

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**CORA-TEXAS MFG. CO., INC.,  
Petitioner,**

**VERSUS**

**No. 11065D**

**KIMBERLY L. ROBINSON,  
SECRETARY, DEPARTMENT  
OF REVENUE,  
STATE OF LOUISIANA,  
Respondent**

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**JUDGMENT ON EXCEPTIONS**


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On May 14, 2019 this matter came before the Board for hearing on the Exceptions of Prescription and Lack of Subject Matter Jurisdiction (the “Exceptions”) filed by Kimberly L. Robinson, Secretary, Department of Revenue, State of Louisiana (the “Department”) with Judge Tony Graphia (Ret.), Chairman, presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Robert Blankenship and Gregory Bodin, attorneys for CORA-TEXAS Mfg. Co., Inc. (“CORA”) and Adrienne Quillen and Aaron Long, attorneys for the Department. After the hearing, the Exceptions were taken under advisement. The Board now unanimously renders Judgment on the Exceptions in accordance with the written reasons attached herewith.

**IT IS ORDERED, ADJUDGED AND DECREED that the above referenced Exceptions of the Department be and are hereby DENIED.**

Judgment Rendered and Signed at Baton Rouge, Louisiana this 5<sup>th</sup> day of December, 2019.

For the Board:

  
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Judge Tony Graphia (Ret.), Chairman  
Louisiana Board of Tax Appeals

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**WRITTEN REASONS FOR JUDGMENT DENYING EXCEPTIONS**  
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CORA appeals from the Department’s denial of a refund under La. R.S. 47:1625. A CPA, Mr. P.J. Caballero, filed CORA’s Claim for Refund of Overpayment on Form R-20127 (the “Refund Claim”) on CORA’s behalf. The Department received the Refund Claim on June 6, 2017. Mr. Caballero attached a Form R-7006: Power of Attorney and Declaration of Representative (the “PoA”) to the Refund Claim. The PoA indicates that Mr. Caballero was to receive notices and communications sent to CORA. The Department and Mr. Caballero were in regular

communication, and he entitled handled the matter for CORA as its agent under the PoA.

The Department denied the Refund Claim by notice dated August 4, 2017 (the “Refund Denial”). The Department mailed the Refund Denial to CORA. However, the Department did not mail a copy of the Refund Denial to Mr. Caballero. It is undisputed that CORA believed Mr. Caballero was handling all aspects of the matter, but he was not aware of the Refund Denial.

The Refund Denial states:

CORA-Texas MFG. Co., Inc. has the right to appeal this denial according to R.S. 47:1625 within sixty (60) days from the date of mailing with the date of mailing being counted as day 1. To appeal, please contact the Louisiana Board of Tax Appeals, P.O. Box 3217, Baton Rouge, LA 70821.

The Refund Denial does not state that any consideration, reconsideration, or action by the Department shall not operate to extend the period to appeal. Mr. Caballero and the Department remained in contact concerning all aspects of CORA’s tax dispute, but the Refund Denial was not discussed until much later (and the appeal was then quickly filed).

CORA filed its *Petition to Review Demand for Remittance of Alleged Overpaid Refund and Denial of Resubmit Refund Claim Involving the Manufacturing Machinery and Equipment Exemption* with the Board on December 27, 2017 (the “Original Petition”). The Original Petition did not concern the Refund Denial discussed above.

CORA then filed an appeal from the Refund Denial in its *First Supplemental and Amended Petition to Review Demand for Remittance of Alleged Overpaid Refund and Denial of Resubmit Refund Claim Involving the Manufacturing*

*Machinery and Equipment Exemption* on July 3, 2018 (the “Amended Petition”).

The Department’s Exceptions relate only to the Amended Petition.<sup>1</sup>

The Department contends that CORA failed to appeal the Refund Denial to the Board within sixty days as required by La. R.S. 47:1625. The Department calculates CORA’s last day to appeal as October 3, 2017. CORA did not file either the Original Petition or the Amended Petition by that date. CORA, initially, argued that the Exceptions should be denied because the Department failed to send notice of the Refund Denial to Mr. Caballero.<sup>2</sup>

The Board requested supplemental briefing on the issue of the Department’s compliance with the notice requirements for a refund denial. The Board finds that the Refund Denial does not comply with specific mandates of La. R.S. 47:1625. La. R.S. 47:1625(B) requires that:

A notice of disallowance, if issued, shall inform the taxpayer that he has sixty days from the date of the certified or registered mailing of that notice to appeal to the Board of Tax Appeals, **and that any consideration, reconsideration, or action by the collector with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which an appeal may be taken.**<sup>3</sup> [emphasis added].

The word “shall” is mandatory. La. R.S. 1:3. The Department’s Refund Denial notice did not include the relevant language that “any consideration, reconsideration, or action by the collector with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which an appeal may be taken.”

The Louisiana Supreme Court has held that a statutorily deficient notice of assessment cannot become a final assessment. *Catahoula Parish Sch. Bd. v.*

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<sup>1</sup> There are other refund claims at issue in the Original Petition that are not affected by the Exceptions. CORA’s other claims will be addressed when the Board renders a decision on the merits.

<sup>2</sup> CORA addressed the §1625(B) issue in supplemental briefing requested by the Board.

<sup>3</sup> See Act 210 of the 2015 Regular Session.

*Louisiana Machinery Rentals, LLC*, 2012-2504, p. 16-17 (La. 10/15/13); 124 So.3d 1065, 1076. The statute at issue in *Louisiana Machinery* contained mandatory “shall” language requiring the collector to provide certain statutory notifications within a notice of assessment. Our Supreme Court found that failure to include those expressly required notifications meant that the notice was statutorily deficient, and was therefore not a valid notice for the purpose of commencing the prescriptive period within which a taxpayer must appeal. Because the notice was statutorily deficient, the Supreme Court held that it did not commence the running of the prescriptive period, and therefore could not become a final notice of assessment equivalent to a final judgment.

La. R.S. 47:1625(B) contains the same mandatory “shall” language. The provision added in 2015 used the conjunctive “and,” thereby requiring that the added language also be included in the text required to be included in the notice.

The Board finds that the Department’s failure to comply with the mandatory language of La. R.S. 47:1625(B) means that the Refund Denial is statutorily deficient. Considering *Louisiana Machinery*, the Board concludes that this statutory deficiency prevents the prescriptive period on the Refund Denial from commencing to run.

In the absence of a denial valid under the statute, CORA’s right to appeal to this Board could not have prescribed. *See e.g., Tin, Inc. v. Washington Par. Sheriff’s Office*, 2012-2056 (La. 3/19/13), 112 So. 3d 197, 209 (these time limitations only apply after the collector has actually denied the refund request in accordance with the statute). The Exceptions will therefore be overruled.

Thus done and signed at Baton Rouge, Louisiana this 5<sup>th</sup> day of December,  
2019.

For the Board:



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Vice Chairman Cade R. Cole  
Louisiana Board of Tax Appeals