

BOARD OF TAX APPEALS
STATE OF LOUISIANA

INNOPHOS, INC.
Petitioner

VERSUS

DOCKET NO. 8828

DEPARTMENT OF REVENUE, STATE
OF LOUISIANA
Respondent

JUDGMENT
ON SECRETARY'S EXCEPTIONS OF NO CAUSE OF ACTION, NO RIGHT OF
ACTION AND LACK OF SUBJECT MATTER JURISDICTION

This matter was heard by the Board on the Secretary's exceptions on November 20, 2014, with Judge Tony Graphia (ret.), Chairman; Cade R. Cole and Kernan A. Hand, Jr. present and no board members absent. Present before the Board were: Jason Brown, attorney for Innophos, Inc. (Taxpayer), and Brandea Averett, attorney for the Secretary, Department of Revenue (Secretary).

The Taxpayer appeals to the Board from the Secretary's assessment of sales tax in the amount of \$450,611.40, less payments, plus interest and penalties for the period December 31, 2010.

The Secretary has filed exceptions of no cause of action, no right of action and lack of subject matter jurisdiction. The Secretary's exceptions are based on the fact that after the Secretary issued the assessment, the Taxpayer acknowledged that it owed some of the taxes in the assessment and sought amnesty on a part of the taxes included in the assessment.

The Secretary is of the opinion that requesting amnesty on any part of the taxes assessed prohibits the Board from hearing the other elements of the assessment for which the Taxpayer did not seek amnesty.

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. and Iron 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.

R.S. 47: 1407 (1) gives the board jurisdiction to hear “ All matters relating to appeals for the redetermination of assessments...”. The Taxpayer appeals for a redetermination of an assessment. The Secretary’s exception of lack of subject matter jurisdiction 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, and the exception is overruled.

In regard to the exception of no cause of action, it is sustained insofar as it pertains to any request for the Board to compel the Secretary to grant amnesty. The grant or denial of amnesty is within the discretion of the Secretary. The Taxpayer’s liability under all applicable laws will be determined following a hearing on the merits.

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary’s exceptions are sustained in part and denied in part.

Baton Rouge, Louisiana, this 22 day of January, 2015.

FOR THE BOARD

Judge Tony Graphia (Ret.), Chairman