

**BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION**

**NORTHWESTERN LOUISIANA CANCER CENTER, LLC
NATCHITOCHEES REGIONAL MEDICAL CENTER**

VERSUS

DOCKET NO. L01810

**LOUISIANA TAX COMMISSION,
TIMOTHY PAGE, ASSESSOR FOR NATCHITOCHEES PARISH
STUART WRIGHT, SHERIFF OF NATCHITOCHEES PARISH**

JUDGMENT ON EXCEPTIONS WITH REASONS

On February 8, 2024, this matter came before the Board for hearing on the Exception of Improper Cumulation filed by Timothy Page, Assessor for Natchitoches Parish ("Assessor"). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Nicole Frey, attorney for the Petitioners Northwest Louisiana Cancer Center, LLC ("NLCC") and Natchitoches Regional Medical Center ("NRMC") (collectively, the "Petitioners"), Brian Eddington attorney for the Assessor, and Franklin "Drew" Hoffman, attorney for the Louisiana Tax Commission ("LTC"). At the conclusion of the hearing, the Board took the matter under advisement. In accordance with the attached Reasons, the Board now rules as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Exception of Improper Cumulation BE AND IS HEREBY converted to a Peremptory Exception of No Right of Action and SUSTAINED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be Judgment in favor of the Assessor and the LTC and against the Petitioners that Petition be and is hereby DISMISSED.

**JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA, THIS 14th DAY OF MARCH, 2024.**

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

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REASONS FOR JUDGMENT ON EXCEPTIONS

On February 8, 2024, this matter came before the Board for hearing on the Exception of Improper Cumulation filed by Timothy Page, Assessor for Natchitoches Parish ("Assessor"). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Nicole Frey, attorney for the Petitioners Northwest Louisiana Cancer Center, LLC ("NLCC") and Natchitoches Regional Medical Center ("NRMC") (collectively, the "Petitioners"), Brian Eddington attorney for the Assessor, and Franklin "Drew" Hoffman, attorney for the Louisiana Tax Commission ("LTC"). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues the foregoing Judgment for the following reasons.

Background:

The following allegations of the Petition are presumed to be true for purposes of ruling on the Exception. Petitioners filed the instant Petition pursuant to L. R.S. 47:2132(D). NRMC is a healthcare system which serves Natchitoches, Winn, and Sabine parishes. NRMC was created as a hospital service district under the authority provided in La. R.S. 47:1051 *et seq.* Hospital service districts are declared to be political subdivisions of the state in La. R.S. 47:1064. NRMC and others formed NLCC in 2005. In August 2021, NRMC became the sole member of NLCC. At the same time NRMC leased all of NLCC's assets from it. Before and after the lease, NRMC used and continued to use the assets to provide services and therapies to the residents of Natchitoches and surrounding areas.

In 2022, NLCC paid ad valorem taxes of \$85,596.01 on the assets it leased to NRMC. NLCC did not pay the taxes under protest and did not file a legality challenge as provided for in La. R.S. 47:2134(C). Nevertheless, on April 25, 2023, NRMC filed a claim for a refund of taxes erroneously paid with the LTC under La. R.S. 47:2312(A). NLCC joined in the refund claim on May 15, 2023. The basis for the refund claim is the assertion that the leased assets are owned and used by political subdivisions of Louisiana to carry out a public purpose, and are therefore exempt under La. Const. art. VII §21(A).

On June 13, 2023, the LTC denied the refund claim. The Assessor admits in Paragraph 10 of the Answer that the LTC did so without the benefit of a hearing, evidence, or argument. On June 30, 2023, the Petitioners filed the instant *Petition for Appeal and Refund* with the Board. An Administrative Record created before the LTC was filed with the Board on August 25, 2023.

Despite the Assessor's admission, the LTC record contains five exhibits submitted by the Petitioner and three pages of documents submitted with the Assessor. In addition, the LTC's decision in the Administrative Record states:

This matter was heard at the office of the LTC on June 14, 2023. Pursuant to La. R.S. 47:2132, the Commission consulted with the Natchitoches Parish Assessor's office who advised that no refund is due. . . . The Commission agreed with the Assessor and voted to DENY the refund request. [emphasis in original].

Counsel for the Petitioners, the Assessor, and the LTC have all represented to the Board that there was no hearing. Counsel for the LTC further represented that the claim was placed on the LTC's agenda 24 hours before it was summarily denied.

The LTC's position is that it cannot consider the claim without the Assessor's approval.¹ The Assessor's position, which the LTC attached to its letter, states that the refund claim is predicated on a legality challenge that the LTC does not have

¹ The LTC did not join in the Exception.

jurisdiction to consider. Consistent with that position, the Assessor has filed an Exception of Improper Cumulation of Actions with the Board, arguing that an appeal under La. R.S. 47:2132(D) is appellate in nature, but that the underlying dispute implicates the original jurisdiction of the Board and the Courts over a legality challenge. Further, Petitioners assert that the Board must first find the property is exempt from tax before it can order a refund. Alternatively, Petitioners ask for a remand to the LTC for adjudication if the Board finds that it has appellate jurisdiction.

