

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

DONALD J. AND SUZETTE N. ROUSE

Petitioners

versus

B.T.A. DOCKET NO. 13132D

**KIMBERLY LEWIS, SECRETARY
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA**

Respondent

JUDGMENT AND REASONS

On December 7, 2022, this matter came before the Board for a hearing on the *Motion for Summary Judgment* filed by Donald J. and Suzette N. Rouse (collectively “Taxpayers”). Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Robert S. Angelico and Cheryl M. Kornick, attorneys for the Taxpayers and Miranda Scroggins, attorney for Kevin Richard, Secretary Department of Revenue, State of Louisiana (“Department”). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues this ruling for the following reasons:

Background

Rouse’s Enterprises, L.L.C. (“Rouse’s”) owns and operates a number of grocery stores in various parishes in South Louisiana. Taxpayers own approximately thirty seven and ½ percent (37.5%) of the issued and outstanding membership interests in Rouse’s. Rouse’s is an S corporation for state and federal income tax purposes. As such, Rouse’s does not pay state or federal income tax; instead, the Taxpayers report their pro-rata share of Rouse’s income, deduction and loss on the Taxpayers’ personal federal and state income tax returns.

Rouse’s pays annual *ad valorem* taxes on its inventory to various local taxing authorities. La. R.S. 47:6006(A)(1) allows a taxpayer a state income tax credit (the

“Inventory Tax Credit” or “ITC”) for *ad valorem* taxes paid on inventory. The ITC is refundable, subject to certain limitations, in cases where the amount of the ITC exceeds a taxpayer’s Louisiana income tax liability for any given year. La. R.S. 47:6006(B)(1) does not limit the ITC itself but limits the Department’s obligation to refund the ITC to the extent it exceeds the Louisiana income tax liability of the taxpayer.

La. R.S. 47:6006(A)(1) provides that the credit for *ad valorem* “taxes paid by corporations shall be applied to state corporate income and franchise taxes” and that the credit for *ad valorem* “taxes paid by unincorporated associations shall be applied to state personal income taxes.” The statute does not specifically address the application of the credit where taxes are paid by an S corporation, which, by definition, does not pay Louisiana corporate income tax.¹ However, La. R.S. 47:1675(G) allows an S corporation to make an election to pass through any credit available to it to its shareholders.

With the above general framework in mind, we turn to the facts of the instant case. On or about July 25, 2018, Taxpayers filed a joint 2017 Louisiana resident personal income tax return (the “Return”). On their Return, Taxpayers claimed their allocable share of Rouse’s ITC (a refundable priority 4 credit) authorized under La. R.S. 47:6006 in the amount of \$397,915.00. Taxpayers received the ITC as their share of the pro-rata ITC from Rouse’s. As set forth in La. R.S. 47:1675(G)(2), Rouse’s elected to flow through its entire ITC to its shareholders. The total amount of the ITC that Rouse’s flowed through to its shareholders was \$1,060,156.00 (the total *ad valorem* tax paid to local taxing authorities on its inventory), and Taxpayers’ ITC claim of \$397,915.00 on the Return represents their 37.5% share of Rouse’s total ITC. Ultimately, the Taxpayers included in the Return the full amount of their pro rata

¹ S corporations are typically subject to the corporate franchise tax; however, since Rouse’s is a limited liability company taxable as an S corporation for federal and state income tax purposes, by statute it is not subject to the franchise tax.

share of Rouse's total ITC without reducing the credit for any limitation under La. R.S. 47:6006(B)(1)(a)-(c).

The Department issued a Notice of Adjustment to Taxpayers dated November 2, 2021. In the Notice of Adjustment, the Department reduced the amount of the ITC allowed by \$148,272.00,² thus resulting in the disallowance of Taxpayers' refund claim. Although not explained in the Notice of Adjustment, at the hearing it was established that the Department's reduction is based on the refundability limitations on the ITC found in La. R.S. 47:6006(B)(1)(c). Further, it appears that the Department's Notice of Adjustment reduced the ITC before the credit was applied to the Taxpayers' 2017 state income tax liability. As a result, Taxpayers filed this Petition on January 28, 2022 appealing the Department's denial of the claimed overpayment. Now, Taxpayers move for summary judgment.

Objections³ to Evidence

The Department objected to the Affidavit of Timothy Kearns attached in support of Taxpayers' motion. The Department contends that Mr. Kearns lacks sufficient personal knowledge of the facts he asserts in Paragraphs three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen, regarding Taxpayers' 2017 return. However, this objection is mostly moot, as Mr. Kearns asserts facts that were admitted by the Department in Paragraphs three, four, five, six, seven, and nine, of its Answer. Furthermore, Mr. Kearns became personally familiar with the facts asserted concerning Taxpayers' 2017 Return in his work as CPA for Taxpayers and for Rouse's. Thus, in addition to being largely moot, this objection is also overruled because Mr. Kearns' Affidavit demonstrates sufficient first-hand knowledge and familiarity to support his testimony.

² A reduction of roughly 37%.

³ The Department also objected to Exhibit A to Mr. Kearns' Affidavit. Exhibit A purports to be the Notice of Adjustment that was issued to Taxpayers. The Department's objection is premised on an alteration to the Notice of Adjustment, and counsel freely admitted that this note was made by Taxpayers' accountant. The Board ruled on the record that the altered portion of the Notice of Adjustment would be stricken.

Summary Judgment Standard

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). Summary judgment is an appropriate mechanism for resolving a purely legal dispute of the proper interpretation of a statute. *Leisure Recreation & Entm't, Inc. v. First Guar. Bank*, 2021-00838, p. 12 (La. 3/25/22), 339 So.3d 508, 517, *reh'g denied*, 2021-00838 (La. 5/10/22), 347 So.3d 88; *Fernandez v. City of Kenner*, 21-550, p. 3 (La. App. 5 Cir. 12/8/21), 335 So.3d 951, 954. Any doubt as to whether the mover is entitled to relief as a matter of law must be resolved in the non-moving party's favor. *Hines v. Garrett*, 2004-0806, p. 1 (La. 6/25/04), 876 So.2d 764, 765.

Discussion

Taxpayers contend that the controlling law is simple: La. R.S. 47:6006(B)(2) applies a single refund limitation to multiple taxpayers that file a single consolidated federal return, and not in any other situation. The Department argues that this interpretation would render the refundability limitation meaningless. A taxpayer could simply organize a flow-through entity and shareholder entities to split the credit into smaller individual amounts that do not trigger the limitation in La. R.S. 47:6006(B)(2). Resolution of this dispute requires the Board to determine the correct interpretation of La. R.S. 47:6006 and related statutes.

The Board begins its exercise in statutory interpretation with the language of the statute itself. *See Bergeron v. Richardson*, 2020-01409, p. 3 (La. 6/30/21), 320 So.3d 1109, 1111. Clear and unambiguous statutory language must be applied as written when it does not lead to absurd consequences. *Dejoie v. Medley*, 2008-2223 (La. 5/5/09), 9 So.3d 826; La. Civ. Code art. 9; La. R.S. 1:4. When statutory language is susceptible of different meanings, Courts must adopt the interpretation that best conforms to the purpose of the law. La. Civ. Code art. 10; *Martin v. Thomas*, 2021-01490, p. 5 (La. 6/1/22), 346 So.3d 238, 242.

La. R.S. 47:6006(B)(2) provides:

Each taxpayer allowed a credit under this Section shall claim the credit on its separately filed income or corporate franchise tax return; however, for purposes of the application of the limitations on refundability of excess credit provided for in Subparagraphs (1)(a) through (c) of this Subsection, all taxpayers included in one consolidated federal income tax return filed under the Internal Revenue Code shall be treated as a single taxpayer.

La. R.S. 47:6006(B)(2) allows a taxpayer to claim the ITC, and further refers to Subparagraphs (a) through (c) to limit the refundable portion of the ITC. Not all of the ITC is refundable. Only the ITC in excess of the taxpayer's income tax liability is refundable, and then further limitations apply depending on the total amount of *ad valorem* tax paid by the taxpayer on inventory. La. R.S. 47:6006(B)(1) expressly states this:

Credit for taxes paid by corporations **shall be applied** to state corporate income and corporation franchise taxes. Credit for taxes paid by unincorporated persons **shall be applied** to state personal income taxes. The secretary shall make a refund to the taxpayer in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapters 1 and 5 of Subtitle II of this Title. **If the amount of the credit authorized pursuant to Subsection A of this Section exceeds the amount of tax liability for the tax year**, the following amounts of the excess credit shall either be refundable or may be carried forward as a credit against subsequent Louisiana income or corporation franchise tax liability for a period not to exceed ten years, as follows:

(a) Taxpayers whose ad valorem taxes eligible for the credit authorized pursuant to this Section paid to all political subdivisions in the taxable year was less than or equal to five hundred thousand dollars shall be refunded all of the excess credit.

(b) Taxpayers whose ad valorem taxes eligible for the credit authorized pursuant to this Section paid to all political subdivisions in the taxable year was more than five hundred thousand dollars, but less than or equal to one million dollars, shall be refunded seventy-five percent of the excess credit, and the remaining twenty-five percent of the excess credit shall be carried forward as a credit against subsequent tax liability for a period not to exceed ten years.

(c) Taxpayers whose ad valorem taxes eligible for the credit authorized pursuant to this Section paid to all political subdivisions in the taxable year was more than one million dollars shall be refunded seventy-five percent of the first one million dollars of excess credit, and the remaining amount of the credit shall be carried forward as a credit against subsequent tax liability for a period not to exceed ten years.⁴

⁴ La. R.S. 47:6006(B)(1) (emphasis added).

These limitations on refundability apply to the excess ITC after income tax liability is absorbed. If the ITC is fully absorbed by a taxpayer's Louisiana income tax liability, then there is no need to apply the above limitations.

If there is excess ITC after liability is fully absorbed, then the total amount of *ad valorem* taxes paid on inventory, not the amount of the excess, determines which limitations apply. If all taxes paid total \$500,000.00 or less, then no limitation applies and the excess is fully refundable. La. R.S. 47:6006(B)(1)(a). If the taxes paid were more than \$500,000.00, but less than or equal to \$1,000,000.00, then 25% of the refundable portion (the excess) is converted into a carryforward. La. R.S. 47:6006(B)(1)(b). If the taxes paid were more than \$1,000,000.00, then only 75% of the first \$1,000,000.00 of the excess is refundable (effectively capping the refund at \$750,000.00) and any remaining excess is converted into a carryforward. La. R.S. 47:6006(B)(1)(c).

Contrary to this express mandate that LA. R.S. 47:6006(b)(1)(a)-(c) limits only the refundability of the excess credit, the Department applied these limitations to the full amount of the credit without first applying the credit to reduce Taxpayers' income tax liability attributable to the income that flowed through to them from Rouse's. That is an interpretation of the statute that leads to absurd results. The absurdity can be shown by considering what would happen to a competing corporation with the same income and the same *ad valorem* tax paid as Rouse's. The corporation would enjoy a full reduction of its corporate income tax liability all the way to \$0.00. No limitation would apply in reducing liability, the limitation is only on the credit above liability. The legislature could not have intended to disadvantage closely-held Louisiana businesses in the way that results from the Department's approach.

Taxpayers must be allowed to apply the ITC to absorb their income tax liability resulting from their pro-rata share of their income from Rouse's without limitation. Without doing that, it is impossible to determine if there is even any excess refundable credit to limit. The refund limitation cannot be applied if there is no excess. The Notice shows that Taxpayers received no refund, so it is possible that

their ITC should have been fully absorbed. If that is the case, then Taxpayers would be entitled to summary judgment reversing the Department's reduction.

However, the summary judgment evidence does not include the necessary supporting facts. The Notice of Assessment does not show what income was attributable to Taxpayers' shares in Rouse's. These facts might be evident in Taxpayers' or in Rouse's returns, but those documents were also not attached to Taxpayers' Motion.

If Taxpayers' have excess ITC, the limitation under La. R.S. 47:6006(B)(1)(c) will apply. Taxpayers argue that their proportionate share of the credit is less than \$500,000.00, and so they fall under La. R.S. 47:6006(B)(1)(a). The Board does not agree. The limitation cannot be circumvented by slicing the ITC into proportionate shares or it becomes meaningless surplusage. Furthermore, the fact that the amount of the credit to be claimed by the Taxpayers is less than \$500,000.00 is irrelevant. The amount of the excess ITC does not determine the applicable limitation. Instead, the total amount of *ad valorem* taxes on inventory paid by Rouse's is what determines the applicable refundability limitation.

In fairness to the Taxpayers, their most compelling, but ultimately misplaced, argument is based on the legislative history of La. R.S. 47:6006(B)(2). In Act 385 of 2017, the legislature deleted a requirement that the Department promulgate rules to treat taxpayers affiliated or related through common ownership as a single taxpayer. The deleted requirement was replaced with language directed at taxpayers that were included on one consolidated federal income tax return. Taxpayers claim that this shows the intent to apply a single limitation only to consolidated filers.

Prior to Act 385, however, the first sentence of La. R.S. 47:6006(B)(2) already stated that taxpayers filing consolidated federal returns were to be treated as one taxpayer. The deleted language was simply an accidental discrepancy. Act 385 conformed the rulemaking mandate to the preceding sentence. Moreover, the canons of statutory construction teach against rendering a portion of a statute meaningless if that can be avoided. See *McLane S., Inc. v. Bridges*, 2011-1141, p. 8 (La. 1/24/12),

84 So.3d 479, 484 (recognizing legislature's intent to tax smokeless tobacco despite not explicitly mentioning it in a declaration of intent provision).

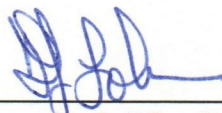
At this time, the record is incomplete. The Board cannot determine the Taxpayers' income tax liability attributable to Rouse's. Without those facts, the Board cannot determine if a refundable excess ITC exists. Without a refundable excess, there is nothing to apply the appropriate limitation to. These findings are essential to determining what relief the Taxpayers are entitled to. Because the necessary facts are not established, Taxpayers have not met their burden on summary judgment and their *Motion for Summary Judgment* must be denied. However, this finding does not prevent Taxpayers from filing a new Motion with sufficient factual support in accordance with the foregoing reasons.

As explained herein, the limitation applies only to the excess ITC, and the excess ITC is only the ITC that exceeds the Taxpayer's personal income tax liability attributable to the Rouse's flow-through income. The Board finds that one limit applies and is proportionately allocated by the shareholder's share, but only after their Rouse's-related income tax has been reduced to zero.

Accordingly, IT IS ORDERED, ADJUDGED, AND DECREED that Taxpayers' Motion for Summary Judgment is DENIED.

Baton Rouge, Louisiana, this day, March 9th, 2023.

FOR THE BOARD:



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