

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**LAFAYETTE GENERAL MEDICAL
CENTER, INC.**

Petitioner

VERSUS

DOCKET NO. 10437D

**KIMBERLY ROBINSON,
SECRETARY, DEPARTMENT OF REVENUE,
STATE OF LOUISIANA**

Respondent

**WRITTEN REASONS FOR JUDGMENT
ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

A hearing was scheduled for May 10, 2018 on the Motion for Summary Judgment of Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (the “Secretary”) and the Motion for Partial Summary Judgment of Lafayette General Medical Center, Inc. (the “Taxpayer”), to be heard before Judge Tony Graphia (Ret.), Chairman, and Board Members Cade R. Cole and Francis “Jay” Lobrano. Attorney for the Taxpayer, Andre B. Burvant, and attorney for the Secretary, Russell J. Stutes, Jr., jointly requested that the motions be decided on the briefs. The Board agreed and now unanimously renders its Judgment for the following written reasons:

This petition is one to recover the sum of \$145,719.00 paid under protest for sales tax on the purchase of medical devices for the period of November 2016. Taxpayer is a Louisiana non-profit corporation operating a group of hospitals in Lafayette, Louisiana. Taxpayer claims that it is licensed by the Louisiana Department of Health and Hospitals and is accredited by The Joint Commission. Taxpayer further claims that its physicians and appropriately qualified employees prescribe medical devices in the treatment of patients at Taxpayer’s hospitals. Taxpayer paid the disputed amount under protest on December 20, 2016, providing

the required notice to the Secretary, and then timely filed this proceeding pursuant to La. R.S. 47:1576 on January 18, 2017.

The Taxpayer's claims are identical to those involving the same counsel that were heard and decided by the Board in *Willis-Knighton Medical Center v. Kimberly L. Robinson in her capacity as Secretary Department of Revenue State of Louisiana*, BTA Docket No. 9734D, (La. Bd. Tax App. 11/8/2017), 2017 WL 8315249. This case was heard and decided on the briefs and a stipulated record since it involved the same legal issue and evidence. For the reasons expressed below, the Board's conclusion and disposition is the same.¹

The issue in this proceeding is the proper interpretation of the provisions of La. Const. Art. VII Section 2.2(B)(3) which provide, in pertinent part:

Effective July 1, 2003, the sales and use tax imposed by the state of Louisiana or by a political subdivision . . . shall not apply to sales or purchases of . . . [p]rescription drugs.

It is the contention of the Taxpayer that the foregoing provision of the Constitution should be treated as if "[p]rescription drugs" meant both pharmaceuticals and medical devices prescribed for use in the treatment of medical disease ("Medical Devices"). Our Constitution does not define "[p]rescription drugs." However, La. R.S. 47:305(D)(1)(j) exempts prescription drugs from Louisiana sales tax, and the statutory definition of drugs had historically included Medical Devices.

The Louisiana Legislature in the 2016 1st Extraordinary Session passed Act 25 and Act 26, both of which went into effect April 1, 2016, and currently expire on June 30, 2018. The Acts suspended almost all exemptions and exclusions from two pennies of Louisiana sales and use tax, and added an additional penny which was imposed with a similarly reduced set of exemptions and exclusions. The only

¹ The *Willis-Knighton* case was resolved following the Judgment of the Board; it was not appealed.

exemptions or exclusions which were not suspended were those explicitly retained by a specific list in the Acts (the “Retained Exemptions List”). The statutory exemptions listed in La. R.S. 47:305(D)(1)(j) and (s) were not included in the Retained Exemptions List and were therefore suspended by the Legislature. However, in recognition of the constraints of La. Const. Art. VII, Sec. 2.2, the Legislature included on the Retained Exemptions List, and thereby excluded from temporary suspension, the exemption for “[p]rescription drugs, as provided in Article VII, Sec. 2.2 of the Constitution of Louisiana.” La. R.S. 47:302(X)(5), 321(L)(5), 321.1(F)(5), 331(S)(5). The Legislature’s Act clearly comports with the constitutional provision since whatever is exempted by the Constitution is still exempted.

Taxpayer argues that the term “[p]rescription drugs” in the constitutional exemption should be read to also include Medical Devices. The Taxpayer’s argument is primarily based on La. R.S. 47:301(20) which states in pertinent part:

301. Definitions

As used in this Chapter the following words, terms, and phrases have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

. . .

