

**STATE OF LOUISIANA
BOARD OF TAX APPEALS**

**SOUTHERN USA FALUN DAFA ASSOCIATION
PETITIONER**

VERSUS

No. 11505B

**SECRETARY, DEPARTMENT OF REVENUE
RESPONDENT**

JUDGMENT

A hearing on the merits of this matter was held before the Board on August 18, 2020. Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman, and board members Cade R. Cole and Francis “Jay” Lobrano. Participating in the hearing were: Hongyi “Frank” Pan, corporate officer and representative of Southern USA Falun Dafa Association (“Taxpayer”) and attorney Aaron Long, representing the Secretary, Department of Revenue (“Department”). After the hearing, the case was taken under advisement. The Board now renders judgment in accordance with the written reasons issued herewith.

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be rendered in favor of the Department and against the Taxpayer and that the Taxpayer’s Petition BE AND IS HEREBY DISMISSED.

JUDGMENT RENDERED AND SIGNED in Baton Rouge, State of Louisiana, this day FEB 10 2021 .


**JUDGE TONY GRAPHIA (RET.), CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS**

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WRITTEN REASONS FOR JUDGMENT

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Taxpayer appeals the Department’s denial of its application for a sales tax exemption certificate provided for eligible nonprofits under La. R.S. 47:305.14(A)(1)(a) (the “Nonprofit Exemption”). This case is not an appeal of a refund denial or appeal from an assessment. Statutory authority for the Board to hear Taxpayer’s petition is granted by La. R.S. 47:305.14(C)(2), which states:

In the event the collector of revenue denies tax exempt status under this Section, the organization may appeal such ruling to the Board of Tax Appeals, which may overrule the collector of revenue and grant tax exempt status if the Board of Tax

Appeals determines that the denial of tax exempt status by the collector of revenue was arbitrary, capricious, or unreasonable.

Taxpayer's officer testified that Taxpayer is a 501(c)(3) non-profit, domiciled in the State of Texas. Taxpayer's mission is to promote traditional Chinese culture, meditative practices, and art in local communities for the benefit of society. To this end, the Taxpayer offers free Chinese Qigong meditation and exercise classes. However, Taxpayer's primary activity is presenting traditional Chinese Shen Yun dance and choreography shows ("Shen Yun"). Taxpayer, operates as a promoter for Shen Yun. Another 501(C)(3), Shen Yun Performing Arts Inc., performs for audiences at Taxpayer's invitation. Taxpayer donates the proceeds of ticket sales to Shen Yun Performing Arts Inc., after accounting for the costs associated with the production of the show, such as venue rental, travel costs, promotion, etc.

Taxpayer held a two-day event on January 30 and 31, 2018 where it organized the presentation of Shen Yun at the River Center Arena in Baton Rouge, Louisiana. Taxpayer claims that it is eligible for the Nonprofit Exemption for gate admission fees associated with its fundraising event. The Taxpayer did not collect sales tax on the tickets it sold and claims the denial of the exemption resulted in significant hardship.

Taxpayer's officer testified that a staff member was sent to the Department to apply for the Nonprofit Exemption on January 30, 2018.¹

¹ Taxpayer claims that the River Center notified it on the day of its event that it had to apply for the exemption annually, something with allegedly came to the Taxpayer's surprise.

Taxpayer's January 30, 2018 application was apparently denied. Taxpayer's officer also testified that on February 5, 2018, he personally went to the Department to submit another application for the Nonprofit Exemption, but that that application was also denied. Notification of the denial of the February 5, 2018 application is attached to the Petition, but not properly introduced into evidence. Documents attached to the petition are simply a part of the pleading. La. CCP art. 853; *Jackson v. Gordon*, 381 So.2d 520, 521 (La. App. 1 Cir. 1980). Arguments and pleadings are not evidence. *In re Melancon*, 2005-1702 (La. 7/10/06); 935 So.2d 661, 666. Nevertheless, the fact that Taxpayer applied for the Nonprofit Exemption on February 5, 2018 and was denied is established by Taxpayer's officer's un rebutted sworn testimony.

At trial, the Taxpayer introduced two exhibits: (1) a 2001 proclamation from Baton Rouge Mayor-President Bobby Simpson declaring July 14, 2001 Falun Dafa Day and a 2001 proclamation from New Orleans Mayor Marc H. Morial declaring July 15, 2001 Falun Dafa Day; and (2) a program from a Shen Yun performance dated between December 28, 2014 and January 7, 2015. These exhibits shed some light on Taxpayer's purpose as an organization and the nature of Shen Yun.

Finally, the Taxpayer attached two exhibits to its post-trial memorandum. At the conclusion of the hearing on the merits, the Board specified that the record was to be held open for 30 days so the parties could submit post-trial briefs *on the law*. The Board did not hold the record open for the Taxpayer to submit additional evidence. Taxpayer's post-hearing exhibits were not properly entered into the record.

