

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**JARRAD AND JO TIFFANY FAULK,
Petitioners**

VS.

DOCKET NO. 11351A

**KIMBERLY L. ROBINSON, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA,
Respondent**

JUDGMENT

On September 9, 2020, this matter came before the Board for a hearing on the merits, with Judge Tony Graphia (ret.), Chairman, presiding, and Board Members, Cade R. Cole and Francis J. "Jay" Lobrano, present. Present before the Board were Debra Morris, attorney for the Department of Revenue (the "Department"), and Bradley S. Bourgeois, attorney for Jarrad and Jo Tiffany Faulk ("Petitioners"). At the end of the hearing, the Board took the matter under advisement. The Board now renders Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED, AND DECREED that the Assessment and Notice of Right to Appeal to the Louisiana Board of Tax Appeals, dated April 11, 2018, Letter ID L1879023968, and the Assessment and Notice of Right to Appeal to the Louisiana Board of Tax Appeals, dated June 14, 2018, Letter ID L0445392224 are hereby vacated and that JUDGMENT BE AND IS HEREBY RENDERED IN FAVOR OF THE PETITIONERS AND AGAINST THE DEPARTMENT.

**JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA, THIS DAY OCTOBER 8, 2020.**

FOR THE BOARD:


JUDGE TONY GRAPHIA (RET.), CHAIRMAN

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WRITTEN REASONS FOR JUDGMENT

On September 9, 2020, this matter came before the Board for a hearing on the merits, with Judge Tony Graphia (ret.), Chairman, presiding, and Board Members, Cade R. Cole and Francis J. “Jay” Lobrano, present. Present before the Board were Debra Morris, attorney for the Department of Revenue (the “Department”), and Bradley S. Bourgeois, attorney for Jarrad and Jo Tiffany Faulk (“Petitioners”). At the end of the hearing, the Board took the matter under advisement. The Board now renders the Judgment attached herewith in accordance with the following written reasons.

Petitioners appeal from an assessment under La. R.S. 47:1565. The tax at issue is individual income tax for the year 2016. The amount in dispute is \$6,684.28. The dispute stems from the Department’s disallowance of a credit for the payment by a business of School Readiness Fees and Grants to Resources and Referral Agencies Credit (the “Credit”). The issue presented is whether the Credit is limited under La. R.S. 47:6107(A)(2) to \$5,000.00 per business or \$5,000.00 per taxpayer.

Petitioners owned two businesses. American Dreams of LA, LLC (the “LLC”) is a residential real estate leasing and development business. Petitioners are the only members of the LLC. The LLC is a Louisiana limited liability company

taxed as a partnership, with pass-through treatment under federal and Louisiana tax laws. Sleepy Hollow, Inc. (the “S-corp.”) is a retail furniture business. Jo Tiffany Faulk is the sole shareholder of the S-corp. The S-corp. is taxed as a Subchapter “S” corporation, with pass-through treatment under federal and Louisiana tax laws.

The LLC and the S-corp. each separately donated \$5,000.00 to the Children’s Coalition for Northeast Louisiana (the “Children’s Coalition”). Each donation was made on separate checks drawn from separate checking accounts.¹ The Department has verified the checks. The Department has also verified that the Children’s Coalition is a valid child care resource and referral agency for purposes of the Credit. The facts were orally stipulated on the record during the hearing.

The LLC and the S-corp. passed the Credits on to Petitioners. Petitioners claimed the Credits in the aggregate amount of \$10,000.00 on their 2016 return. The Department denied \$5,000.00 of the Credit. The basis for the denial was the limitation found in La. R.S. 47:6107(A)(2), which states:

There shall be an additional refundable credit against any Louisiana individual or corporation income tax or corporation franchise tax for the payment by a business of fees and grants to child care resource and referral agencies not to exceed five thousand dollars per tax year.

The only issue in dispute is whether the Department correctly applied the \$5,000.00 limit. Petitioners argue that the limit should be applied separately to each business. The Department argues that the limit applies once to Petitioners because they are one taxpayer on their joint return.

La. R.S. 47:6107(A)(2) does not use the term “taxpayer.” However, the statute does use the term “tax.” La. R.S. 47:293(9)(a) defines “tax” as the liability for all amounts owing by an individual to the state of Louisiana under the state’s

¹ The use of separate checks and separate checking accounts distinguishes the facts of this case from an earlier case involving the same Petitioners, *Jarrad W. and Jo Tiffany Faulk v. Secretary, Department of Revenue*, Docket No. 10519C (La. Bd. Tax App. 11/7/18) 2018 WL 7197508. The Board decided that case without reaching the legal issue now under consideration.

individual income tax laws. La. R.S. 47:293(6) states that an individual is a natural person, “[h]owever” a husband and wife may file a joint income tax return for any given tax year. La. R.S. 47:101(B)(1) provides that “[i]f a joint return is made the tax shall be computed on the aggregate income and the liability for the tax shall be joint and in solido.” La. R.S. 47:101(B)(1). In other words, a joint return calculates one tax for two individuals. Therefore, the Department’s position is correct if the limit applies per “tax.”

