

STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL DIVISION

HEALTHY COURSE, LLC
PETITIONER

VERSUS

No. L00807

THE CITY OF NEW ORLEANS,
NORMAN F. WHITE DIRECTOR/CFO,
THE CITY OF NEW ORLEANS
DEPARTMENT OF FINANCE,
THE PARISH OF ORLEANS
RESPONDENT

JUDGMENT WITH WRITTEN REASONS

On December 4, 2020, this matter came before the Local Division (the “Board”) for a hearing on the *Motion for Summary Judgment* filed by Petitioner Healthy Course, LLC (“Taxpayer”) and the *Motion for Summary Judgment* filed by The City of New Orleans, Norman F. White Director/CFO, The City of New Orleans Department of Finance, The Parish of Orleans (“Collector”), with Local Tax Judge Cade R. Cole presiding. Present at the hearing were Jacqueline C. Barber, attorney for Taxpayer and Kimberly K. Smith, attorney for the Collector. After the hearing, the Board took the motions under advisement. The Board now issues Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be rendered in favor of the Taxpayer and against the Collector, that the Taxpayer’s *Motion for Summary Judgment* is hereby GRANTED and the Collector’s *Motion for Summary Judgment* is hereby DENIED,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Collector's assessment of \$50,462.95 in sales and/or use tax in connection with the furnishing of meals to students and staff of the Louise S. McGehee School is hereby VACATED.

JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana, this 13 day of January, 2021.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

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WRITTEN REASONS FOR JUDGMENT

On December 4, 2020, this matter came before the Board of Tax Appeals-Local Tax Division (the “Board”) for a hearing on the *Motion for Summary Judgment* filed by Petitioner Healthy Course, LLC (the “Taxpayer”) and the *Motion for Summary Judgment* filed by The City of New Orleans, Norman F. White Director/CFO, The City of New Orleans Department of Finance, The Parish of Orleans (the “Collector”), with Local Tax Judge Cade R. Cole presiding. Present at the hearing were Jacqueline C. Barber, attorney for Taxpayer and Kimberly K. Smith, attorney for the Collector. After the hearing, the Board took the motions under advisement. The Board now issues the attached Judgment for the following written reasons.

Taxpayer seeks a redetermination of the Collector’s assessment of \$50,462.95 in sales and/or use tax in connection with the furnishing of meals to students and staff of the Louise S. McGehee School (“McGehee”). McGehee is a non-profit educational institution in Orleans Parish.

Taxpayer contracted with McGhee to provide daily catering services to students. Taxpayer prepares meals for the students to purchase *a la carte* or pursuant to a meal plan offered to all McGee students.

The Collector conducted a sales tax audit of Taxpayer for the period January 1, 2015 through February 28, 2018. The auditor determined an underpayment of sales tax on meals furnished to McGee students in the amount of \$50,462.95. Taxpayer does not contest the auditor's factual conclusions or its determination of the amount of sales at issue. However, Taxpayer views the transactions as exempt from local sales tax under La. R.S. 47:305(D)(2)(a), which provides:

Sales of meals furnished as follows shall be exempt:

(i) To the staff and students of educational institutions including, but not limited to kindergartens, if the meals are consumed on the premises where purchased, or if they are purchased in advance by students, faculty, or staff pursuant to a meal plan sponsored by the institution or organization or purchased in advance pursuant to any other payment arrangement sanctioned by the institution or organization and generally available to students, faculty, and staff of the institution or organization, regardless of where such meals are consumed.

It is undisputed that Taxpayer's sales meet the criteria for the above stated exemption found in state law (the "state law exemption").

The Collector nevertheless takes the position that sales at issue are not exempt under New Orleans' corollary version of the exemption, found in New Orleans Municipal Code Section 150-880(a) (the "city ordinance version"), which states:

Public school boards, high school boards, churches, religious organizations, colleges, universities or private schools operating lunch rooms, cafeterias or dining rooms for the exclusive purpose of providing their respective students only

with meals are deemed not to be engaged in the business of selling tangible personal property at retail and will not be held liable for payment of the sales tax with respect to such receipts. Persons selling food products to such institutions, with the exception of state operated schools and schools operated under religious supervision (see sections 150-800 and 150-801), for use by the latter in providing meals are deemed to be making sales at retail and must pay the tax with respect to their receipts therefrom.

There is no dispute that if the above quoted and emphasized language applies, then the sales at issue are subject to New Orleans sales tax.

The question for the Board to decide is whether the state statute exemption or city ordinance version actually applies. The answer depends on whether New Orleans' Home Rule Charter has the effect of depriving the legislature of its express constitutional authority to enact exemptions applicable to all localities of the state.

