

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**RANDAL AND ANN HEINE,
Petitioners,**

VS.

DOCKET NO. 11815B

**KIMBERLY ROBINSON, SECRETARY,
DEPARTMENT OF REVENUE,
Respondent**

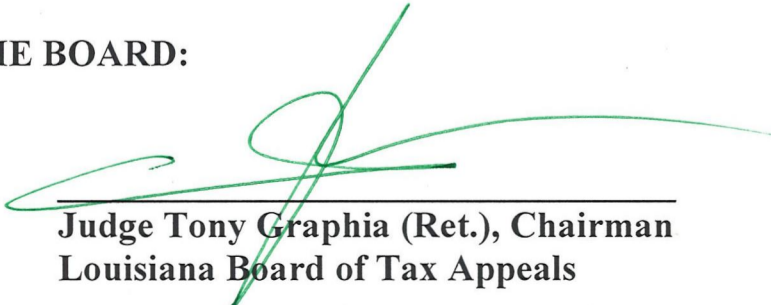
JUDGMENT ON EXCEPTIONS

This matter came before the Board on February 12, 2020, for hearing on the Exceptions of Prescription and Lack of Subject Matter Jurisdiction (the "Exceptions") filed by Kimberly Robinson, Secretary, Department of Revenue (the "Department"), with Judge Tony Graphia (Ret.), Chairman, presiding, and Board Members Cade R. Cole and Francis "Jay" Lobrano present. Participating in the hearing were Robert C. Barrett, Jr., attorney for Randal and Ann Heine ("Petitioners"), and Miranda Scroggins, attorney for the Department. At the end of the hearing, the Board overruled the Exceptions. The Board now unanimously renders Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that the Exceptions BE AND ARE HEREBY OVERRULED.

**JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA THIS DAY this 12th day of March, 2020.**

FOR THE BOARD:



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

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REASONS FOR JUDGMENT ON EXCEPTIONS

This matter came before the Board for hearing on the Exceptions of Prescription and Lack of Subject Matter Jurisdiction (the “Exceptions”) filed by Kimberly Robinson, Secretary, Department of Revenue (the “Department”) on February 12, 2020, with Judge Tony Graphia (Ret.), Chairman, presiding, and Board Members Cade R. Cole and Francis “Jay” Lobrano present. Participating in the hearing were Robert C. Barrett, Jr., attorney for Randal and Ann Heine (“Petitioners”), and Miranda Scroggins, attorney for the Department. At the end of the hearing, the Board overruled the Exceptions. The Board now unanimously renders Judgment in accordance with the following written reasons.

Petitioners appeal from the denial of refunds for the 2013 and 2014 tax years. The Department’s Exceptions are directed at Petitioners’ claims for the 2014 year. The Department’s position is that Petitioners filed their refund claims after the expiration of the applicable three-year prescriptive period provided in La. R.S. 47:1623(A). Petitioners assert that their claims were timely placed in the mail before the deadline under LAC 61:I.4903 and LAC 61:I.4911.

The facts relevant to the Exceptions are not in dispute. Petitioners submitted their refund claims with their 2014 Louisiana individual income tax return.

Petitioners mailed their 2014 return on January 2, 2019, as shown by the postmark on the envelope in which the return was mailed. The Department does not dispute the date of mailing.

La. R.S. 47:1623 provides for prescription of refunds or credits. La. R.S. 47:1623(A) states:

After three years from the 31st day of December of the year in which the tax became due or after one year from the date the tax was paid, whichever is the later, no refund or credit for an overpayment shall be made unless a claim for credit or refund has been filed with the secretary by the taxpayer claiming such credit or refund before the expiration of said three-year or one-year period. The maximum amount which shall be refunded or credited shall be the amount paid within said three-year or one-year period. The secretary shall prescribe the manner of filing claims for refund or credit.

Under La. R.S. 47:103(3), Petitioners' 2014 tax return was due on May 15, 2015. Three years from that date was December 31, 2018. La. R.S. 47:103(4) states that "[i]n the event that the date on which returns shall be filed falls on Saturday, Sunday, or a legal holiday, the return shall be made and filed on the next business day."

Similarly, LAC 61:I.4903 provides:

A. Unless otherwise specifically provided, when the due date of any report or return prescribed under the laws administered by the Department of Revenue and Taxation, falls on a Saturday, Sunday, or a legal holiday, the report or return shall be considered timely if it is filed on the next business day.

B. Definitions. For the purposes of this Section, the following term is defined.

Legal Holiday--any legal holiday observed by the state of Louisiana or the United States Post Office.

La. R.S. 1:55(B)(3) also states: "[t]he governor, by executive proclamation, may authorize the observance of such other holidays and half-holidays as he may deem in keeping with efficient administration." The Governor declared December 31, 2018, to be a legal holiday by Executive Department Proclamation Number 159 JBE

2018. Accordingly, the due date for Petitioners' 2014 refund claims fell on a legal holiday. The following day, January 1, 2019, was New Year's Day, which was also a legal holiday under La. R.S. 1:55(A)(1). The following day, the first day following the due date that was not a legal holiday, was January 2, 2019.

LAC 61:I.4911(B)(1) provides for the filing date of returns, reports, or other documents by United States Postal Service ("USPS") mail. The regulation provides in relevant part:

A return, report or other document in a properly addressed envelope with sufficient postage delivered by the United States Postal Service is deemed filed on the date postmarked by the United States Postal Service. The postmark must bear a date on or before the last date prescribed for filing the return, report or other document in order to be considered timely filed.

Accordingly, to be timely filed, the 2014 refund claims had to have been postmarked by USPS by January 2, 2019. It is undisputed that Petitioners' 2014 return and refund claims were indeed postmarked by USPS on that date. Copies of the certificate of mailing and receipt were entered into evidence by Petitioners. Petitioners' refund claims were timely under the Department's own regulations. Therefore, the Board finds that Petitioners' 2014 refund claims are not prescribed, and that the Exceptions must be overruled.

Baton Rouge, Louisiana this 12 day of March, 2020.



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