(20) “Drugs” includes all pharmaceuticals and medical devices which are prescribed for use in the treatment of any medical disease

The Secretary relies on the common or ordinary meaning of the phrase “[p]rescription drugs.” In interpreting the income tax provisions of our Constitution, the Supreme Court has directed that:

The words and terms expressed in the Constitution are to be interpreted by the courts with an understanding of the definitions which would have been given to those words or terms by the people

. . .

In interpreting the words of our Constitution, there is a presumption in favor of the natural and popular meanings in which words are usually understood by the people who adopt them.

City of New Orleans v. Scramuzza, 507 So. 2d 215, 218 (La. 1987) [emphasis supplied]. In interpreting the constitution meaning of the phrase “motor fuel” for the purposes of a prohibition on local taxation, the Supreme Court reiterated that:

In order to ascertain the ordinary, usual, and commonly understood meaning of a word not otherwise defined in a constitution, courts generally look first to the dictionary definition. . . .

...
[I]n accordance with the general principles of constitutional interpretation enunciated above, we do not believe that the voters of this state, when adopting the constitutional prohibition against political subdivisions levying taxes on motor fuel, understood "motor fuel" with reference to the technical definition provided by [a statute].

Ocean Energy, Inc. v. Plaquemines Parish Government, 2004-0066 (La. 7/6/04), 880 So.2d 1, 8, 13-14.

The definitions found in Section 301 state those definitions shall apply to the terms “as used in this chapter.” The constitutional provision is obviously not found in Chapter 2 of Title 47. The Legislature clearly knew how to import statutory definitions into this particular constitutional section. In La. Const. Art. VII, Sec. 2.2(B)(1), the Legislature and the people directed that no sales tax should be applied to “Food for home consumption, as defined in R.S. 47:305(D)(1)(n) through (r) on January 1, 2003.” However, in Paragraph (3) of that same Subsection, the Legislature and the people did not import any statutory definition, but merely directed that “[p]rescription drugs” be excluded from state sales and use tax. The Board is required to follow the Supreme Court’s directive that “[u]nequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning.” *Ocean Energy*, 04-0066, p.7, 880 So. 2d at 6-7.

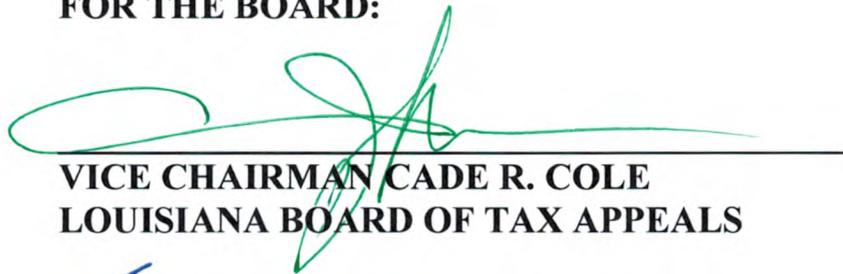
The Board finds that the legislative history also fails to support the Taxpayer’s argument that the Legislature and the voters intended to import a technical meaning into the Constitution. The underlying statutory exemptions are broader in scope than

the constitutional exemption. In 2016, the Legislature decided to suspend these two statutory exemptions, but in Act 426 of 2017 the Legislature reversed course and reinstated the statutory medical device exemption by adding it to the Retained Exemptions List effective July 1, 2017. When the Legislature changes the wording of a statute, it is presumed to have intended a change in the law. There would have been no need for Act 426 under the Taxpayer's reading of the 2016 enactments.

The Board finds that the phrase Prescription drugs is clear and unambiguous. Considering the definitions offered and the common and ordinary understanding of the meaning of "Prescription drugs," the Board finds that there is no basis for including Medical Devices within the scope of the constitutional exemption. The Taxpayer's Motion for Partial Summary Judgment requesting that the Board rule that the constitutional provision under consideration includes Medical Devices and to order the return of the \$145,719.00 it paid under protest, on that basis, is denied. The Secretary's Motion for Summary Judgment is granted on the same issue.

Baton Rouge, Louisiana this 11 day of July 2018.

FOR THE BOARD:



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

