

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

HELENA MORVANT,

Petitioner

VS.

DOCKET NO. 11542B

SECRETARY, DEPARTMENT OF REVENUE

Respondent

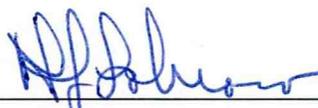
JUDGMENT AND REASONS

On July 12, 2023, this matter came before the Board for hearing on the Exception of Prescription filed by the Secretary, Department of Revenue (the "Department"), and for hearing on the merits. Presiding at the hearing were Francis J. "Jay" Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Miranda Scroggins, attorney for the Department, and Cindy L. Roth, CPA for Helena Morvant (the "Taxpayer"). At the conclusion of the hearing, the Board sustained the Exception of Prescription as to the 2016 Tax Year only and took the trial on the merits under advisement with respect to the 2014 and 2015 Tax Years. The Board now issues this Judgment on the 2014 and 2015 Tax years in accordance with the attached Reasons:

IT IS ORDERED, ADJUDGED, AND DECREED that there be Judgment in favor of the Department that the Petition be and is hereby DISMISSED.

**JUDGMENT RENDERED AND SIGNED at Baton Rouge, Louisiana,
this 17th day of August, 2023.**

FOR THE BOARD:



**Francis J. "Jay" Lobrano, Chairman
Louisiana Board of Tax Appeals**

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

HELENA MORVANT,

Petitioner

VS.

DOCKET NO. 11542B

SECRETARY, DEPARTMENT OF REVENUE

Respondent

REASONS FOR JUDGMENT

On July 12, 2023, this matter came before the Board for hearing on the Exception of Prescription filed by the Secretary, Department of Revenue (the “Department”), and for hearing on the merits. Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Miranda Scroggins, attorney for the Department, and Cindy L. Roth, CPA for Helena Morvant (the “Taxpayer”). At the conclusion of the hearing, the Board sustained the Exception of Prescription as to the 2016 Tax Year only and took the trial on the merits under advisement with respect to the 2014 and 2015 Tax Years (the “Tax Years”). The Board now issues the foregoing Judgment on the 2014 and 2015 Tax Years for the following reasons.

The Taxpayer seeks redetermination of Assessments of Individual Income Tax (collectively the “Assessments”) for the Tax Years. The Taxpayer argues that the income for the Tax Years is from a “retirement system for retirees of the United States Government.” It is undisputed that this income was received from the Government of Guam Retirement Fund as a result of the Taxpayer’s husband’s employment by the government of Guam.

Discussion:

Considering that the pertinent facts are undisputed, the only issue before the Board is whether the Government of Guam Retirement Fund is a “retirement system

for retirees of the United States Government” within the meaning of La. R.S. 47:44.2.

La. R.S. 47:44.2 provides:

Any benefit received by an individual pursuant to the provisions of Chapter 7 of Title 42 of the United States Code (42 U.S.C. 301 et seq.), and any income received by an individual pursuant to a retirement system for retirees of the United States Government or pursuant to the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.) shall be exempt from the state income tax.

It is evident from the plain language of La. R.S. 47:44.2 that the statute provides an exemption from tax. Exemptions are to be strictly construed against the taxpayer claiming the exemption. *Mattingly v. Vial*, 190 So. 313 (La. 1939); see *Meyers v. Flournoy*, 25 So.2d 601 (La. 1946); *Ethyl Corp. v. Collector of Revenue*, 351 So.2d 1290, 1293 (La. App. 1 Cir. 1977), *writ denied*, 353 So.2d 1035 (La. 1978). Thus, any legal ambiguity in the statute will be construed against the Taxpayer.

Neither the statute, nor the Department’s related regulation define “retirement system for retirees of the United States Government.” See La. R.S. 47:44.2; LAC 61.I:1311. There are no decisions from Louisiana courts interpreting this language. Further, the Board has found no decisions from courts of other jurisdictions dealing with the question presented here. Absent any controlling authority, the Board will attempt to answer the question presented under federal law and the laws of Guam.

Under the Guam Organic Act of 1950, Guam is an unincorporated territory of the United States. 48 U.S.C. § 1421a. The Guam Organic Act effectively provides the constitution for the civil government of Guam. *Haeuser v. Dep’t of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996); *In re Guerrero*, 2021 WL 2787928, at *7 (Guam July 2, 2021). Because the government of Guam only has the powers conferred to it by congress, it has been held to be an “instrumentality” of the federal government. See *Guam v. Guerrero*, 290 F.3d 1210 (9th Cir. 2002); *Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285, 1286 (9th Cir. 1985). Federal law provides that the salaries of employees of the government of Guam are to be “paid by the government of Guam at rates prescribed by the laws of Guam.” 48 U.S.C. § 1421d.

The Guamanian legislature established the Government of Guam Retirement Fund. 4 G.C.A. § 8101, *et. seq.* Under Guamanian law the Government of Guam Retirement Fund is an agency of the government of Guam. *See Bautista v. Agustin*, 2015 WL 4633604, at *4 (Guam Aug. 4, 2015); 5 G.C.A. § 6102. This determination is supported by a reading of other laws of Guam covering the retirement of public employees. Those statutes distinguish employment by Guam from employment by the federal government. For example, 4 G.C.A. § provides:

Any employee who shall have been employed by the government of Guam for a period of ten (10) years or more and who is a member of the Fund, who is appointed for a position within the United States Government which requires his continued residence within Guam and who has not terminated his membership in the Fund may be allowed credit for such federal service, provided he does not become a member of the Civil Service Retirement System and provided further that he pays to the Fund during the years for which he claims credit as a federal employee the contributions which he would have paid had his employment been with the government of Guam, together with regular interest thereon from the date on which such contributions would have been made had such service not been with the Federal Government to the date of actual payment.

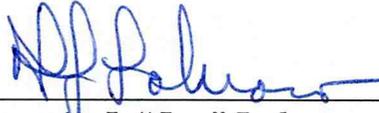
The same distinction between employment by Guam and employment by the United States is also made in the corresponding provision allowing credit for previous federal service. *See* 4 G.C.A. § 8110.1.

While Guam is an instrumentality of the federal government, considering the relevant statutes in light of each other and in their context, the Government of Guam Retirement Fund is a retirement system for retirees of the government of Guam, not for “retirees of the United States government.” Any ambiguity in La. R.S. 47:44.2 in this respect does not favor the Taxpayer.

For the foregoing reasons, the Board holds that the Taxpayer’s income from the Government of Guam Retirement Fund is not exempt under La. R.S. 47:44.2. The Department’s Assessment correctly imposes Louisiana income tax on that income. The Taxpayer has not put forth any other disagreement with the Assessment. Accordingly, the Board will uphold the Assessment and render Judgment in favor of the Department.

Baton Rouge, Louisiana, this 17th day of August, 2023.

FOR THE BOARD:



Francis J. "Jay" Lobrano, Chairman
Louisiana Board of Tax Appeals