

STATE OF LOUISIANA

JOHN AND LINDA MATESSINO
Petitioner

VERSUS

BTA DOCKET NO. 8939

TIM BARFIELD, SECRETARY,
DEPARTMENT OF
REVENUE, STATE OF LOUISIANA
Respondent

JUDGMENT
WITH ADDITIONAL WRITTEN REASONS

A hearing was held on June 17, 2015, on the Secretary, Department of Revenue's ("Secretary") exception of prescription with Judge Tony Graphia (ret.), Chairman; Cade R. Cole and Kernan A. Hand, Jr., present and no board members absent. Present before the Board were: Robert C. Barrett Jr. attorney for John and Linda Matessino ("Taxpayers"), and Aaron Long, attorney for the Secretary, Department of Revenue ("Secretary"). After the hearing, the matter was taken under advisement, and this Judgment is now unanimously rendered.

The Taxpayers have appealed the Secretary's assessment of Louisiana income tax in the amount of \$2,869.00 plus interest and penalties for 2007.

The Secretary has filed an exception of prescription alleging that the assessment assessing the taxes was dated April 8, 2014, and the Taxpayers' petition objecting to the assessment was not filed with the Board until June 10, 2014, 63 days later and outside the sixty day appeal period allowed by La. R.S. 47:1625.¹

¹ The taxpayer's post-trial memorandum claims filing on June 9, 2014 based on the mailing date. At the time of this filing the Board followed the standard rule of a trial court, a filing is made when actually received or when properly fax filed. In this case, that means this matter was filed on Tuesday, June 10, 2015 when it should have been filed by Monday, June 9, 2015 (since the 60th day fell on Saturday). The Board only adopted a 'mail-box' rule similar to that urged by the taxpayer on 4/20/15. La. State Register Vol. 41, No. 4, p. 584, L.A.C. 69:323.

The Taxpayers complain that the time that the Secretary had to make the assessment had already prescribed pursuant to La. R.S. 47:1579 and La. Const. Art. 7, Sect. 16.

The question for the Board to decide is whether the Taxpayers are barred from pleading prescription of the underlying tax obligation pursuant to the Constitution because its appeal was not filed within the sixty-day period provided for in La. R.S. 47:1565.

Section 1565 states in relevant part:

“A. Having assessed the amount determined to be due, the secretary shall send a notice by certified mail to the taxpayer...This notice shall inform the taxpayer of the assessment and that he has sixty calendar days from the notice to either pay the amount of the assessment or to appeal to the Board of Tax Appeals for a redetermination of the assessment...

B. If the taxpayer has not filed an appeal with the Board of Tax Appeals within the sixty day period, the assessment shall be final and collectable by distraint...”.

The Taxpayers in this matter did not file an appeal with the Board within the allowed sixty-day period allowed by the statute, and the assessment became final. After the expiration of the sixty-day period, the Taxpayers were precluded from asserting any defense to the final assessment before the Board or in any court.

As the First Circuit recently recognized in *Shields & Shields, APLC v.*

Department of Revenue:

[T]he legislature has explicitly provided that after the expiration of the sixty-day time period under Section 47:1565(B), the taxpayer's relief relative to assessment errors lies solely within the discretion of the Department secretary, and the courts have no jurisdiction to review the secretary's decisions on matters “relating thereto.” *See* La. R.S. 47:1565(C)(2). To avoid being subject to the sole discretion of the secretary relative to an assessment error, it is the taxpayer's obligation to follow the statutory requirements for either appealing the assessment or paying the assessment under protest, then filing suit. In this case, the taxpayer, did neither. Both the trial court and

this court lack subject matter jurisdiction to entertain [taxpayers'] causes of action arising *after* the assessments became final.

2014-0693, p. 6 (La. App. 1 Cir. 3/4/15), 2015 WL 965746.

As the First Circuit recognized in *Shields*, a direct attack on a final assessment after the 60 day appeal period is prescribed and an exception of prescription should be granted. *Id.* at *fn.* 5. Furthermore, any further attack on collection of a final assessment before either this Board or the Courts could be met with an exception of lack of subject matter jurisdiction. *Id.*²

For the foregoing reasons:

IT IS, ORDERED, ADJUDGED AND DECREED that the Secretary's Exception of Prescription IS SUSTAINED, and the Taxpayers' petition is HEREBY DISMISSED.

Signed at Baton Rouge, Louisiana this 13th day of August, 2015.

FOR THE BOARD:



JUDGE TONY GRAPHIA (RET.)
CHAIRMAN

² Although the Uniform Local Sales Tax Code provides a special relief to protect a taxpayers' right to assert constitutional prescription, the Legislature has declined to add a similar provision to the state's procedural Chapter. *Contrast* La. R.S. 47:337.28.1(C) with Chapter 18 of Title 47 of the Louisiana Revised Statutes of 1950, as amended. In this case, the taxpayer's right to review of the assessment expired when it failed to file a timely appeal and the assessment became a final judgment.

While we are certainly sympathetic to the taxpayer's plight, the Legislature has affirmatively acted to preclude any external review of a final assessment. Although this may be an appropriate case for application of the mercy allowed by La. R.S. 47:1565(C)(2), the Board's role under that provision is strictly limited to approving or disapproving any reduction made by the Secretary; this Board and the Courts are specifically denied any jurisdiction related to the Secretary's vast discretion over whether or not an error was made in a final assessment that justifies relief under that part.