

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

WILLIS-KNIGHTON MEDICAL CENTER

Petitioner

VERSUS

DOCKET NO. 9734D

**KIMBERLY L. ROBINSON IN HER CAPACITY
AS SECRETARY DEPARTMENT OF REVENUE
STATE OF LOUISIANA**

Respondent

JUDGMENT

ON CROSS MOTIONS FOR SUMMARY JUDGMENT

On October 11, 2017 the Board heard the Cross Motions for Summary Judgment of the Secretary Department of Revenue, State of Louisiana (the "Secretary") and Willis-Knighton Medical Center (the "Taxpayer"), with Judge Tony Graphia (Ret.), Chairman, presiding, and with Board Members Cade R. Cole and Francis "Jay" Lobrano present. Participating in the hearing were: Russell J. Stutes, Jr., attorney for the Secretary, and Andre B. Burvant, attorney for Taxpayer. After the hearing the case was taken under advisement, and the Board now unanimously renders its Judgment as follows, for the written reasons issued herewith.

IT IS ORDERED, ADJUDGED, AND DECREED that the Taxpayer's Motion for Partial Summary Judgment BE AND IS HEREBY DENIED.

IT IS ORDERED, ADJUDGED, AND DECREED that the part of the Secretary's Motion for Summary Judgment as it relates to the La. R.S. 47:315.3 exclusion for drugs purchased pursuant to provisions of Medicare IS HEREBY RECOGNIZED AS HAVING BEEN WITHDRAWN.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the remainder of the Secretary's Motion for Summary Judgment BE AND IS HEREBY GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just reason for delay and this shall be a final and appealable judgment in favor of the Secretary and against the Taxpayer pursuant to La. C.C. art. 1915(B), and shall be appealable pursuant to La. R.S. 47:1434-37.

Baton Rouge, Louisiana this 8 day of November, 2017.

FOR THE BOARD:



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

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**WRITTEN REASONS FOR JUDGMENT
ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

On October 11, 2017 the Board heard the Cross Motions for Summary Judgment of the Secretary Department of Revenue, State of Louisiana (the “Secretary”) and Willis-Knighton Medical Center (the “Taxpayer”), with Judge Tony Graphia (Ret.), Chairman, presiding, and with Board Members Cade R. Cole and Francis “Jay” Lobrano present. Participating in the hearing were: Russell J. Stutes, Jr., attorney for the Secretary, and Andre B. Burvant, attorney for Taxpayer. After the hearing the case was taken under advisement, and the Board now unanimously renders its Judgment for the following written reasons:

This petition is one to recover a sales tax paid under protest. Taxpayer paid the sum of \$177,852 under protest for the period of April 2016. Taxpayer gave notice to the Secretary that this sum was being paid under protest and then timely filed this proceeding pursuant to La. R.S. 47:1576.

The ultimate issue in this proceeding pertains to the provisions of La. Const. Art. VII Section 2.2(B)(3) which provides, in pertinent part:

“§2.2. Power to Tax; Sales and Use Tax; Limitation

(B) Effective July 1, 2003, the sales and use tax imposed by the state of Louisiana or by a political subdivision ...shall not apply to sales or purchases of the following items:

...

(3) Prescription drugs.”

It is the contention of Taxpayer that the foregoing provision of the Constitution should be treated as if Prescription Drugs meant both pharmaceuticals and medical devices prescribed for use in the treatment of medical disease (“Medical Devices”).

Taxpayer is a hospital system and its physicians routinely use items like pacemakers, stents, artificial knees and other medical devices in the treatment of patients at Taxpayer’s hospitals.

La. R.S. 47:305(D)(1)(j) exempts prescription drugs from Louisiana sales tax. The statutory definition of drugs had historically included Medical Devices. La. R.S. 47:305(D)(1)(s) also separately exempts medical devices from Louisiana sales tax.

Subsequent to the enactment of the foregoing statutes, the Louisiana Legislature in the 2016 1st Extraordinary Session passed Act 25 and Act 26, both of which went into effect April 1, 2016, and both of which currently expire on June 30, 2018. These Acts suspended almost all exemptions and exclusions from two pennies of Louisiana sales and use tax, and added an additional penny which was imposed with a similarly reduced set of exemptions and exclusions. The only exemptions or exclusions where were not suspended were those explicitly retained by a specific list in those Acts (the “Retained Exemptions List”).

The issue in this case is that the statutory exemptions listed in La. R.S. 47:305 (D)(1)(j) and (s), were not on the Retained Exemptions List, and were therefore suspended by the Legislature. However, in recognition of the constraints of La. Const. art. VII, Sec. 2.2, the Legislature included on the Retained Exemptions List and thereby excluded from temporary suspension the exemption for “Prescription

drugs, as provided in Article VII, Sec. 2.2 of the Constitution of Louisiana. La. R.S. 47:302(X)(5); 321(L)(5); 321.1(F)(5); and 331 (S)(5).

The Legislature's Act clearly comports with the constitutional provision since whatever is exempted by the Constitution is still exempted. The question is therefore whether the scope of the constitutional exemption includes Medical Devices.

It is the argument of the Taxpayer that the term "Prescription drugs" in the constitutional exemption should be read to also include Medical Devices. The Taxpayer's argument is primarily based on La. R.S. 47:301(20) which states in pertinent part:

"§301. Definitions

As used in this Chapter the following words, terms, and phrases have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

...

(20) "Drugs" includes all pharmaceuticals and medical devices which are prescribed for use in the treatment of any medical disease..." (Emphasis supplied)

The Secretary responds by relying upon the common or ordinary meaning of the phrase "Prescription drugs." In interpreting the income tax provisions of our Constitution, the Supreme Court has directed that:

The words and terms expressed in the Constitution are to be interpreted by the courts with an understanding of the definitions which would have been given to those words or terms by the people...

* * *

In interpreting the words of our Constitution, there is a presumption in favor of the natural and popular meanings in which words are usually understood by the people who adopt them.

City of New Orleans v. Scramuzza, 507 So. 2d 215, 218 (La. 1987)(emphasis supplied).

In interpreting the constitutional meaning of the phrase "motor fuel" for the purposes of a prohibition on local taxation, the Supreme Court also reiterated that:

In order to ascertain the ordinary, usual, and commonly understood meaning of a word not otherwise defined in a constitution, courts generally look first to the dictionary definition.

* * *

[I]n accordance with the general principles of constitutional interpretation enunciated above, we do not believe that the voters of this state, when adopting the constitutional prohibition against political subdivisions levying taxes on motor fuel, understood “motor fuel” with reference to the technical definition provided by [a statute].

Ocean Energy, Inc. v. Plaquemines Parish Government, 2004-0066 (La. 7/6/04), 880 So.2d 1, 8 and 13-14.

The definitions found in Section 301 state those definitions shall apply to the terms “as used in this chapter.” The constitutional provision is obviously not found in Chapter 2 of Title 47.

The Legislature clearly knew how to import statutory definitions into this particular constitutional section. In La. Const. art. VII, Sec. 2.2(B)(1), the Legislature and the people directed that no sales tax should be applied to “Food for home consumption, as defined in R.S. 47:305(D)(1)(n) through (r) on January 1, 2003.” However, in Paragraph (3) of that same Subsection, the Legislature and the people did not import any statutory definition, merely directing that “Prescription drugs” be excluded from state sales and use tax.

The Supreme Court has directed that “[u]nequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning. “*Ocean Energy Inc. v. Plaquemines Parish*”, 04-0066, p.7, 880 So.2d at 6-7. The Board finds that the phrase Prescription drugs is clear and unambiguous.

Considering the definitions offered and the common and ordinary understanding of the meaning of “Prescription drugs”, the Board finds that there is no basis for including Medical Devices within the scope of the constitutional

exemption. The Board's also finds that the legislative history fails to support the Taxpayer's position that the technical meaning was meant to be imported into the Constitution by the Legislature and the voters.

The underlying statutory exemptions have a broader scope than the constitutional exemption. In 2016 the Legislature decided to suspend these two statutory exemptions, but in Act 426 of 2017 the Legislature reversed course and reinstated the statutory medical device exemption by adding it to the Retained Exemptions List effective July 1, 2017. When the Legislature changes the wording of a statute, it is presumed to have intended a change in the law. There would have been no need for Act 426 under the Taxpayer's reading of the 2016 enactments.

The Taxpayer's Motion for Partial Summary Judgment requesting that the Board rule that the constitutional provision under consideration includes Medical Devices and to order the return of the \$177,852 it paid under protest, on that basis, is denied.

The Secretary's Motion for Summary Judgment is granted on the same issue. The portion of the Secretary's Motion for Summary Judgment on the R.S. 47:315.3 exclusion was withdrawn.

Baton Rouge, Louisiana this 8 day of November, 2017.

FOR THE BOARD:



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

NOTICE OF JUDGMENT
AND APPEAL RIGHTS

ENCLOSED IS A CERTIFIED COPY OF THE JUDGMENT RENDERED ON THE
8th DAY OF NOVEMBER, 2017:

A Judgment of the Board of Tax Appeals may be appealed to the proper Court of Appeal “**within thirty days of the signing of a decision or judgment of the Board**” in the manner specified in R.S. 47:1434-38.

Costs for appeal are described in the promulgated rules of the Board (codified pursuant to R.S. 47:1413, found in Louisiana Administrative Code Title 69).

In matters where the Board found that tax was due, the appellant is required to post a security in the amount of **one and one-half (1 ½) times** the tax, interest and penalty found to be due, prior to filing the *Motion for Review*. (R.S. 47:1434)

I hereby certify that the above and forgoing notice was mailed with the judgment by me, postage prepaid, to counsel of record for all parties and to those who were not represented by counsel, directed to their last known address, on this 8th day of November, 2017.



Ann Faust
Secretary-Clerk
Louisiana Board of Tax Appeals

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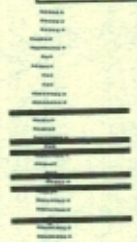
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