Discussion

The Assessor's Exception calls into question what effect, if any, can be given to language in La. R.S. 47:2132(D) that seems to establish a right to appeal from an action of the Assessor or the LTC in "rejecting or refusing to approve any claim" made under La. R.S. 47:2132, "by means of ordinary proceedings to the Board of Tax Appeals or to the district court having jurisdiction where the property which is the subject of the claim is located." Louisiana law formulates a two-track procedure that "must be adhered to in challenging property tax assessments. *Gisclair v. Louisiana Tax Comm'n*, 2009-0007, p. 5 (La. 6/26/09), 16 So.3d 1132, 1135. One "track" is the "correctness" challenge, the other "track" is a "legality" challenge. *Id.* The nature of the challenge determines the forum in which Louisiana's constitution invests original jurisdiction to hear and resolve the dispute. *Id.* The assertion that the assessed property is exempt by law is a legality challenge. *Triangle Marine, Inc. v. Savoie*, 95-2873, p. 6 (La. 10/15/96), 681 So.2d 937, 940. The Board and the District Courts have original jurisdiction to hear legality challenges. La. R.S. 47:2134(D); see La. Const. art. V, Sec. 36; *Triangle Marine*, 95-2873, p. 6 (La. 10/15/96), 681 So.2d at 941.

In *New Orleans Riverwalk Marketplace, LLC v. Louisiana Tax Commission*, 2017-0968, (La. App. 4 Cir. 4/30/18), 243 So.3d 1070, 1076, *writ denied*, 2018-0889 (La. 9/28/18), 252 So.3d 925 ("*NORM*"), the Fourth Circuit has considered the question presented and accepted the position now urged by the Assessor. The

taxpayer in *NORM*, like the Petitioners, voluntarily paid tax on property allegedly owned by a public entity. The taxpayer later filed a refund claim with the LTC. The LTC denied the refund, and the taxpayer appealed to the courts under La. R.S. 47:2132(D). On appeal, the Fourth Circuit held that La. R.S. 47:2132(D) did not remove the requirement that a taxpayer challenging the validity of a tax must pay under protest and sue to recover in order to obtain a refund. The Court found no jurisprudence defining the term “taxes erroneously paid,” although it did note the existence of several Attorney General opinions, particularly an opinion dealing with the Homestead Exemption. Without arriving at a comprehensive definition, the Court decided that the legality dispute in the case was more than a simple erroneous payment.

In order to bring a legality challenge under La. R.S. 47:2134(C), the Petitioners were required to pay the tax under protest and then file suit within thirty days of the payment. The Petitioners did not do so. The Board agrees with the Fourth Circuit’s conclusion that La. R.S. 47:2132 does not provide an alternative procedure for a legality challenge. The Board further agrees with the Court’s holding that notes that after *NORM* was decided, the legislature amended La. R.S. 47:2132 to specify that a person “who prevails in a suit pursuant to R.S. 47:2134(C)” can bring a refund claim within three years of the date of the final judgment. The Petitioners do not satisfy the pre-requisite criteria for claiming a refund under the amended statute. Furthermore, this matter is not a suit under La. R.S. 47:2134(C). Thus, even if the Board were to render a declaratory judgment in favor of the Petitioners, that would not enable them to claim a refund under La. R.S. 47:2132.

La. R.S. 47:2132(D) does not provide a means to invoke the Board’s original jurisdiction over a legality challenge. However, that does not mean that can be used to invoke the Board’s appellate jurisdiction over a correctness challenge. Indeed, it is difficult to define the right of appeal described in La. R.S. 47:2132(D). The Board has considered the legislative history surrounding the enactment of the provision and the

context provided by related provisions. La. R.S. 47:2132(D) was enacted by 2008 Act 819 (H.B. 337). The 2008 reforms overhauled procedures for tax sales and property adjudicated to political subdivisions. The changes to the law introduced the concept of "Tax Sale Title" as way to more easily return adjudicated property to commerce. The legislative comments to La. R.S. 47:2132 merely state that it is a re-enactment and consolidation La. R.S. 47:2108 and 47:2108.1.

The comments also indicate that, prior to the 1974 Constitution, refund claims for state property taxes were heard by this Board. Under La. R.S. 47:2108, the Board was empowered to:

[M]ake such examination and investigation as it may deem necessary to determine the correctness of any claim presented; and for that purpose, the board is authorized to employ any expert accountant or clerical assistants that might be necessary. The board may appoint an agent to conduct any investigation, in Louisiana or elsewhere, that may be found necessary in discovering the facts in connection with any claim. The board is authorized to require the claimant to present for its inspection all books, papers, documents, receipts, etc., that may have a bearing upon the true facts in connection with any claim presented; and the burden of proof shall always rest with the person presenting any claim against the state for any purpose whatsoever. The board is further authorized to call upon any department or official of the state or any institution thereof or any citizen to make available to the board any and all information, documents, receipts and papers that will aid it in discovering the correctness and justice of any demand or claim that might be presented to it against the state.

