

STATE OF LOUISIANA
LOUISIANA BOARD OF TAX APPEALS
LOCAL TAX DIVISION

DOUGLAS AND ANDRY
SUSTAINABLE BUILDING, LLC,
individually, and through its sole member,
GLOBAL GREEN USA, a nonprofit
corporation.
Petitioner,

versus

DOCKET NO. L01583

ERROLL G. WILLIAMS IN HIS
CAPACITY AS THE ASSESSOR FOR
THE PARISH OF ORLEANS; BUREAU
OF TREASURY OF THE DEPARTMENT
OF FINANCE OF THE CITY OF NEW
ORLEANS IN ITS CAPACITY AS THE
TAX COLLECTOR FOR THE PARISH
OF ORLEANS; AND THE LOUISIANA
TAX COMMISSION
Respondents

JUDGMENT WITH WRITTEN REASONS

On July 13, 2023, this matter came before the Board for hearing on the Exceptions of Prescription, No Cause of Action, No Right of Action and Lack of Subject Matter Jurisdiction filed by Erroll G. Williams, in his capacity as the Assessor for the Parish of Orleans, State of Louisiana (“Assessor”) and on the Partial Peremptory Exception of No Cause of Action filed by the Louisiana Tax Commission (“LTC”). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Reese Williamson, attorney for the Assessor and Georgia Ainsworth, attorney for Douglas and Andry Sustainable Building, LLC (“D&A”), individually and through its sole member, Global Green USA (“Global Green”) (“Petitioner”). Appearing by Zoom were Drew Hoffman, attorney for the LTC, and Tanya Irvin, attorney for the City of New Orleans. During the hearing, the Board ruled on the LTC’s Exception, and at the conclusion of the hearing, the Board took the Assessor’s Exceptions under advisement. The Board now issues this Judgment in accordance with the attached Written Reasons:

IT IS ORDERED, ADJUDGED, AND DECREED that there be Judgment in favor of the Assessor, the LTC, and the City and against the Petitioner.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the LTC's Partial Peremptory Exception of No Cause of Action is sustained. All claims for money damages against the LTC are dismissed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of Lack of Subject Matter Jurisdiction is sustained as to Petitioner's alternative prayer for a refund based on the valuation of the Property.

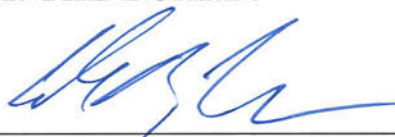
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of No Right of Action is overruled as moot.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of Prescription is sustained as to Petitioner's claims for a refund of taxes paid under protest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Exception of No Cause of Action is sustained as to the remainder of the Petition and the Petition is hereby dismissed in its entirety.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE, LOUISIANA ON THIS 30TH DAY OF MAY, 2024.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

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LOUISIANA BOARD OF TAX APPEALS
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WRITTEN REASONS FOR JUDGMENT

On July 13, 2023, this matter came before the Board for hearing on the Exceptions of Prescription, No Cause of Action, No Right of Action and Lack of Subject Matter Jurisdiction filed by Erroll G. Williams, in his capacity as the Assessor for the Parish of Orleans, State of Louisiana (“Assessor”) and on the Partial Peremptory Exception of No Cause of Action filed by the Louisiana Tax Commission (“LTC”). Presiding at the hearing was Local Tax Judge Cade R. Cole. Present before the Board were Reese Williamson, attorney for the Assessor and Georgia Ainsworth, attorney for Douglas and Andry Sustainable Building, LLC (“D&A”), individually and through its sole member, Global Green USA (“Global Green”) (“Petitioner”). Appearing by Zoom were Drew Hoffman, attorney for the LTC, and Tanya Irvin, attorney for the City of New Orleans (the “City”). During the hearing, the Board ruled on the LTC’s Exception, and at the conclusion of the hearing, the Board took the Assessor’s Exceptions under advisement. The Board now issues these Written Reasons for Judgment.