The standard of review in this matter is provided in the statute. La. R.S. 47:305.14(C)(2). The question presented is whether the Department's denial of the Taxpayer's application was arbitrary, capricious, or unreasonable. An action by a governmental agency can only be considered "arbitrary and capricious" if there is no "rational basis for the action taken." *Bannister v. Dep't of Streets*, 95-0404, p. 8 (La. 1/16/96); 666 So. 2d 641, 647. The Department's decision cannot be considered arbitrary "unless it was made without reason or reference to relevant legal considerations. Arbitrariness is the absence of a rational basis." *Magill v. Louisiana State Police Troop G through Dept. of Public Safety and Correction*, 30 565, p. 7 (La. App 2 Cir. 5/13/98); 714 So. 2d 139, 142. "A governmental agency will not be found arbitrary and capricious when good cause exists for its action." *Agrilelectric Power Partners, LTD*, 2014 WL 2930145 (La. Bd. Tax App. 3/19/14). An agency decision is entitled to deference in its interpretation of its own rules and regulations; however, it is not entitled to deference in its interpretation of statutes and judicial decisions. *Entergy Louisiana, LLC v. Louisiana Public Service Com'n*, 08-0284 (La.7/01/08), 990 So.2d 716, 723.

The Department offers two justifications for denying Taxpayer's application. First, the Department argues that the Nonprofit Exemption is only available to Louisiana corporations. La. R.S. 47:305.14(A)(1)(a) provides the following criteria for obtaining the Nonprofit Exemption :

The sales and use taxes imposed by taxing authorities shall not apply to sales of tangible personal property at, or admission charges for, outside gate admissions to, or parking fees associated with, events sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious

organizations, which are nonprofit, when the entire proceeds, except for necessary expenses such as fees paid for guest speakers, chair and table rentals, and food and beverage utility related items connected therewith, are used for educational, charitable, religious, or historical restoration purposes, including the furtherance of the civic, educational, historical, charitable, fraternal, or religious purpose of the organization.

The Department interprets the term “domestic,” to mean only Louisiana organizations. A tax exemption statute that discriminates against interstate companies would be unconstitutional on its face. See *Transcon. Gas Pipeline Corp. v. Louisiana Tax Comm’n*, 2009-1988 p. 28-29 (La. 3/16/10); 32 So.3d 199, 216-17. When possible, a statute should be interpreted so as to maintain its constitutionality. *Beer Indus. League of Louisiana v. City of New Orleans*, 2018-0280, p. 9 (La. 6/27/18); 251 So.3d 380, 387. Under the Department’s interpretation, the statute would offer the Nonprofit Exemption to intrastate nonprofits and not to interstate nonprofits. This would almost certainly result in out of state nonprofits paying more taxes than Louisiana nonprofits and an unconstitutional discrimination against interstate commerce. The Board should not adopt this interpretation unless there is no other way to read the statute.

There is another way to read the statute that does not raise serious constitutional concerns. The term domestic can be interpreted to mean a United States corporation. Although the Department warns that this would render other parts of the statute superfluous, the Board disagrees. The statute lists the types of nonprofit organizations that may qualify for the Nonprofit Exemption: “domestic, civic, educational, historical, charitable, fraternal, or religious.” The disjunctive “or” typically signifies

a list of alternatives. This does not mean that any domestic nonprofit organization can claim the Nonprofit Exemption. The applicant must also have a purpose conforming to the second list of criteria found in the statute: “educational, charitable, religious, or historical restoration purposes.” A domestic nonprofit would still need to satisfy this separate purpose test.

The second basis for the denial offered by the Department is that Taxpayer failed to apply 30 days in advance of the event. The Taxpayer points out that the requirement that the application be submitted 30 days in advance cannot be found in statute or regulation. La. R.S. 47:305.14 contains no such requirement. Neither does LAC 61:I.4418, promulgated pursuant to the Department’s authority to regulate applications for the Nonprofit Exemption under La. R.S. 47:305.14(C)(1).

The 30-day advance application requirement is found in the Department’s “Form R-1048.” The first page of application Form R-1048 provides that “[a]pplications should be submitted as far in advance as possible, but no later than thirty days prior to the event.” The last page of Form R-1048 provides general information regarding the exemption and states that “[a]ll applications must be submitted at least thirty days before the first fundraising event to allow time for processing.” Additionally, RIB No. 13-018 states that “[a]pplications should be submitted at least thirty days before the first fund-raising event to allow time for processing.” RIB’s are informal statements of information issued for the public and employees and are general in nature. *See Impala Terminals Burnside, LLC., Petitioner, v. Mark West, Administrator,*

Ascension Parish Sales & Use Tax Authority, Docket No. L00189, 9901D (La. Bd. Tax App. Feb 8, 2018) 2018 WL 8577434. The RIB itself states that it is not a rule or regulation, does not have the force and effect of law, and is not binding on the public or the Department. Although it would not normally be binding, the standard of review only calls for the Board to analyze whether the Department's reason for denial is so unreasonable as to be arbitrary and capricious.

The Department imposed the 30-day advance requirement in order to administer the Nonprofit Exemption. The Department identified the need for adequate time to process applications as a reason for doing so. Therefore, the Department articulated a basis for denying the Taxpayer's application. Under La. R.S. 47:305.14(C)(2), the Board may only overrule the Department's determination if the Taxpayer shows that the denial was arbitrary, capricious, or unreasonable. The Taxpayer's evidence relates to its benevolent purpose and activities. The admissible exhibits and testimony do not attack the reasonableness of the 30-day advance deadline. Consequently, the Board has no reason to overrule the Department's denial of the Taxpayer's application. Accordingly, the Petition must be dismissed.

FEB 10 2021

Baton Rouge, Louisiana this day _____.

FOR THE BOARD:



JUDGE TONY GRAPHIA (RET.)
CHAIRMAN
BOARD OF TAX APPEALS