

STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION

NUCOR STEEL LOUISIANA, LLC,
Petitioner

VERSUS

DOCKET NO. L00560

ST. JAMES PARISH SCHOOL BOARD, AND NESHELLE NOGESS,
IN HER CAPACITY AS TAX ADMINISTRATOR,
FOR THE ST. JAMES PARISH TAX AGENCY,
Respondent


JUDGMENT

On August 30, 2019, this matter came before the Local Division for hearing on the *Peremptory Exceptions of Prescription, Peremption and Res Judicata* filed by St. James Parish School Board, and Neshelle Nogess, in her Capacity as Tax Administrator, for the St. James Parish Tax Agency (the "Collector"), with Local Tax Judge Cade R. Cole presiding. Present at the hearing were Drew Talbot on behalf of the Collector and Jesse R. Adams on behalf of Nucor Steel Louisiana, LLC ("NUCOR"). After the hearing, the matter was taken under advisement. The Board now issues Judgment for the written reasons attached hereto.

IT IS ORDERED, ADJUDGED AND DECREED that the Collector's Exception of Prescription BE AND IS HEREBY SUSTAINED, that there be Judgment in favor of the Collector and against Petitioner NUCOR dismissing the Petition in its entirety, with prejudice.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 11 day of March, 2020.

FOR THE BOARD:


LOCAL TAX JUDGE CADE R. COLE

**STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION**

**NUCOR STEEL LOUISIANA, LLC,
Petitioner**

VERSUS

DOCKET NO. L00560

**ST. JAMES PARISH SCHOOL BOARD, AND NESHELLE NOGESS,
IN HER CAPACITY AS TAX ADMINISTRATOR,
FOR THE ST. JAMES PARISH TAX AGENCY,
Respondent**

WRITTEN REASONS FOR JUDGMENT

On August 30, 2019, this matter came before the Local Tax Division for hearing on the *Peremptory Exceptions of Prescription, Peremption and Res Judicata* filed by St. James Parish School Board, and Neshelle Nogess, in her Capacity as Tax Administrator, for the St. James Parish Tax Agency (the “Collector”), with Local Tax Judge Cade R. Cole presiding. Present at the hearing were Drew Talbot on behalf of the Collector and Jesse R. Adams on behalf of Nucor Steel Louisiana, LLC (“NUCOR”). After the hearing, the matter was taken under advisement. The Board now issues the attached Judgment for the following written reasons.

NUCOR appeals from the denial of its Sales Tax Refund Claim filed on January 27, 2016 (the “Refund Claim”). In this case, the Collector did not grant or deny the Refund Claim within one year of filing. In fact, the Collector did not actually deny the Refund Claim until February 23, 2018. The Collector now argues that NUCOR’s appeal is prescribed, preempted and barred by res judicata.

The Collector claims that it did not act on the Refund Claim by either granting or denying it within a year of filing. La. R.S. 47:337.81(A)(2) applies a special prescriptive period when a collector fails to act on a refund claim within one year from the date of filing. In that situation, the statute provides a one hundred and

eighty day window for appeal to this Board. According to the Collector, the date of constructive denial (one year of inaction from the date of filing) was January 27, 2017. The resulting one hundred and eighty day window closed on July 26, 2017. NUCOR filed this appeal well after that date, on May 24, 2018.

NUCOR's counter-argument is that there was no constructive denial because the Collector did act on the Refund Claim in ways other than granting or denying the claim. The Collector responded to the Refund Claim in a letter dated April 13, 2016 and requested additional information. Then, on September 14, 2016, the Collector issued another letter to NUCOR. The September 14, 2016 letter stated that review of the Refund Claim was in progress. The Collector further stated that it would review certain invoices for the Refund Claim as part of an ongoing audit. Later, on November 17, 2016, the Collector issued a third letter to NUCOR. The November 17, 2016 letter reiterated the update on the Refund Claim from the September 14, 2016 letter.

A series of e-mails introduced by NUCOR shows that the Collector continued to ask for additional information and toured NUCOR's facility on July 26, 2017. In an e-mail dated the next day, the Collector described the information from the tour as "essential" to the review of the Refund Claim. The Collector also included a paragraph in the Refund Denial issued in February 2018 describing NUCOR's right to appeal to this Board.

In connection with the audit, the Collector and NUCOR entered into six consecutive agreements to suspend prescription of taxes. The final effective date of the agreements was October 15, 2017. The agreements only deal with the prescriptive period for the initial filing of refund claims and for the assessment of taxes. NUCOR is not claiming that the agreements suspend the prescriptive period at issue in this case.

The Board must determine whether the failure to act described in La. R.S. 47:337.81(A)(2) means a failure to grant or deny a refund claim. The statute provides in relevant part:

No appeal may be filed before the expiration of one year from the date of filing such claim unless the collector renders a decision thereon within that time, nor after the expiration of ninety days from the date of mailing by certified or registered mail by the collector to the taxpayer of a notice of the disallowance of the part of the claim to which the appeal relates, nor after the expiration of one hundred eighty days from the end of the expiration of the one year in which the collector failed to act.

[emphasis added]. The Board applies clear and unambiguous law as written unless doing so would lead to absurd consequences. La. Civ. Code art. 9. In those instances where a law is ambiguous, the fundamental question in cases of statutory construction is legislative intent and the reasons that prompted the legislature to enact the law. *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 2003-0360, p. 3 (La. 12/3/03); 860 So.2d 1112, 1115-16.

La. R.S. 47:337.81(A)(2) provides two alternative prescriptive periods for a taxpayer to appeal a refund denial. First, a taxpayer must appeal within 90 days of when the Collector “renders a decision” denying a refund claim. Second, a taxpayer may appeal if a claim has been filed for at least one year.

