

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**GILLIAN GOODRICH AND
ROBERT BERNARD III**
Petitioners

DOCKET NO. 12332C

VS.

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

JUDGMENT

On February 9, 2022, this matter came before the Board for hearing on a Motion for Summary Judgment filed by Petitioners Gillian Goodrich and Robert Bernard III (husband and wife) (“Taxpayers”), with Judge Tony Graphia (ret.)¹, Chairman, presiding, and Board Members Cade R. Cole and Francis J. “Jay” Lobrano, present. Present before the Board were William J. Kolarik II and Sean T. McClaughlin, attorneys for the Taxpayers, and Debra Morris, attorney for Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (“Respondent” or “Department”). After the hearing, the Board took the matter under advisement. The Board now renders the following Judgment in accordance with the attached written reasons:


¹ Following the hearing, Judge Tony Graphia’s term expired and he retired from the Board, and thus is not participating in the rendering of this Judgment and these Reasons for Judgments.

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be rendered in favor of the Taxpayer, and that Taxpayers' Motion for Summary Judgment is GRANTED;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Department's assessment of \$22,559.33 dated January 31, 2020 is VACATED.

JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana, this 10th day of March, 2022.

FOR THE BOARD:



Francis J. "Jay" Lobrano, Chairman
Louisiana Board of Tax Appeals

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WRITTEN REASONS FOR JUDGMENT

On February 9, 2022, this matter came before the Board for hearing on a Motion for Summary Judgment filed by Petitioners Gillian Goodrich and Robert Bernard III (husband and wife) (“Taxpayers”), with Judge Tony Graphia (ret.)², Chairman, presiding, and Board Members Cade R. Cole and Francis J. “Jay” Lobrano, present. Present before the Board were William J. Kolarik II and Sean T. McClaughlin, attorneys for the Taxpayers, and Debra Morris, attorney for Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (“Respondent” or “Department”). After the hearing, the Board took the matter under advisement. The Board now renders Judgment in favor of the Taxpayers in accordance with the following written reasons.

Facts:

² Following the hearing, Judge Tony Graphia’s term expired and he retired from the Board, and thus is not participating in the rendering of this Judgment and these Reasons For Judgments.

As established by the competent summary judgment evidence submitted and introduced into evidence without objection by the Taxpayers, the facts of this case are undisputed. At issue is the Taxpayers' tax liability for the 2018 tax year (Tax Period). Specifically, Taxpayers were Louisiana residents who had Alabama source income for the Tax Period. Taxpayers reported \$2,767,145 as Federal Adjusted Gross Income on Line 7 of their individual Louisiana Income Tax Return - Form IT-540 (Return), and \$90,260 of Louisiana Income Tax prior to the application of any credits on Line 11 of the Return. Taxpayers further reported \$75,417 as Non-refundable Priority 1 Credits on Line 12 of the Return, which amount included \$63,919 as a credit for income taxes paid to Alabama as reported on Line 1, Form 10606, which form was attached to the Return.

On Taxpayers' 2018 Form 40NR Alabama Nonresident Individual Income Tax Return (Alabama Return), Taxpayers reported "Tax Due" (Line 19 of the Alabama Return) of \$63,319 and "Net Tax Due Alabama" (Line 20 of the Alabama Return) of \$33,319. The \$30,000 difference between the "Tax Due" and the "Net Tax Due Alabama" was the result of the Taxpayers' election to make a \$30,000 contribution to a qualified Scholarship Granting Organization (SGO). Specifically, Alabama law³ allows a taxpayer to elect to allocate and pay a part of that taxpayer's Alabama income tax liability to an SGO by granting a dollar for dollar credit to the taxpayer for such payments against the taxpayer's

³ The Alabama Accountability Act of 2013, as amended, codified at Al. Code 16-6D-1, *et seq.*

Alabama income tax liability⁴. Taxpayers in this case properly reported and paid \$30,000 of their \$63,319 Alabama income tax liability to an SGO⁵. This amount was reported by the Taxpayers on Schedules NTC and AATC attached to their 2018 Alabama Return.

In 2019, the Department audited Taxpayers' 2018 Return and ultimately assessed Taxpayers with additional tax, interest and penalty. The additional tax resulted from the Department's disallowance of the \$30,000 Alabama SGO contribution and related Alabama credit, with the result being that the Taxpayers' credit for income taxes paid to Alabama was reduced to \$33,319, the amount paid to the State of Alabama. The Taxpayers timely appealed the assessment with this Board, and ultimately filed this Motion for Summary Judgment.

Reasons:

There are no facts in dispute in this case, and the issue presented in Taxpayers' Motion for Summary Judgment is purely a legal question: Whether the amounts paid by the Taxpayers to the SGO and ultimately taken as a credit on Taxpayers' 2018 Alabama Return fall within the definition of "net income taxes imposed by and paid to another state" as set forth in La. R.S. 47:33(A), and thus allowable as a credit against

⁴ Of note, Louisiana and many other states have adopted similar legislation whereby a taxpayer may elect to pay all or a part of their state income tax liability to an SGO in that state.

⁵ Taxpayers actually had a carryforward of the SGO credit from a prior year.

Taxpayers' 2018 Louisiana income tax liability? Specifically, La. R.S. 47:33(A) provides in part:

Subject to the following conditions, resident individuals shall be allowed a credit against the taxes imposed by this Chapter for net income taxes imposed by and paid to another state on income taxable under this Chapter. . . .

La. R.S. 47:33(A) imposes several conditions on the availability of the credit, none of which are applicable in this case. Thus, the only issue in this case is whether the payment made by the Taxpayers to the SGO and the credit against Alabama individual income taxes for that payment qualify as "net income taxes imposed by and paid to another state" as required by La. R.S. 47:33(A).

The Department, relying on general principles of statutory interpretation and the principle that statutes which grant credits against taxes are to be strictly construed against the taxpayer, argues that the payment of the \$30,000 to the SGO was not "an income tax imposed by and paid to" the State of Alabama. During the hearing, the Department also pointed out that designations and amounts set forth on Taxpayers' Alabama Return support the Department's position in this case - specifically, Line 20 of the Alabama Return - the "Net Tax Due Alabama" reflects the "net income tax imposed by and paid to" the State of Alabama. In short, the Department takes a strict and narrow view of the definition "net income tax imposed by and paid to another state. . . ." and excludes the Taxpayers' payment to the SGO from that definition.

The Taxpayers argue that since the payment of the total Alabama Tax Liability of \$63,319 was a compulsory payment made by the Taxpayers, albeit partly to the State of Alabama and partly to the SGO, the \$30,000 payment to the SGO in 2018 constitutes “net income tax imposed by and paid to” the State of Alabama. Taxpayers further argue that denying them that credit amounts to double taxation of their income which is prohibited by the dormant commerce clause of the United States Constitution. Finally, Taxpayers argue that the federal income tax treatment of the payment to the SGO comports with the Taxpayers’s position in this case and thus supports their interpretation of La. R.S. 47:33(A).

In *Smith v. Robinson*, 265 So. 3d 740 (La. 2018), *affirmed in part and modified in part on re-hearing*, 265 So. 2d 740 (La. 2019), one of the issues before the court was whether the Texas franchise tax was an “income tax” within the meaning of La. R.S. 47:33. Citing its previous ruling in *City of New Orleans v. Scramuzza*, 507 So. 2d 215 (La. 1987), the court re-affirmed the principle that the “classification of a tax must be determined by its operational effect rather than by the descriptive language used in drafting the enactment” and that “the operational and consequential effect of the tax must be given paramount consideration”. *Smith*, supra at 746. Applying similar principles in this case, we find that the “operational effect” of the payment by the Taxpayers to the Alabama SGO was a payment of Alabama income taxes by the Taxpayers. In effect, there was no difference between (a) the Taxpayers

paying their full \$63,319 tax liability to Alabama, followed by a grant from the State of Alabama to the SGO and (2) the State of Alabama giving the Taxpayers the option to pay a portion of the individual Alabama income tax liability directly to the SGO. In the enactment of the Alabama Accountability Act of 2013, the Alabama legislature specifically authorized a taxpayer the right to discharge that taxpayer's Alabama income tax liability by making qualifying payments to an SGO. Further, the payment to the SGO cannot be considered a voluntary "donation" by the Taxpayers as the Taxpayer received full value for the transfer; i.e, a dollar for dollar credit against their Alabama income tax liability. The only logical and reasonable classification of the payment to the SGO is that it was a substitute payment of Alabama individual income tax. Clearly, the economics of the transaction support the Taxpayers' position, and the "operational effect" of the payment to the SGO is best characterized as the payment of Alabama income tax.

Further, the federal treatment of the payment to the SGO is relevant in determining its "operational effect." Specifically, Internal Revenue Code Section 164(a)(3) allows as a deduction⁶ from one's federal income the state income taxes paid by a taxpayer. Effective January 1, 2018, the Tax Cuts and Jobs Act of 2017 limited this deduction (commonly referred to as the "SALT" deduction, which includes income taxes) to \$10,000 (\$5,000 for a single taxpayer). Treas. Reg. §1.164-3(j) specifically provides that an individual "who makes a

⁶ State income taxes paid by an individual are considered a miscellaneous itemized deduction for federal income tax purposes.

payment to or for the use of an entity described in section 170(c) in consideration for a State or local tax credit **may treat as payment of State or local tax for purposes of section 164** [emphasis added] that portion of such payment for a which a charitable contribution deduction under section 170 is disallowed. . . .” Treas. Reg. §1.162-15(a) provides for similar rules in the context of a payment by a business entity and the ordinary and necessary business expense deduction rules found under Section 162. Thus, for federal income tax purposes, a payment made by a taxpayer to an SGO where a state grants a state income tax credit for such payment is treated as a payment of that state’s income tax for purposes of Internal Revenue Code Sections 162 and 164. The federal laws and regulations correctly recognize that the operational effect of the SGO payment is that of a state income tax. Internal Revenue Code Section 170(c) in fact disallows a charitable contribution deduction in the case where the a state income tax credit is given for a payment to an entity that would otherwise qualify as a charitable contribution because the taxpayer is using the payment to discharge a state income tax liability, and thus the payment is not made with true donative intent.

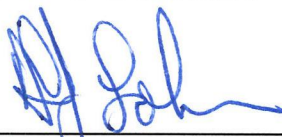
From a fundamental fairness perspective, the disallowance of the credit would result in the Taxpayers paying their overall state income tax liability twice. We note that this is a case of first impression, and clearly had the Taxpayers known that their payment to the Alabama SGO would result in partial disallowance of their credit under La. R.S.

47:433, they could have simply elected not to make a payment to the Alabama SGO and instead made the full payment to the Alabama Treasury. Finally, we note that both Louisiana and Alabama (as well as numerous other states) have allowed for creditable payments to SGO's for policy reasons and other societal benefits, and to adopt the Department's position would have the effect of discouraging taxpayers from electing to make these payments.

We note that our ruling in this matter is limited expressly to the unique facts of this case.

Baton Rouge, Louisiana, this 10th day of March, 2022.

FOR THE BOARD:



Francis J. "Jay" Lobrano, Chairman
Louisiana Board of Tax Appeals