

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

UNIVERSITY OF NEW ORLEANS
RESEARCH AND TECHNOLOGY
FOUNDATION, INC.

Petitioner

DOCKET NO. L01362

versus

NORMAN WHITE CHIEF FINANCIAL
OFFICER AND DIRECTOR OF FINANCE
CITY OF NEW ORLEANS; ERROLL G.
WILLIAMS, ASSESSOR, ORLEANS
PARISH; AND LAWRENCE E.
CHEHARDY, CHAIRMAN, LOUISIANA
TAX COMMISSION

Respondents

JUDGMENT ON SUPPLEMENTAL EXCEPTIONS
WITH REASONS

On August 11, 2022, this matter came before the Board for hearing on the Supplemental Exceptions filed by Erroll G. Williams, Assessor, Orleans Parish (“Assessor”). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Cheryl M. Kornick and Tyler D. Trew, attorneys for the University of New Orleans Research and Technology Foundation, Inc. (“UNO”) and Reese F. Williamson, attorney for the Assessor. Attorneys for Norman White, Chief Financial Officer and Director of Finance, City of New Orleans (“Collector”)¹ and Lawrence E. Chehardy, Chairman, Louisiana Tax Commission (“Commission”)² appeared via Zoom to observe the proceedings. At the conclusion of the hearing, the Board overruled the Supplemental Exceptions of No Cause of Action and No Right of Action, and took the Supplemental Exceptions of Prescription under advisement. The Board now rules on the Supplemental Exceptions of Prescription as follows:

¹ Tanya Irvin and Kimberly Smith.
² Jordan Varnado.

IT IS ORDERED, ADJUDGED AND DECREED that the Assessor's Supplemental Exceptions of Prescription are SUSTAINED and UNO's claims under La. Const. art. VII, Section 21(B) are hereby DISMISSED. UNO's claims under La. Const. art. VII, Section 21(A) are not affected by this ruling and are not dismissed.

Judgment Rendered and Signed at Baton Rouge, Louisiana, on this

8th day of *March*, 2023.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

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Respondents

REASONS FOR JUDGMENT ON SUPPLEMENTAL EXCEPTIONS

On August 11, 2022, this matter came before the Board for hearing on the On August 11, 2022, this matter came before the Board for hearing on the Supplemental Exceptions filed by Erroll G. Williams, Assessor, Orleans Parish (“Assessor”). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Cheryl M. Kornick and Tyler D. Trew, attorneys for the University of New Orleans Research and Technology Foundation, Inc. (“UNO”) and Reese F. Williamson, attorney for the Assessor. Attorneys for Norman White, Chief Financial Officer and Director of Finance, City of New Orleans (“Collector”)³ and Lawrence E. Chehardy, Chairman, Louisiana Tax Commission (“Commission”)⁴ appeared via Zoom to observe the proceedings. At the conclusion of the hearing, the Board overruled the Supplemental Exceptions of No Cause of Action and No Right of Action,

³ Tanya Irvin and Kimberly Smith.

⁴ Jordan Varnado.

and took the Supplemental Exceptions of Prescription under advisement. The Board now issues the attached Judgment for the following reasons:

Background

UNO filed the instant Petition to recover *ad valorem* property taxes paid under protest with respect to property owned by UNO and located at: 2285 Lakeshore Drive; 2219 Lakeshore Drive; 2253 Lakeshore Drive; and 2021 Lakeshore Drive, for tax year 2022 (“Property”). In its Petition, UNO asserts that the Property is exempt from *ad valorem* taxation under the exemption for public property used for public purposes provided for by La. Const. art. VII, Section 21(A) (“21(A)”) and/or alternatively exempt under the exemption for property owned and operated for charitable purposes provided for in La. Const. art. VII, Section 21(B) (“21(B)”, the “21(B) Exemption”, or the “Exemption”). The Assessor’s Supplemental Exceptions of Prescription and this Judgment are concerned only with UNO’s claims under 21(B).

Prior to the hearing, the parties agreed that the eventual ruling on the Supplemental Exceptions in this matter would be governed by the Board’s ruling on substantially identical Supplemental Exceptions filed by the Assessor in Docket No. L01363. The Board overruled the Supplemental Exceptions in Docket No. L01363, finding that it was close case and resolving any doubt in favor of maintaining the Petition.

Counsel for UNO then stated that the facts in this case were materially different from the facts in Docket No. L01363 for purposes of the Board’s ruling and asked for the opportunity to supplement the factual record. The Assessor objected. The Board held the record open for the Taxpayer provide supplementary evidence and for the Assessor to lodge any objection to the introduction of said supplementary evidence. The Board will now rule on the Assessor’s objections.

