

2018 WL 4608117 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

SMITH INTERNATIONAL, INC., PETITIONER

v.

SECRETARY, DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket No. 10498D

April 10, 2018

JUDGMENT

*1 A hearing was held before the Board on August 8, 2017 on the Secretary, Department of Revenue, State of Louisiana's (the "Secretary") Exception of Lack of Subject Matter Jurisdiction and the merits of the Petition of Smith International, Inc. (the "Taxpayer") with Judge Tony Graphia (Ret.), Chairman; Board Members Cade R. Cole and Francis "Jay" Lobrano present, and no member absent. Participating in the hearing were: Robert S. Angelico and Cheryl M. Kornick, attorneys for Taxpayer, and Miranda Y. Conner, attorney for the Secretary. After the hearing the case was taken under advisement, and the Board now unanimously renders Judgment for the written reasons.

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that the relief sought in the Taxpayer's Petition for Redetermination is GRANTED;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Secretary's Exception of Lack of Subject Matter jurisdiction is overruled;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Taxpayer is not liable for the penalties assessed by the Secretary under R.S. 1602(A), [R.S. 47:1604.1](#), or [R.S. 47:1604.1\(C\)](#) for corporate income tax and corporate franchise tax for the tax period December 31, 2008 to December 31, 2010.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 10th day of April, 2018.

REASONS FOR JUDGMENT

A hearing was held before the Board on August 8, 2017 on the Secretary, Department of Revenue, State of Louisiana's (the "Secretary") Exception of Lack of Subject Matter Jurisdiction and the merits of the Petition of Smith International, Inc. (the "Taxpayer") with Judge Tony Graphia (Ret.), Chairman; Board Members Cade R. Cole and Francis "Jay" Lobrano present, and no member absent. Participating in the hearing were: Robert S. Angelico and Cheryl M. Komick, attorneys for Taxpayer, and Miranda Y. Conner, attorney for the Secretary. After the hearing the case was taken under advisement, and the Board now unanimously renders its Judgment for the following written reasons.

Taxpayer appeals the Secretary's assessment of corporate franchise tax for the period December 31, 2008 to December 31, 2010 in the amount of \$170,658.00, along with interest in the amount of \$60,524.77, and penalties in the amount of \$93,873.45 less payments, and corporate income tax for the same period in the amount of \$324,267.00, along with interest in the amount

of \$147,267.29, and penalties in the amount of \$178,346.85 less payments made. Taxpayer has paid the tax and interest, but objects to the penalties.

The Secretary originally assessed three penalties on the Taxpayer. The penalties that remain in dispute are penalties for late payment under [R.S. 47:1602\(A\)](#) and penalties for negligence under [R.S. 47:1604.1](#). According to the Petition, the secretary also originally assessed penalties for an “other large tax deficiency” under [R.S. 47:1604.1\(C\)](#). However, the Secretary and Taxpayer subsequently entered into Joint Stipulations by which the Secretary agreed to remove and not pursue then penalties under [R.S. 47:1604.1\(C\)](#), leaving only the late payment and negligence penalties for the Board's consideration.

*2 The Secretary filed an Exception of Lack of Subject Matter Jurisdiction which was referred to the merits. The basis of the Secretary's Exception is that the Board does not have jurisdiction to waive the penalties assessed. However, the Taxpayer is not requesting a waiver of penalties. Rather, the Taxpayer's petition alleges that the assessed penalties are not due. [R.S. 47:1407\(1\)](#) gives the Board jurisdiction over all matters relating to appeals for the redetermination of assessments. The relief prayed for is therefore properly pled and within the board's jurisdiction. Accordingly, the Secretary's Exception of Lack of Subject Matter Jurisdiction will be overruled.

The Board must determine whether the penalties assessed are owed by the Taxpayer. The first penalty under consideration is the late payment penalty. The late payment penalty is found in [R.S. 47:1602](#), which states in part:

Section 1602. Penalty for failure to make timely return

A. When any taxpayer fails to make and file any return required to be made under the provisions of this Subtitle before the time that the return becomes delinquent or when the taxpayer fails to timely remit to the secretary of the Department of Revenue the total amount that is due on a return which he has filed, there shall be imposed, in addition to any other penalties provided, a specific penalty to be added to the tax.

Section 1602 requires that a taxpayer timely remit the amount that is due on the return or risk being subject to the late payment penalty. It is admitted by Joint Stipulation that the Taxpayer timely filed its required corporate income tax and corporate franchise tax returns and remitted to the Secretary the amount of tax shown to be due on those returns. The Taxpayer has complied with the requirements of Section 1602. Therefore, the Taxpayer is not subject to the late payment penalty.

The next inquiry is whether Taxpayer is subject to the negligence penalty found in [R.S. 47:1604.1](#). That section was amended by La. Acts 2015, No. 128 (“act 128”). The effect of Act 128 was to allow the Secretary to assess the negligence penalty absent a finding of willful intent to defraud the state on the part of the taxpayer. Act 128 states on its face that it will become effective on July 1, 2015. The tax period at issue is December 31, 2008 to December 31, 2010. There is nothing in Act 128 stating that it will be retroactive. Further, [Article 6 of the Louisiana Civil Code](#) provides:

Art. 6. Retroactivity of laws

In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.

A substantive law is one that establishes new rules, rights, and duties, or changes existing ones. [State v. Foret, 2015-1298 \(La. 1/27/16\), 188 So.3d 154, 160](#). The Supreme Court has recognized that a law that penalizes an act which was not punishable at the time, or increases the penalty for that act, cannot be applied to acts that were not committed before the law's effective date. *Id.* at 161. Act 128 increased the penalty for an understated tax liability from 5% to 10% for negligence and dispensed with the requirement that the Secretary find willful negligence or intentional disregard of rules and regulations before imposing the negligence penalty. The Board therefore rules that Act 128 is substantive and does not apply to the acts committed by the Taxpayer during the period at issue in this case.

*3 [R.S. 47:1604.1](#) as it existed during the tax period at issue provided:

Section 1604.1 Negligence penalty

If any taxpayer fails to make any return required by this Sub-title or makes an incorrect return, and the circumstances indicate willful negligence or intentional disregard of rule's and regulations, but no intent to defraud, there shall be imposed in addition to any other penalties provided, a specific penalty of 5% of the tax or deficiency found to be due

There has been no showing that the Taxpayer is guilty of willful negligence or intentional disregard of rules and regulations. Therefore, the Board finds that the Taxpayer is not liable for the negligence penalty imposed by [R.S. 47:1604.1](#).

Baton Rouge, Louisiana this 10th day of April, 2018.

For the Board:

Judge Tony Graphia (Ret.)
Chairman

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