

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**JAZZ CASINO COMPANY, LLC
PETITIONER**

VERSUS

DOCKET NO. 6372

**DEPARTMENT OF REVENUE,
STATE OF LOUISIANA
RESPONDENT**

**JUDGMENT ON THE
MOTION TO ANNUL JUDGMENT
FILED BY THE SECRETARY OF THE DEPARTMENT OF REVENUE**

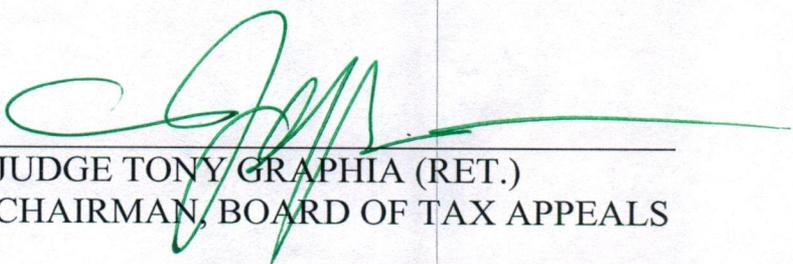
A hearing on the Motion to Annul Judgment filed by the Secretary, Department of Revenue, State of Louisiana (Secretary) was held before the Board on January 14, 2016 with Judge Tony Graphia (Ret.), Chairman, presiding and Vice-Chairman Cade R. Cole and Board Member Kernan A. Hand present, and no member absent. Present before the Board were: Jay Adams, attorney for Jazz Casino Company, LLC (Taxpayer), and Miranda Scroggins, attorney for the Secretary.

Considering the law and evidence being in favor thereof, as unanimously agreed by the Board in open session on this date, and for the written reasons assigned on this date:

IT IS ORDERED, ADJUDGED, AND DECREED that the Secretary's Motion to Annul Judgment BE AND IS HEREBY DENIED.

Baton Rouge, Louisiana on this 14th day of January, 2016.

FOR THE BOARD:



JUDGE TONY GRAPHIA (RET.)
CHAIRMAN, BOARD OF TAX APPEALS

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**ADDITIONAL WRITTEN REASONS
FOR JUDGMENT DENYING THE
SECRETARY'S MOTION TO ANNUL JUDGMENT**

A hearing on the Motion to Annul Judgment filed by the Secretary, Department of Revenue, State of Louisiana (Secretary) was held before the Board on January 14, 2016 with Judge Tony Graphia (Ret.), Chairman, presiding and Vice-Chairman Cade R. Cole and Board Member Kernan A. Hand present, and no member absent. Present before the Board were: Jay Adams, attorney for Jazz Casino Company, LLC (Taxpayer), and Miranda Scroggins, attorney for the Secretary.

Background and Facts

The present litigation has been ongoing for more than a decade. The Secretary the Taxpayer's August 19, 2004 refund request in June of 2006. The Taxpayer timely appealed to this Board in August of 2006. The Board originally denied the taxpayer's appeal of its refund denial, but the Taxpayer appealed the Board's original ruling to the 19th Judicial District Court. The trial court remanded the matter to the Board with instruction to consider two issues.

On remand, The Board rendered a Judgment on December 15, 2011 in the Taxpayer's favor on the issue of whether Taxpayer was a non-transient, or 'permanent' guest under the applicable statutory definition. The Secretary failed to

timely appeal the Board's judgment within the 30 days required by La. R.S. 47:1434.

The 19th Judicial District Court and the First Circuit Court of Appeal both sustained exceptions of prescription finding the Secretary's purported appeal from this judgment to have been prescribed. The First Circuit specifically held that:

The Department's February 9, 2012 request for review was not filed within "thirty calendar days" of the BTA's December 15, 2011 decision, as required by Section 1434, it was not timely filed, **and that portion of the BTA's decision became *res judicata*.**

Jazz Casino Co., L.L.C. v. Bridges, 2012-1237, p. 5 (La. App. 1 Cir. 8/9/13), 2013 WL 4039892.

