

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**LEE AND CHRISTIE DRAGNA
PETITIONERS**

VERSUS

DOCKET NO. 9551D

**SECRETARY, DEPARTMENT OF
REVENUE, STATE OF LOUISIANA
RESPONDENT**

**JUDGMENT ON EXCEPTION OF PRESCRIPTION
WITH ADDITIONAL WRITTEN REASONS**

A hearing on the Secretary, Department of Revenue's (the "Secretary") Exception of Prescription was heard by the Board on September 14, 2016 with Judge Tony Graphia (Ret.), Chairman; Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were: Attorney Richard Creed Jr. representing Lee and Linda Dragna (Taxpayers) and Miranda Y. Conner, attorney for the Secretary. After the hearing, the case was taken under advisement, and a decision is now unanimously rendered as follows:

Taxpayers appeal the Secretary's denial of a claim for refund of Louisiana income taxes for 2010 in the amount of \$191,720.00. The request for refund pertained to an amended 2010 tax return, which was mailed to the Secretary on June 26, 2015.

La. R.S. 47:1623 dealing prescription of income tax refunds, states pertinent part:

"A. After three years from the 31st day of December of the year in which the tax became due...no refund or credit for the overpayment shall be made unless a claim for refund or credit has been filed with the secretary...before the expiration of said three-year...period...".

As provided by §1623, the Taxpayers had until December 31, 2014 to timely

file their claim for a refund or credit for tax year 2010.

The Taxpayers complain that they did not receive their approval for the 2010 R & D tax credit from the Louisiana Department Economic Development (“LED”) until the October of 2014. Taxpayers testified that the CPA who prepared the amended 2010 return was very busy and therefore did not file the amended return until June of 2015.

The refund request was filed almost six months after the applicable prescriptive deadline, is therefore facially untimely and barred by prescription.

Even if LED had not approved the credit before the applicable prescriptive period had run the taxpayer could have filed a protective claim for refund.¹ In this case, the taxpayer actually had over two months from final certification within which to file their return before the applicable deadline had run. The Board has considered all legal grounds for interruption or suspension of prescription and does not find any applicable basis for a suspension of prescription in this case.

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary’s Exception of Prescription BE AND IS HEREBY SUSTAINED; and the Taxpayers’ petition for redetermination of a refund denial BE AND IS HEREBY DISMISSED.

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

For the Board:



Judge Tony Graphia (Ret.), Chairman

¹ Although not expressly detailed in Louisiana promulgated regulations, protective claims for refund are regularly utilized by taxpayers in Louisiana state tax filings. IRS Pub. 556 explains in detail that: “If your right to a refund is contingent on future events and may not be determinable until after the time period for filing a claim for refund expires, you can file a protective claim for refund. A protective claim can be either a formal claim or an amended return for credit or refund. Protective claims are often based on current litigation or expected changes in the tax law, other legislation, or regulations. A protective claim preserves your right to claim a refund when the contingency is resolved.”