Resolving this case requires statutory interpretation. The goal of statutory interpretation is to ascertain the intent of the legislature. *Gulley v. Hope Youth Ranch*, 2016-1112, p. 8 (La. 3/15/17); 221 So.3d 21, 26. In general, legal ambiguity in tax statutes is strictly construed against the taxing authority. *Crawford v. Duhon*, 2001-0193, p. 5 (La. App. 4 Cir. 11/7/01); 799 So.2d 1273, 1277. The default rule gives way to strict construction in favor of the state when the statute provides a tax credit. *Crawford*, 2001-0193, p.6; 799 So.2d at 1277; *Harrah’s Bossier City Inv. Co., LLC v. Bridges*, 2009-1916, p. 10 (La. 5/11/10); 41 So.3d 438, 446. These principles of construction are useful for resolving ambiguity in the meaning of tax laws. However, if the law is clear, unambiguous and its application does not lead to absurd consequences, then the law must be applied as written. *Barfield v. Bolotte*, 2015-0847, p. 6 (La. App. 1 Cir. 12/23/15); 185 So.3d 781, 785, *writ denied*, 2016-0307 (La. 5/13/16); 191 So.3d 1058.

The question presented is a novel one. There are no controlling Louisiana cases on this issue. The pertinent regulations do not address the application of the \$5,000.00 limit. *See* LAC 61:I.1903(2); 28:CLXV.701, 709. The \$5,000.00 limit was not discussed by the Ways and Means Committee when it considered the Credit’s enacting legislation. *See* La. 2007 Reg. Session House Ways and Means Committee, Act 457, SB 361 (6/18/07), available at

https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2007/jun/0618_07_WM.

The Department urges the Board to look to La. R.S. 47:6108(B)(5) for guidance. That provision states:

The character of the credit for taxes paid by or on behalf of a partnership or S corporation and allocated to the partners or shareholders, respectively, of such partnership or S corporation, shall be determined as if such credit were incurred by such partners or shareholders, as the case may be in the same manner as incurred by the partnership or S corporation, as the case may be.

La. R.S. 47:6108 provides for the refundable nature of the Credit and related rules. Petitioners' outstanding liabilities are such that they will not receive a refund even if they prevail in this matter. Nevertheless, the Department suggests that La. R.S. 47:6108(B)(5) explains how the Credit should be applied, even if no refund will actually be issued. The Department reads La. R.S. 47:6108(B)(5) as dictating that Petitioners be treated as if they themselves had made both donations, which ought to subject them to a single \$5,000.00 limit.

La. R.S. 47:6108(B) establishes ordering rules for pass-through entities. Partnerships pass the Credit to their partners. S-corporations must apply the Credit to their own corporate income and/or franchise tax liabilities before passing the Credit to their shareholders. La. R.S. 47:6108(B)(5)'s in the ordering scheme is to require that the "character" of the Credit be determined with respect to each new entity to which the Credit flows. The character of the Credit is the type of tax that it can be applied to. La. R.S. 47:6108(B)(5) says nothing about the limit on the Credit. Consequently, the Board does not find an answer in La. R.S. 47:6108(B)(5) to the question presented.


The plain language of the statute supports the Petitioners' position. The statute creates a Credit for the payment by a business when made to a qualifying

agency. In this case, the undisputed facts are that there were two separate payments by two separate businesses. The result is two separate Credits. Two separate Credits should have two separate \$5,000.00 limits. A Credit may be applied to “any” individual income tax, corporate income tax, or corporate franchise tax. If a Credit can apply to “any” individual income tax, then the Credits in this case can apply to the same individual income tax.

In addition to the foregoing, the Board notes that the S-corp. was actually a separate taxpayer for purposes of the corporate franchise tax. The S-corp. could have applied the Credit to its franchise tax liability. The reason that this did not happen was that the S-corp.’s inventory tax credit absorbed its franchise tax liability first. Petitioners were the ones footing the bill

Accordingly, the Board finds that La. R.S. 47:6107(A)(2) imposes a separate \$5,000.00 limit on the Credit for each separate business that makes a separate payment to a child care resource and referral agency. In this case, two separate businesses generated two separate Credits. Each Credit was therefore subject to a separate \$5,000.00 limit. The Petitioners were entitled to both Credits in the aggregate amount of \$10,000.00. The Department erroneously denied \$5,000.00 of the Credits to which Petitioners were entitled, leading to the assessment. Finally, the Board notes that the Department and Petitioners introduced copies of two different assessments. Both assessments show the same amount assessed. Both assessments will be vacated out of an abundance of caution.

Baton Rouge, Louisiana OCTOBER 2, 2020



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