

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**CAJUN INDUSTRIES, LLC AND  
CAJUN CONSTRUCTION, INC.**  
**Petitioners**

**VERSUS**

**BTA DOCKET NO. 9898D**

**SECRETARY DEPARTMENT OF REVENUE,  
STATE OF LOUISIANA**  
**Respondent**

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**JUDGMENT ON SECRETARY'S EXCEPTION OF PRESCRIPTION**  
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A hearing on the Secretary, Department of Revenue's (the "Secretary") Exception of Prescription was heard by the Board on March 7, 2017 with Judge Tony Graphia (Ret.), Chairman, Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were: David R. Kelly, attorney for Cajun Industries, LLC and Cajun Construction, Inc. (the "Taxpayer"), and Drew M. Talbot, attorney for the Secretary. After the hearing, the case was taken under advisement, the Board now unanimously renders Judgments as follows:

Taxpayer has appealed to the Board the Secretary's denial of a sales tax refund request in the amount of \$1,695,801.92 for the period 1/1/2010-12/31/2011. The Secretary denied the requested refund because it was not timely filed as required by La. R.S. 47:1623. The last day to timely file a refund for the period January 1, 2010–November 30, 2010 was December 31, 2013; for the period December 31, 2010 through November 30, 2011 was December 31, 2014; and for December 2011 was December 31, 2015 (the end of the year three years from the due date of the applicable return for that month).

The refund claim filed by the Taxpayer with the Secretary in this matter was mailed to the Secretary on April 28, 2016. The claim was not timely and has clearly

prescribed on its face. The only question is whether the Taxpayer has fulfilled its burden of establishing that the prescriptive period was interrupted or suspended as allowed by La. R.S. 47:1623.

Taxpayer had also filed with the Secretary a claim involving a similar sales tax issue for the same period, but involving other transactions, that other claim was also denied and appealed to the Board. That case which was decided on this date in favor of Taxpayer is captioned *Cajun Industries, LLC and Cajun Constructors, Inc. v. Secretary, Department of Revenue*, BTA Docket No 9247 (“Cajun I”).

Cajun I’s underlying refund claim was filed with the Secretary on July 19, 2012, and appealed to the Board on February 6, 2015. Cajun I is also based on the theory that Taxpayer had paid taxes when none were due pursuant to La. R.S. 47:301(10)(g). The amount claimed in the refund filed with the Secretary in Cajun I was \$2,442,843.53, which refund was granted in full in the Board’s Judgment on Cajun I rendered this date.

Taxpayer has filed the instant case bearing BTA Docket No. 9898D (“Cajun II”), and requests a refund in the amount of \$1,695,801.92. As referenced above, the underlying refund claim for Cajun II was untimely and the refund will be deemed prescribed unless the pendency of the Cajun I refund request somehow interrupts prescription.

Taxpayer claims that the refund requested in Cajun II is from similar but distinct transactions from those in Cajun I, but that it had been left out of the calculation and supporting schedules of Taxpayer’s request for the Cajun I refund.

Cajun I’s refund request was presented to the Secretary for on Department of Revenue form R-20-127 (2/11). That form asks: “The total amount tax paid for the period”. Answer: \$2,442,843.53. “Amount of tax requested to be refunded”. Answer: \$2,442,843.53. That form also requires that an amended return be filed.

A deposition of the Taxpayer was taken on January 28, 2016, the same form R-20-127 was attached to an exhibit as support for the refund. This was three months before the refund claim in the present case was filed with the Secretary on April 28, 2016.

Taxpayer had ample time to determine that it wanted to seek a refund on the items in dispute in Cajun II, and that separate refund request could easily have been filed with the Secretary prior to the running of the three year prescription.

Refund claims are not made for time periods but for transactions that make up the claim. In the present case those transactions were identified to the Department and a specific dollar amount was listed. This is not the case of a potential clerical error on a form, the transactions in dispute in the prior claim are distinct items from the transactions involving the later claim.

The first refund claim was denied by the Secretary and was appealed to this Board. Much time and effort has been spent on Cajun I litigating it before this Board. Cajun II must stand on its own, and there is no statutory basis for the argument that prescription has been suspended or interrupted. The Cajun II claim was not timely filed and has in fact prescribed.

For the foregoing reasons:

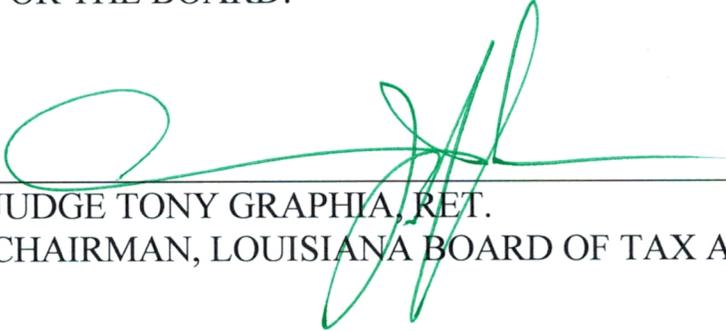
IT IS ORDERED, ADJUDGED AND DECREED that the Secretary, Department of Revenue's Exception of Prescription BE AND IS HEREBY SUSTAINED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition for Refund filed by Cajun Industries, LLC and Cajun Construction, Inc. against the Secretary in the present case BE AND IS HEREBY DISMISSED with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall bear their own costs for these proceedings.

Baton Rouge, Louisiana this 12 day of April, 2016.

FOR THE BOARD:



A handwritten signature in green ink, consisting of a large loop on the left and several vertical strokes on the right, positioned above a horizontal line.

JUDGE TONY GRAPHIA, RET.  
CHAIRMAN, LOUISIANA BOARD OF TAX APPEALS