At the conclusion of the appeal of the Taxpayer on another issue, the 19th Judicial District Court issued a Judgment on April 24, 2014 remanding the case to this Board for a "determination of the amount of hotel occupancy tax overpayment JCC made during the relevant taxable periods and for an Order ordering the Department to refund JCC those amounts, together with applicable statutory interest."

The parties entered into a formal Joint Stipulation, and filed it into the record of these proceedings on September 10, 2014. The parties then filed a Joint Motion for Leave to Supplement and Amend the Record to provide a new Joint Stipulation with exact dollar amounts.

The Board rendered a Judgment on October 8, 2014 entirely consistent with the Joint Stipulation of the parties. This Judgment was not appealed by the Secretary and has long been final pursuant to La. R.S. 47:1438.

The Secretary was therefore required by law to issue the refund from the current collections of those same taxes, within the relevant time period specified in R.S. 47:1621(D).

On September 24, 2015, the 19th Judicial District Court issued a writ of mandamus directing the Secretary to pay the refund stipulated to in this case. The Secretary then filed the present motion to annul the Board's October 8, 2014 Judgment. The Secretary alleges that the Board lacked subject matter jurisdiction over a portion of the refund claim related to the below described occupancy taxes.

Law

The Secretary has no legal basis to seek to annul a judgment that it consented to. Furthermore, the underlying judgment is final under the law and these attacks are wholly untimely. The First Circuit has already instructed the Secretary in this very case that the failure to timely appeal a judgment of the Board provides the effect of *res judicata* under the finality of R.S. 47:1438.

The Secretary is also wrong to allege that Uniform Local Sales Tax Code governs these applicable taxes.

The Tourism Promotion District ("LTPD") tax is not a local tax, it is in all practical respects a component part of the state sales tax (its .03% together with the remaining 3.97% equals the statewide 4% levy). It is levied by the TPD and remitted to the treasury to be spent by the Legislature as part of the state budget.¹

Our courts have long recognized that the state Collector of Revenue (the Secretary) is the proper party to collect tax for the Louisiana Stadium and Exposition District ("LSED"). *Hilton Hotels Corp. v. Jefferson Parish* (La. 5/14/1971) 247 So.2d 843, 843. As the Supreme Court recognized in *Hilton*, the LSED is a special tax levied by the LSED as a political subdivision of the State of Louisiana in lieu of a portion of the normal state occupancy tax. It is wholly

¹ La. Const. art. II, Sec. 2(A)(3)(b) recognizes that a general session shall not involve the levy of a state tax including a tax "by any statewide political subdivision whose boundaries are coterminous with the state." Local taxes may be legislated about in any year, but the TPD is squarely in the same boat as a state tax.

distinct from the occupancy taxes levied by the City of New Orleans or the Parish of Jefferson.

Similarly, the NOEHA tax is levied pursuant to Act 305 of 1978 which specifically provides that the agency will contract with the Secretary concerning the collection of the tax, “which tax may be collected in the same manner and subject to the same conditions” as the taxes already collected by the Secretary.

The Secretary is the collector of the taxes at dispute in this case, the legal matters regarding this case have been resolved, a final Judgment has been rendered, and that Judgment was not appealed.

The Board of Tax Appeals has exercised primary jurisdiction continuously since 1937 over “all matters relating to appeals from... the determination of overpayments” (ie. the Secretary’s refund denials). *See e.g.* R.S. 47:1407(1). The Supreme Court has regularly recognized that “jurisdiction to resolve tax related disputes is constitutionally and statutorily granted to the Board which is authorized to decide disputes and render judgments.” *St. Martin v. State*, 09-035, p. 8 (La. 12/1/09) 25 So.3d 736, 741.

There is simply no merit to the Secretary’s argument that the Board lacks subject matter jurisdiction over appeals from the Secretary’s decision to deny refunds of LTPD, LSED, or NOEHA tax.

Considering the finality of the Judgment and the lack of merit in the Secretary’s motion, the Board finds that the motion should be denied.

Thus done and signed in open session at Baton Rouge, Louisiana on this 14th day of January, 2016.

FOR THE BOARD:



VICE-CHAIRMAN CADE R. COLE
LOUISIANA BOARD OF TAX APPEALS