

BOARD OF TAX APPEALS  
STATE OF LOUISIANA

SPIRIT AIRLINES, INC.,  
Petitioner,

VS.

DOCKET NO. 11540D

KIMBERLY ROBINSON, SECRETARY,  
DEPARTMENT OF REVENUE,  
Respondent

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JUDGMENT

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This matter came before the Board for hearing on the cross Motions for Summary Judgment on October 6, 2022, with Francis J. "Jay" Lobrano, Chairman, presiding, and Board Members Cade R. Cole and Judge Lisa Woodruff-White (Ret.) present. Participating in the hearing were Robert Waldow, representative for Spirit Airlines, Inc. ("Petitioner"), and Christopher Jones, attorney for Kimberly Robinson, Secretary, Department of Revenue (the "Department"). 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.

IT IS ORDERED, ADJUDGED AND DECREED that the Petitioner's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be Summary Judgment in favor of the Department and against the Petitioner, and the Petition be and is hereby DISMISSED.

Rendered and signed in Baton Rouge, Louisiana this 8th day  
of December, 2022.

**For the Board:**



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

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**WRITTEN REASONS**

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Petitioner appeals the denial of a refund claim under La. R.S. 47:1625. Between the Tax Periods of January 1, 2014, through December 31, 2016 (the “Tax Periods”), Petitioner operated in Louisiana as an airline company providing commercial passenger air transportation services. During the Tax Periods, all of Petitioner’s flights originating from New Orleans International Airport were to destinations outside of Louisiana. Petitioner purchased aviation jet fuel in Louisiana for use in

its aircrafts for flights originating out of New Orleans International Airport and destined for locations outside of the state.

Petitioner filed a refund claim with the Department on December 28, 2017, claiming an overpayment of sales tax on its purchases of aviation jet fuel. The Department denied the Refund Claim on September 19, 2018. On November 28, 2018, Petitioner filed the instant Petition to Review Denial of Refund. In its original Petition, Petitioner asserted that its purchases were exempt under La. Const. Art. VII, Sec. 27 (A). The Board dismissed the constitutional claims by Judgment issued on July 9, 2020.

The Board did not dismiss Petitioner's alternative and amended claims for a partial refund under the formula in La. R.S. 47:306.1. These claims are now presented for decision. For the Tax Periods,<sup>1</sup> Petitioner prays for a refund determined by calculating its liability under La. R.S. 47:306.1's formula for dealers in interstate and foreign commerce, which allows for an interstate carrier to pay sales taxes on its purchases based on in state miles operated by the carrier over total miles operated by the carrier.

### **Discussion**

On summary judgment, the parties dispute proper legal interpretation of La. R.S. 47:306.1. The statute provides:

Persons, as defined in this Chapter, engaged in the business of transporting passengers or property for hire in interstate or foreign commerce, whether by railroad, railway,

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<sup>1</sup> Petitioner withdrew its claims related to the Tax Periods January 1, 2014 through October 31, 2014 because applying the formula to those periods would result in an increased tax liability.

automobile, motor truck, boat, ship, aircraft or other means, may, at their option under rules and regulations prescribed by the collector, register as dealers and pay the taxes imposed by R.S. 47:302 A on the basis of the formula hereinafter provided.

Such persons, when properly registered as dealers, may make purchases in this state or import property into this state without payment of the sales or use taxes imposed by R.S. 47:302 A at the time of purchase or importation, provided such purchases or importations are made in strict compliance with the rules and regulations of the collector. Thereafter, on or before the 20th day of the month following the purchase or importation, the dealer shall transmit to the collector, on forms secured by him, returns showing gross purchases and importations of tangible personal property, the cost price of which has not previously been included in a return to the state. The amount of such purchases and importations shall be multiplied by a fraction, the numerator of which is Louisiana mileage operated by the taxpayer and the denominator of which is the total mileage, to obtain the taxable amount of tax basis. This amount shall be multiplied by the tax rate to disclose the tax due.

Each such dealer, at the time of making the return required hereunder, shall remit to the collector the tax due for the preceding calendar month as shown on the return.

The Department asserts that Petitioner cannot use the formula described above because Petitioner failed to properly register as a dealer as required by the statute. Petitioner never registered with the Department as an Interstate or Foreign Commerce Dealer. Petitioner's position is that it implicitly complied with the statute because it became registered as a dealer for purposes of collecting sales tax on March 16, 2013, when it was issued a Sales Tax Registration Certificate and assigned an account number.

