

2019 WL 7424714 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

EDWARD J. MASSENBERG, JR., PETITIONER

v.

SECRETARY, DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket No. 11276C

November 7, 2019

JUDGMENT

*1 This case came before the Board for hearing on September 11, 2019 on the merits of the Petition of Edward Massenberg, Jr. (the “Taxpayer”) with Judge Tony Graphia (Ret.), presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Edward J. Massenberg, Jr., appearing *pro se* on his own behalf with the assistance of his son, Edward Massenberg, III, by agreement of the parties, and Debra Morris, attorney for the Secretary, Department of Revenue, State of Louisiana (the “Department”). After the hearing, the matter was taken under advisement. The Board now renders Judgment by majority vote in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that the Taxpayer's prayer for relief BE AND IS HEREBY DENIED and that Judgment be rendered in favor of the Department and against the Taxpayer dismissing the Taxpayer's petition.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 7th day of November, 2019.

WRITTEN REASONS FOR JUDGMENT

This case came before the Board for hearing on September 11, 2019 on the merits of the Petition of Edward Massenberg, Jr. (the “Taxpayer”) with Judge Tony Graphia (Ret.), presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Edward J. Massenberg, Jr., appearing *pro se* on his own behalf with the assistance of his son, Edward Massenberg, III, and Debra Morris, attorney for the Secretary, Department of Revenue, State of Louisiana (the “Department”). After the hearing, the matter was taken under advisement. The Board now renders the Judgment attached herewith by majority vote in accordance with the following written reasons.

The Taxpayer appeals from a Notice entitled *Denial of Solar Claim* dated February 21, 2018 (the “Refund Denial”). The Department denied the Taxpayer's claim for a Wind and Solar Credit in the amount of \$12,500.00 for the 2015 individual income tax year. The Refund Denial states that under [La. R.S. 47:6030](#), the Taxpayer was required to submit his claim electronically by August 31, 2017. The reason given for the denial is that the Taxpayer failed to submit a complete claim in electronic form by this deadline.

The Taxpayer is 87 years old. He and his wife are retired and formerly taught at Southern University. The Taxpayer stated that he has never owned a personal computer and has always filed his tax returns on paper. The Taxpayer and his wife live on a fixed income from the Teachers' Retirement System of Louisiana. The Taxpayer and his wife were diligent taxpayers of the State of Louisiana, never failing in timely resolving their obligations to the state.

At the hearing, the Taxpayer introduced an invoice showing that he paid \$25,000.00 for the purchase and installation of a solar power system at his home. At the time, it was widely advertised to our citizens that the state subsidized the purchase of these systems. This was used in the extensive marketing of these systems to our citizens, many of whom relied upon the credits in making the decision to purchase the system. The Taxpayer also introduced his 2015 individual income tax return. A comparison of the return and the invoice reveals that the Taxpayer and his wife paid nearly half of their combined retirement income for the *entire* 2015 year for the solar power system installed at their home.

*2 The Taxpayer paid a tax preparer to file his 2015 return, which included his claim for the Wind and Solar Credit. The preparer filed the return on paper on December 31, 2015. The preparer submitted the Taxpayer's claim for the credit on 2014 Form R-1086. Form R-1086 is provided by the Department.

In Act 131 of the 2015 regular legislative session, the legislature amended [La. R.S. 47:6030](#) to add the requirement that Form R-1086 contain certain statutorily prescribed sworn statements by the dealer and installer of a solar power system. The 2015 Form R-1086 contained a page for submitting these statements, but the 2014 Form R-1086 did not have the same statements. The preparer used the 2014 form, and the Taxpayer's application therefore did not have the newly required addendum under Act 131. Because of this defect, the Department rejected the Taxpayer's entire claim. Although the retroactive changes made by Act 131 were ruled unconstitutional in the 19th Judicial District Court, the Louisiana Supreme Court vacated that ruling and held that the subsequent adoption of Act 413 of 2017 mooted that question [Ulrich v. Robinson, 2018-534 \(La. 3/26/19\)](#) — So.3d —, [2019 WL 1395316](#).¹ The Supreme Court held that since taxpayers who were denied pursuant to Act 131 was given an opportunity to be paid under Act 413 that there was no longer a live controversy concerning the prior Act.

However, the 2017 Act explicitly required electronic filing by a date that occurred a few months after the relief act was adopted. [La. R.S. 47:6030\(B\)\(1\)\(b\)\(iv\)](#). The Department avers that the failure to file electronically constituted another basis for denying this taxpayer's credit.

We question whether the legislature considered the electronic filing requirement's impact on an 87-year-old taxpayer who does not own a computer and who has filed paper returns his entire life. Could such a taxpayer be reasonably expected to master the voluminous technical requirements enacted by the legislature in seeking this credit? Many have had difficulty dissecting the mangled legislative history of [La. R.S. 47:6030](#).

The Board finds an injustice foisted upon this taxpayer by the increasingly complex continuous re-writing of this statute. However, the Board is constrained to follow the law as given to us by the legislature. As amended by Act 131, [La. R.S. 47:6030\(D\)\(3\)\(d\)](#) requires the Taxpayer to submit a Form R-1086, "which shall contain" the sworn statements of the dealer and installer of the solar power system. The legislature explicitly placed this requirement into the legal requirements to claim this credit. The Form R-1086 submitted by the Taxpayer, though provided by the Department of Revenue (for the prior year), did not meet the requirements of Act 131. The Supreme Court has held that questions concerning the constitutionality of that law are moot, so the citizens of this state can only rely upon the good graces of a future legislature to provide any additional relief.

*3 The Taxpayer indisputably paid for the solar power system installed at his home, a system it installed because it was promised this credit. Were it not for Act 131, and the electronic filing requirement of Act 413 the Taxpayer would be able to claim the credit for that system. We assume it was a wholly unintended consequence that this complex regime results in an elderly couple losing the credit promised and relied upon when they decided to purchase the solar system. However, we are compelled to follow the text of the law as written, and that result is what that law requires in this case. Accordingly, the Refund Denial must be upheld.

Baton Rouge, Louisiana this 7th day of November, 2019.

For the Board:

Cade R. Cole
Vice Chairman

WRITTEN REASONS FOR DISSENT FROM JUDGMENT

Graphia, J. dissenting

The legislature should not have required electronic filing in this state. I call upon it to remove this requirement and provide relief to similarly situated taxpayers. Therefore, I respectfully dissent.

Judge Tony Graphia (Ret.)
Chairman

Footnotes

- 1 *Id. at p. 7, 2019 WL 1395316 at p. 13*, “For the reasons set forth above, we find the district court erred in overruling the Department of Revenue's peremptory exception of mootness. Because the 2017 amendment to *La. Rev. Stat. 47:6030* by Act 413 cured the alleged constitutional issue created by the 2015 amendment to the solar tax credit statute, the instant controversy is moot. In the absence of an applicable exception to the mootness doctrine, this case no longer presents a justiciable controversy. Accordingly, the district court's judgment overruling the exception of mootness and declaring Act 131 unconstitutional is reversed.”

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