

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**GENERAL ELECTRIC
CAPITAL SERVICES, INC.
Petitioner**

VERSUS

B.T.A. Docket No. 7337

**T.A. "TIM" BARFIELD, JR. IN HIS CAPACITY
AS SECRETARY OF THE DEPARTMENT OF
REVENUE, STATE OF LOUISIANA AND THE
STATE OF LOUISIANA**

Respondent

**JUDGMENT
ON RESPONDENTS' EXCEPTIONS
OF VAGUENESS, LACK OF SUBJECT MATTER JURISDICTION, NO CAUSE OF
ACTION, NO RIGHT OF ACTION, MOTION TO STRIKE, NONJOINER OF A
PARTY, INSUFFICIENCY OF SERVICE OF PETITION, AND PRESCRIPTION**

The Exceptions of the Attorney General of the State of Louisiana ("Attorney General") and the Secretary, Department of Revenue, of the State of Louisiana ("Secretary"), were heard by the Board on March 20, 2013. Present before the Board were Florence Bonaccorso-Saenz and William Little for the Secretary and the Attorney General; and John F. Fletcher, William Backstrom, Jr. and Kimberly L. Robinson, attorneys for General Electric Capital Services, Inc. ("Taxpayer"). After the argument of counsel, the matters were taken under advisement.

On October 8, 2008, Taxpayer filed its 2007 Corporate Income Tax and 2008 Corporate Franchise Tax return with the Secretary (the "Original 2008 Return"). The Original 2008 Return stated that Taxpayer owed no corporate income tax and owed \$129,628 in corporate franchise taxes. The Original 2008 Return stated Taxpayer had paid \$254,000 in advance taxes for the tax years in question, and it directed the Secretary to apply \$129,628 of the advance taxes to the obligation reflected in the Original 2008 Return and to apply the balance of the advance taxes, \$124,772, to any obligation that it may have for 2009.

During November 2010, Taxpayer filed an amended 2008 corporate income tax and corporate franchise tax return (the "Amended 2008 Return"). The Amended 2008 Return requested a refund of the \$129,628, which Taxpayer had paid with the Original 2008 Return.

On October 6, 2011, the Taxpayer filed its petition with the Board requesting a refund of the \$129,628 under the provisions of R.S. 47:1625, and in the alternative the return of the \$129,628 under the provisions of R.S. 47:1481, a claim against the state.

On December 17, 2012, Taxpayer filed its First Amended and Supplemental Petition on Refund Denial. Taxpayer's amended and supplemental petition changed its request for refund from \$129,628 to \$254,400. Taxpayer alleges that the Secretary denied the Taxpayer's request for a refund. Taxpayer reiterated its claim for refund under the provisions of R.S. 47:1625 and in the alternative also pled a claim against the state under R.S. 47:1481 *et seq.*

The Secretary and the Attorney General (Respondents) have filed numerous exceptions.

Exception of Lack of Subject Matter Jurisdiction

The Board will first discuss the Exception of Lack of Subject Matter Jurisdiction. The Respondents allege that the Board does not have jurisdiction to hear the underlying case for three reasons.

The first reason alleged by Respondents is that the Board does not have the jurisdiction to rule on whether LAC 61: I 301(D) is invalid in regard to the Taxpayer. The case of *UTELCOM, INC. and UCOM, Inc. v. Cynthia BRIDGES, in her Capacity as Secretary of the Department of Revenue, State of Louisiana*; 10-654 (La. App. 1st Cir. 9/12/11), 77 So.3d 39, writs denied 11-2632 (La. 3/2/12), 83 So.3d 1046, held that LAC 61:I 301 was invalid insofar as it pertained to the plaintiffs' in *UTELCOM, supra*.

The Taxpayer in this case before the Board claims that it was not subject to the Louisiana corporate franchise tax because the facts of its claim for refund are the same as in *UTELCOM*. It is important to note that the Board does not have to declare the above regulation invalid. The Court of Appeal has already made that ruling. This pretermits the question of whether the Board has the jurisdiction to rule that a regulation of the Secretary is invalid under the law in its application to the activity or conduct of a particular taxpayer. The question before the Board is merely how to apply the First Circuit's holding in *UTELCOM* to the facts of the present case.¹

For the reasons stated above, the Board rules that it has subject matter jurisdiction in regard to the first and second elements of the Respondents' Exception of Lack of Subject Matter Jurisdiction.

¹ Respondents correctly observe that the Board has no jurisdiction to declare a law unconstitutional since this is a question within the exclusive jurisdiction of the Courts, but this observation is irrelevant since the resolution of the merits of the underlying case will not require a determination of constitutionality.