On its face, La. R.S. 47:337.81(A)(2) creates a binary set of paths based on whether or not the Collector renders a decision. The Board therefore finds that the failure to act described in La. R.S. 47:337.81(A)(2) necessarily means the failure to render a decision on a refund claim.

NUCOR’s position is also contrary to the legislative intent behind the statute. The legislature established the prescriptive period at issue in this case by Act 640 of 2014. Act 640 was very beneficial to the system of tax adjudication in that it granted taxpayers a pre-payment appeal to this Board for the first time, but the grant of those

new rights included certain restrictions on that new grant of appeal rights. This provision was included in response to the decision in *Tin, Inc. v. Washington Parish Sheriff's Office*, 2012-2056 (La. 3/19/13); 112 So.3d 197. In *Tin*, the Louisiana Supreme Court held that under then-existing law a taxpayer had an unlimited amount of time to appeal from a collector's failure to act on a refund claim.

The law always included a provision that if a refund had been filed for one year without denial then it was eligible to be appealed to the Board, even though it had never been ruled on by the collector. Act 640 supplied a prescriptive rule (of 180 days) that commences to run once the one year period was triggered, ie. once you could actually appeal.

If this Board were to hold that something other than granting or denying the claim could constitute an "act," then the applicable prescriptive period would be determined on a case-by-case basis. The unpredictability of examining each situation deprives local governments of the fiscal certainty that Act 640 was supposed to provide concerning stale refund claims. Therefore, the Board finds that a bright line rule serves this legislative intent, and best comports with the statutory regime.

When read *in pari materia*, the 180 day prescription should logically commence running at the same one year anniversary where the taxpayer gains a right to appeal to the Board. There is no dispute that the taxpayer gained the right to appeal to the Board on January 27, 2017, therefore that is also the date that the 180 day prescription commenced running.

NUCOR argues that the Collector effectively renounced prescription by issuing the Refund Denial on February 23, 2018. The Refund Denial provides: "Should Nucor disagree with or dispute the Collector's final determination, pursuant to La. R.S. 47:337.81, Nucor has ninety (90) calendar days from the date of the certified mailing of this notice of refund claim determination letter to appeal to the

Board of Tax Appeals” NUCOR’s appeal was filed within ninety days of February 23, 2018.

Prescription may be renounced after it has accrued. La. Civ. Code art. 3449. Renunciation may be express or tacit. La. Civ. Code art. 3450. The resolution of the question of whether the February 2018 assessment was a renunciation is a much closer question. The Board has exhaustively reviewed the relevant jurisprudence. The Louisiana Supreme Court has long held that “prescriptive statutes are strictly construed against prescription and in favor of the obligation sought to be extinguished; thus, of two possible constructions, that which favors maintaining, as opposed to barring, an action should be adopted.” *Lima v. Schmidt*, 595 So.2d 624, 629 (La.1992).¹

However, renunciation is also subject to stringent requirements of proof. *Id.* at 631. Renunciation of accrued prescription must be unequivocal, and the intent to renounce must be clearly, directly, and absolutely manifested by words or actions of the party in whose favor prescription has run. *Geiger v. State ex rel. Dep’t of Health & Hosp.*, 2001-2206, p. 10 (La. 4/12/02); 815 So.2d 80, 86. An individual cannot form the intent to renounce prescription if the individual does not know that prescription has accrued. *See Queen v. W & W Clarklift, Inc.*, 537 So.2d 1214, 1216 (La. Ct. App. 1989).

The Refund Denial has the statutorily required language for a refund denial that NUCOR had the right to appeal to the Board. However, it does not say anything about a waiver of any prescription. The Collector could not have intended to

¹ The standard of review for the factual component of a prescription claim is restated below, however, when the issue concerns the legal construction of a prescriptive statute the interpretative principle is in favor of maintaining the cause of action. *Palazola v. IMC Consulting Eng’rs, Inc.*, 16-22 (La. App. 5 Cir. 6/30/16), 197 So.3d 782, 784 (Ordinarily, the party urging prescription bears the burden of proof at the trial of the exception; however, if the petition is prescribed on its face, the burden shifts to the plaintiff to show that the action has not prescribed.)

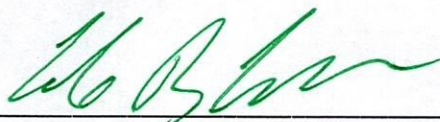
renounce a right that it did not know existed, and there must be some intent evidenced to renounce prescription itself. Accordingly, the Board finds that the facts of this case do not establish that the Collector intended to renounce prescription.

For similar reasons, the Board must disagree with NUCOR's estoppel argument. Under *Showboat Star Partnership v. Slaughter*, 2000-1227 (La. 4/3/01); 789 So.2d 554, the first element of a detrimental reliance claim against a government agency is unequivocal advice from an unusually authoritative source. The only time the Collector mentioned NUCOR's appeal rights was in the Refund Denial, long after prescription had already accrued. Prior to the running of the prescription, the Collector merely informed NUCOR of the date on which it received the Refund Claim. This information should have permitted NUCOR to calculate when a year of inaction would elapse. The Collector never instructed NUCOR to delay its appeal, never advised NUCOR its appeal rights were reserved, and never agreed to waive the applicable prescriptive statute.

Under the facts presented, the Board does not find that the Collector gave NUCOR any advice on the matter at issue during the period when it could have exercised its rights. The collector did not give unequivocal advice that would serve to lull NUCOR into a false sense of security concerning it exercising its appeal rights during the 180 day window. Consequently, the Board holds that the Collector is not estopped from raising the exception of prescription.

Baton Rouge, Louisiana this 11 day of March, 2020.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE