

**BOARD OF TAX APPEALS**

**STATE OF LOUISIANA**

**T-MOBILE RESOURCES CORP.**  
Petitioner

**VERSUS**

**DOCKET NO. 13671D**

**KEVIN RICHARD, SECRETARY,**  
**DEPARTMENT OF REVENUE,**  
**STATE OF LOUISIANA**  
Respondent

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**JUDGMENT ON EXCEPTIONS WITH REASONS**

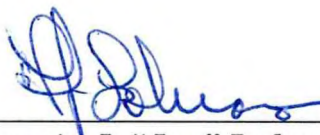
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On January 11, 2024, this matter came before the Board for a hearing on the Exceptions of No Right of Action and Lack of Procedural Capacity filed by the Louisiana Department of Revenue (“Department”). Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Christopher Jones, attorney for the Department, and Jeremy Blocher and Justin Gruba, CPA’s for T-Mobile Resources Corp. (“Petitioner”). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues Judgment in accordance with the attached Written Reasons.

IT IS ORDERED, ADJUDGED, AND DECREED that the Department’s Exceptions of No Right of Action and Lack of Procedural Capacity are hereby overruled.

**JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana,**  
**this 13<sup>th</sup> day of March, 2024.**

**FOR THE BOARD:**



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

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STATE OF LOUISIANA

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REASONS FOR JUDGMENT ON EXCEPTIONS  
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On January 11, 2024, this matter came before the Board for hearing on the Exceptions of No Right of Action and Lack of Procedural Capacity filed by the Louisiana Department of Revenue (“Department”). Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Christopher Jones, attorney for the Department, and Jeremy Blocher and Justin Gruba, CPA’s for T-Mobile Resources Corp. (“Petitioner” or “TMR”). 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**

During the tax periods January 1, 2019, through December 31, 2020 (the “Tax Periods”), TMR entered into multiple transactions in which it sold property to T-Mobile USA, Inc. (“Taxpayer” or “TMU”). TMR alleges that, as the seller and registered dealer for sales tax purposes, it collected sales tax from TMU on the transactions. TMR remitted the tax that it collected to the Department. Now, TMR has asked for a refund of the taxes that were paid by TMU.

TMR filed a Claim for Refund of Taxes Paid (“Refund Claim”) in the amount of \$2,103,844.66 on October 17, 2022. In the Refund Claim, TMR identified itself as the taxpayer, despite having merely collected the tax from TMU and remitted it to the

Department. TMR did not inform the Department that it was making the Refund Claim as an agent of TMU.

The Department issued a Notice of Denial on June 27, 2023. The Department's Notice gives two reasons for the denial: (1) that TMR is not the proper party to file the Refund Claim; and (2) insufficient documentation for the Department to determine the nature of the transactions. TMR provided the Department with a letter dated August 21, 2023 ("Response Letter"), two days prior to filing the instant Petition. The Response Letter, which was introduced into evidence at the hearing, was signed by Larry Weians. Mr. Weians identified himself as "Vice President – Tax." In the Response Letter, Mr. Weians represented that TMR is the purchasing company for, and subsidiary of, TMU. Mr. Weians further asked that the Response Letter serve as confirmation of TMR's authorization to pursue the Refund Claim as the tax agent of TMU. Although, Mr. Weians' letter does not say who is the Tax VP of, his signature on the attached Power of Attorney ("PoA") Form was made with the representation that he is the duly authorized representative of the taxpayer. The taxpayer who is identified in the PoA Form that was attached to the Response Letter is TMU. Mr. Weians' is also identified as "T-Mobile Representative" on the list of appointees appended to the PoA Form.

The PoA Form attached to the Response Letter is actually one of two PoA Forms in the record. The other PoA Form (which, chronologically, is the first PoA Form) was attached to the original Refund Claim that was filed on October 17, 2022. The first PoA Form was also signed by Larry Weians. His signature was made with the representation that he is the duly authorized representative of the taxpayer. The "taxpayer" identified in the first PoA Form is TMR. Thus, in the first PoA Form, Mr. Weians is identified as a representative of TMR, and in the second PoA Form, he is identified as the representative of TMU. Counsel for the Petitioner explained at the hearing that Mr. Weians is, in fact, the Tax VP for both entities.

## Discussion

Both Exceptions assert that TMR cannot pursue the Refund Claim as the agent of the TMU<sup>1</sup> because: Mr. Weians could not grant agency authority to TMR to act on behalf of TMU; that no agency relationship exists or existed at the time of the Refund Claim; and that any agency relationship had to be disclosed to the Department to be effective.<sup>2</sup> The Department points to what it describes as an absence of evidence in the record to support these claims.

“It is well settled that laws regulating the collection of taxes are *sui generis* and constitute a system to which the general provisions of the Civil Code have little, if any application.” *Church Point Wholesale Beverage Co., Inc. v. Tarver*, 614 So.2d 697, 708 (La. 1993). However, there are exceptions to the general rule. For example, the term “tangible personal property” in tax statutes is treated as synonymous to, and interpreted consistently with, the Civil Code’s definition of corporeal movable property. *South. Cent. Bell Telephone Co. v. Barthelemy*, 94-0499, pp. 5-6 (La. 10/17/94), 643 So.2d 1240, 1243. In *South Central Bell*, the Louisiana Supreme Court looked to Codal provisions in order to avoid developing an inconsistent body of property law that would have been specific to the tax context. *Id.*

More importantly, the Louisiana Supreme Court has provided precedent for applying civilian principles governing mandataries to tax a dispute. In *J-W Power Co. v. State ex rel. Department of Revenue & Taxation*, 2010-1598, (La. 3/15/11) 59 So.3d 1234, *J-W Power Co.* (“Power”), the seller of natural gas-compression services, was permitted to act as the agent of its customers *J-W Gathering Co.* and *J-W Operating Co.*, in a payment under protest action under La. R.S. 47:1576. Power did not disclose that it was acting as an agent in its protest notice or its original petition. Three years

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<sup>1</sup> Nevertheless, lack of capacity is not synonymous with no right of action. *Mt. Zion Baptist Ass’n v. Mt. Zion Baptist Church #1 of Revilletown Park*, 2016-0151, p. 5 (La. App. 1 Cir. 10/31/16), 207 So.3d 414, 417, *writ denied*, 2016-02109 (La. 2/3/17), 215 So.3d 697.

<sup>2</sup> In its Memorandum, the Department argues that the Petitioner is an agent of the state as collector of the tax, under La. R.S. 47:304 and 306, and therefore cannot also be the agent of the Taxpayer. This argument is pretermitted by the holding in *J-W Power*.

after the filing of the petition, the Department raised the exception of No Right of Action. In its opposition brief, Power disclosed that it was acting as an agent of the purchasers. The exception was sustained but Power was allowed to amend its petition. In its supplemental and amending petition, Power corrected its allegations to make clear that it was pursuing the claims of its principles in a representative capacity. The Department renewed its exception, which was sustained by the District Court, but then overruled by the First Circuit. *J-W Power Co. v. State ex rel. Department of Revenue & Taxation*, 09-2330 (La. App. 1 Cir. 6/11/10), 40 So.3d 1214.

On writ of certiorari, the Louisiana Supreme Court stated that La. R.S. 47:1576 neither authorizes nor precludes an action by the purchaser's agent. The Court further rejected the Department's argument that rules on agency in the Civil Code and the Code of Civil Procedure should not apply to tax law, noting that the Department dealt with countless agents for various taxpayers all the time. The Court reasoned that fashioning a special rule that would preclude agency in the context of a payment under protest claim was the province of the legislature, not the Courts. In addition, the Court found that the failure to disclose the relationship at the outset did not prejudice the Department and was cured by the amending and supplementing petition.

The Department argues that *J-W Power* is distinguishable. First, the underlying statute is different. This case deals with the refund of an overpayment provided for in La. R.S. 47:1621 *et. seq.* In *J-W Power*, the underlying statute was La. R.S. 47:1576, which provides for payment under protest and suit to recover. Although there are different statutes involved, there is nothing the refund of overpayment statutes that precludes the use of an agent. However, contrary to the Department's assertions, its own regulations do provide for agency relationships. La. Admin. Code 61:I.4909(2) provides for the signature requirement for refund claims, and states that a claim for refund "shall be signed and dated by the taxpayer or his authorized representative." Furthermore, the Department still deals with representatives in numerous contexts. Nothing has changed in that respect since *J-W Power* was

decided. Accordingly, the Board finds it appropriate to extend the holding of *J-W Power* to refund of overpayment claims.

The question remains as to whether TMR actually had agency authority, and if the existence of that authority is proven by the facts in the record. La. C.C.P. art. 700 provides that:

When a plaintiff sues as an agent to enforce a right of his principal, or as a legal representative, his authority or qualification is presumed, unless challenged by the defendant by the timely filing of the dilatory exception. When so challenged, the plaintiff shall prove his authority or qualification on the trial of the exception.

With respect to the proof in the record. Petitioner has put forth evidence to show that Larry Weians authorized TMR to act on behalf of TMU. At the hearing, counsel for TMR argued that Mr. Weians' authority is established in the corporate bylaws. However, Petitioner did not enter those documents into the record. Nevertheless, the PoA Forms and the Response Letter provide evidence of Mr. Weians' authority. The Department offered no evidence that the Board could weigh against those documents. Notably, and although Mr. Weians did not state who his employer was in his Response Letter, any doubts were cured by the representation on the PoA Form that he was the duly authorized representative of the corporate taxpayer. Furthermore, Mr. Weians signature appears on the original PoA Form that was submitted with the original Refund Claim. Thus, there is evidence of the existence of the agency relationship when the Refund Claim was made.

Some evidence of an agency relationship and no contradictory evidences tips the scales in the Petitioner's favor. Even if the evidence was evenly weighted, however, the Board must resolve uncertainty on an Exception of No Right of Action in favor of maintaining the Petition. Consequently, the Board holds that Larry Weians validly authorized TMR to pursue the Refund Claim on TMU's behalf.

The Department further contends that the agency relationship was not valid unless it was disclosed to the Department. In *J-W Power*, the Court rejected this argument because there was no evidence that the Department was prejudiced. Likewise, in this case, there is no evidence of prejudice. Moreover, the codal



provisions on agency do not support the Department's position. The Department asserts that proof of agency requires a written contract. However, agency can be acquired through a unilateral act. This is known as a procuration, and is provided for in La. Civ. Code art. 2987, which states:

A procuration is a unilateral juridical act by which a person, the principal, confers authority on another person, the representative to represent the principal in legal relations.

The procuration may be addressed to the representative or to a person whom the representative is authorized to represent the principal in legal relations.

Comment (c) to Article 2987 states that a procuration is not required to be in a particular form, unless the law prescribes a certain form for the authorized act. La. Admin. Code 61:I.4909(A)(1) provides for the form of a claim for refund and states that the claim must be in written in English and be: submitted on forms provided by the secretary; or written in a format substantially the same as that provided by the secretary; or submitted by timely filing an amended return. La. Admin. Code 61:I.4909(A)(1)(a) – (c). TMR submitted the Department's PoA Form with its Refund Claim and with its Response Letter. Mr. Weians signed as representative of the taxpayer on both PoA Forms. Mr. Weians signature presumed to be binding on the taxpayer identified in the Form under La. R.S. 47:1671(C)(1), which provides:

Notwithstanding any provision of law to the contrary, any return, statement, declaration, waiver, agreement to suspend prescription, installment agreement, settlement agreement, collateral agreement, offer in compromise, or any other document filed, or executed or entered into with the secretary and signed by a representative of a legal entity, for the assessment, collection, administration, and enforcement of taxes, fees, licenses, penalties, interest, and other charges due the state that have been delegated to the secretary of the Department of Revenue, shall create a conclusive presumption that such representative is authorized to sign on behalf of such legal entity. This conclusive presumption shall not be invalidated as to the legal entity by any lack of authority, power, or capacity of the signing representative. The fact that the name of the representative is signed on the document by such representative shall have the same force and effect as the act of the legal entity and shall be binding upon such legal entity.

The Department questions whether a Vice President of Tax can confer agency, but this concern is answered by La. R.S. 47:1671(C)(3), which provides:

The term “representative” shall include but is not limited to president, **vice president**, chief executive officer, chief financial officer, secretary, treasurer, comptroller, controller, tax officer, tax manager, partner, general partner, member, fiduciary, attorney, certified public accountant, executor, receiver, administrator, trustee, tutor, or any other legal representative.<sup>3</sup>

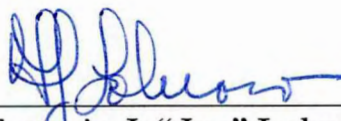
Thus, the evidence in the record establishes a presumption that Larry Weians was authorized to confer agency on TMU’s behalf. The Department offered no evidence to rebut that presumption.

As a practical matter, the opposite conclusion would lead to absurdity. TMR and TMU are related entities. Mr. Weians is the Vice-President of Tax for both companies. There is no suggestion that TMR is somehow going behind TMU’s back to surreptitiously claim its refund. Obviously, TMU intended for TMR to pursue the Refund Claim on its behalf. At this point, prescription would likely block TMU from pursuing the Refund Claim in its own name. Sustaining the Exceptions would result in a windfall to the Department due to a pure technicality.

For the foregoing reasons, the Board holds that TMR has a right of action to pursue the instant Refund Claim as TMU’s agent. Contrary to the Department’s assertion, there is evidence in the record that establishes the existence of the agency relationship. TMR’s failure to disclose that relationship was cured without prejudice to the Department. Accordingly, the Exception of No Right of Action will be overruled. The Department’s Exception of Lack of Procedural Capacity is based on the same arguments, and will also be overruled.

**Baton Rouge, Louisiana, this 13<sup>th</sup> day of March, 2024.**

**FOR THE BOARD:**



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

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<sup>3</sup> La. R.S. 47:1671(C)(3) [emphasis added]. Notably, neither TMU nor TMR complied with La. R.S. 47:1671(D), which says that a group of related entities may appoint a designated tax representative to act on their collective behalf. However, that provision is permissive, rather than mandatory. It does not provide an exclusive procedure for designating a tax representative.