Background

This is a validity challenge under La. R.S. 47:2134(C) for recovery of *ad valorem* property taxes paid under protest. A document attached to the Petition titled City of New Orleans Real Estate Sold Redemption Bill No. 39W101613 (the “2019 Redemption Bill”) evidences a demand that the Petitioner pay *ad valorem* property taxes assessed against property located at 5413 N. Peters St., New Orleans (the “Property”), as well as redemption interest, penalties and fees for the tax years 2017, 2018, 2019 and 2021 (collectively, the “Tax Years”). Petitioner alleges that the assessment of tax on the Property resulted in enforcement by a tax sale (the “Tax Sale”) of 90% of the Property to Flag Boy Properties, LLC (“Flag Boy”). Petitioner challenges the validity of the original assessment of tax, the 2019 Redemption Bill, and the Tax Sale.

Petitioner alleges that it is a non-profit 501(c)(3) and that the Property is exempt under La. Const. Art. VII § 21(B).¹ Petitioner admits that it paid no tax on the Property for any of the Tax Years at issue until it made the protest payment on November 14, 2022. Petitioner also admits that it did not submit an application for the non-profit exemption for the Tax Years. The protest payment only covered the amounts shown on the 2019 Redemption Bill for the 2017, 2018, and 2019 tax years. Petitioner has made no payment of any kind for the 2021 tax year.

Petitioner filed the instant action against the Assessor and the LTC. Petitioner asserts that: it received no notice of deficiency, no pre-sale notice of the Tax Sale and no post-sale notice of the Tax Sale from either the Assessor or Flag Boy; the assessment of tax is illegal and void because the Property is exempt; and that it is entitled to a refund of the amounts paid under protest. The LTC responded with an Exception of No Cause of Action. The Assessor responded with Exceptions of

¹ The 21(B) Exemption is for property of a non-profit used for charitable purposes. Petitioner also claims the Property is exempt under La. Const. Art. VII § 21(C)(12), which provides an exemption for “property used for cultural, Mardi Gras carnival, or civic activities and not operated for profit to the owners.”

Prescription, No Cause of Action, Lack of Subject Matter Jurisdiction, and No Right of Action.

LTC's Exception of No Cause of Action

The LTC asked the Board to dismiss any claims against the LTC for money damages. Counsel for the LTC explained that its Exception was filed as a protective measure against the possibility that Petitioner's prayer for general and equitable relief could be construed as a prayer for damages. The law does not allow Petitioner to seek money damages against the LTC in a validity challenge, and counsel for Petitioner represented that they are not seeking any such damages. Accordingly, the Board sustained the Exception.

Assessor's Exceptions

Subject Matter Jurisdiction

The Assessor raises the Exception of Lack of Subject Matter Jurisdiction with respect to Petitioner's prayer for a refund of the disputed amounts based on an allegedly incorrect valuation of the Property. Louisiana provides a two-track procedure for challenging property tax assessments. One track is for challenges to the "correctness" of an assessment. Correctness challenges concern issues of regularity, over-valuation, and mis-description. *Triangle Marine, Inc. v. Savoie*, 95-2873 (La. 10/15/96), 681 So.2d 937; *Gisclair v. Louisiana Tax Comm'n*, 2009-0007 (La. 6/26/09), 16 So.3d 1132.

The Board has appellate jurisdiction, only, over correctness challenges that have matriculated through the review procedure before the Parish taxing authority and then the LTC. La. Const. Art. VII§ 18(E). Petitioner's prayer for a refund based on the value of the Property is undoubtedly a correctness challenge. However, Petitioner has not followed the preliminary administrative procedures that must be adhered to before invoking the Board's appellate jurisdiction. Accordingly, the alternative prayer for a refund based on a redetermination of the value of the

Property will be dismissed.

Prescription

The Assessor asks the Board to sustain both the Exception of Prescription and the Exception of No Cause of Action because the Petitioner did not make a timely payment of the tax under protest. La. R.S. 47:2134(C) provides for legality challenges by payment under protest, it states:

A person resisting the payment of an amount of ad valorem tax due or the enforcement of a provision of the ad valorem tax law and thereby intending to maintain a legality challenge shall timely pay the disputed amount due under protest to the officer or officers designated by law for the collection of the tax

The period for timely payment referred to in La. R.S. 47:2134(C) is defined in La. R.S. 47:1997(B), which provides that taxes become delinquent on February 1st for the year for which such taxes are levied.

Petitioner did not pay the taxes under protest until November 14, 2022, and has not made any payment whatsoever for the 2021 Tax Year. Nevertheless, Petitioner argues that its payment under protest was timely, pointing to the use of the disjunctive “or,” before: “enforcement of a provision of the ad valorem tax law.” Petitioner suggests that there is a second category of validity challenge for which timely payment can vary based on the context of the enforcement action in dispute. Further, Petitioner argues that in the context of a Tax Sale, timeliness is governed by the Louisiana Constitution’s three-year period for redeeming property sold at a tax sale. La. Const. Art. VII § 25(B). Petitioner maintains that its payment under protest was timely because it was made within the redemption period.

Petitioner’s reading of the statute is not supported by any decision in our jurisprudence. In fact, the Louisiana Supreme Court has already decided how to give effect to the disjunctive language in La. R.S. 47:2110(B), the predecessor to La. R.S. 47:2134(C). In *Triangle Marine, Inc. v. Savoie*, 95-2873 (La. 10/15/96), 681 So.2d 937, the Court was called upon to decide whether an “as-applied” constitutional challenge

to an assessment was a correctness challenge or a validity challenge. The Assessor argued that only a facial constitutional challenge to the ad valorem tax statutes could be a validity challenge.

The Court disagreed, holding that La. R.S. 47:2110(B) gave the taxpayer the right to challenge “both the validity of the law itself and the constitutionality of the administration of an otherwise valid law.” *Id.* at 941. The Court stated that this interpretation gave “proper meaning to the disjunctive language of the statute which provides a right of action to question ‘the legality of any tax accrued or accruing or the method of enforcement thereof.’” *Id.* Thus, the use of the disjunctive clarifies that both facial and as-applied constitutional challenges are validity challenges.

More importantly, a taxpayer’s right to challenge a property tax assessment on the basis of the non-profit exemption in La. Const. art. VII, § 21(B) is a validity challenge that must be brought before the deadline specified in La. R.S. 47:1997(B). *NOHC, Inc. v. Williams*, 2022-0248 (La. App. 4 Cir. 12/6/22), 367 So.3d 40, *on reh’g* (Mar. 22, 2023). Timely payment is required to preserve the right to contest the validity of a tax on the grounds of a constitutional exemption. *Side By Side Redevelopment, Inc. v. Marshall*, 2009-1430, p. 3 (La. App. 4 Cir. 6/30/10), 43 So.3d 1059, 1061. The requirement of timely payment cannot be avoided by bringing a validity challenge under the guise of another statute. *See New Orleans Riverwalk Marketplace, LLC v. Louisiana Tax Comm’n*, 2017-0968 (La. App. 4 Cir. 4/30/18, 9–10), 243 So.3d 1070, 1076, *writ denied*, 2018-0889 (La. 9/28/18); 252 So.3d 925 (dismissing untimely validity challenge ostensibly brought as a claim for refund under La. R.S. 47:2132).

The Petitioner’s remedy at this point, if any, is a challenge to seek annulment of the Tax Sale. However, an action to annul a tax sale must be brought in district court. La. R.S. 47:2286 states:

No tax sale shall be set aside except for a payment nullity, redemption nullity, or a nullity under R.S. 47:2162, all of which are relative nullities. The action shall be brought in the district court of the parish in which

the property is located. In addition, the action may be brought as a reconventional demand or an intervention in an action to quiet title under R.S. 47:2266 or as an intervention in a monition proceeding under R.S. 47:2271 through 2280.

Moreover, the Board's jurisdiction expressly excludes tax sale controversies. La. R.S. 47:1431(F)(3) states that the Board cannot hear an action "concerning the conduct of tax sales, the nullification of tax sales, or contesting the seizure of movables for collection." La. R.S. 47:1431(F)(3). In fact, Petitioner is already seeking the annulment of the Tax Sale in the quiet title suit pending before the New Orleans CDC.

