

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA  
LOCAL TAX DIVISION**

**APPLE INC.,  
Petitioner  
versus**

**DOCKET NO. L01283**

**ROMY S. SAMUEL, IN HER CAPACITY  
AS COLLECTOR OF REVENUE OF THE  
CITY OF NEW ORLEANS, DEPARTMENT  
OF FINANCE, AND THE CITY OF NEW  
ORLEANS, DEPARTMENT OF FINANCE,  
IN ITS CAPACITY AS ORLEANS PARISH  
TAX COLLECTOR,  
Respondents**

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**JUDGMENT  
ON APPLE’S FINAL MOTION FOR PARTIAL SUMMARY JUDGMENT  
(APPLE MUSIC) WITH REASONS**

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On March 14, 2024, this matter came before the Board for hearing on the Final Motion for Partial Summary Judgment (Apple Music) filed by Apple, Inc. (“Apple”). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were William M. Backstrom, Jr. and Mark E. Nebergall,<sup>1</sup> attorneys for Apple and Dashia D. Myles, attorney for Romy S. Samuel, in her Capacity as Collector of Revenue of the City of New Orleans, Department of Finance, and the City of New Orleans, Department of Finance, in its Capacity as Orleans Parish Tax Collector (the “City”). The City did not file an opposition, but stated that she did not consent to the granting of the motion. At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues this Judgment in accordance with the attached written reasons:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Apple’s Final Motion for Partial Summary Judgment (Apple Music) is HEREBY GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be final Judgment in favor of Apple and against the City.


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<sup>1</sup> Appearing *Pro Hac Vice*.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Notice of Assessment dated September 20, 2021, addressed to Apple for the Audit Periods: January 1, 2016 through October 10, 31, 2018, and purporting to assess taxes, interest, penalties, and audit costs in the total amount of \$676,130.00, be and is hereby invalidated as contrary to law and re-determined to \$0.00.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,  
LOUISIANA ON THIS 2<sup>ND</sup> DAY OF MAY, 2024.

FOR THE BOARD:



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LOCAL TAX JUDGE CADE R. COLE

BOARD OF TAX APPEALS  
STATE OF LOUISIANA  
LOCAL TAX DIVISION

APPLE INC.,  
Petitioner  
versus

DOCKET NO. L01283

ROMY S. SAMUEL, IN HER CAPACITY  
AS COLLECTOR OF REVENUE OF THE  
CITY OF NEW ORLEANS, DEPARTMENT  
OF FINANCE, AND THE CITY OF NEW  
ORLEANS, DEPARTMENT OF FINANCE,  
IN ITS CAPACITY AS ORLEANS PARISH  
TAX COLLECTOR,  
Respondents

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REASONS FOR JUDGMENT  
ON APPLE’S FINAL MOTION FOR PARTIAL SUMMARY JUDGMENT  
(APPLE MUSIC)

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On March 14, 2024, this matter came before the Board for hearing on the Final Motion for Partial Summary Judgment (Apple Music) filed by Apple, Inc. (“Apple”). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were William M. Backstrom, Jr. and Mark E. Nebergall,<sup>1</sup> attorneys for Apple and Dashia D. Myles, attorney for Romy S. Samuel, in her Capacity as Collector of Revenue of the City of New Orleans, Department of Finance, and the City of New Orleans, Department of Finance, in its Capacity as Orleans Parish Tax Collector (the “City”). The City did not file an opposition, but stated that she did not consent to the granting of the motion. At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues the foregoing Judgment for the following reasons:

**Background:**

Apple asks the Board to overturn the City’s Notice of Assessment dated September 20, 2021, addressed to Apple for the Audit Periods: January 1, 2016

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<sup>1</sup> Appearing *Pro Hac Vice*.

through October 10, 31, 2018, and purporting to assess taxes, interest, penalties, and audit costs in the total amount of \$676,130.00 (the “Assessment”), with respect to Apple’s sales of Apple Music streaming subscriptions as an illegal discriminatory tax on electronic commerce barred by § 1101(a)(2) of the Internet Tax Freedom Act (“ITFA”) codified in the notes to 47 U.S.C. § 151.

This is the third time in this case that Apple has moved for partial summary judgment. The City did not file an opposition to the prior two motions, just as it has not filed an opposition to the instant motion. Absent any genuine dispute, the Board granted Apple’s previous motions. Apple’s third motion concerns all remaining tax periods and transactions at issue in the Assessment that were not disposed of by the previous two motions. Thus, while Apple’s motion is technically a motion for “partial” summary judgment, granting it would effectively render final judgment in Apple’s favor.

The instant motion concerns Apple’s sales of subscriptions to its Apple Music streaming service. Apple lists three purportedly undisputed material facts concerning Apple Music. First, Apple Music is a service that uses the internet to stream audio content, such as music, to devices connected to the internet. Second, satellite radio is a service that allows the streaming of audio content, such as music, using satellites to devices capable of receiving satellite signals. Third, the audio content streamed using the internet to Apple Music subscribers is similar to the audio content streamed by satellite radio providers to subscribers using satellite signals.

The attachments to the Affidavit of Terry Ryan, Apple’s Senior Tax Director, show that Apple Music offers subscribers access to music categories similar to music channels offered by SiriusXM. SiriusXM provides its music streaming service via satellite. There is no evidence in the competent summary judgment record that Apple Music offers any services that are substantially different than the services that SiriusXM offers. For example, there is no competent summary judgment evidence showing that an Apple Music subscriber has greater access to specific songs, while a

SiriusXM subscriber only has access categories of songs. The only evidence before the Board is that Apple Music and SiriusXM are essentially the same service. There is also no competent summary judgment evidence in this case to show that SiriusXM offers its service over the internet, like Apple does. The only difference between Apple Music and SiriusXM that has been shown to the Board is the medium by which the services are provided (via internet or via satellite).

**Summary Judgment Standard:**

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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(B); *Beteta v. City of New Orleans*, 06-0972 (La. App. 4 Cir. 1110/07), 950 So.2d 862, 865. A party is permitted move for summary judgment on a part of the relief prayed for. La. C.C.P. art. 966(A)(1). Partial summary judgment may be granted as to a particular issue, theory of recovery, cause of action, defense, or party. La. C.C.P. art. 966(E). Normally, the party moving for summary judgment bears the burden of proving that no genuine issue of material fact exists. La. C.C.P. art. 966D)(1). A material fact is one that ensures or precludes recovery, bears on a party's ultimate success, or is determinative of the legal dispute. *Hines v. Garrett*, 04-0803, p. 1 (La. 6/25/04), 876 So.2d 764, 765. A genuine issue is one upon which reasonable persons could disagree. *Larson v. XYZ Ins. Co.*, 16-0745, pp. 6-7 (La. 5/3/ 17), 226 So.3d 412, 416.

**Discussion:**

The ITFA prohibits a state or a political subdivision from imposing discriminatory taxes on electronic commerce. ITFA § 1101(a)(2). In relevant part, the ITFA defines the term "discriminatory tax" as one imposed on electronic commerce but not generally imposed and legally collectible by such state or such political subdivision on transactions involving similar property, goods, services, or

information accomplished through other means.<sup>2</sup> The ITFA defines “electronic commerce” as “any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.” ITFA § 1105(3).

It is undisputed that Apple Music streaming services are sold over the internet, and that said sales meet the definition of “electronic commerce” provided in the ITFA. Direct-to-home satellite service is defined in the Federal Telecommunications Act (“FTA”) as “only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.” Pub. L. 104-104, title VI, §602(b), Feb. 8, 1996, 110 Stat. 144 (reproduced at 47 U.S.C. § 152, note). The FTA preempts providers of direct-to-home satellite service from the “collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.” FTA §602(a). Thus, the FTA prevents the City from taxing direct-to-home satellite service.

Apple has put forward evidence, which the City has not controverted, that SiriusXM’s music streaming service is not subject to the City’s sales tax because it is transmitted by satellite. Based on that evidence, and in the complete absence of any evidence to the contrary, the Board concludes that, under the unique circumstances

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<sup>2</sup> ITFA § 1105(2)(A)(i). The ITFA defines several other alternative definitions of a discriminatory tax, including: a tax that is not generally imposed and legally collectible at the same rate by such state or political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period; a tax that imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or a tax that establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means. ITFA § 1105(2)(A)(ii-iv). In addition, a tax is discriminatory if: the sole ability to access a site on a remote seller’s out-of-state computer server is considered a factor in determining a remote seller’s tax collection obligation; or a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of the display of a remote seller’s information or content on the out-of-state computer server of a provider of Internet access service or online services or the processing of orders through the out-of-State computer server of a provider of Internet access service or online services. ITFA § 1105(2)(B).



of this case, satellite music streaming services are not generally subject to the City's sales tax. Further, the Board finds that the City is attempting to impose its sales tax on the same service because Apple provides it via the internet. As such, the City has applied its sales tax in a discriminatory manner that is prohibited by the ITFA.

Based on the absence of any genuine dispute in this case, the Board will grant summary judgment as prayed for. Apple has come forward with a sufficient showing that it is entitled to relief. The City could have come forward with contradictory evidence, but elected not to do so. Under these facts and circumstances, and considering that all other issues have already been disposed of in Apple's favor, the Board finds that Apple is entitled to summary judgment vacating the Assessment appealed from in its entirety.

**Baton Rouge, Louisiana, this 2<sup>nd</sup> day of May, 2024.**

**FOR THE BOARD:**



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**LOCAL TAX JUDGE CADE R. COLE**