

**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**

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**JUDGMENT**  
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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

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**