

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**WAGNERS CHEF, L.L.C.
PETITIONER**

VERSUS

DOCKET NO. 9119

**TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE.
STATE OF LOUISIANA
RESPONDENT**

JUDGMENT

A hearing was held before the Board on August 13, 2015 on the Secretary, Department of Revenue's (Secretary) Dilatory Exception of Prematurity and Declinatory Exception of Lack of Subject Matter Jurisdiction with Judge Tony Graphia (Ret.), Chairman, and Vice-Chairman Cade R. Cole present; Board Member Kernan A. Hand, Jr. was absent. Present before the Board were: Robert G. Harvey, attorney for Wagners Chef, L.L.C. ("Taxpayer") and Aaron Long, attorney for the Secretary. After the hearing, the matter was taken under advisement.

Taxpayer appeals from the Secretary's Notice of Jeopardy Assessment in the amount of \$299,131.27 plus interest and penalties for the period 01/01/2008 -05/31/2013, which assessment was dated 06/05/2014.

The initial question that the Board must decide is whether it can hear Taxpayer Wagners Chef, L.L.C.'s appeal from the jeopardy assessment against it.

R.S. 47:1566, dealing with jeopardy assessments states in part:

"The taxpayer against whom the assessment lies can stay distraint of his property, or sale of his property already distrained, as the case may be, only by the payment of the assessment or by posting with the collector a surety bond for twice the amount of such assessment or a lower amount acceptable to the collector, with such sureties as the collector deems necessary. The Taxpayer shall have sixty calendar days from the date of payment or the date of posting bond to appeal to the Board of Tax Appeals in the manner set out in Chapter 17, Sub-title II of this Title, for a redetermination of the assessment..."

It is admitted that the Taxpayer in this matter has neither paid the assessment nor posted a surety bond.

The Taxpayer has cited no statutory or jurisprudential authority why it is not required to comply with the foregoing statute in order to have the Board hear its case.

Taxpayer refers to temporary restraining orders issued in a state court that does

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NOTICE OF JUDGMENT AND CERTIFICATE OF MAILING


A CERTIFIED COPY OF THE JUDGMENT AND NOTICE OF SIGNING OF JUDGMENT WAS MAILED TO ALL COUNSELS OF RECORD AND/OR UNREPRESENTED PARTIES NAMED THEREIN ON THE 5 DAY OF November, 2015.

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. 47:1434-38.¹

Costs for appeal are described in the promulgated rules of the Board (codified pursuant to R.S. 47:1413 in L.A.C. 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 foregoing notice was mailed with the Judgment by me, postage prepaid to counsel of record for all parties and to those parties who were not represented by counsel, directed to their last known address, on this 4 day of November, 2015.


Ann Faust, Secretary-Clerk
Louisiana Board of Tax Appeals

¹ Please consider whether you have reviewed the version of those Sections as amended by Acts 198 and 640 of 2014 and Act 210 of 2015. *Note*: The Board is statutorily exempt from the Administrative Procedures Act and its methods of judicial review, the proper standard of appellate review is instead codified at R.S. 47:1435(C). *See also, St. Martin v. State*, “the Board acts as a trial court in finding facts and applying the law” 25 So.3d 736, 740 (La. 2009); and “jurisdiction to resolve tax related disputes is constitutionally and statutorily granted to the Board which is authorized to hear and decide disputes and render judgments.” *Id.* at 741.

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not pertain to Taxpayer and to bankruptcy proceedings in which the Taxpayer in this matter was not a debtor as reasons why the Board should hear its appeal. None of the arguments of this Taxpayer persuade the Board that it should hear this case.

The law requires payment of the assessment or posting of security, neither of which has been done. The Board's jurisdiction attaches once one of these requirements has been met; the case is now premature. The exception of lack of subject matter jurisdiction is rendered moot by the granting of the exception of prematurity.

Because this Taxpayer has not complied with the statutory steps necessary to perfect its appeal right, the Secretary's exception of prematurity is proper. *See e.g. Transcontinental Gas Pipe Line Corporation v. Bridges*, 09-421 (La. App. 1 Cir. 10/23/09) 28 So.3d 1082.

Considering the evidence adduced, the law and facts being in favor thereof, and for the foregoing reasons:

IT IS ORDERED, ADJUDGED, AND DECREED that the Secretary's Exception of Prematurity BE AND IS HEREBY SUSTAINED, and that the Taxpayer's petition BE AND IS HEREBY DISMISSED.

Baton Rouge, Louisiana this 4 day of November, 2015

FOR THE BOARD:


**Judge Tony Graphia (Ret.), Chairman
Louisiana Board of Tax Appeals**