Assessor's Objections

The Assessor objects to the admission of the Taxpayer's Factual Record based on the agreement between the parties. A letter memorializing the agreement in writing was filed with the Board. The parties' agreement states that, at the hearing:

[T]he Board can address the supplemental exceptions filed in WWII Theatre, Docket No. L01363. Those will be timely briefed. The supplemental exceptions in UNO R&T, Docket No. L01362, and the briefing in that matter, can be deferred, as the parties would expect the Board's ruling in WWII Theatre to govern in that case as well.

An email thread with the following exchange was attached to the letter:

[Counsel for UNO]: With respect to the supplemental exceptions filed in the WWII Theatre and UNO R&T cases, as we discussed, we have not received from the BTA notice of a hearing date for those exceptions. In the interest of efficiency, we will agree that the WWII Theatre Supplemental Exceptions will be heard on July 14 at an in-person hearing. We will defer the UNO R&T supplemental exceptions as those likely will be guided by the ruling in WWII Theatre. Please respond to this email demonstrating your agreement. Once we receive that, we will send a letter to the BTA to make sure we are all on the same page for the July 14 hearing.

[Counsel for the Assessor]: I thought we were going to agree that the board will apply its ruling on the supplemental exceptions against WWII Theatre to those exceptions in UNO R&T? I only bring this up because your bullet point number 2 doesn't expressly agree to do so. I would like to have an agreement to apply the WWII Theatre ruling to UNO R&T, as that would be the most efficient thing to do.

Subject to clarification on those two points, we are in agreement.

[Counsel for UNO]: I will put those in the letter to the BTA and send it Tuesday, copying you. Thank you, and have a good holiday.

[Counsel for the Assessor]: To avoid confusion, the agreement applies to the ruling on the exceptions from Filmore/MFLC that overlap in WWII Theatre, WWII Museum and UNO. . . . The remainder is correct, being that the eventual ruling on the supplemental exceptions against WWII Theatre will be applied to the supplemental exceptions against UNO.

The parties could not have intended for the Board to issue a ruling that is not supported by the facts in the record in this case. Moreover, if the parties had intended to bar the introduction of evidence at the hearing, they could have expressed language to that effect in their agreement. Instead, what the parties did express was that

briefing in this case could be deferred. That is not a stipulation that the facts of the two cases are identical. Nor is it an express prohibition against introducing evidence. The Assessor's objections will be overruled.

Factual Record

UNO's supplemental record contains the Affidavit of its counsel James Exnicios. Attached to the Affidavit as Exhibit A is a 2011 letter from the Assessor's counsel to Mr. Exnicios. The 2011 letter memorializes an agreement between the parties concerning tax years 2012 through 2015 and "all prior tax periods." The agreement required UNO to submit to the Assessor annual certifications concerning the proportion of commercial and non-commercial occupancy of the Property.

Exhibit B to Mr. Exnicios's Affidavit is a letter from UNO's President & CEO Eileen K. Byrne to the Assessor's counsel. Ms. Byrne's statements in the letter are related to the proportionate occupancy of the Property for the year 2018. The attached occupancy schedules detail tenants and calculates their share of the square footage of each building.

Exhibits C and D are printouts from the websites of the Assessor and the Louisiana Tax Commission ("LTC"). Mr. Exnicios avers that these printouts represent publicly available records on which UNO relied. The printouts in Exhibit C are attributed to the Assessor for the year 2018. In Exhibit C, the Property Class is described thusly:

2021 Lakeshore Drive	Commercial
2219 Lakeshore Drive	Exempt
2285 Lakeshore Drive	Exempt
2253 Lakeshore Drive	Exempt

UNO argues that this shows that the Assessor was still treating three of the four buildings as exempt and one building as partially exempt.

The printouts in Exhibit D are attributed to the LTC for the years 2019 and 2020. In the LTC printouts, the Property is described as follows:

2019		Status: Exempt/Tax Free
Description	Total Taxable Assessed Values	
Schools & Classrooms	\$0	
No Land Value (Leased Property)	\$0	
Total Taxes Due		\$0
2020		Status: Active
Offices, Medical & Public Buil[dings]	\$75,8720	
Commercial Non-Subdivision Lot	\$0	
Total Taxes Due		\$0
2219 Lakeshore Drive		
2019		Status: Exempt/Tax Free
Description	Total Taxable Assessed Values	
Schools & Classrooms	\$0	
No Land Value (Leased Property)	\$0	
Total Taxes Due		\$0
2020		Status: Active
Offices, Medical & Public Buil[dings]	\$924,100	
Commercial Non-Subdivision Lot	\$0	
Total Taxes Due		\$0
2253 Lakeshore Drive		
2019		Status: Exempt/Tax Free

Description		Total Taxable Assessed Values
Schools & Classrooms		\$0
No Land Value (Leased Property)		\$0
Total Taxes Due		\$0
2020	Status: Active	
Commercial Non-Subdivision Lot		\$0
Garages, Industrials, Lofts[]		\$217,800
Total Taxes Due		\$0
2021 Lakeshore Drive		
2019	Status: Exempt/Tax Free	
Description		Total Taxable Assessed Values
No Land Value (Leased Property)		\$0
Offices, Medical & Public Buil[dings]		\$235,490
Total Taxes Due		\$0
2020	Status: Active	
Commercial Non-Subdivision Lot		\$0
Offices, Medical & Public Buil[dings]		\$288,410
Total Taxes Due		\$0

The Taxpayer claims that these records show that the Assessor put the Property back on the tax rolls for 2020. This fact appears undisputed as the Assessor also states that he placed the Property on the tax rolls in 2020 in Paragraph 13 of his Affidavit that was attached to his Opposition to UNO's Factual Record as Exhibit B.

The Assessor attached to his affidavit an email thread between himself and UNO's Chairman. The earliest email in the thread was sent on October 8, 2019, and the last email was sent on November 13, 2019. The correspondence appears to show that the parties scheduled a meeting to discuss tax assessments on the Property in late October 2019. The last email is from UNO's Chairman, and it expresses thanks for an explanation of property taxing policies from the Assessor. UNO's Chairman

also asks about phasing in new tax values to give UNO a "chance to negotiate leases with Tenants that are fully engaged with UNO and/or Non Profits. In addition, as present leases end, we can renegotiate leases that hold Tenants responsible for their share of taxes." This is the only instance in the record where nonprofits are mentioned.

Discussion

The Supplemental Exceptions of Prescription are based on La. R.S. 33:2828. The statute establishes a procedure to claim the exemption from ad valorem tax for property owned by a charitable organization established by La. Const. art. VII, Section 21(B) (the "21(B) Exemption" or the "Nonprofit Exemption") that applies only in the city of New Orleans:

[A]n exemption from ad valorem taxation granted to property pursuant to Article VII, Section 21(B) of the Constitution of Louisiana shall be applied for annually by completing an application form provided by the assessor and certifying that property qualifies for the exemption sought.

* * *

B. . . . (2) Each assessor shall be responsible for delivering the application form to the listed owner of each such tax exempt property on the assessment rolls located in the respective assessor's district, at the address shown on the assessment rolls.

* * *

C. (1) Each owner of such tax exempt property shall return the completed application form, duly sworn to, within twenty days after the form has been delivered at the address shown on the assessment rolls. The completed application form may be submitted to the assessor in person or by first class mail.

* * *

D. Each assessor shall evaluate and grant or deny the request for tax exemption, or grant a partial tax exemption based on the assessed value of that proportion of the property not being used for an exempt purpose, by the first day of August of each year which shall determine the liability for or exemption from taxation for the calendar year. Each determination by the assessor shall be subject to review as provided by law.

UNO did not submit an application for the 21(B) Credit for 2022 or for any prior tax year. The Assessor contends that UNO's 21(B) claims are prescribed by its failure to submit an application in time for the Assessor to make the determination described in La. R.S. 33:2828(D).

In the Board's view, La. R.S. 33:2828 lays out a procedure intended to provide an orderly process through which the Assessor can discern exempt and non-exempt properties. The plain language of La. R.S. 33:2828 does not require the Assessor to send an application to every taxpayer, or even every taxpayer that might apply for the 21(B) Exemption. Instead, the statute requires the Assessor to send an application form to tax exempt property on the assessment rolls in the assessor's district. La. R.S. 33:2828(B)(2). Thus, an Assessor's statutory obligation to deliver the application form is attached to property on the exempt rolls in the Assessor's district.

The statute's requirements are expressed in mandatory terms. However, the statute contains no penalties or provisions stating any consequences for noncompliance, either by the Assessor or the taxpayer. This means that the statute does not explicitly identify any prescriptive period for the Taxpayer to claim the 21(B) Exemption. To the extent that this leads to ambiguity, such ambiguity is construed against prescription and in favor of maintaining the cause of action. That is what the Board did in Docket No. L01363.

