

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**JAMES CARL NORRED,**  
Petitioner

-vs-

B.T.A. DOCKET NO. 13401B

**DEPARTMENT OF REVENUE, ET AL.,**

Respondents

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**JUDGMENT AND REASONS**  
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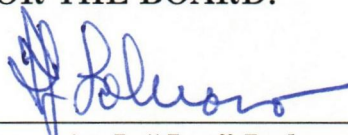
On March 8, 2023, this matter came before the Board for a hearing on the Exceptions of No Cause of Action, No Right of Action, and Lack of Subject Matter Jurisdiction filed by the Department of Revenue (“Department”), and on the merits. Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were James Carl Norred (“Petitioner”), representing himself, and Miranda Scroggins, attorney for the Department. At the conclusion of the hearing, the Board took the entire case under advisement. The Board now issues Judgment in accordance with the attached Reasons.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Exception of No Right of Action is SUSTAINED, the Exception of No Cause of Action is SUSTAINED, and the Exception of Lack of Subject Matter Jurisdiction is OVERRULED AS MOOT.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that there be Judgment in favor of the Department and against the Petitioner and the Petition is HEREBY DISMISSED.

Judgment rendered and signed in Baton Rouge, Louisiana, this 4<sup>th</sup> day of May, 2023.

**FOR THE BOARD:**



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**Francis J. “Jay” Lobrano, Chairman  
Louisiana Board of Tax Appeals**

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**REASONS FOR JUDGMENT**  
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On March 8, 2023, this matter came before the Board for a hearing on the Exceptions of No Cause of Action, No Right of Action, and Lack of Subject Matter Jurisdiction filed by the Department of Revenue (“Department”), followed by hearing on the merits. Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were James Carl Norred (“Petitioner”), representing himself, and Miranda Scroggins, attorney for the Department. At the conclusion of the hearing, the Board took the entire case under advisement. The Board now issues the foregoing Judgment for the following reasons:

**Background**

On August 24, 2022, Petitioner filed his Petition for Refund with the Board. The dispute in this case relates to probation supervision fees collected by the Department’s Office of Debt Recovery (“ODR”). The Department contends that debt is final, delinquent, and collected by ODR on behalf of a state agency pursuant to La. R.S. 47:1676. The debt was referred to ODR from the Amite District Probation and Parole Office (“Amite Office”).

Petitioner was convicted of cultivating marijuana and placed on probation for the period of January 1, 2014, to September 1, 2016. As a condition of probation, Petitioner was required to pay statutory fees, primarily to defray the cost of supervision. The amount of the alleged debt for these fees is \$2,343.00, of which \$1,160.35 remains unpaid.

Petitioner argues that he does not owe supervision fees for the period of time that he was in prison in Florida. Petitioner was incarcerated from September 17, 2014, through June 3, 2016. Petitioner also argues that the fees should be reduced because he was given credit for time served under La. C. Crim. Pro. Article 901(C)(3). Additionally, Petitioner argues that he has not been afforded any administrative or judicial opportunity for his dispute to be heard. Petitioner prays for a refund of fees collected but allegedly not owed. Petitioner also asks the Board to order that all collection efforts cease and that the alleged debt be removed from his record.

### **Exception of No Right of Action**

A peremptory exception of no right of action is a threshold procedural device for dismissing a petition filed by a person who does not have a legally recognized right to bring the claim asserted. *See Midland Funding, LLC v. Giles*, 2021-304, p. 5 (La. App. 3 Cir. 12/15/21), 332 So.3d 744, 749; *Joseph v. Hosp. Serv. Dist. No. 2 of Parish of St. Mary*, 05-2364, p. 4 (La. 10/15/06), 939 So.2d 1206, 1210. The question is whether the Petitioner belongs to the class of persons possessing a real and actual interest in subject matter of the petition. La.Code Civ.P. art. 927; *Reese v. State Dep't of Pub. Safety & Corrs.*, 03-1615 (La. 2/20/04), 866 So.2d 244; *Indus. Co., Inc. v. Durbin*, 02-0665 (La. 1/28/03), 837 So.2d 1207. For this purpose, the Board assumes that the petition states a valid cause of action for someone. *See Reese*, 866 So.2d at 246. The Board begins with an examination of the pleadings. *Howard v. Administrators of Tulane Educ. Fund*, 07-2224 (La. 7/1/08), 986 So.2d 47; *see also R.G. Claitor's Realty v. Juban*, 391 So.2d 394 (La. 1980). If it is not apparent from the pleadings that the Petitioner lacks a right of action, evidence may be introduced to support or controvert the exception. La. Code Civ. P. art. 931.

The Refund Overpayment Procedure provides a remedy to a taxpayer whose properly filed claim for a refund or credit has been disallowed by notice of disallowance, or through inaction, by the collector. La. R.S. 47:1625(A)(1). On its face, the Petition shows that the Petitioner has never filed a refund claim under La. R.S. 47:1621. Furthermore, the allegations of the Petition are directed at a debt collected

by ODR under the authority of La. R.S. 47:1676. La. R.S. 47:1676(D)(1) provides, “Notwithstanding any other provision of law to the contrary, the secretary of the Department of Revenue may treat a delinquent debt referral in the same manner as an assessment that has become final without restriction or delay.” The Louisiana Supreme Court has held that a final assessment of tax is an established liability equivalent to a final judgment and that it precludes the use of the refund overpayment procedure. *Collector of Revenue v. Pioneer Bank & Tr. Co.*, 196 So.2d 270 (La. 1967).

The probation fees described in the Petition meet the definition of a “delinquent debt” as defined La. R.S. 47:1676(3), (4), and (6). A “debt” is defined as “any legally collectible liquidated sum due and owing an agency, or due and owing a person and collectible by any agency, or a judgment, order of the court, or bond forfeiture that is properly certified by the clerk and that orders the payment of a fine or other court-ordered penalty.” La. R.S. 47:1676(3). A debt becomes “final” once it is no longer negotiable and the debtor has no further right of administrative and judicial review. La. R.S. 47:1676(6). A final debt becomes “delinquent” once it is sixty days or more past due. La. R.S. 47:1676(4).

Petitioner claims that he has not been provided with an opportunity to dispute the debt. However, there were several opportunities for Petitioner to seek review or modification of the terms of his probation under the Code of Criminal Procedure. Article 881.1 provides for a motion to reconsider a sentence, and Article 912 describes the right to appeal to a higher court from a conviction and sentence. Article 896 allows for a motion to modify the terms of probation. Additionally, if a modification of probation was denied, Petitioner could have exercised his right to seek supervisory writs under Article 881.2. *See State v. Sewell*, 53,571 (La. App. 2 Cir. 11/18/20), 307 So.3d 362; *State v. Houston*, 2019-0615 (La. App. 1 Cir. 11/15/19), 291 So.3d 223.

Petitioner did not avail himself of the remedies available to him within the time provided by law. He has no further right to seek review of the terms of his probation. The debt at issue is therefore “final” within the meaning of La. R.S.

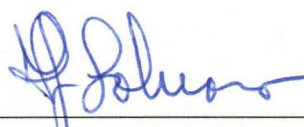
47:1676. Because the debt is “final,” it is equivalent to a final judgment or established liability. *Pioneer Bank, supra*. The finality of the debt extinguishes any legally recognizable interest the Petitioner may have had in seeking a refund of supervision fees. Therefore, Petitioner does not have a right of action to bring the claims asserted.

In the alternative, the Petitioner has not stated a cause of action against the Department for relief that the Board can grant. Petitioner alleges that he has not been provided with a dispute resolution process, has been improperly charged supervision fees when not under supervision, and has not been credited for time served under Article 901(C) of the Code of Criminal Procedure. The Department is not the entity responsible for any of these alleged harms. Moreover, the Board is not able to order the Department to provide the relief that Petitioner prays for. Petitioner’s right of review was with the sentencing Court and the appropriate Court of Appeal. In addition, the Board notes that Article 901(C) concerns jail time and has no impact on probation fees accrued prior to revocation. Finally, the Board observes that the Petition fails to properly make any agency other than the Department a party to the case. The relief sought by Petitioner, independently or collectively, would, at a minimum, necessitate the inclusion of the agencies imposing the fees as Respondents. Petitioner never filed a request to serve the Petition on any additional parties.

The Board will sustain the Exception of No Cause of Action and No Right of Action. Petitioner does not have a legally recognizable right to claim a refund for payments made towards his fixed liability for probation supervision fees. Therefore, the Petition will be dismissed.

**Baton Rouge, Louisiana, this 4<sup>th</sup> day of May, 2023.**

**FOR THE BOARD:**



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**Francis J. “Jay” Lobrano, Chairman  
Louisiana Board of Tax Appeals**