

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**DESTINATION MANAGEMENT
Petitioner**

VERSUS

DOCKET NO. 7727

**DEPARTMENT OF REVENUE, STATE
OF LOUISIANA
Respondent**

JUDGMENT WITH WRITTEN REASONS

This matter was heard on the merits by the Board on November 19, 2014 with Judge Tony Graphia (ret.), Chairman, Cade R. Cole and Kernan A. Hand Jr. present and no members absent. Present before the Board were: Susanne Veters and Kathleen Manning, attorneys for Destination Management, Inc. (Taxpayer), and Brandea P. Averette, attorney for the Secretary, Department of Revenue (Secretary). After the presentation of evidence and argument of counsel, the case was taken under advisement, and the Board subsequently adopted this Judgment with no member dissenting.

The Taxpayer appeals from an assessment of sales tax in the amount of \$25,438.56 for the period January 1, 2007 through December 31, 2009 plus interest and penalties.

Taxpayer is a travel agency located in New Orleans, Louisiana. In the transactions at issue, Taxpayer sells to its clients hotel rooms, meals, transportation services and event tickets. Taxpayer acquires from hotels, restaurants, transportation providers and event producers (Providers) hotel rooms, meals, transportation and event tickets. Taxpayer pays an agreed price and any applicable tax to the aforementioned Providers. Taxpayer sells to its clients a package that may include all of the above services or things it has acquired from the Providers or just some of the services and things. The Taxpayer charges its clients an amount that includes the price that it has contracted to pay the Providers, including any taxes that it has paid to the provider, plus a service fee or commission for its services.

The Secretary has assessed Taxpayer a sales tax on the total amount that the Taxpayer has charged its clients less any amount that Taxpayer has paid to the Providers, including any tax that Taxpayer may have paid to the Providers

The net result is that the Secretary has assessed a sales tax on the amount of the Taxpayer's commission.

The Taxpayer claims that the tax is not due because its commission is a non-taxable service.

Services are not subject to sales tax unless they are those services that are specifically enumerated in R.S. 47:301 (14).

The sale of hotel rooms is specified in R.S. 47: 301 (14) (a) and provides:

“(a) The furnishing of sleeping rooms, cottage or cabins by hotels.”

“Hotels” are defined in R.S. 47:301 (6)(a). Taxpayer is not a hotel and is not liable to collect and remit a sales tax. The hotel with which the Taxpayer contracts is the “Hotel” contemplated in R.S. 47:301(14)(a). The tax on the service of furnishing hotel rooms has been paid by the Taxpayer to the hotel.

The Secretary has assessed the Taxpayer a sales tax on the price that the Taxpayer has charged its clients for “event” tickets. R.S. 47:301(14)(b) imposes a sales tax on “the sale of admission to places of amusement, recreational events...”. The price of admission to many events is exempt from sales tax. The question is whether this Taxpayer is liable to pay a sales tax on the price it charges its clients for any such tickets. There is no evidence or allegation that the Taxpayer did not pay to the event producer any sales taxes that were due. The issue is whether the Taxpayer is responsible to pay a sales tax on the price that it charges its clients for the tickets less any advance sales tax or price it may have paid the seller of the event ticket. Again, the question is whether there is a sales tax due on the Taxpayer's commission. The answer is no. The only services that the legislature has chosen to tax are those that are enumerated in R.S. 47:301(14). The services of Taxpayer are not included in those enumerated services.

The Secretary attempts to tax food and transportation services that the Taxpayer has charged its clients. This is an attempt to charge a sales tax on the unlisted service that the Taxpayer charges its clients. There is no tax due here.

The Secretary, in an oblique fashion, is attempting to collect a sales tax on the price of the service that the Taxpayer charges its clients. These services are not ones specified in R.S. 47:301(14).

The conduct of the Taxpayer in handling the Tulane Commencement reservations raises concern. In their other transactions the Taxpayer advertises that tax is included and charges one lump-sum price. In the Tulane transactions the taxpayer advertises a base rate with the proviso that 13% hotel tax and occupancy fees are extra. Taxpayer Exhibit 4. They then actually charge the purchaser a rate that is the advertised base rate plus 13% and \$3 per night, noting that it “includes 13% tax and \$3 per night occupancy fee.”

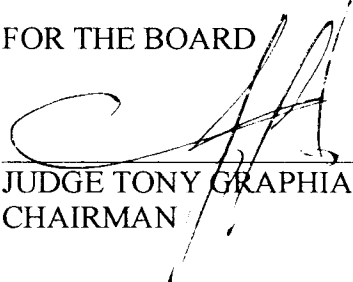
Unlike the scenario where there is a simple statement that tax is included in the lump sum rate, the Tulane method is clearly leading customers to believe that the extra amount paid (above the advertised base rate) is being collected as tax. When a dealer collects a tax it is required to remit that collection even if the underlying tax was not owed. *Sabine Pipe & Supply Co. v. McNamara*, 411 So.2d 1167 (La. App. 1 Cir. 1982).

Based on Exhibit A of the Joint Stipulation we calculate the tax owed on the Tulane Commencement rooms to be \$1,913.36

IT, IS ORDERED, ADJUDGED AND DECREED that the Secretary’s assessment against the Taxpayer in this matter is HEREBY REDETERMINED, with Judgment rendered herein on the Petition in favor of the taxpayer, Destination Management, Inc. and against the Secretary of the Department of Revenue reducing the disputed assessment to taxes due in the amount of \$1,913.36 together with the interest and penalties provided for by law.

Baton Rouge, Louisiana, this 22 day of January 2015.

FOR THE BOARD



JUDGE TONY GRAPHIA (Ret.)
CHAIRMAN