's Reconventional Demand for attorney's fees BE AND IS HEREBY DENIED.

Baton Rouge, Louisiana this 29th day of June, 2017.



LOCAL TAX JUDGE CADE R. COLE

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WRITTEN REASONS FOR JUDGMENT

A hearing on Cajun Country Campground, Inc.'s ("Cajun Country") Petition for Refund was held before the Board of Tax Appeals-Local Division on January 9, 2017, Local Tax Judge Cade R. Cole presiding. Present before the Board were Nicole Gould, attorney for Cajun Country, and Drew Talbot, attorney for West Baton Rouge Parish Revenue Department (the "Collector"). After the hearing, the case was taken under advisement, and the Board has now rendered Judgment for the following written reasons:

Cajun Country has appealed the Collector's denial of requested refund of hotel/motel occupancy tax and a parking privilege tax for the period January 1, 2012 through December 31, 2014. The amount requested in the sales tax refund was \$32,088.61. The amount requested in the occupancy tax refund was \$18,957.06

The sister case of Night RV Park Esquivel, LLC v. West Baton Rouge Parish, Docket No. L00242 involved a petition to this Board following a payment under protest pursuant to La. R.S. 47:337.63. However, current Cajun Country had voluntarily remitted these taxes to the Collector (ie. did not pay under protest), and was seeking a refund under La. R.S. 47:337.77. The appeal to the Board from the denial of the refund request was then made pursuant to La. R.S. 47:337.81.

The Board will first consider the merits of the Collector's assessment of West Baton Rouge Parish Tourist Commission occupancy taxes. The tax at issue is levied under the authority of La. R.S. 33:4574.1.1(A). That statute gives the commission the authority to:

“...levy and collect a tax upon the occupancy of hotel rooms, motel rooms, and overnight camping facilities...”

La. R.S. 33:4574.1.1(C)(1) defines hotel as follows:

“C.(1) The word “hotel” as used in this Section shall mean and include any establishment, either public or private, engaged in the business of furnishing or providing rooms and overnight camping facilities intended or designed for dwelling, lodging, or sleeping purposed to transit guests where such establishment consists of two or more guest rooms...”

However, there is no definition of either “motel” or “overnight camping facilities.”

The Legislature did specifically grant to each tourist commission the authority “to provide in the resolution or ordinance necessary and appropriate rules and regulations for the imposition, collection, and enforcement of the tax.” La. R.S. 33:4574.1.1(F)(1). However, the West Baton Rouge Tourist Commission's ordinance levying this tax also fails to provide a definition of concerning overnight camping facilities, or provide any formal guidance that could be used by all Cajun Country to ascertain that his facility was within the intended scope of their levy of this tax.

In light of the well settled jurisprudence concerning the statutory interpretation of ambiguity in tax matters, the lack of clarity will be resolved in favor of Cajun Country. As our court have recognized:

It is a well-established principle of Louisiana tax law that taxing statutes must be strictly construed against the taxing authority. Where a tax statute is susceptible of more than one reasonable interpretation, the construction favorable to the taxpayer is adopted.

Bridges v. Hana Corp., 2004-0754, p. 4 (La. App. 4 Cir. 10/27/04), 888 So.2d 944, 946, citing *Southlake Dev. Co. v. Secretary, Dept. of Revenue*, 98-2158 (La.App. 1

Cir. 11/05/99), 745 So.2d 203, 206; *Collector of Revenue v. Wells Fargo Leasing, Corp.*, 393 So.2d 1244, 1246 (La. 1981).

In the sister case to the present case, the Taxpayer established that there had been significant changes in the park's operations as it became re-labeled an RV park. The record of the current case established that Cajun was a campground with a camping shop and with organized recreational activities for patrons. These were later discontinued after the ownership change. Conversely, Cajun Country also established that its business had evolved and during the refund period that the overwhelming majority of its operations were long-term rentals.

Cajun Country is wrongly focused on the definition of "hotel" and the need for rooms. The occupancy tax is also levied on "overnight camping facilities." The facts of the present case are better at supporting the Collector's argument that Cajun Country Campground would meet the common sense definition of an 'overnight camping facility' even if a pure long term occupancy RV park does not.

The Collector in levying this occupancy tax could have provided the missing definition,¹ and in light of the directive to construe the imposition of a tax liberally in favor of the taxpayer, the Board finds that Cajun Country was not operating as an overnight camping facility during the refund period.