In sum, a legality challenge under La. R.S. 47:2134(C) requires timely payment under protest. Timely means payment before the tax becomes delinquent under La. R.S. 47:1997. The Petitioner in this case did not make a timely payment under protest for any of the Tax Years at issue. Petitioner's payment under protest action under La. R.S. 47:2134(C) is therefore barred by prescription.

Petitioner's allegation that it did not have actual notice of the assessments does not defeat prescription. The relevant statutory notice requirements are found in La. R.S. 47:1992(A)(1)(a):

After each assessor has prepared and made up the lists showing the assessment of immovable and movable property in and for his parish or district, his lists shall be exposed daily for inspection by the taxpayers and other interested persons for the period provided for in Subsection F of this Section. Each assessor shall give notice of such exposure for inspection in accordance with rules and regulations established by the Louisiana Tax Commission.

The relevant LTC regulation, LAC 61:V.3101, requires the Assessor post notice in the newspaper that the rolls will be made open for inspection for a period of 15 days. That is what the Assessor did in this case. The Assessor did not violate La. R.S. 47:1992(A)(1)(a) or LAC 61:V.3101 by not also mailing a copy of the tax bill to the Petitioner. Thus, there is no basis for the Board to find that prescription was suspended or interrupted by lack of actual notice.

No Cause of Action

A peremptory exception of no cause of action “questions whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition.” *Kendrick v. Est. of Barre*, 2021-00993, p. 3 (La. 3/25/22), 339 So. 3d 615, 617. For this purpose, a cause of action is the “operative facts that give rise to the plaintiffs right to judicially assert the action against the defendant.” *Rainey v. DeCaire*, 2003-1299, p. 7 (La. 3/19/04), 869 So. 2d 114, 118. In ruling on the exception, the Board accepts the well-pleaded allegations of fact in the Petition as true and no evidence no evidence may be introduced to support or controvert the exception. See *State ex rel. Tureau v. BEPCO, L.P.*, 2021-0856 (La. 10/21/22), 351 So. 3d 297, 310; *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So. 2d 1234, 1235 (La. 1993).

A refund of tax paid under protest is no longer available and Petitioner has not prayed for declaratory relief. But even if Petitioner were to amend their Petition to seek other relief, they would be unable to state a cause of action. In addition to being unable to obtain a refund of their delinquent property taxes, Petitioner is precluded from litigating the tax exempt status of the Property in a declaratory judgment action. As stated by the Fourth Circuit in *Side By Side Redevelopment, Inc. v. Marshall*, 2009-1430 (La. App. 4 Cir. 6/30/10), 43 So.3d 1059, “[i]t is well established that Louisiana law does not provide a cause of action for declaratory relief seeking tax exempt status.” *Id.* at 1062, citing *Allied Chem. Corp. v. Iberville Parish Police Jury*, 426 So.2d 1336, 1341 (La. 1983). Just like in this case, the taxpayer in *Side by Side* was a non-profit entity that did not file a timely payment under protest of an assessment made on allegedly exempt property. The result was the loss of the right to challenge the validity of a tax. The same result holds for the Petitioner in this case.

Conclusion

For foregoing reasons, the Board will sustain the Exceptions of Prescription and Lack of Subject Matter Jurisdiction and dismiss the Petition. To the extent that

the Petition raises a legality challenge, it is barred by prescription. Petitioner has not shown that prescription was suspended or interrupted. To the extent that Petitioner raises a correctness challenge, the Board lacks original jurisdiction and the Petitioner is not invoking the Board's appellate jurisdiction by appealing from a decision of the Louisiana Tax Commission. The remedy for Petitioner lies with the quiet title suit before the CDC, not with the Board. Finally, because the Board will dismiss the Petition on the foregoing grounds, the Assessor's Exception of No Right of Action is rendered moot.

BATON ROUGE, LOUISIANA, THIS DAY OF MAY 30, 2024.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE