**BOARD OF TAX APPEALS**
**STATE OF LOUISIANA**
**LOCAL TAX DIVISION**

**TOPSHELF SPORTS, INC.**
**PETITIONER**

**VERSUS** **DOCKET NO. L00034**

**ROBERT SIMPSON, DIRECTOR**
**LAFAYETTE PARISH SCHOOL SYSTEM**
**RESPONDENT**

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**ORDER WITH WRITTEN REASONS**

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A hearing was held on the merits of this matter before Local Tax Judge Cade R. Cole, Louisiana Board of Tax Appeals, ("the Board") on May 12, 2015. Present before the Board were: Drew Talbot, attorney for Robert Simpson, Director Lafayette Parish School System, (Collector) and Nicole F. Gould, attorney for Topshelf Sports, Inc. (Taxpayer). After the presentation of evidence and argument of counsel, the matter was taken under advisement.

Taxpayer appeals from the Collector's assessment of sales tax in the amount of $26,732.85 plus interest and penalties for the period January 1, 2011 through December 31, 2013. The correctness of the dollar amount of the assessment is not at issue.

Collector claims that the activities of the Taxpayer are the "Sale of services" as contemplated by R.S. 47: 47:301.14(14)(b)(i), which provides in relevant part:

> "(b)(i) …the furnishing for…fees or other consideration…the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities…".

The position of the Taxpayer is that its activities are the lease of immovable property, which is not subject to Louisiana sales tax, or, in the alternative, some of the transactions at issue are sales for resale.

Taxpayer owns a 33,000 square foot building in Youngsville in the parish of Lafayette ("the Building"). Taxpayer charges a fee to its patrons for the use of the Building.

Taxpayer claims that the consideration that it charges its patrons is not a taxable service but is the lease of an immovable which is not taxable.

The testimony and other evidence produced at trial revealed the following:

The use of the Building allowed to the patrons might be for a several hour period or for several days. If the use was for more than one day, the days might not be consecutive days. For example, the contact with Acadiana Roller Girls, dated March 26, 2014 introduced into evidence as Taxpayer Exhibit 2, was for March 29, April 12, May 10, August 30, September 13, September 27, October 4 and October 23, all of 2014.

The Facilities Contracts introduced into evidence revealed that the patrons of Taxpayer only had the use of the Building for certain hours during the day. For example, the contract with Lori Guillory, dated November 12, 2012, only allowed the use of the Building for 8:30 A.M. to 5:30 P.M. on six consecutive days. The other two contracts introduced were not during the audit period but had similar limits on the times the patron would have use of the Building.

The Building would sometimes be used by several different patrons during the course of a day.

The Taxpayer retained the exclusive use of a "concession stand" and retained the exclusive right to sell concessions during the time a patron had use of the Building and its contents (sports equipment).

The Taxpayer was obligated to maintain and keep the Building clean before, during and after a patron had the use of the Building. Taxpayer had a number of part-time employees whose job it was to maintain and keep the Building clean and safe and to set up the equipment for the sports activities being held.

The Taxpayer had its administrative offices in the Building and the Taxpayer's patrons did not have access to these offices.

The insurance and utilities pertaining to the Building were the obligation of the Taxpayer. The patrons were not tenants of immovable property whereby they would actually acquired "real rights" in the immovable under the provisions of our civil code.

Certain of the sports equipment in the Building were the property of Taxpayer and used by the patrons in the same consideration that the patrons paid. The Taxpayer was obligated to set up and take down the aforementioned equipment, and the patrons were prohibited from doing so.

The Collector's witness, Mr. Brent J. Hebert, testified that he had examined the Federal tax returns of the Taxpayer, which returns revealed that the Taxpayer had a

significant amount of movable equipment, and that this equipment was for the use of the Taxpayer's patrons during their events.

After considering the testimony of the witnesses and the documentary evidence introduced, the Board rules that the Taxpayer's Building is a facility for amusement, entertainment, athletic and/or recreation as contemplated by R.S. 47:301(14)(b)(i), and finds that the activities of the Taxpayer under consideration are in fact the furnishing for a consideration of the privilege of having access to and the use of a facility for amusement, entertainment, athletic and/or recreation as provided for under R.S. 47:301(14)(b)(i).

The use of the building and its contents is a taxable event under the law, and is not a non-taxable lease of an immovable.

The Taxpayer claims that some of the transactions under consideration were sales for resale under R.S. 47:301(10)(a)(ii). That may be true, but the taxpayer bears the burden of proof on that exclusion. Taxpayer's witness, Mr. James Greco, testified that he thinks he saw some of his patrons charging admission to certain events. His testimony was vague and uncertain. The Collector's witness testified that he had examined the sales tax records of the Collector and was able to determine that none of the Taxpayer's patrons had registered for sales tax or had, in fact, paid sales tax. The taxpayer recognized that the made a calculated decision not to subpoena his patrons who would be able to give evidence on this issue because he didn't want them to end up being taxed.

There was no real evidence in the record to support the taxpayer's position on this issue, therefore the Board rejects the Taxpayer's claim that tax otherwise due should be excluded as sales for resale.

IT IS ORDERED that after circulation pursuant to Uniform Rule 9.5, the collector shall submit a proposed Judgment conforming to these Written Reasons, and that this Judgment shall include proper decreetal language dismissing the taxpayer's appeal and upholding the disputed assessment. This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

Baton Rouge, Louisiana this 29 day of June 2015.

LOCAL TAX JUDGE CADE R. COLE
LOUISIANA BOARD OF TAX APPEALS