The statutory procedure for state property tax refund claims before the Board appears to be similar to the claim against the state procedure in La. R.S. 47:1481.

In *Williams v. State, Through Office of Motor Vehicles*, 538 So.2d 193 (La. 1/30/1989); the Supreme Court recognized a general power to use the declaratory judgment provisions to declare something unconstitutional even if the provisions of the state payment under protest statute were not adhered to (R.S. 47:1576 is the state equivalent of R.S. 47:2134). The Court implicitly suggested the taxpayer could get a recommendation from this Board pursuant to La. R.S. 47:1481 to receive payment.

Shortly thereafter, in *Church Point Wholesale Beverage Co. v. Tarver*, 614 So. 2d 697 (La. 1993), the Court confirmed that a taxpayer could obtain a declaratory

judgment and then seek payment pursuant to R.S. 47:1481, **provided** that that the underlying three-year period to receive that refund had not prescribed. *Id.* It held that if there was no longer a power under R.S. 47:1481 to refund the money, then there would not be any standing for a declaratory judgment challenge. *Id.* at 706.

When the legislature enacted La. R.S. 47:2132 as a procedure for local property taxes, it could have copied the old state property tax refund procedure or the similar procedure in R.S. 47:1481. It did not do so. In fact, in enacting Subsection B of R.S. 47:2132, it specified that after a judicial determination of the invalidity of a 'statutory imposition' that "[t]he tax commission shall also authorize and direct the refund and repayment of those taxes found to be erroneously paid as provided in this Section." That is far more direct and authoritative than the maze of language used in Subsection A, which only authorizes the LTC to::

[C]onsult with the assessor of the parish in which the property which is the subject of the claim is located, and after that assessor advises the tax commission that a refund is due the claimant, the tax commission shall duly examine the merits and correctness of each claim presented to it and shall make a determination thereon within thirty days after receipt of the claim.

The LTC's review of a refund claim does not provide the ability to perform functions typically performed by a trial court, such as the power to compel discovery, issue subpoenas, require the attendance of witnesses and the production of books, papers and documents pertaining to the matter under inquiry, to examine witnesses, and to require the taking of depositions. *See Kellogg Brown & Root, LLC v. Lopinto*, 22-204, p. 5 (La. App. 5 Cir. 11/2/22), 354 So.3d 69, 73 *writ denied*, 2022-01761 (La. 2/24/23), 356 So.3d 341. The narrow review by the LTC of refund claims also stands in contrast the LTC's role as the venue for a "meaningful" hearing in a correctness challenge. La. R.S. 47:1989(A); *D90 Energy, LLC v. Jefferson Davis Parish Bd. of Review*, 2020-00200, p. 8 (La. 10/1/20), 341 So.3d 492, 498.

Moreover, there is no doubt that in this case the LTC actually did not conduct meaningful review of the Petitioners' refund claim. The LTC did not docket the claim,

did not issue a rule to show cause, did not hear arguments, and did not consider the Petitioners' exhibits. *See Comeaux v. Louisiana Tax Comm'n*, 2020-01037 (La. 5/20/21), 320 So.3d 1083, 1098 ("The very act of issuing a rule to show cause designated that the Commission would review the assessment of the Assessor after evaluating the arguments and evidence of both parties.").

Although it is not clear what the legislature intended for La. R.S. 47:2132(D) to provide, the Board finds that the vague language did not create a new "track" for legality challenges. It could have used the clear language of Subsection (B), or other laws, but it did not. The pre-requisites established in La. R.S. 47:2134(C) in this case require that the taxes in dispute be paid under protest for the Petitioners to have a cause of action to assert a legality challenge. *See S. Ryan Holdings, LLC v. Aguiard*, 2021-40, p. 8 (La. App. 3 Cir. 6/9/21), 322 So.3d 862, 868 (upholding refusal to certify a class when a majority of the putative class members did not pay under protest). The provisions of Subsection (A) of R.S. 47:2132 are so weak and conditional that there is no remedy. ^{here} Since there is no remedy, there is no standing for a declaratory challenge. *Churchpoint*, supra. This is a wrong that requires a legislative solution, not a judicially created one.

The Petitioners did not satisfy those pre-requisites provided by La. R.S. 47:2134, and cannot resurrect their legality challenge under La. R.S. 47:2132(D). Accordingly, the Board will convert the Exception of Improper Cumulation to a Peremptory Exception of No Right of Action and dismiss this Petition.

BATON ROUGE, LOUISIANA, THIS 14th DAY OF MARCH, 2024.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE