

2017 WL 5508705 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

FRANK'S INTERNATIONAL, LLC,. PETITIONERS

v.

DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket No. 10,050D

July 12, 2017

JUDGMENT WITH WRITTEN REASONS

*1 A hearing on the Secretary, Department of Revenue's (the "Secretary") Exceptions of No Right of Action and Lack of Subject Matter Jurisdiction was heard by the Board on March 6, 2017 with Judge Tony Graphia (Ret.), Chairman; Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were: Nicole F. Gould Frey, attorney for Frank's International, LLC (the "Taxpayer"), and Miranda Y. Conner, attorney for the Secretary. After the hearing, the case was taken under advisement. The Board now unanimously renders Judgment with Written Reasons as follows:

Taxpayer has appealed to the Board the Secretary's denial of a sales tax refund request in the amount of \$728,534.12 for the period 2012. The Secretary denied the requested refund because Taxpayer had participated in the Louisiana Tax Delinquency Amnesty Act of 2013 the (the "Amnesty Program").

A sales tax audit of the Taxpayer was made by the Secretary shortly after May 31,2013. The sales tax audit covered the period January 1,2009 through December 31, 2012. The audit resulted in a determination by the Secretary that Taxpayer owed sales taxes to the state in the amount of \$79,274.89, plus interest in the amount of \$15,441.95 and penalties in the amount of \$3,963.74, for a total of balance of \$98,680.49. On November 18, 2013 Taxpayer agreed to participate in the 2013 Amnesty Program. Pursuant to the amnesty agreement, Taxpayer paid the tax, one- half of the interest and none of the penalties, a total of \$86,995.87, for a savings of \$11,684.63. Subsequent to entering into the amnesty agreement, Taxpayer determined that it had over-paid its sales tax for 2012 by \$728,534.12.

On December 9, 2015 Taxpayer filed with the Secretary a claim for overpayment of 2012 sales tax in the amount of \$728,534.12. The Secretary denied the refund request stating that the refund was barred because the Taxpayer had participated in the Amnesty Program for the same tax period (2012) for the same tax type (sales tax). The Taxpayer has appealed the Secretary's denial.

Our courts have recognized that jurisdiction over the subject matter is the legal power and authority to hear and determine a particular class of actions or proceedings. *Smith v. Gretna Mach, andiron Works*, 617 So.2d 144, 145 (La. App. 5 Cir. 1993). As with all exceptions, the movant bears the burden of proving the lack of jurisdiction. *Id.*

The Supreme Court has recognized that "the Board acts as a trial court in findings of fact and applying the law". *St. Martin v. State*, 09-935, p. 6 (La. 12/1/09) 25 So.3d 736, 740. The Supreme Court also concluded 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 p. 8, 25 So.3d at 741.

*2 La. R.S. 47:1407(1) gives the board jurisdiction to hear “All matters relating to appeals for the determination of overpayments [refunds].” The Taxpayer appeals for a redetermination of denied refund. The Secretary's exception of lack of subject matter jurisdiction is without merit and is overruled.

In regard to the exception of no right of action, the Taxpayer is clearly the party in interest who would have a right of action to appeal the assessment, so the only analysis is whether under the Amnesty Act's provisions preclude this refund for this Taxpayer.

The Louisiana Tax Delinquency Amnesty Act of 2013 is Act No. 421 of the Regular Session of 2013, the Amnesty Program provides in Section 3 D:

“(D) Participation in the amnesty program shall be conditioned upon the agreement of the taxpayer that the right to protest or initiate an administrative or judicial proceeding is barred. The agreement shall only apply to the specific tax and the tax period for which amnesty is granted.”

The issue in dispute in this refund action is totally separate and distinct from the issue for which Taxpayer participated in the Amnesty Program. The Secretary is of the opinion that requesting amnesty on any sales tax issue prohibits the Board from hearing Taxpayer's refund denial appeal even when it is wholly unrelated to the dispute at issue in the Taxpayer's amnesty.

The Secretary is asking the Board to interpret the phrase “the tax” to mean the entire tax type (all sales tax) as opposed to actual issue that gave rise to the liability within that tax type (the tax due).

The Board's review of the Act and its associated history suggests to us that this is not what the legislature intended when it included section (3) (D) in the Act.

Section 3(1) of the Act also provides that the filing of an application makes “the tax, interest, and penalty immediately due and payable...ineligible for refund, credit, or claim against the state.” The Board finds that this provision is clearly directed to the tax liability actually at issue in the Amnesty, preventing that “tax, interest, and penalty” from being clawed back via any future refund claim.

This provision is not directed at a separate issue that was not under discussion or consideration at the time of the Amnesty, and does not relate in any way to the issue for which Taxpayer participated in the Amnesty Program.

The Board has not reached the merits of this case, the Taxpayer still bears the burden of proof to actually show that it is entitled to this refund on the merits.

Considering the foregoing:

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary's Exception of Lack of Subject Matter Jurisdiction **IS OVERRULED**, and that the Secretary's Exception of No Right of Action **IS OVERRULED**.

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

Judge Tony Graphia (Ret.)
Chairman

2017 WL 5508705 (La.Bd.Tax.App.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.