

BOARD OF TAX APPEALS  
STATE OF LOUISIANA

SAMUEL K. AND MELANIE C. SMITH  
PETITIONERS

VERSUS

DOCKET NO. C06686A

KIMBERLY ROBINSON, SECRETARY,  
LOUISIANA DEPARTMENT OF  
REVENUE

RESPONDENT

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**JUDGMENT WITH WRITTEN REASONS**

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This matter came before the Board for hearing on March 10, 2021. Before this Board are the Petitioners, Samuel K. and Melanie C. Smith, taxpayers (collectively "Taxpayers") contesting the Louisiana Department of Revenue's (the "Department") assessment of late filing penalties on the Louisiana Personal Income Tax Return (Form IT 540) ("Return") for the tax year 2018. Participating in the trial were: Samuel Smith and Melanie Smith, representing themselves pro se, and Miranda Scroggins, attorney for the Department. After the hearing, the case was taken under advisement. The Board now renders Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment be hereby rendered in favor of the Taxpayers and against the Department and that that the Department's assessment be vacated and set aside in part; specifically, the assessment of the delinquent filing penalty of \$996.75 is cancelled.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the balance of the Department's assessment is upheld, and the

Department is ordered to revise the assessment consistent with this Judgment.

JUDGMENT RENDERED AND SIGNED in Baton Rouge, State of Louisiana, this day                      **JUL 14 2021**.

  
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**JUDGE TONY GRAPHIA (RET.)**  
**CHAIRMAN**  
**LOUISIANA BOARD OF TAX APPEALS**

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WRITTEN REASONS FOR JUDGMENT

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The facts of this case are not in dispute. Apparently, the Taxpayers attempted to file an extension to file their Return for 2018. In addition, they made an estimated payment of \$4,200 by the May 15, 2019 deadline to pay 2018 Louisiana personal income taxes. Ultimately, the Taxpayers filed the Return on September 25, 2019, which was admittedly filed late. However, the estimated payment of \$4,200 was more than sufficient to

cover the tax liability of \$3,987.00 reported on the Return, and thus the Return included a request for a refund of the overpayment.

The Department issued a Notice of Assessment dated December 6, 2019 to the Taxpayers assessing a delinquent filing penalty of \$996.75 for the late filing of the Return, a penalty of \$212.34 as an underestimated payment penalty, and interest due (presumably on the penalties) of \$13.76, with the result being that the Taxpayers had an amount due of \$1,009.85. The Taxpayers timely filed their petition with this Board contesting the assessment of the delinquent filing penalty. The Taxpayers did not dispute the underestimated payment penalty.

The only issue in dispute is the delinquent filing penalty. Taxpayers argue that there is no delinquent filing penalty due since their 2018 tax liability had been paid in full by the payment due date of May 15, 2019. The Department argues that the delinquent filing penalty and its applicable rates apply to the tax liability as shown on line 24 of the Return, regardless of whether that tax was paid timely. For the reasons that follow, we agree with the Taxpayers.

La. R.S. 47:1602(A)(1) provides:

A. When any taxpayer fails to make and file any return required to be made under the provisions of this Subtitle before the time that the return becomes delinquent or when any taxpayer fails to timely remit to the secretary of the Department of Revenue the total amount of tax that is due on a return which he has filed, there shall be imposed, in addition to any other penalties provided, a specific penalty to be added to the tax.

(1) In the case of a failure to file a tax return or of the filing of a return after the return becomes delinquent, the specific penalty shall be five percent **of the total tax due on the return** (emphasis added) if the failure or delinquency is

for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the failure or delinquency continues, not to exceed twenty-five percent of the tax in the aggregate.

The Department argues that the phrase “total tax due on the return” means the amount due on line 24 of the Return - “Total Income Tax and Consumer Use Tax”. This is the amount of tax calculated on the return before consideration of any withholdings, estimated payments, amounts paid with extensions requests, and credits. Line 39 of the Return is titled “the amount you owe” and is the calculation of the tax due AFTER consideration of withholding, estimated payments, amounts paid with extension requests and credits. The Taxpayers argue that it is Line 39 of the Return that is the basis for application of the late filing delinquency penalty, and if this amount is zero (or less, if a refund is due), then the late filing delinquency penalty is likewise zero. We find that the Taxpayers’ interpretation of the statute is correct.

First, in the instructions to the Return, the “Delinquent Filing Penalty Calculation Worksheet” applies the penalty percentage to the “Amount you owe” (Line IT-540, Line 39) – the amount due AFTER application of all withholdings, payments, and credits, which application is directly contrary to the position of the Department in this case. As the drafter of instructions and the actual form of the Return, the Department’s own interpretation of La. R.S. 47:1602(A)(1) is at worst persuasive authority in support of the Taxpayer’s interpretation of the statute, and at best may be binding on the Department under *Showboat Star Partnership v. Slaughter*, 2000-1227, (La. 2001), 789 So.2d 554.

Second, it is well settled that penal statutes are to be strictly construed, and any ambiguity to be resolved in favor of the party against whom the penalties are imposed. *Smith v. Quarles Drilling Co.*, 2004-0179, (La. 2004), 885 So. 2d 562. While it is the Board's position that phrase "total tax due on the return" is not ambiguous and applies to taxes owed to the State of Louisiana AFTER application of timely prior payments made, even assuming for purposes of argument that the statute is ambiguous, it nonetheless must be strictly construed against application of the penalty, and thus the Taxpayers' interpretation of the statute would still prevail.

The Department relies on this Board's decisions in a series of companion cases - *James C. Burns Remainder Trust v. Robinson*, BTA Docket No. 10477B (La. Bd. Tax App. 12/11/18), 2019 WL 7501666 in support of its argument. In that case, the Board upheld late filing penalties on the basis of the Taxpayer's lack of evidence that an extension to file was obtained. However, a review of the record in that case reveals that the Louisiana income taxes were in fact paid late, thus rendering the *Burns* cases inapplicable.

The Department also cites the federal statute defining and imposing a late filing penalty as support of its position. Specifically, the federal statute specifically states that the basis for application of the federal late filing penalty is the amount due AFTER considering all timely made tax payments, withholdings, and credits. The Department argues that because the Louisiana statute fails to expressly state that the penalty is applied against amounts owed AFTER timely made payments, it must be interpreted to mean that the basis for the

application of the penalty is based on the tax that is due on the Taxpayer's Louisiana taxable income regardless of whether the payments were made timely. We do not agree. Considering that the Department's interpretation of its own statute is consistent with the federal statute, we find that the federal statute actually supports the Taxpayer's interpretation of La. R.S. 47:1602(A)(1). We further find that the Taxpayer's interpretation of La. R.S. 47:1602(A)(1) comports with the sound public policy of having parity and consistency between the Louisiana and Federal procedural laws.

JUL 14 2021

Baton Rouge, Louisiana, this day \_\_\_\_\_.

For the Board:

  
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Judge Anthony "Tony" Graphia (ret.)  
Chairman  
Louisiana Board of Tax Appeals