

2018 WL 1459225 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

RENEW COUNTRY OF LOUISIANA THREE CORPORATION
RENEW COUNTRY OF LOUISIANA TWO CORPORATION

v.

SECRETARY, DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket Nos. 9261, 9262

February 7, 2018

JUDGMENT WITH WRITTEN REASONS

*1 On December 5, 2017 a hearing was held before the Board on the merits of these two consolidated cases with Judge Tony Graphia (Ret.), Chairman, and Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were: Brandon Lagarde, CPA, for Renew Country of Louisiana Three Corporation (hereinafter referred to as “Taxpayer Three”) and for Renew Country of Louisiana Two Corporation (hereinafter referred to as “Taxpayer Two”) and Adrienne Quillen, attorney for the Secretary Department of Revenue (the “Secretary”). After the hearing the case was taken under advisement, and the Board now unanimously renders Judgment for the following written reasons.

The issues in these two consolidated case are exactly the same. Taxpayer Three was assessed additional sales/lease tax in the amount of \$43,381, plus interest and penalties, for the period January 1, 2012 to April 30, 2013. Taxpayer Two was assessed additional sales/lease tax in the amount of \$43,328, plus interest and penalties, for the period January 1, 2012 to April 30, 2013. Both Taxpayers herein purchased solar energy equipment from third-party suppliers for lease to homeowners (the “Lessees”). A company called The Citizenre Corporation (“TCC”) installed the solar energy equipment and entered into lease agreements with Lessees.

TCC then assigned its rights and obligations under the leases with Lessees to Taxpayers herein. The leases to Lessees were generally for ten years. At the end of the ten-year period Taxpayers were obligated to remove the solar energy equipment from the Lessees' houses or the Lessees could buy the solar energy equipment for its fair market value. Under the terms of the leases, the Lessees were obligated to pay monthly rental payment to Taxpayers. As the owner of the solar energy equipment and the provisions of R.S. 47:6030 (A)(I) the Taxpayers herein received solar tax credits.

There was no dispute that the Taxpayer owed the lease tax on the lease payments from the Lessees. The Taxpayer paid that tax and it was not in dispute. It is the position of the Secretary-- and the basis of the assessments—that a lease tax is also owed on the amount of the income tax credits that the Taxpayers themselves received from the state.

La. R.S. 47:6030 provided that any taxpayer who purchases and installs a solar energy system in a residence located in Louisiana is eligible for the credit. In regard to the tax on the credits, the Secretary relies on LAC 61:I.1907(C)(4). That regulation states that in order for a taxpayer other than the owner of a residence to claim a tax credit, that taxpayer must provide the department with a copy of a contract stating therein that the owner of the residence is not entitled to and will not claim the tax credit and transfers his right to claim the credit to the installer, developer or third party taxpayer. However, there was no evidence or discussion at trial of this provision's application to these installations.

*2 The evidence and law provide that in accordance with La. R.S. 47:6030, as in effect following Act 467 of 2009, the Taxpayers herein were entitled to the tax credits at issue. While the Secretary's regulation is a logical to prevent any potential double dipping problems, the credits were granted by the state to the Taxpayer as the party who purchased and installed the system.

The Secretary has provided no law that would allow the Secretary to include within the lease tax definition of gross proceeds the value of the tax credits which are under the applicable law given directly to this taxpayer.

IT IS ORDERED, ADJUDGED AND DECREED that the Taxpayers Petitions of Redetermination of the Assessment BE AND ARE HEREBY GRANTED, and that Judgment be and is hereby rendered against the Secretary in this matter, and that the Secretary's assessments against these Taxpayers BE AND ARE HEREBY vacated.

Judgment Rendered and Signed at Baton Rouge, Louisiana, this 7th day of February, 2018.

For the Board:

Judge Tony Graphia (Ret.)
Chairman

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