The facts in that case showed that the 21(B) Exemption was the only grounds asserted for relief. The fact that the Assessor was in litigation over the tax status of the property necessarily meant that the Assessor knew about the taxpayer's 21(B) claims. Despite that knowledge, the Assessor did not send an application form to the taxpayers. This was legally significant because the only deadline explicitly imposed on a taxpayer in La. R.S. 33:2828 is that the taxpayer must return the completed application to the Assessor within twenty days after delivery. Prescription could not be sustained based on that part of the statute because the Assessor never delivered the application. The other time limit in the statute is the August deadline for the

Assessor to grant or deny Exemption. It would be contrary to the canons of construction applicable to prescription statutes to hold the taxpayer responsible for a deadline that is expressly imposed on the Assessor when the Assessor knew of the taxpayer's 21(B) claims but did not send the taxpayer a copy of the application form.

The facts of this case are different. In this case, the exemption for public property used for public purposes found in 21(A) is UNO's primary grounds for relief and the 21(B) Exemption is only pled in the alternative. UNO did not necessarily put the Assessor on notice of its 21(B) claims in other litigation, and moreover, there is no evidence to show that it actually did put the Assessor on notice. The 21(B) Exemption is not raised in the correspondence introduced by UNO. There is no mention of the 21(B) Exemption in any of the printouts from the Assessor's website or from any other source. No filings in the other litigation described in UNO's memorandum were introduced to show that UNO raised a 21(B) claim in those cases.

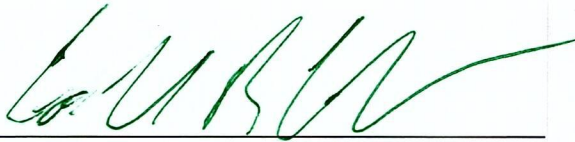
More importantly, the facts in this case show that the taxpayer should have been on notice of the need to obtain the form and submit it to the Assessor. The Assessor placed the Property on the tax rolls and issued assessments. If UNO believed that the 21(B) Exemption applied to its Property, it should have pursued its remedies under the law to claim that Exemption. The fact that Property was assessed in 2019 did not stop UNO from submitting applications in the following years. Despite being assessed for the tax years 2019, 2020, 2021, UNO did not submit an application by the time of the 2022 Assessment at issue. The Assessor cannot be blamed for UNO's continued failure to apply for the Exemption.

The facts in the record in this case show that the Assessor followed the law and that UNO did not. There is no evidence that UNO took action either by applying for the Exemption or by triggering the Assessor's obligation to deliver the application form. UNO persisted in its inaction for years after the Assessor put the Property on the tax rolls and began issuing assessments.

The Assessor demonstrated that UNO's alternative 21(B) claims are facially prescribed and UNO has not come forward with evidence to controvert the running of prescription. Accordingly, the Board will sustain the Assessor's Exception of Prescription and dismiss UNO's alternative 21(B) claims. This partial dismissal is not a final judgment in this case and does not have any effect on UNO's primary claims under 21(A).

Signed at Baton Rouge, Louisiana on this ^{gjm} 1st day of ^{March} ~~January~~, 2023.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

BOARD OF TAX APPEALS
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Respondents

JUDGMENT ON ORIGINAL EXCEPTIONS
AND SUPPLEMENTAL EXCEPTIONS OF NO CAUSE OF ACTION
AND NO RIGHT OF ACTION

This matter came for hearing before the Board on August 11, 2022, on the Original Exceptions including the Declinatory Exception of Lack of Subject Matter Jurisdiction and Peremptory Exceptions of No Cause of Action and No Right of Action (the "Original Exceptions") and the Supplemental Exceptions of No Cause of Action and No Right of Action filed by Assessor, Erroll G. Williams (the "Assessor").

Present were:

Cheryl Kornick and Tyler Trew, counsel for Petitioner, University of New Orleans Research and Technology Foundation, Inc.; Jordan S. Varnado, counsel for Defendants, Louisiana Tax Commission and Lawrence E. Chehardy, in his official capacity as Chairman of the Louisiana Tax Commission (via video); Reese F. Williamson, counsel for Erroll G. Williams, in his official capacity as Assessor of Orleans Parish ("Assessor Williams"); and Tanya L. Irvin and Kimberly K. Smith, counsel for Norman White Chief Financial Officer and Director of Finance, City of New Orleans (via video).

Having considered the pleadings, memoranda, evidence, law, and arguments of counsel, and for the reasons orally stated on the record:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Original Exceptions **ARE HEREBY OVERRULED** with respect to Paragraph Three of Taxpayer's Prayer for Relief, subject to the understanding that the Board does not have jurisdiction to determine the amount of tax owed on any taxable portion of the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Supplemental Exceptions of No Cause of Action and No Right of Action **ARE HEREBY OVERRULED**. The Board's ruling on the Supplemental Exceptions of Prescription will be issued in a separate Judgment.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA, THIS ^{9th} ~~12~~TH DAY OF ^{March} ~~JANUARY~~, 2023.

FOR THE BOARD


LOCAL TAX JUDGE CADE R. COLE