

NOTICE OF JUDGMENT

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ENCLOSED IS A CERTIFIED COPY OF THE JUDGMENT RENDERED ON THE 27th
DAY OF AUGUST, 2015, IN THE MATTER OF:

SWEPI, LP

BTA DOCKET NO. L00135

vs.

*RED RIVER PARISH TAX AGENCY
AND ELAINE MOORE IN HER
CAPACITY AS TAX ADMINISTRATOR
OF RED RIVER PARISH TAX AGENCY*

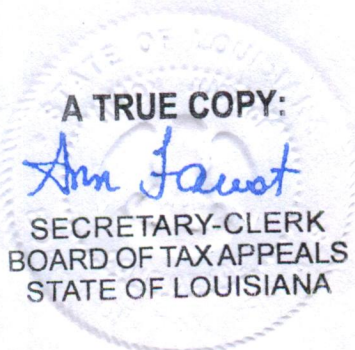
Although a Final Judgment of the Board of Tax Appeals may be appealed to the proper Court of Appeal "within thirty days of the signing of a decision or judgment of the board" in the manner specified in R.S. 47:1434-38, an interlocutory ruling is subject to judicial review only by supervisory writ under R.S. 47:1435(B), in the same manner as provided for in civil matters under the Code of Civil Procedure and applicable appellate court Rules.

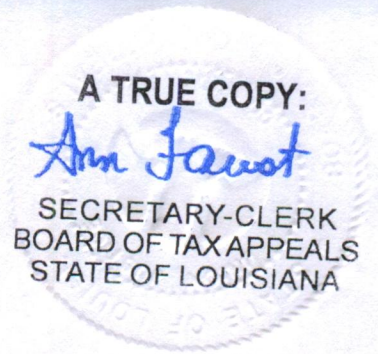
Costs for appeal are described in the promulgated rules of the Board (codified pursuant to R.S. 47:1413 in L.A.C. Title 69).

I hereby certify that the above and foregoing notice was mailed with the Judgment by me, postage prepaid to counsel of record for all parties and to those parties who were not represented by counsel, directed to their last known address, on this 28th day of August, 2015.

Ann Faust

Secretary-Clerk





STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION

SWEPI, LP,

Petitioner

VERSUS

BTA DOCKET NO.: L00135

RED RIVER PARISH TAX AGENCY AND
ELAINE MOORE IN HER CAPACITY AS
TAX ADMINISTRATOR OF RED RIVER
PARISH TAX AGENCY,

Respondents

JUDGMENT
WITH ADDITIONAL WRITTEN REASONS

A hearing was held on an *Exception of Lis Pendens* filed by the Respondents before Local Tax Judge Cade R. Cole on August 27, 2015 at the 39th Judicial District Courthouse in Coushatta, Louisiana. Present before the Board-Local Tax Division were: Jonathan Stokes, attorney for the Red River Parish Tax Agency (“Collector”) movant of the exception, and Andre Burvant, attorney for SWEPI, LP (“Taxpayer”), opponent of the exception. After the full hearing of this matter, and in consideration of the evidence adduced, the Board issued the following written reasons for Judgment:

The parties stipulated that the legal argument was the same as was argued extensively between the same counsel on the same day in *Encana Oil and Gas (USA), Inc. v. Red River Parish Tax Agency*, BTA Docket Nos. L00058 and L00059. The Board adopts the written reasons for Judgment rendered therein as additional written reasons for Judgment in the present case.

Although the underlying procedural posture of this case is largely similar to *Encana*, one difference stems from the Collector’s decision to file a Declaratory Judgment suit after the Taxpayer had already filed its refund action with the Board.

A decision on the pending declaratory judgment action will necessarily come from the 39th Judicial District Court, but the Board takes note that the First Circuit has specifically addressed similar maneuvers by the Revenue Department.

In *Louisiana Dep't of Revenue, State v. KCS Holdings I, Inc.*, the Court held that:

The Department is simply attempting to litigate the merits of KCS's claim in district court, as a court of original jurisdiction, rather than before the Board of Tax Appeals, which is the proper body vested with exclusive original jurisdiction over the claim.

Although the Department styles its petition as a request for declaratory relief that invokes the original jurisdiction of the district court, our courts have consistently rejected “semantic endeavors” by parties who attempt to circumvent an administrative agency's original jurisdiction by filing a petition in district court. Because the Board is vested with original jurisdiction over the merits of KCS's claims, the trial court [district court] correctly sustained the exception of lack of subject matter jurisdiction and dismissed the petition for declaratory judgment.

2013-1479, pp.8-9 (La. App. 1 Cir. 3/31/14) 2014 WL 1285742 (*internal citations omitted*). Although most of the discussion in *KCS* relates to the exercise of supervisory jurisdiction over the Board in regard to interlocutory matters, the Board observes that the holding related to supervisory jurisdiction was affected by a change in the law when R.S. 47:1435(B) was enacted in Act 198 of 2014.