The statute provides for registration "under rules and regulations prescribed by the collector . . . ." and that a taxpayer "may make purchases in this state or import property into this state without

payment of the sales or use taxes imposed by R.S. 47:302 A at the time of purchase or importation, **provided such purchases or importations are made in strict compliance with the rules and regulations of the collector.**" [emphasis added] The applicable regulation was first promulgated in 1987, and is found at LAC 61:I.4353. The regulation states:

A. R.S. 47:306.1 specifically provides for an option by persons engaged in interstate or foreign commerce transporting passengers or property for hire to register as dealers and pay the taxes imposed by R. S. 47:302(A) on the basis of the formula hereinafter provided; however, since the intent is apparent, the option equally applies to the tax imposed by R.S. 47:321(A) and R.S. 47:331(A). All persons engaged in the business of transporting passengers or property for hire in interstate or foreign commerce can avail themselves of this option; however, only such purchases and importations, as hereinafter defined, used in the furtherance of the interstate or foreign commerce activity will come under this option. Specifically, a person engaged in activities and operations of another nature cannot apply the option to such purchases and importations, as hereinafter defined, and must pay the tax in the manner prescribed in R.S. 47:302(A), R.S. 47:321(A), and R.S. 47:331(A).

B. Carriers which do not elect to report and pay Louisiana sales and use taxes under the optional formula provided by R.S. 47:306.1 shall report and pay the Louisiana sales tax on all purchases made within the state of Louisiana, and shall report and pay the use tax on all tangible personal property imported into the state of Louisiana and becoming a part of the mass of the taxpayer's property located within the state.

C. Carriers which elect to report and pay Louisiana sales and use taxes under the optional formula provided by R.S. 47:306.1 shall be governed by the provisions set forth below.

D. For purposes of this regulation, gross purchases and importations means all tangible personal property purchased by the taxpayer, within or without the state of Louisiana, and all property imported into Louisiana subsequent to the effective date of this regulation, on which no Louisiana sales or use tax has been paid.

E. Carriers desiring to avail themselves of the provisions of this optional formula, which have not previously registered with the secretary for such purposes, shall apply to the secretary for an interstate or foreign carrier dealer's number, and submit satisfactory proof to the secretary that they are engaged in the transporting of passengers or property for hire in interstate or foreign commerce. Proof that they are subject to appropriate federal regulatory agencies, such as the ICC, CAA, etc., shall normally be sufficient. The secretary shall then issue a registration number which may be used for the purpose of making purchases or importations into this state without payment of sales or use taxes at the time of purchase or importation.

F. Carriers currently registered with the secretary as an interstate or foreign carrier may continue to operate under the interstate or foreign carrier dealer's number which has been issued to them; however, carriers electing to report under this optional formula must expressly signify their election, in writing, at the time of filing their first sales tax return following the effective date of this regulation. All carriers who do not expressly so elect to report under the optional formula shall be presumed conclusively to have elected not to report under the formula.

G. An election either to report under the optional formula or not to report under the optional formula may not be withdrawn without written consent of the secretary for good cause shown.

H. Sellers of tangible personal property may recognize the claim of a buyer that the property concerned is to be used in the transporting of passengers or property for hire in interstate or foreign commerce only if the buyer is properly registered hereunder, and only if the buyer submits a blanket certificate, Form LGST 12, signed by and bearing the name, address and registration number of the buyer, to the effect that he is using the property purchased in the business of transporting persons or property or services purchased in the business of transporting persons or property for hire in foreign or interstate commerce and that he will pay the taxes owed directly to the secretary under the provisions of R.S. 47:306.1. Blank certificates may be obtained from the secretary. Sellers will be responsible for the collection of tax on all sales made to persons who have not secured the proper registration number. A dealer who fails to secure or keep for the secretary examination certificates signed by the buyer will be liable for and must pay the tax himself.

I. On or before the twentieth day of each month, the carrier shall transmit to the secretary on forms furnished by the secretary, returns showing the gross purchases and importations. The taxable base shall be determined by applying the mileage ratio (miles traveled in Louisiana divided by total miles traveled) to the gross amount referred to above. The prevailing tax rate shall be applied to the taxable base to determine the amount of tax due.

J. R.S. 47:306.1 applies only to the tax imposed on sales and use of tangible personal property, as set forth in R.S. 47:302(A), R.S. 47:321(A), and R.S. 47:331(A). The tax imposed on the lease or rental of tangible personal property [ R.S. 47:302(B), R.S. 47:321(B), and R.S. 47:331(B)] and the tax on sales of services [ R.S. 47:302(C), R.S. 47:321(C), and R.S. 47:331(C)] may not be paid and reported under the optional method provided by R. S. 47:306.1.

In *Chevron U. S. A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984) (which has been cited by the Louisiana Supreme Court in several cases, see e.g., *Arrant v. Wayne Acree PLS, Inc.*, 187 So. 3d 417 (La. 2016) and *Midtown Med., LLC v. Dep't of Health & Hosps.*, 135 So. 3d 594 (La. 2014)), at issue was the deference to be given by a reviewing court to a regulation of the administrative agency charged with the enforcement of the particular law at issue. The U.S. Supreme Court explained the standard of review as follows: "The power of an administrative agency to administer a . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Morton v. Ruiz*, 415 U.S. 199, 231 (1974). If Congress has **explicitly** left a gap for the agency to fill, there is an express **delegation of authority to the agency** to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight



unless they are arbitrary, capricious, or manifestly contrary to the statute. *Chevron*, supra, at 843-44.

We note that our legislature explicitly granted to the collector (the Louisiana Department of Revenue) the authority to issue rules and regulations to govern the procedure by which a taxpayer properly classified as an interstate carrier can elect to pay sales tax on the basis of the mileage formula. We find that it is not arbitrary, capricious or manifestly contrary to the statute. The Department was expressly directed to promulgate regulations and the alternative calculation requires “strict compliance” with those regulations.

The Regulation requires the dealer to register by applying for an interstate or foreign carrier dealer's number and also to obtain a blanket certificate, Form LGST 12 (For-Hire Carrier Blanket Exemption Certificate). It is undisputed that Spirit did not register as a carrier nor did it obtain a Form LGST 12. However, Spirit contends that, despite the requirements in the regulation, specifically those found in the second and third paragraphs of La. R.S. 47:306.1, the first paragraph of the statute provides its own option for a dealer to obtain a refund of tax based on the formula in the second paragraph without having to collect and remit the tax itself or otherwise strictly comply with the rules and regulations of the Collector.

The statute does not mention refunds. It provides an alternative method to “pay” the tax. The first paragraph describes who may register to pay the tax under the formula. The first paragraph does not provide

its own version of the formula, but refers to the second paragraph. Likewise, the second paragraph does not define who may use the formula, but refers to “such persons” described in the first paragraph. The formula itself incorporates the requirement that the taxpayer make the calculation on a return. The third paragraph expressly requires that the tax paid according to the formula be paid on a monthly return. The paragraphs interlink and operate in concert with each other. It would be irrational for the Board to split the different paragraphs of the statute into independent provisions.

There are relatively few cases addressing La. R.S. 47:306.1. In *Mississippi Chem. Exp., Inc. v. Glover*, 467 So.2d 1261, 1263 (La. Ct. 2 App. 1985), an interstate trucking company sought to use La. R.S. 47:306.1 local sales tax liability on goods purchased for use in its interstate operations. The collector for Bossier City argued that the formula could not be applied to local taxes. At that time, no statutory provision expressly prohibited or authorized use of the formula in the local tax context. Looking to the principles on which the formula was based, the Court sided with the taxpayer. The Court described La. R.S. 47:306.1 as “a formula for the computation of sales taxes owed by interstate carriers.” *Id.* at 1263. The Court also stated that La. R.S. 47:306.1 is a recognition of the constitutional principle that state and its political subdivisions may constitutionally tax property used in interstate transportation only if the tax is equitably apportioned on the use of the property within the state. *Id.* at 1262.

Unlike the Petitioner, the compliance of the taxpayer in *Mississippi Chem.* with statutory requirements was not in question. There is no mention one way or another of registration as an interstate carrier. However, the facts suggest that the taxpayer was registered and was remitting taxes on monthly returns. The tax liability at issue was an additional liability proposed after an audit. Whether the taxpayer was entitled to use the formula was determinative as to that dispute. Thus, the taxpayer would have already been using the offset formula and paying the tax on its returns. That is not what the Petitioner did in this case.

In at least one instance, this Board has approved a claim against the state for a taxpayer under La. R.S. 47:306.1 and that decision was affirmed on appeal. *Pumpkin Air, Inc. v. Tarver*, 95-14951 (La. App. 3 Cir. 4/3/96), 671 So.2d 1131, writ denied, 96-1081 (La. 6/7/96), 674 So.2d 975. Unlike the Petitioner, however, the taxpayer in *Pumpkin Air* was registered as an interstate carrier and was reporting and paying the tax according to the statute. The possibility of a refund arose when the taxpayer realized that it had been over-counting its Louisiana miles in computing its liability. Correctly re-calculating the liability according to the formula yielded a reduced the taxable base and an overpayment. On appeal, the Third Circuit found a sufficient basis to affirm the new calculation and a legal basis for approving the claim, stating: "La. R.S. 47:305.1 [sic] provides an exemption from sales tax for transactions involving interstate commerce."

The registration requirement in La. R.S. 47:306.1 was held to be a pre-requisite for use of the formula in *Cotten v. Collector*, 579 So.2d 499 (La. Ct. 4 App. 1991). In *Cotten*, the taxpayers imported a plane that they had purchased outside the state without paying sales tax. The airplane was to be used in interstate commerce, but the taxpayers were not registered as dealers prior to purchase and importation. The Court held that taxpayers' failure to pre-register barred them from using the formula in La. R.S. 47:306.1 to reduce their liability, stating: "The clear, unambiguous language of the statute requires registration as a dealer prior to importation of the aircraft as a prerequisite for entitlement to the exemption." *Id.* at 501. The taxpayers claimed that they could not have registered with the LDR because, at the time, they were not registered with the FAA. In rejecting that argument, the Court stated:

Section 4353 creates a presumption that a person subject to Federal regulation by the ICC or, inferentially, the F.A.A., is engaged in interstate commerce and thus, entitled to the special tax treatment. However, nothing in the language of the statute or regulation precludes an applicant from proving, by other means, that he is engaged in interstate commerce.

*Id.* at 502. The requirement that an applicant show that it is engaged in interstate commerce distinguishes registration under La. 47:306.1 from general registration to collect sales tax.

In 2005, the legislature compartmentalized application of the interstate carrier formula by enacting La. R.S. 47:306.2 and 337.20.1. 2005 Act 126. La. R.S. 47:306.2 was enacted to apply specifically to apply to carriers venturing offshore outside the territorial limits of any state.

La. R.S. 47:337.20.1 fulfilled the same role, but explicitly with respect to local taxes. The legislature provided for continuity in the pre-existing elections of interstate carriers in the following manner:

Transportation dealers registered under R.S. 47:306.1 on the effective date of this Act and engaged in providing transportation between points in Louisiana and points offshore outside the territorial limits of any state during the sales and use tax period immediately preceding the effective date of this Act shall be deemed to have elected to report under this R.S. 47:306.2 and shall begin filing under R.S. 47:306.2 and R.S. 47:337.20.1 in lieu of R.S. 47:306.1 and R.S. 47:337.20 beginning on the effective date of this Act, unless the taxpayer notifies the secretary to the contrary.

2005 Act 126, Section 3. The legislature specifically referred to registration under La. R.S. 47:306.1 and not to registration under any particular paragraph of the statute. The legislature further did not refer to dealers registered under any other statute. Nor did the legislature repudiate LAC 61:I.4353 or elect to change the provisions which had, at that time, been in effect for more than 17 years. Instead, the legislature described registration under La. R.S. 47:306.1 in terms of the then-existing registration, which was the registration for interstate carriers administered by the Department under the regulation.

Examination of the foregoing authorities reveals no basis for a taxpayer who has not registered as an interstate carrier to obtain a refund under La. R.S. 47:306.1. Registration is a pre-requisite for using the formula. The three paragraphs of the statute are interrelated and refer to each other. It is not reasonable to interpret the first paragraph of the statute as a stand-alone refund provision. The first paragraph of La.

R.S. 47:306.1 sets forth who may register to use the formula in the second paragraph, and the formula is to be used on monthly returns as required by the second and third paragraphs. Registration within the meaning of the statute is made according to the rules and regulations of the Department in LAC 61:I.4353. When the legislature enacted related statutes, it referred to registration under the entire statute as administered by the Department. Accordingly, the Board holds that Petitioner is precluded from obtaining a refund using the calculation formula in La. R.S. 47:306.1 by its failure to register as an interstate carrier as required under that statute and LAC 61:L4353.

**Baton Rouge, Louisiana this day December 8, 2022.**



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**Cade R. Cole, Vice-Chairman  
Louisiana Board of Tax Appeals**