The third reason that the Respondents allege that the Board does not have subject matter jurisdiction is based on R.S. 47:1621(F), which states:

F. This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the secretary of the provisions of any law or of the rules and regulations promulgated thereunder. In the event a taxpayer believes that the secretary has misinterpreted the law or promulgated rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover, or by appeal to the board of tax appeals in instances where such appeals lie. (Emphasis supplied)

The first sentence of this subsection prohibits the Secretary from making a refund under the circumstances enunciated therein. However, the taxpayer is still granted two remedies. The inquiry in the present case is the meaning of the last sentence, the meaning of “appeal to the board of tax appeals in instances where such appeals lie.”

The Jurisdiction of the Board is found in R.S. 47:1407. That statute specifically refers to “appeals,” in subsection (1) where it grants the Board jurisdiction to hear “All matters relating to appeals for the...determination of overpayments, as provided in R.S.47:1431 through 47:1438.”

La. R.S. 47:1431 states in part:

“Whenever a taxpayer is aggrieved by an assessment made by the collector, or the collector’s action or failure to act on a claim for refund or credit of an overpayment, such taxpayer may appeal to the board for a redetermination of the assessment or determination of the alleged over payment, by filing a petition with the board within the respective periods set forth in R.S. 47:1565, 47:1566 and 47:1625.”

La. R.S. 47:1625 states in part:

“If the collector fails to act on a properly filed claim for refund or credit within one year from the date received by him or if the collector denies the claim in whole or in part, the taxpayer claiming such refund or credit may appeal to the board of tax appeals...the board of tax appeals shall have jurisdiction to determine the correct amount of tax for the period in controversy and to render judgment”

There are only two appeals that a taxpayer can make to the board: one from an assessment, and the other from the Secretary’s denial of, or failure to act on, a Taxpayer’s refund request. The Board has been granted other jurisdiction, but these are the only “appeals” to it.

The Respondents argue that the sentence in question concerning “appeal to the Board” only refers to “claims against the state” under La. R.S.47:1481. They argue that it could not refer to an appeal to the Board of a refund denial under R.S. 47:1625. However, all matters under R.S. 47:1481 are “claims” not “appeals,”² and the Legislature clearly chose to use the word “appeal.”

² §1481 has vested the Board with jurisdiction for more than seventy years over all matters related to these “claims against the State.” See Act 120 of 1942 (transferring to the Board the jurisdiction originally granted to the Board of Public Examiners by Act 33 of 1918). These claims do not necessarily need to involve taxes; any money erroneously paid into the treasury may be claimed.

The Board has recently ruled on this same question in *KCS HOLDINGS I, INC. v. Bridges*, BTA No. 7385 c/w 7497 (La. Bd. Tax. App. 1/14/13), 2013 WL 2205962. In *KCS Holdings I*, the Board ruled that the last sentence of R.S. 47:1621(F) grants a right to appeal to the Board from the Secretary's denial of a claim for refund concerning an overpayment.

The Louisiana Supreme Court recently discussed the last sentence of R.S. 47:1621(F), "...or by appeal to the board of tax appeals in instances where such appeals lie", and the Court also found that "'instances where such appeal lie' refers to La. R.S.47:1625." *TIN, INC. v. WASHINGTON PARISH SHERIFF'S OFFICE, ET AL* 12-2015, p. 7 (La. 3/19/13), 2013 WL 1115330, p. 4. (emphasis provided).

R.S. 47:1625 provides for the Board to render judgment on the Taxpayer's refund appeal. As recognized in *Clark v. State*, "the Claims Against the State procedure does not permit the Board to render a "judgment" on a claim brought pursuant to its provisions, but only authorizes it to either "approve" or "reject" such a claim, which is then submitted to the legislature for payment." 873 So.2d 32, 35 (La. App. 1st Cir. 2004). The Board agrees that the logical construction of R.S. 47:1621(F) allows taxpayer appeals to the Board under R.S. 47:1625.³

For the foregoing reasons the Board rules that it has subject matter jurisdiction, and that Respondents' Exception of Lack of Subject Matter Jurisdiction is overruled.

Exception of Vagueness

The second of Respondents' exceptions that the Board will address is their Exception of Vagueness. That exception argues that the Respondents allege are improperly vague. The first of the Respondents' allegations of vagueness is that the Taxpayers First Amended and Supplemental Petition on Refund Denial contain paragraphs which duplicate the numbers in the Taxpayer's Original Petition on Refund Denial. The second complaint of the Respondents is that the Taxpayer's First Amended and Supplemental Petition of Refund Denial mistakenly refers to paragraph 36 when it clearly meant paragraph 38 of its Original Petition on Refund Denial.

The Board finds that the Taxpayer's Original Petition on Refund Denial, its First Amended and Supplemental Petition of Refund Denial, and its Second Amended and

³ Our Courts have recognized that R.S. 47:1481 "was intended to give the Board of Tax Appeals the authority to grant claims for taxes erroneously paid to the state, when principles of justice and equity so require, even though a refund might not otherwise be permitted by law." *Sperry Rand Corp. v. Collector of Revenue*, 376 So.2d 505, 507 (La. App. 1 Cir. 1979). Therefore, the Legislature would not need to write an exception into §1621(F) to continue to allow "claims against the state," since they would not have been restricted by that law anyway. Respondents' construction would render the last sentence of §1621(F) meaningless since §1481 claims would not have been restricted by the remainder of §1621.

Supplemental Petition on Refund Denial are not so vague or ambiguous as to require the Board to order the Taxpayer to amend its petitions as to allowed by La. C.C.P art. 933. Therefore the Respondents' Exception of vagueness is overruled

Exception of No Cause of Action

The third of Respondents' exceptions is their Exception of No Cause of Action for Refund pursuant to La. R.S. 47:1621. The argument of the Respondents is that R.S. 47:1621(F) does not authorize this Taxpayer to receive a refund because of the provisions of this subsection. This is the same argument that Respondents asserted under their exception of lack of subject matter jurisdiction discussed hereinabove. The exception is overruled for the same reasons.

Exception of No Right of Action

The fourth of Respondents' exceptions is the Exception of No Right of Action with Respect to Refund Claim or, alternatively, Motion to Strike Refund Claim. This exception, like those discussed above, is based on the Respondents' contention that the Taxpayer cannot receive a refund due to the provisions of R.S. 47:1621(F). The Board rejects the Respondents' arguments for the same reasons stated above, and this exception is also overruled.

Attorney General's Exceptions

The Board will next consider the exceptions filed solely by the Attorney General on behalf of the State of Louisiana. These are Exceptions of: Nonjoinder of a Party; Insufficiency of Service of the Petition; and Prescription (with Respect to the Claim Against the State for the 2008 Franchise Tax Year).

Those exceptions are all based on the State's assertions that the State of Louisiana must be made a party to a claim made by a taxpayer under R.S. 47:1481, which section pertains to claims against the State for money erroneously paid into the State Treasury.

The Board's jurisdiction over claims against the state is provided for in R.S. 47:1407, which provides in pertinent part that: "[t]he Jurisdiction of the board shall extend to... All matters relating to claims against the state, provided in R.S.47:1481 through 47:1486."

La. R.S. 47:1481 provides in part:

"Any person who has a claim against the State of Louisiana for money erroneously paid into State Treasury...may present such claim to the board of tax appeals...The board shall duly examine into the justice, merits and correctness of each such claim presented to it, and shall officially pass thereon."

La. R.S. 47:1482 provides in part:

“The board is authorized to make such examination and investigation as it may deem necessary to determine the correctness of any claim presented...The board is further authorized to call on any department or official of the state government...to make available to the board any and all information, documents, receipts and papers that will aid it in discovering the correctness and justice of any demand or claim that might be presented to it against the State of Louisiana.”

The foregoing statutes show that any proceeding before the Board pursuant to §1481 is not an adversarial proceeding. The Board is charged by statute to hear any claim presented, and to make a determination as to the correctness and justice of the claim. A “claim against the state” is a unique procedure: there is no right to judicial review from the Board’s decision, and the award is not paid unless the Legislature appropriates funds for the claim. *See*, La. R.S. 47:1484; 1486.

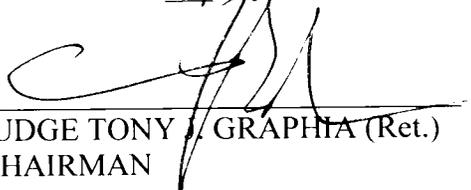
All of the Taxpayer’s petitions have been served on the Secretary, who is responsible for defending its principal demand--the refund appeal. The Attorney General, through the Secretary’s attorneys, who have been appointed to also act on his behalf, complains that he was not separately served with the initial petitions (which pled a §1481 claim in the alternative).

Although the Board’s practice is generally to have service on the Attorney General in claims filed under R.S. 47:1481, the Attorney General is not an indispensable party in this non-adversarial “claim,” and he is not required by law to participate in the Board’s deliberation of the correctness and justice of any claim presented. Pursuant to the provisions of R.S. 47:1482, the Board has the authority to call on the Secretary, the Attorney General, and/or any other state official for information or assistance in discovering the correctness and justice of demands and claims presented to it under R.S. 47:1481 *et seq.*

The exception of prescription contends that earliest §1481 claim is prescribed due to these alleged defects in service.

For the foregoing reasons, all of the exceptions of the Attorney General on behalf of the State of Louisiana are overruled.

JUDGMENT RENDERED in Baton Rouge, Louisiana this 19 day of June, 2013.


JUDGE TONY J. GRAPHIA (Ret.)
CHAIRMAN