

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**HERBERT J. BOXILL  
PETITIONER**

**DOCKET NO. 12603C**

**VERSUS**

**DEPARTMENT OF REVENUE  
RESPONDENT**

\*\*\*\*\*

**JUDGMENT**

\*\*\*\*\*

On March 10, 2022, this matter came before the Board for hearing on the *Department's Amended and Re-Urged Peremptory Exception Raising the Objection of Prescription with Incorporated Memorandum*. Presiding at the hearing were: Francis J. "Jay" Lobrano, Chairman and Vice-Chairman Cade R. Cole, with Judge Lisa Woodruff-White (ret.) abstaining from the decision. Present before the Board were Herbert J. Boxill ("Taxpayer"), appearing pro se, and Christopher Brault representing the Department of Revenue ("Department"). At the conclusion of the hearing, the matter was taken under advisement. The Board now renders the following Judgment in accordance with the attached written reasons:

IT IS ORDERED, ADJUDGED AND DECREED that the Department's Exception be SUSTAINED and that Judgment be rendered in favor of the Department and that the Taxpayer's Petition be and is hereby DISMISSED WITH PREJUDICE.

JUDGMENT RENDERED AND SIGNED at Baton Rouge,  
Louisiana, this 5 day of May, 2022.

FOR THE BOARD:



---

Francis J. "Jay" Loblano, Chairman  
Louisiana Board of Tax Appeals

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**HERBERT J. BOXILL  
PETITIONER**

**DOCKET NO. 12603C**

**VERSUS**

**DEPARTMENT OF REVENUE  
RESPONDENT**

\*\*\*\*\*

**WRITTEN REASONS FOR JUDGMENT**

\*\*\*\*\*

On March 10, 2022, this matter came before the Board for hearing on the *Department's Amended and Re-Urged Peremptory Exception Raising the Objection of Prescription with Incorporated Memorandum*. Presiding at the hearing were: Francis J. "Jay" Lobrano, Chairman and Vice-Chairman Cade R. Cole, with Judge Lisa Woodruff-White (ret.) abstaining from the decision. Present before the Board were Herbert J. Boxill ("Taxpayer"), appearing pro se, and Christopher Brault representing the Department of Revenue ("Department"). At the conclusion of the hearing, the matter was taken under advisement. The Board now renders the foregoing Judgment for the following written reasons.

**Facts:**

Taxpayer appeals from four separate denials of individual income tax refund claims for the tax years 1999, 2000, 2001, and 2002 (the "Tax Periods"). The denials are evidenced by four respective Notices from the Department each dated November 24, 2020. The Notices were entered into evidence at the hearing as exhibits LDR 1 through LDR 4. Each



Notice states that the Taxpayer's Individual Income Tax Return had a mail date of August 20, 2020.

The underlying facts are the same for all of the Tax Periods. The Taxpayer was a victim of the infamous Madoff Securities Ponzi scheme. In a prior case, the same Taxpayer challenged an assessment of individual income tax on Ponzi scheme funds distributed in the 2001 tax year. In that case, the Board ruled that distributions from the Ponzi scheme were not income, and thus were not taxable. *Boxill v. Robinson*, Docket No. C05778A (La. Bd. Tax App. 3/11/20). The Taxpayer now claims that the Board's decision entitles him to refunds of individual income tax. However, the issue presently under consideration is purely procedural: did Taxpayer timely file his refund claims under the law?

**Discussion:**

The Department raises the exception of three year prescription under La. R.S. 47:1623(A). That statute bars the Taxpayer's refund claims after three years from the 31<sup>st</sup> 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 later. Taxes for the Tax Periods at issue would have become due long before the August 20, 2020 mail date of the returns. In addition, the evidence in the record does not clearly establish when the taxes were paid. However, it appears from the affidavit of Natasha Hayes, Revenue Tax Assistant Director for the Department, that the claims concerned income taxes withheld from Taxpayer's wages. Income tax withholdings are considered paid with the filing of the returns to which they relate.

Accordingly, the Board finds that the Taxpayer's refund claims are prescribed. Taxpayer made his refund claims after the expiration of three years from December 31 of the year in which the taxes became due. The Taxpayer did not establish an exception to prescription. Therefore, the Department's exception will be sustained.

**Motion for Leave to Amend Petition:**

On November 23, 2021, Taxpayer filed a letter with the Board wherein he requested to amend his appeal to include the tax years: 1998, 1997, 1996, 1994, and 1993. The Department filed its *Answer* on November 3, 2021. La. Code of Civil Procedure Art. 1151 provides that a plaintiff may amend their Petition after an answer has been filed only with leave of court or with written consent from the adverse party. Taxpayer did not present any such written consent from the Department. Further, the Board does not find good cause exists to allow amendment of the Petition. Taxpayer did not establish that he submitted a refund claim for the additional tax years, and without the claims having been first present to the Department, the appeal would be premature. *See* La. R.S. 47:1431(A); *B&T Rental, Inc., v. Barfield*, Docket No. 8281 (La. Bd. Tax App. 12/10/14); 2014 WL 8333000. Accordingly, the motion to amend the petition will be denied.

Baton Rouge, Louisiana, this 5<sup>th</sup> day of May, 2022.



---

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