

**STATE OF LOUISIANA
BOARD OF TAX APPEALS**

**ESTATE OF CLARK W. TAYLOR
PETITIONER**

VERSUS

No. 9537B

**LOUISIANA DEPARTMENT OF REVENUE
RESPONDENT**

JUDGMENT

A hearing on the merits of this matter was held before the Board on November 4, 2020. Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman, and board members Cade R. Cole and Jay Lobrano. Participating in the hearing were: Attorney Jason R. Brown representing the Estate of Clark W. Taylor (the “Taxpayer”) and attorney Debra Morris, representing the Secretary Department of Revenue (the “Secretary”). After the hearing the case was taken under advisement.

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be rendered against the Secretary and in favor of the Taxpayer concerning the taxpayer’s petition for credit on its Louisiana income taxes for 2011 and 2012 for corporation franchise taxes paid to the state of Tennessee be allowed and that the credit be granted, and that the petition’s other claims be recognized as withdrawn.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a refund is due to the Taxpayer in the amount of \$6,164 for the credit for the 2011 tax year and \$62,651.00 for the credit for the 2012 tax year, as

prayed for, which shall be paid by the Secretary to the Taxpayer together with interest accrued through payment as provided by law.

JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana, this 9th day of December, 2020.

FOR THE BOARD:



JUDGE TONY GRAPHIA (RET.)
CHAIRMAN

**STATE OF LOUISIANA
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**ESTATE OF CLARK W. TAYLOR
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VERSUS

No. 9537B

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RESPONDENT**

WRITTEN REASONS FOR JUDGMENT

A hearing on the merits of this matter was held before the Board on November 4, 2020. Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman, and board members Cade R. Cole and Jay Lobrano. Participating in the hearing were: Attorney Jason R. Brown representing the Estate of Clark W. Taylor (the “Taxpayer”) and attorney Debra Morris, representing the Secretary Department of Revenue (the “Secretary”). After the hearing the case was taken under advisement.

Taxpayer appeals the Secretary’s denial of certain deductions or credits claimed by Taxpayer in amended fiduciary tax returns for 2011 and 2012. The issues in dispute are (1) taxes paid to the state of Tennessee; (2) Motion Picture credits; (3) Louisiana Citizens Property Insurance and (4) capital gains realized in 2011 from the sale of Louisiana Business assets.

The Board will first consider the denial of taxes paid to the state of Tennessee during 2011 and 2012. La. R.S. 47:33 provides for credit for taxes paid to other states. That section provides that resident individuals

shall be allowed a credit against taxes imposed by Chapter 1 of Title 47 of Louisiana Revised Statutes. The credit is generally allowed for net income taxes imposed by and paid to another state on income also taxable in Louisiana. La. R.S. 47:300.9 provides that “resident estates or trusts that are allowed the credit provided resident individuals for net income taxes paid to other states upon the same requirements, conditions or limitations as provided therein.”

The basis of the Secretary’s denial of the taxes paid to Tennessee was that the tax paid to Tennessee was an excise tax instead of an income tax and therefore the credit was not allowed under Louisiana law. The Secretary unsuccessfully used the same argument for a denial of credit for Texas’s franchise tax in *Perez vs. Department of Revenue*, 731 So.2d 406. (La. App. 1th Cir.8/8/99) and *Ivan Smith v. Robinson* 2018-0728 (La. 12/5/18), 265 So.3d 740.

The Louisiana Supreme Court held that it is not what the tax is called that is important but “the relevant inquiry remains whether the operational and consequential effect of the law is to impose a tax on income that is [also] subject to the Louisiana income tax.” *Id.* at 746-47. The Court’s analysis found that the Texas tax qualified because it starts with revenue allows deductions and then produces a net number that is also subject to Louisiana tax. *Id.* at 747.

Tennessee law provides that:

All persons, except those having not-for-profit status, doing business in Tennessee shall, without exception other than as provided in this part, pay to the commissioner, annually, an excise tax, in addition to all other taxes, equal to six and one half percent (6½%) of the net earnings for the next preceding

fiscal year for business done in this state during that fiscal year.

T.C.A. 67-4-2007(a); *see also* T.C.A. 67-4-2006(a)(a); 2007(b)and (d).

The Tennessee tax is more clearly a tax on income than the Texas tax. It is expressly applied to “net earnings,” and this overlaps with the Louisiana income tax. Under the holdings of *Perez* and *Ivan Smith, supra*, the Tennessee excise tax is operationally an income tax. The board rules that the Taxpayer is entitled to the credit for income taxes that it seeks for the excise taxes it paid to Tennessee.

The Petition also includes the Taxpayer’s request for a deduction for its capital gain from its sale during 2012 of Louisiana business assets. This deduction is found in L.S.A 47: 293 (9)(a)(xvii). The Secretary objected to this deduction because La. R.S. 47:291 provides: “The provisions of this Part shall apply only to individual taxpayers. This Part is not applicable to estates or trusts.” The Taxpayer abandoned this component of its Petition and did not pursue this credit at the hearing. The Board additionally observes that the Taxpayer is an estate and is not therefore eligible for this deduction.¹

Baton Rouge, Louisiana this 9th day of December, 2020.

FOR THE BOARD:



VICE CHAIRMAN CADE R. COLE

¹ The Taxpayer also failed to put forth evidence at the hearing in pursuit of the petition’s claims related to motion picture or citizens property insurance credits. The Board assumes the parties have resolved these items among themselves or that the petitioner has decided to withdraw them.