Although BTA decisions were historically appealed to the District Courts, the Legislature changed the law in 2014 and instead provided that the “courts of appeal shall have exclusive jurisdiction to review the decisions and judgments of the board.” R.S. 47:1435(A).¹ The Taxpayer is correct that the district court does

¹ The Legislature is free to direct the judicial review of BTA decisions in any manner it desires. *See e.g., Loop, Inc. v. Collector of Revenue*, 523 So.2d 201, 203 (La. 1988) (in reviewing BTA decisions, district courts are courts of limited jurisdiction and have only appellate jurisdiction as provided by law); *see also, generally, Matter of American Waste & Pollution Control Co.*, 588 So.2d 367, 373 (La. 1991) (Judicial review of a decision of an administrative agency is an exercise of a court's appellate jurisdiction, and the Legislature may constitutionally repose such appellate review in the court of its choice...In this case, the Legislature has properly vested such appellate review in the First Circuit Court of Appeal).

not possess any jurisdiction over a BTA cause of action, with even its former appellate jurisdiction having been removed in 2014.²

While the district court's grant of original jurisdiction is broad, it is not plenary, the Supreme Court instructs us that not all causes of action are considered "civil matters;" tax appeals are *sui generis*, exist under the authority of La. Const. art. VII, Sec. 3, and are not "civil matters" for the purposes of art. V, §16.³

The Supreme Court has recognized that **"the Board's jurisdiction is not circumscribed by La. Const. art. V, § 16."** *St. Martin, supra.* at p. 5, fn. 5, citing

² The Collector raised for the first time in its recent reply brief an allegation that Act 640 unconstitutionally divested the district court of jurisdiction. This issue was not properly raised for the purposes of this exception and its related Motion for Transfer is not decided herein, but the Board takes note of the fact that all refund actions pending in the district court remained there. A new process was enacted prospectively only for appeals of new cases.

³ *St. Martin, supra.* See also generally, *Wooley v. State Farm*, 893 So.2d 746 (La. 2005) where the Supreme Court explained that executive branch ALJs can exercise quasi-judicial power and that the district courts do not possess original jurisdiction over disputes that are not civil matters.

Although a taxpayer always had a right to pay under protest and file suit, the overpayment refund action for local sales taxes, as it is currently envisaged, did not exist in law in Louisiana until the enactment of the Uniform Local Sales Tax Code ("ULSTC") in 2003. See R.S. 47:337.77 and 337.81. Prior to Act 73 of 2003 an overpayment refund was governed by local ordinances, and many of those ordinances precluded almost all refunds. Even today overpayment refunds are limited in scope in certain circumstances when the collector's legal position is challenged. §337.77(F).

The Board's exclusive original jurisdiction over the redetermination of state tax refund disputes has been continually in effect since 1937. Under pre-ULSTC jurisprudence, the courts routinely recognized that a cause of action for a local refund did not necessarily exist. See e.g. *Kean's v. Parish of East Baton Rouge* 668 So.2d 1343 (La. App. 1 Cir. 1996) ("Because we conclude that a question of law exists...[taxpayer] does not have an action for refund.") and *Tigator Inv. v. W. Baton Rouge Police Jury* 657 So.2d 221, 226 (La. App. 1 Cir. 1995)("We find, further, that the taxpayers do not have an action for refund of the sale taxes paid without protest. Where there is an issue of law concerning the taxability of a transaction, the power of the Taxing Authorities to grant a refund under these ordinances is discretionary.")

The Legislature exercised its power to create a uniform local refund action in 2003 and at that time also chose to grant a right of appeal from that newly enacted right to the district courts. However, review of an administrative agency action may be constitutionally vested in any manner directed by law. *Wooley, supra, quoting Matter of American Waste, supra.*

In 2014 the Legislature elected to change the law for local tax appeals field after the effective date of Act 640. The action or inaction on a refund request by the collector would then be subject to administrative review by the Board (as has been the case for state tax refunds for 78 years). The Board's decision would thereafter be subject to judicial review by the appellate courts.

to *Clark v. State*, 873 So.2d 32, 36 (La. App. 1 Cir. 2004)(finding that tax appeals are not civil matters under La. Const. art. VII, §16).⁴

The pending declaratory judgment action does not justify the grant of an exception of *lis pendens* in the present case. The current refund action was pending first making *lis pendens* inapplicable. Furthermore, the Board finds persuasive the related holding of the First Circuit in *KCS Holdings I, Inc.*, *supra*.

The 39th JDC cases for prior periods also do not support an *exception of lis pendens*. The Board finds that as a matter of fact the current action involves distinct tax periods with discrete transactions that will necessarily differ from those involved in the suit pending in the 39th JDC. The elements of *lis pendens* are not met; although there is a unity on legal issues, these cases do not involve the same transaction or occurrence.⁵

Considering the law and evidence being in favor thereof, for oral reasons assigned, and for the foregoing written reasons:

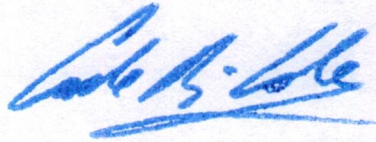
IT IS ORDERED, ADJUDGED, AND DECREED that the Collector's Exception of *Lis Pendens* BE AND IS HEREBY OVERRULED AND IS DENIED, and that the board's costs of the transcription of these proceedings, be assessed against the Collector.

⁴ *Loop, Inc. v. Collector of Revenue*, 523 So.2d 201, 203 (La. 1987), *rev'd on other grounds on rehearing, cited in Wooley, supra* ("When the statute upon which he relies establishes a specific procedure for judicial review of an agency's action, a litigant may invoke the reviewing court's jurisdiction only by following the statutorily prescribed procedure, unless there can be found within the act a genuine legislative intent to authorize judicial review by other means.")

Accord, Loop, Inc., supra 523 So.2d at 202 ("**A government agency which does not have a constitutionally guaranteed right of judicial review necessarily must rely upon and comply with statutory provisions for such review.**")(emphasis provided)

⁵ Although it is not necessary to reach the prong related to concurrent judicial forums, the Taxpayer has correctly pointed out that the First Circuit in *dicta* in *Clark, supra* found that *lis pendens* would not strictly apply to actions before the Board.

Judgment Rendered and Signed at Coushatta, Louisiana on this 27th
day of August, 2015.



LOCAL TAX JUDGE CADE R. COLE
LOUISIANA BOARD OF TAX APPEALS