Prior to the enactment of Louisiana's 1974 Constitution, the legislature recognized New Orleans' rights under its Home Rule Charter to exercise a plenary power to tax without needing specific authority from the legislature. When the 1974 Constitution was enacted, Article VI, § 4 ratified that power by stating:

Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein. **Except as inconsistent with this constitution, each local governmental subdivision** which has adopted such a home rule charter or plan of government **shall retain the powers, functions, and duties in effect when this constitution is adopted.**

The Collector alleges that the city ordinance version of this exemption, Section 150-880(a), was in effect prior to 1974, and therefore the

legislature's authority is preempted by La. Constitution Article VI, § 4 (the "Ratification Clause").

The summary judgment procedure provides for the just, speedy, and inexpensive determination of every action, and is favored under the law. *Szewczyk v. Party Planners W., Inc.*, 2018-0898, p. 6 (La. App. 4 Cir. 5/29/19); 274 So.3d 57. A motion for summary judgment will be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). A motion for summary judgment is the appropriate procedural device when there is no genuine issue of material fact for all or part of the relief prayed for by the litigant. *Forrest as Tr. for Jack Thrash Forrest III Trust v. Ville St. John Owners Ass'n, Inc.*, 2018-0175, p. 6 (La. App. 4 Cir. 11/7/18); 259 So.3d 1063, 1068.

The Board recognizes that New Orleans' Home Rule Charter extends freedom from legislative interference with the city's power to enact and enforce local laws. See *City of New Orleans v. Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690, p. 7 (La. 7/5/94); 640 So.2d 237, 243. However, the City of New Orleans' broad powers of self-governance are subject to the limitations placed thereon by the Constitution itself. *Id.* at p. 16-17; 247. By its own terms, the Ratification Clause does not grant or preserve any power that is "inconsistent" with the Constitution.

New Orleans' Home Rule Charter taxing powers are subordinate to the specific clauses related to taxes found in the Louisiana Constitution, the city's ordinances must yield with they are **inconsistent** with specific

constitutional provisions. When the people of Louisiana, expressed in its foundational document, provide a specific authorization to tax subject to particular parameters then those express terms must be given effect.

In *Circle Food Stores, Inc. v. City of New Orleans*, the Louisiana Supreme Court struck down New Orleans' attempt to levy a tobacco tax as a violation of La. Const. Art. VI § 29(A). 620 So.2d 281 (La. 1993). La. Const. Art. VI § 29(A) bars municipalities from imposing a sales, use, or consumption tax in excess of three percent without both legislative authorization and approval by a majority of the electors at an election for that purpose. Without receiving either authorization, New Orleans sought to levy a tobacco tax that would have been duplicative (and therefore in excess of 3%) with other sales, use, or consumption taxes on tobacco.

The Supreme Court affirmed that every tax that is in substance a sales tax must meet the requirements of La. Const. Art. VI, § 29, and struck down the tobacco tax since it did not meet those requirements. *Id.* at 286. New Orleans' Home Rule Charter, and the broad powers of taxation that it provides, were in effect when the Supreme Court decided *Circle Foods*, and those powers nonetheless could not override the provisions of Paragraph A of Section 29.

The interpretation urged by the Collector in this case similarly seeks to override another provision of Article VI, § 29, specifically Paragraph (D), which states:

Except when bonds secured thereby have been authorized, the legislature may provide for the exemption or exclusion of any

goods, tangible personal property, or services from sales or use taxes only pursuant to one of the following:

(1) Exemptions or exclusions uniformly applicable to the taxes of all local governmental subdivisions, school boards, and other political subdivisions whose boundaries are not coterminous with those of the state.

(2) Exemptions or exclusions applicable to the taxes of the state or applicable to political subdivisions whose boundaries are coterminous with those of the state, or both.

(3) Exemptions or exclusions uniformly applicable to the taxes of all the tax authorities in the state.

If the City's Home Rule Charter authority has to yield to the provisions of Paragraph A of Section 29, there is no reason it should not also be subject to the provisions of Paragraph D of the same Section.

The legislature has the express authority to provide for tax exemptions, provided they are "uniformly applicable" as provided for therein. In other words, the legislature must use its power to provide exemption in a way that treats all local collectors in the state the same.¹ The legislature did so by making La. R.S. 47:305(D)(2)(a) uniformly applicable to all taxing authorities. The legislature did not make this exemption optional. New Orleans' Home Rule Charter cannot override the legislature's exercise of its express constitutional power to provide for uniform sales tax exemptions.

Adopting the Collector's position is inconsistent La. Const. Art. VI, § 29(D). Consequently, the Board must apply the exemption as written in La. R.S. 47:305(D)(2)(a). There is no dispute that the sales at issue are

¹ See e.g. *Arrow Aviation Co. v. St. Martin Parish Sch. Bd. Tax Sales Dept.*, 2016-CA-1132 (La. 12/6/16), 218 So. 3d 1031 (the legislature may directly exempt or may authorize optional exemptions, provided the option to implement is applied uniformly throughout the state).

subject to the state law exemption. Because the valid state law exemption applies, the Assessment appealed from is contrary to law, and must be vacated.

Baton Rouge, Louisiana this 13 day of January, 2021.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE