

**NOTICE OF JUDGMENT**

Andre Burvant  
201 St. Charles Avenue, Ste. 5100  
New Orleans, LA 70170

Stephen Lafleur  
Jonathan Stokes  
P.O. Box 6118  
Alexandria, LA 70137

ENCLOSED IS A CERTIFIED COPY OF THE JUDGMENT RENDERED ON THE 27<sup>th</sup>  
DAY OF AUGUST, 2015, IN THE MATTER OF:

*ENCANA OIL AND GAS (USA), INC.,*  
vs.  
*RED RIVER PARISH TAX AGENCY*  
*AND ELAINE MOORE IN HER*  
*CAPACITY AS TAX ADMINISTRATOR*  
*OF RED RIVER PARISH TAX AGENCY*

BTA DOCKET NO. L00058  
L00059

Although a Final Judgment of the Board of Tax Appeals may be appealed to the proper Court of Appeal "within thirty days of the signing of a decision or judgment of the board" in the manner specified in R.S. 47:1434-38, an interlocutory ruling is subject to judicial review only by supervisory writ under R.S. 47:1435(B), in the same manner as provided for in civil matters under the Code of Civil Procedure and applicable appellate court Rules.

Costs for appeal are described in the promulgated rules of the Board (codified pursuant to R.S. 47:1413 in L.A.C. Title 69).

I hereby certify that the above and foregoing notice was mailed with the Judgment by me, postage prepaid to counsel of record for all parties and to those parties who were not represented by counsel, directed to their last known address, on this 28<sup>th</sup> day of August, 2015.

*Ann Javot*

Secretary-Clerk

A TRUE COPY:

*Ann Javot*

SECRETARY-CLERK  
BOARD OF TAX APPEALS  
STATE OF LOUISIANA



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

**ENCANA OIL AND GAS (USA), INC.,  
Petitioner**

**VERSUS**

**BTA DOCKET NO.: L00058  
AND L00059**

**RED RIVER PARISH TAX AGENCY AND  
ELAINE MOORE IN HER CAPACITY AS  
TAX ADMINISTRATOR OF RED RIVER  
PARISH TAX AGENCY,**

**Respondents**

\*\*\*\*\*

**JUDGMENT  
WITH ADDITIONAL WRITTEN REASONS**

\*\*\*\*\*

A hearing was held on an *Exception of Lis Pendens* filed by the Respondents before Local Tax Judge Cade R. Cole on August 27, 2015 at the 39<sup>th</sup> Judicial District Courthouse in Coushatta, Louisiana. Present before the Board-Local Tax Division were: Jonathan Stokes, attorney for the Red River Parish Tax Agency (“Collector”) movant of the exception, and Andre Burvant, attorney for Encana Oil and Gas (USA), Inc. (“Taxpayer”), opponent of the exception. After the full hearing of this matter, and in consideration of the evidence adduced, the Board issued the following written reasons for Judgment:

Article VII, Section 3(A) of the Constitution of Louisiana mandates that the Legislature “provide an adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.”<sup>1</sup>

In *St. Martin v. State*, the Supreme Court reiterated that the Louisiana Board of Tax Appeals “acts as a trial court in finding facts and applying the law” 25

<sup>1</sup> See e.g. *TIN, Inc. v. Washington Parish Sheriff's Office*, 112 So.3d 197 (La. 3/19/13)(where the Supreme Court applied this article to local sales tax collectors).

So.3d 736, 740 (La. 2009), and that “jurisdiction to resolve tax related disputes is constitutionally and statutorily granted to the Board which is authorized to hear and decide disputes and render judgments.” *Id.* at 741.

The Legislature had previously enacted a Uniform Local Sales Tax Code (Chapter 2-D of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended; the “ULSTC” was originally enacted by Act 73 of 2003). In enacting the ULSTC, the Legislature specifically provided that its provisions pre-empted any contrary provisions of local ordinances. R.S. 47:337.2(B)(1).

In adopting R.S. 47:337.77 (the “local refund statute”) the Legislature substantially borrowed from R.S. 47:1621 (the “state refund statute”). The primary difference between state refund procedure and local refund procedure was the fact that previously denial or inaction on a refund could not be appealed to the Board.

The Board of Tax Appeals (“Board” or “BTA”) has exercised primary and exclusive original jurisdiction over state tax refund actions since 1937.<sup>2</sup> Act 640 of 2014 amended R.S. 47:337.81 to grant the BTA, through its Local Tax Division, jurisdiction over local sales and use tax refunds.<sup>3</sup>

As codified in La. C.C. art. 6, only procedural and interpretive laws may be applied retroactively. A procedural law describes the steps necessary to have an

---

<sup>2</sup> See e.g., *St. Martin v. State*, 2008-1403, p.4 (La. App. 1 Cir. 3/27/09) 2009 WL 838598, *rev'd on other grounds*, *St. Martin*, *supra*, 25 So.3d 736 (La. 2009) (“**It is clear that for claims brought under the refund for overpayment procedure...the Board has primary exclusive jurisdiction to adjudicate the merits of the claims. In adjudicating the merits of taxpayer disputes, the Board essentially functions as a trial court.**”)

<sup>3</sup> Act 640 of 2014 enacted a compromise between the business community and tax collectors to bring local sales tax adjudication to the BTA, prior to this enactment Louisiana was the last state in the nation without a uniform place to appeal both state and local disputes. See also, R.S. 47:1401 and 1403(A)(3) & (4) and (B)(6) (as amended by Act No. 210 of 2015; see also Sec. 4 of Act 210) concerning the Local Tax Division generally.

existing right judicially enforced, while a substantive law instead provides a new right or duty. *See e.g., Retroactivity of Laws*, La. Law Rev. Vol. 62, p. 1328-29.

The grant of an appeal to the BTA about whether or not a taxpayer had a right to a refund is itself procedural and interpretive, and the amendments to R.S. 47:337.81 concerning the proper venue for appeal of a collector's inaction on a refund request were given immediate effect on July 1, 2014 for all pending refund requests.<sup>4</sup> Under current law a taxpayer can still access a district court if it avails itself of the payment under protest procedure for that period, but jurisdiction over refund actions, both state and local, is otherwise now fully vested in the BTA.

In the present case, the Collector urges an *exception of lis pendens* due to a pending payment under protest suit filed against it by the Taxpayer. However, the Board is not aware of any procedure whereby refund actions can now be adjudicated in the pending suit, the Legislature has set up a specific procedure for administrative review by the collector with an appeal to the BTA followed by judicial review of the BTA's judgment in the relevant Court of Appeals.

The Fourth Circuit has recognized that the *sui generis* nature of tax procedure overrules general procedural provisions related to combining distinct tax issues into the same cause of action, even if the parties are the same. *See e.g., City of New Orleans' Dep't of Fin. v. Touro Infirmary*, 2004-0835 (La. App. 4 Cir.

---

<sup>4</sup> As part of the compromise unanimously adopted by the Legislature in Act 640, and at the request of associations representing Sheriffs, School Boards, Cities, Parishes, and Collectors, a 'deemed denial' provision was added to change the law and overrule *TIN, supra*. This provision deems one year of inaction on a refund to be a denial of that refund, and requires that a taxpayer file an appeal with the BTA within 180 days from that date or the refund claim would be prescribed. Section 8 of Act 640 implemented a transitional provision to provide that no appeal to the BTA would be restricted by this rule until January 1, 2015. The taxpayer is correct in its position that its appeal to the BTA was required by the application of this law, and that its rights would have been lost if not timely filed in the Local Tax Division of the BTA.

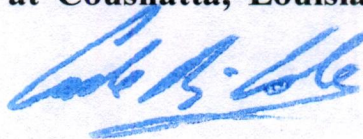
4/27/05), 905 So. 2d 314, 324, *writ denied*, 924 So. 2d 997 (La. 2/17/06). The *Touro* Court held that, “[b]ecause the laws regulating tax collections are *sui generis* and do not contemplate the filing of reconventional demands in summary proceedings to enforce the payment of taxes, it was improper for the trial court to permit a reconventional demand to be filed in the instant case.” *Id.*

The Board finds that as a matter of fact the current action involves distinct tax periods with discrete transactions that will necessarily be different from those involved in the suit pending in the 39<sup>th</sup> JDC. Therefore, the elements of *lis pendens* are not met; although there is a unity of the legal issues, these cases do not involve the same actual transactions or occurrences.<sup>5</sup>

The parties orally stipulated that the evidence and argument is the same for both Docket Numbers above captioned and a single Judgment should be rendered and filed into the record of both cases. Considering the law and evidence being in favor thereof, for oral reasons assigned, and for the foregoing written reasons:

**IT IS ORDERED, ADJUDGED, AND DECREED that the Collector’s Exception of *Lis Pendens* BE AND IS HEREBY OVERRULED, and that all additional costs of these proceedings be assessed against the Collector.**

**Judgment Rendered and Signed at Coushatta, Louisiana on this 27<sup>th</sup> day of August, 2015.**



---

**LOCAL TAX JUDGE CADE R. COLE  
LOUISIANA BOARD OF TAX APPEALS**

---

<sup>5</sup> Although it is not necessary to reach the prong related to concurrent judicial forums, the Taxpayer has correctly pointed out that the First Circuit in *dicta* in *Clark, supra* found that *lis pendens* would not strictly apply to actions before the Board. Furthermore, the jurisdiction of the BTA and the 39<sup>th</sup> JDC is not truly concurrent in these matters.