

BOARD OF TAX APPEALS  
STATE OF LOUISIANA  
LOCAL TAX DIVISION

FILMORE PARC APARTMENTS II

VERSUS

BTA DOCKET NO. L01364

NORMAN WHITE, CHIEF FINANCIAL OFFICER AND DIRECTOR OF FINANCE, CITY OF NEW ORLEANS; ERROLL WILLIAMS, ASSESSOR, ORLEANS PARISH; AND THE CHAIRMAN, LOUISIANA TAX COMMISSION

CONSOLIDATED WITH

MFLC PARTNERS, A LOUISIANA PARTNERSHIP IN COMMENDAM,

VERSUS

BTA DOCKET NO. L01365

NORMAN WHITE, CHIEF FINANCIAL OFFICER AND DIRECTOR OF FINANCE, CITY OF NEW ORLEANS; ERROLL WILLIAMS, ASSESSOR, ORLEANS PARISH; AND THE CHAIRMAN, LOUISIANA TAX COMMISSION

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JUDGMENT ON EXCEPTIONS WITH REASONS  
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On June 2, 2022, this matter came before the Board for hearing on the *Declinatory Exception(s) of Lack of Subject Matter Jurisdiction* and *Peremptory Exceptions of No Cause of Action and No Right of Action* filed by Erroll G. Williams, in his capacity as Assessor, Parish of Orleans, State of Louisiana (“Assessor Williams”) and Norman White in his capacity as Director of the Department of Finance, City of New Orleans (“Director White”) (Assessor Williams and Director White will be referred to herein collectively as “Collectors”). Present at the hearing were Cheryl M. Kornick, attorney for Filmore Parc Apartments II, A Louisiana Partnership in Commendam and MFLC Partners, A Louisiana Partnership in Commendam (collectively the “Taxpayers”), Kimberly K. Smith, attorney for Director White, John J. Weiler, Reese F. Williamson, and Emily E. Tastet for Assessor Williams, and Franklin “Drew” Hoffman, attorney for the Louisiana Tax Commission.<sup>1</sup> At the conclusion of the hearing, the Board took the matters under

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<sup>1</sup> The Louisiana Tax Commission did not file an exception.

advisement. The Board now renders Judgment in accordance with the attached written reasons.

IT IS ORDERED, ADJUDGED AND DECREED that the Exceptions ARE HEREBY OVERRULED IN PART with respect to Paragraphs<sup>2</sup> Three of the Taxpayers' Prayer for Relief, subject to the understanding that the Board does not have jurisdiction to determine the amount of tax owed on any taxable portion of the Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Exceptions ARE HEREBY SUSTAINED IN PART, Paragraphs Four of the Taxpayers' Prayers for Relief ARE HEREBY STRICKEN from the Petitions, subject to the proviso that the Taxpayer will be allowed to amend and supplement their Petitions in response to any procedural challenges raised by any of the Collectors.

**Judgment Rendered and Signed at Baton Rouge, Louisiana on this 14<sup>th</sup> day of July, 2022.**

**FOR THE BOARD:**



**LOCAL TAX JUDGE CADE R. COLE**

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<sup>2</sup> The Board refers to Parargaphs in plural so as to refer to the identical Paragraphs of the Prayers for Relief contained in the Petition in Docket Number L01364 and the Petition in Docket Number L01365.

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REASONS FOR JUDGMENT ON EXCEPTIONS  
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Commission.<sup>1</sup> At the conclusion of the hearing, the Board took the matters under advisement. The Board now renders the attached Judgment in accordance with the following reasons.

Taxpayers filed Payment Under Protest Petitions asserting legality challenges to 2022 Ad Valorem Tax Assessments. The Assessments concern apartment complexes owned by the Taxpayers in Orleans Parish (collectively the “Property”). Taxpayers ask the Board to declare the Property exempt from ad valorem tax. On the merits of their Petitions, Taxpayers rely on the exemption for property used for public purposes provided for in La. Const. Art. VII § 21(A).

The Collectors argue that Taxpayers embedded a “correctness” challenge in Paragraphs Three and Four of their Prayers for Relief. The Paragraphs state:

3. In the alternative, in the event the Property is not exempt from taxation, for a declaration that a portion of the Property is exempt from taxation, that Assessor Williams failed to assess the amount of the taxes on the taxable portion properly, and that [Taxpayers are] entitled to a partial refund and ordering the partial refund, or
4. In the alternative, in the event the Property is not exempt from taxation in any portion, for a declaration that Assessor Williams failed to assess the amount of taxes properly and that MFLC is therefore entitled to a partial refund and ordering the partial refund . . . .

The Collectors ask that the above-quoted Paragraphs be removed from the Petitions.

There is no dispute over the relevant jurisdictional principles. Louisiana provides a two-track procedure for challenging property tax assessments. One track is for challenges to the “correctness” of an assessment. Correctness challenges concern issues of regularity, over-valuation, and mis-description. *Triangle Marine, Inc. v. Savoie*, 95-2873 (La. 10/15/96), 681 So.2d 937; *Gisclair v. Louisiana Tax Comm’n*, 2009-0007 (La. 6/26/09), 16 So.3d 1132. The Board has only appellate jurisdiction over correctness challenges that have matriculated through the review

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<sup>1</sup> The Louisiana Tax Commission did not file an exception.

procedure before the Parish taxing authority and then the Louisiana Tax Commission. La. Const. Art. VII§ 18(E).

The other “track” is for “legality” challenges, which are directed at the validity of the tax and/or the constitutionality of the administration of the tax. *Triangle Marine*, at pp. 6-7, 681 So.2d at 941. The Board has concurrent original jurisdiction over legality challenges with District Courts. La. Const. Art. VII§ 3(A); La. R.S. § 47:2134. The Petitions in these consolidated matters assert legality challenges. In fact, Taxpayers disclaim any purported “correctness” challenge.

With respect to Paragraphs Three, the Board recognizes how the phraseology employed could have led the Collectors to file their Exceptions. Particularly, the language stating that Assessor Williams “failed to assess the amount of the taxes on the taxable portion properly . . .” might appear to venture too close to a correctness challenge. Nevertheless, there was an undisputed and unanimous understanding of the parties, stated on the record at the hearing, that Taxpayers are not bringing correctness challenges in these cases. The amount of tax due on any portion of the Property that may be found to be taxable is not reviewable in these cases. With that understanding, there is no need to strike Paragraphs Three.

However, Paragraphs Four cannot be reconciled with a legality challenge. These Paragraphs ask for a declaration that the amount of tax was not properly assessed on property that the Board may find to be taxable. This challenges the correctness of the amount of a valid assessment. That is not a legality challenge. Accordingly, Paragraphs Four of the prayers for relief must be removed from the Petitions.

Counsel for the Taxpayers explained that their goal in including Paragraphs Four was to anticipate a potential procedural objection from the Collectors. However, the Collectors raised no such objection at the hearing. Nor can the Board discern such

a procedural objection from the Collectors' responsive pleadings and memoranda.<sup>2</sup> Accordingly, under the present circumstances, there is no procedural objection for Paragraphs Four to address. As stated above, the Board will rule that Paragraphs are to be stricken. Nevertheless, if a procedural objection to Taxpayers' legality challenges is raised at a later date, the Taxpayers will be allowed to amend and supplement their Petitions in response.

Baton Rouge, Louisiana, this 14<sup>th</sup> day of July, 2022.

FOR THE BOARD:



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LOCAL TAX JUDGE CADE R. COLE

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<sup>2</sup> Though not cited by any party, Taxpayers may be referring to the procedural dispute in *New Orleans Riverwalk Marketplace, LLC v. Louisiana Tax Comm'n*, 2017-0968, p. 6 (La. App. 4 Cir. 4/30/18), 243 So.3d 1070, 1074, *writ denied*, 2018-0889 (La. 9/28/18), 252 So.3d 925.