The Collector has also attempted to impose a tax on Cajun Country on the service of parking.

La. R.S. 47:301(14)(c) provides in pertinent part:

"(14) 'Sale of services' means and includes the following:
...(c) The furnishing of storage or parking privileges by auto hotel or parking lots...."

¹ It could not offer a definition that is in conflict with statute, but considering the gap in the law and the specific directive to issue regulations concerning the tax, the Commission itself as the levying entity could help by better describing the applicable thing it chose to levy upon.

The applicable regulations provide that parking over 30 days shall not be subject to tax. LAC 61:I.4301.C.

The evidence in the sister case was that the business had transformed into non-transient guests staying over 30 days. However, when the current Cajun Country operated the park it had more transient guests who would be subject to the sales tax in the first 30 days.

Cajun Country offered occupancy cards as proof of the length of stay during the refund period. The Board finds the evidence credible to support Cajun Country's position on those guests staying longer than 30 days.

Procedural Defenses of the Collector

The Collector asserts that La. R.S. 47:337.77(F) precludes a refund since these taxes were not paid under protest. The Collector put on evidence that letters were sent to Cajun Country advising it of the Collector's legal position that the tax at issue here was due. There was also testimony about a meeting to discuss these issues.

This case is distinguishable from *Tin, Inc. v. Washington Parish Sheriff's Office*, 2012-2056 (La. 3/19/13), 112 So.3d 197 because this case did involve a communication to Cajun Country of the Collector's legal position. Therefore, absent an exception, Cajun Country was obligated to pay under protest if it wanted to assert a contrary legal position.

This case is also generally distinguishable from the Board's ruling in *General Electric Capital Services, Inc. v. Barfield* (La. Bd. Tax App. 6/19/13) 2013 WL 3465284. The statutory provision adding the language about petitions to the Board of Tax Appeals to the end of Subsection F of La. R.S. 47:337.77 was added by Act 640 of 2014--after most of the periods at issue herein. The §337.77(F) addition would be applicable only to the last six months of the refund requested.

The language added by the Legislature to §337.77(F) also somewhat varies

From the language of the long-standing provision in the state refund statute concerning appeals to the Board being an exception to its Subsection F refund limitation.

The undersigned substantially contributed to the Board's ruling in *GE Capital*, and agrees with that holding. However, the Board does not need to reach the *res nova* question of whether the above stated differences in statutory language affect the applicability and extension of the holding in *GE Capital* to this local case. For the reasons stated hereinbelow, the Board believes that the Collector's second procedural defense is applicable and prevents a refund.

The Collector asserts that Cajun Country was really a dealer, and that the underlying patrons were the true taxpayers, and that those taxpayers would possess the right of action for a refund. *Larrieu v. Wal-Mart Stores, Inc.* (La. App. 1 Cir. 2/23/04) 872 So.2d 1157; *Cox Cable New Orleans v. City of New Orleans* (La. 9/3/93) 624 So.2d 890, 896. The Collector asserts that La. R.S. 47:337.17 prevents the dealer from absorbing the sales tax.

The Collector established that Cajun Country 'backed out' the applicable tax and remitted it from its guest receipts. Cajun Country's bookkeeping system separately accounted for those 'backed out' payments as "sales tax collected" and not included within gross sales.

There are other instances (parking lots) where the sales tax is not separately stated on the receipt. The failure of Cajun Country to state the tax on customer receipts is not controlling.

If Cajun Country was not collecting and remitting taxes and the Collector forced them to remit it after the fact (pursuant to an audit), then Cajun Country would be the taxpayer as to that tax and could assert its rights as the taxpayer of that tax.

Under our law during the present refund period, Cajun Country was a dealer and was obligated to remit the tax that it was obligated to collect on its sales. The jurisprudence does not give it a right of refund for those taxes.²

For the foregoing reasons the Board finds that the Taxpayer's Petition should be denied.

Collector's Demand for Attorney's Fees pursuant to La. R.S. 37:337.13.1(B)

The Taxpayer's position had a reasonable basis in law and fact, and therefore no attorney's fees should be awarded in the present case.

Baton Rouge, Louisiana this 29th day of June, 2017.



LOCAL TAX JUDGE CADE R. COLE

² These defenses were not applicable in the sister case, and that is why the Board ordered a full refund in that case.