

BOARD OF TAX APPEALS
STATE OF LOUISIANA

STANTON'S APPLIANCE SALES & SERVICE, INC.
PETITIONER

DOCKET NO. C07129A

VS.

LOUISIANA DEPARTMENT OF REVENUE
RESPONDENT

JUDGMENT WITH WRITTEN REASONS

On November 3, 2021, this matter came before the Board for hearing on the *Declinatory Exception Raising the Objection of Lack of Subject Matter Jurisdiction with Incorporated Memorandum* filed by the Louisiana Department of Revenue ("Department"). Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman¹, Vice-Chairman Cade R. Cole, and Board Member Francis J. "Jay" Lobrano. Appearing before the Board were Jill Schexnailder as representative of record for Stanton's Appliance Sales & Service, Inc. ("Taxpayer"), and Miranda Scroggins, attorney for the Department. At the conclusion of the hearing, the matter was taken under advisement. The Board now renders Judgment in accordance with the attached written reasons:

¹ Following the hearing, Judge Tony Graphia's term expired and he retired from the Board, and thus is not participating in the rendering of this Judgment and accompanying Reasons for Judgment.

IT IS ORDERED, ADJUDGED AND DECREED that the Department's Exception be SUSTAINED and that Taxpayer's Petition be and is hereby DISMISSED.

JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana, this 1st day of June, 2022.

FOR THE BOARD:



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

BOARD OF TAX APPEALS
STATE OF LOUISIANA

STANTON’S APPLIANCE SALES & SERVICE, INC.
PETITIONER

DOCKET NO. C07129A

VS.

LOUISIANA DEPARTMENT OF REVENUE
RESPONDENT

WRITTEN REASONS FOR JUDGMENT

On November 3, 2021, this matter came before the Board for hearing on the *Declinatory Exception Raising the Objection of Lack of Subject Matter Jurisdiction with Incorporated Memorandum* filed by the Louisiana Department of Revenue (“Department”). Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman¹, Vice-Chairman Cade R. Cole, and Board Member Francis J. “Jay” Lobrano. Appearing before the Board were Jill Schexnailder as representative of record for Stanton’s Appliance Sales & Service, Inc. (“Taxpayer”), and Miranda Scroggins, attorney for the Department. At the conclusion of the hearing, the matter was taken under advisement. The Board now renders the foregoing Judgment in accordance with these written reasons.

¹ Following the hearing, Judge Tony Graphia’s term expired and he retired from the Board, and thus is not participating in the rendering of this Judgment and accompanying Reasons for Judgment.

Background:

Taxpayer appeals from the assessment of penalties. The penalties in question are for failure to remit sales tax via Electronic Funds Transfer (“EFT”). The tax periods at issues are July 2020 through August 2020. The evidence admitted into the record² at the hearing shows that the Department denied Taxpayer’s request for a waiver of penalties.

According to the Petition, Taxpayer made monthly remittances of sales tax from June 2020 to August 2020. Taxpayer attempted to remit its June 2020 taxes via an ACH draft. Taxpayer’s bank rejected the payment due to a credit limit. On July 29, 2020, Taxpayer learned of the error and submitted payment via check. The Taxpayer was granted a waiver of penalties for this period.

Taxpayer proceeded to pay its July and August sales tax liabilities via check as well. The Department determined that Taxpayer was required to remit payment via EFT and assessed penalties for failure to do so. Taxpayer requested that the Department waive the penalties. The request was denied. Taxpayer subsequently paid the penalties assessed for July. However, as of the date of the Petition, Taxpayer had not paid the penalties assessed for August. In due course, the Department filed the instant *Declinatory Exception Raising the Objection of Lack of Subject Matter Jurisdiction with Incorporated Memorandum*, arguing that the Board lacks jurisdiction to review the denial of a penalty waiver.

² The Department moved to admit the entire case file into the record, without objection.

Discussion:

La. R.S. 47:1519(B)(1) empowers the Department to require payment of tax by EFT for taxable periods beginning on or after January 1, 2008. In accordance with this authority, the Department promulgated LAC 61:I.4910, "Electronic Funds Transfer." LAC 61:I.4910(A)(3) requires payment by EFT for taxable periods beginning on or after January 1, 2008 if:

- a. the payments made in connection with the filing of any business tax return or report averaged, during the prior 12-month period, more than \$5,000 per reporting period; or
- b. any business tax return or report is filed more frequently than monthly and the average total payments during the prior 12-month period were more than \$5,000 per month; or
- c. any company who files withholding tax returns and payments on behalf of other taxpayers and payments during the previous 12-month period averaged more than \$5,000 per month for all tax returns filed.

LAC 61:I.4910(B) defines "Business Tax" as "any tax, except for individual income tax, collected by the Department of Revenue."

The question presented is solely³ whether the Taxpayer's failure to pay the tax by EFT triggers application of the penalty.

The application of the penalty was correct. La. R.S. 47:1519(B)(4) states:

If any taxpayer fails to comply with the electronic funds transfer requirements, the tax payment will be considered delinquent and will be subject to penalties and interest as provided under R.S. 47:1601 through 1602.

³ La. R.S. 47:1519(D) provides that when a taxpayer "can prove the payment by electronic funds transfer would create undue hardship, the secretary shall exempt the taxpayer from paying by electronic funds transfer." No such claim of undue hardship was presented to the Department.

The Taxpayer did not pay by EFT because of an issue with their bank.

Taxpayer's mechanism for relief can be found in LAC 61:I.4910:

If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519 and this rule, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

The relief set forth is a waiver under La. R.S. 47:1603. La. R.S. 47:1603 does not grant the Board jurisdiction to review the Department's discretionary denial of a waiver. *See, e.g. Enrich Personal Case Serv., LLC v. Department*, BTA Docket No. C02553 (La. Bd. Tax App. 3/31/13); 2013 WL 2481025; cf. *Smith Int'l, Inc. v. Robinson*, 2018-1640, p. 6-7 (La. App. 1 Cir. 1/9/20), 311 So.3d 1062, 1066-67 (distinguishing waiver from whether penalties are owed). Accordingly, the Department's exception will be sustained.

Baton Rouge, Louisiana, this 1st day of June, 2022.



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