

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**LANASA FAMILY TRUST  
PETITIONER**

**VERSUS**

**DOCKET NO. 9327C**

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

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**JUDGMENT**  
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A hearing on the the Secretary's Exception of Lack of Subject Matter Jurisdiction and the on the merits of this case was held before the Board on March 9, 2016 with Judge Tony Graphia (Ret.), Chairman, and Board Member Cade R. Cole, present. Participating in the hearing was: R.A. Osborn, Jr., attorney for Lanasa Family Trust (Taxpayer), and Aaron Long, attorney for the Secretary. After the hearing, Board rendered the ruling stated herein.

Taxpayer has appealed the Secretary's denial of a request for a refund of interest and penalties that it paid to the Secretary as a result of an assessment made by the Secretary in regard to Taxpayer's 2013 Fiduciary Income Tax Return. (the Return).

Taxpayer claims that it filed the Return by posting it in the U.S. mail on March 12, 2014 and accompanying the Return with a check in the amount of \$117,793.00, the amount of tax due s stated in the Return. The Return and payment were not due until May 15, 2014.

When the Taxpayer discovered that the Secretary had not credited it with the \$117,793.00, it paid the taxes on January 15, 2015.

The Secretary claims that it received the Return but did not receive the check. On May 6, 2015 the Secretary issued an assessment for interest in the amount of \$5,535.21 and late payment penalties in the amount of \$29,448.25.

Taxpayer paid the interest and penalties and requested the return of the interest and penalties which request was denied by the Secretary.

Taxpayer timely appealed the assessment of penalties and interest, claimed they were not owed and prayed that the Board order the refund of the interest and penalties.

The issues presented to the Board are whether the taxes were timely paid, were the interest and penalties owed and did the Board have jurisdiction to hear Taxpayer's appeal.

The Secretary has filed an exception of Lack of Subject Matter Jurisdiction alleging that the Board does not have the jurisdiction to waive penalties and/or interest. The Board is not considering whether to waive the penalties and interest because it has no jurisdiction to do so. The inquiry is whether the interest and penalties were owed.

After considering the testimony and other evidence presented to the Board, the Board rules that the check in the amount of \$117,793.00 was mailed to the Secretary on March 12, 2014.

R.S. 47:1568 B states in relevant part:

"B. If the taxpayer fails to accompany his return filed with a proper payment...the secretary shall **immediately** send a notice by mail to such person...informing him of the amount due...demanding the payment of such amount within thirty days...". (emphasis supplied)

The evidence reveals that the Return was filed on March 12, 2014. The return and payment of the tax were not due until May 15, 2014. If the Secretary had “immediately” notified the Taxpayer that the return did not contain the “proper payment”, the Taxpayer would have been able to pay the tax before the May 15, 2014 deadline and the no interest or penalties would have been assessed.

For the foregoing reasons:

IT IS ORDERED, ADJUDGED AND DECREED that: the Secretary’s exception of Lack of Subject Matter Jurisdiction is overruled and;

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that no interest or penalties was due by the Taxpayer and the Secretary shall refund to the Taxpayer interest in the amount of \$5,535.21 and penalties in the amount of \$29,448.25.

Baton Rouge, Louisiana this \_\_\_ day of \_\_\_\_\_, 2016.

FOR THE BOARD

***ORIGINAL SIGNED JUDGMENT ON FILE***

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Judge Tony Graphia (Ret.) Chairman