

BOARD OF TAX APPEALS
STATE OF LOUISIANA

JOYCE KIDD

Petitioner

VERSUS

B.T.A. DOCKET NO. 13205B

DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

Respondent

JUDGMENT AND REASONS

On June 15, 2023, this matter came before the Board for a hearing on the *Peremptory Exception of Prescription and No Right of Action* filed by the Department of Revenue, State of Louisiana (“Department”). Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Robyn Davis, on behalf of the Department, and Margie Campbell, appearing by phone on behalf of Joyce Kidd (“Petitioner”). At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment in accordance with the attached Reasons:

IT IS ORDERED, ADJUDGED, AND DECREED that the *Peremptory Exception of Prescription and No Right of Action* BE AND ARE HEREBY OVERRULED.

Judgment Rendered and Signed at Baton Rouge, Louisiana, on this 17 day of August, 2023.

FOR THE BOARD:



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

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REASONS FOR JUDGMENT

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Background:

The Petitioner’s representative, Ms. Campbell, filed the Petitioner’s Original 2017 Louisiana Individual Income Tax Return (“Original Return”) on June 19, 2020. The Original Return showed a balance due and did not include a claim for an overpayment. The balance on the Original Return was paid in August 2020. On November 5, 2021, Ms. Campbell filed an Amended 2017 Louisiana Individual Income Tax Return (“Amended Return”) on behalf of the Petitioner. The Amended Return was filed with an attached Schedule E that reported \$31,069.00 in exempt Teacher’s Retirement income. In fact, the Teacher’s Retirement income on Schedule E was the only income reported anywhere on the Amended Return. However, on Line 7 of the Amended Return, Ms. Campbell did not check the box indicating exempt

income on Schedule E. In addition, also on the Schedule E, Ms. Campbell did not enter the total amount of exempt income on Line 4K. Further still, Ms. Campbell failed to enter a zero for Louisiana Adjusted Gross Income on Line 5C.

On February 1, 2022, Ms. Campbell filed a correct, complete, Final Return (“Final Return”). The Final Return included a Schedule E that correctly showed a Federal Adjusted Gross Income amount of zero. The Department argues that the Final Return represents the first and only claim for refund. Further, the Department argues that since the refund was not claimed until February 1, 2022, it was not submitted within three years of December 31 of the year in which the tax became due, nor within one year of when the tax was paid in August 2020.

Prescription:

Statutes providing for prescriptive periods are to be strictly construed in favor of maintaining a cause of action. *Correro v. Caldwell*, 49,778, p. 3 (La. App. 2 Cir. 6/3/15), 166 So.3d 442, 444, writ denied, 2015-1536 (La. 10/23/15), 179 So.3d 607. The prescriptive period at issue in this matter is found in La. R.S. 47:1623(A), which provides:

After three years from the 31st day of December of the year in which the tax became due or after one year from the date the tax was paid, whichever is the later, no refund or credit for an overpayment shall be made unless a claim for credit or refund has been filed with the secretary by the taxpayer claiming such credit or refund before the expiration of said three-year or one-year period. The maximum amount which shall be refunded or credited shall be the amount paid within said three-year or one-year period. The secretary shall prescribe the manner of filing claims for refund or credit.

The Department has promulgated a rule setting out requirements for a “claim for refund or credit” in LAC 61:I.4909(A)(1). The regulation requires that the claim be written in English, and be, “submitted on claims for refund/credit forms provided by the secretary,” “written in a format substantially the same as that provided by the secretary,” or “submitted by timely filing an amended return.”

The Third Circuit recently held that a “return that seeks a refund of overpayment constitutes the filing of a ‘claim for credit or refund.’” *Shepherd v. Lewis*, 2022-337, p. 8 (La. App. 3 Cir. 10/26/22), 352 So.3d 1042, 1046–47. In *Shepherd*, the

taxpayer filed a return in which he claimed entitlement to a refund of \$1,078.00. The return was filed within one year of the Department seizing funds from his bank to satisfy a different tax liability amount for the same period. The Court held that since the taxpayer had sought a refund, the amended return constituted a claim for credit or refund for purposes of La. R.S. 47:1623, despite the distinction in the amount and nature of the two claims.

In this case, there actually was a relationship between the exempt income reported, albeit incorrectly, on the Amended Return and the overpayment reported on the corrected Final Return. *A fortiori*, there is an even more compelling reason to overrule the Exception of Prescription in this case than there was in *Shepherd*. There is nothing in La. R.S. 47:1623 nor LAC 61:I.4909(A)(1) that makes Petitioner's claim for the exemption dependent on a particular line item on a return, much less the specific line items that Ms. Campbell failed to fill out. Based on the specific facts before the Board, and construing the prescriptive statute against sustaining the exception, the Board finds that, for purposes of La. R.S. 47:1623, reporting all of Petitioner's income as exempt Teacher's Retirement benefits on the Amended Return constituted a claim for a refund or credit.

The Amended Return was filed within the three year period set forth in La. R.S. 47:1623(A). Therefore, the Petitioner's claim is not prescribed. The Board will accordingly overrule the Exception of Prescription. The Board will also overrule the Exception of No Right of Action as it is based solely on the alleged untimeliness of the refund claim.

Baton Rouge, Louisiana, this day, August 17th, 2023.

FOR THE BOARD:



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