

STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL DIVISION

GILMER COOLING AND HEATING AND APPLIANCE
PETITIONER

VERSUS

No. L00806

LAFOURCHE PARISH SCHOOL BOARD
SALES & USE TAX DEPARTMENT
RESPONDENT

JUDGMENT WITH WRITTEN REASONS

On January 9, 2020, this matter came before the Local Division (the “Board”) for a hearing on the Merits, with Local Tax Judge Cade R. Cole presiding. Present before the Board were Steven McCann, accountant and representative for Gilmer Cooling and Heating and Appliance (“Taxpayer”), and Patrick M. Amedee, attorney for Lafourche Parish School Board Sales & Use Tax Department (“Collector”). After the hearing, the Board took the matter under advisement. The Board now renders Judgment for the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be rendered in favor of the Collector and against the Taxpayer, that the Assessment be upheld, and that the Taxpayer’s Petition be and is hereby DISMISSED WITH PREJUDICE.

JUDGMENT RENDERED AND SIGNED at Baton Rouge,
Louisiana, this 11 day of February, 2021.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

**STATE OF LOUISIANA
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WRITTEN REASONS FOR JUDGMENT

On January 9, 2020, this matter came before the Local Division (the “Board”) for a hearing on the Merits, with Local Tax Judge Cade R. Cole presiding. Present before the Board were Steven McCann, accountant and representative for Gilmer Cooling and Heating and Appliance (“Taxpayer”), and Patrick M. Amedee, attorney for Lafourche Parish School Board Sales & Use Tax Department (“Collector”). After the hearing, the Board took the matter under advisement. The Board now issues the attached Judgment for the following written reasons.

Taxpayer appeals from a Notice of Assessment (“Assessment”) of local sales and/or use tax in the amount of \$4,503.37, penalties in the amount of \$1,091.59, and interest in the amount of \$1,129.62 for a total assessed amount of \$6,724.58 for the period January 1, 2015, through December 31, 2018 (“Tax Periods”). The penalties and interest in the Assessment are calculated to July 29, 2019.

At the hearing on the merits, Taxpayer testified that he did not know how the Collector had calculated the amount assessed. The

Collector sought to answer this question with testimony from Ashley McCollough, the sales tax auditor who performed the audit of Taxpayer's sales tax records. Ms. McCullough reviewed invoices from Taxpayer for the years 2015 and 2016. Taxpayer was unable to provide Ms. McCullough with invoices for 2017 and 2018. Ms. McCullough determined that there was a discrepancy between the taxes that the Taxpayer should have collected based on the locations of the Taxpayer's points of sale and the taxes that the Taxpayer actually collected. This discrepancy led to a deficiency and, ultimately, to the Assessment.

The Collector provided the Board with an Assessment Detail to show Ms. McCullough's calculations. The Assessment detail does not show the amount of tax that the Taxpayer remitted to the Collector. Without that information, the Board cannot determine for itself whether Taxpayer remitted too little or too much tax. The only relevant evidence in this respect is Ms. McCullough's testimony that her calculations led her to find a deficiency of roughly \$100 per month for the Tax Periods. Taxpayer's representative stated that he did not contest Ms. McCullough's calculations. Accordingly, the Board finds Ms. McCullough's determination of tax liability to be undisputed.

In due course, the Collector proceeded with notice and assessment to collect tax, penalty, and interest found to be due in the audit. Taxpayer testified that he could not always easily receive mail during the process of notice and assessment because he was in the midst of a divorce and his mailing address was that of his former home. Taxpayer did not take steps to update his address with the Collector. More importantly, the

Taxpayer stated that he was not questioning the Collector's compliance with the statutes governing notice and assessment. Accordingly, the Board finds that the Assessment is valid in form and was issued in compliance with the law.

The merits hearing in this matter was the Taxpayer's opportunity to challenge the correctness of the Assessment. The Taxpayer did not do so. Instead, the Taxpayer argued that Ms. McCullough should have spoken to Taxpayer's accountant or come to his office to review Taxpayer's books and records. This argument is not relevant to the substantial question of whether the Assessment is correct and whether the tax, penalty, and interest shown thereon are due. The Taxpayer bears the burden of producing records requested by the Collector in order to fulfill its statutory duty of determining the correct amount of tax due. Accordingly, the Assessment must be upheld and the Taxpayer's Petition must be dismissed.

Baton Rouge, Louisiana, this 11th day of February, 2021.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE