

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

ROSY'S JAZZ HALL, LLC
Petitioner

VERSUS

DOCKET NO. 8707

SECRETARY, DEPARTMENT OF REVENUE STATE OF LOUISIANA
Respondent

JUDGMENT AND WRITTEN REASONS

A hearing was held before the Board on the merits of this matter on October 8, 2014. Present before the Board were Donald Bowman, attorney for the Secretary, Department of Revenue (Secretary) and Phillip Wagner, a member of the LLC, (Taxpayer). After hearing the presentation of evidence and the argument of the parties, the matter was taken under advisement.

Taxpayer appeals the Secretary's assessment of New Orleans Exhibition Hall Authority Tax ("NOEHAT") for the period January 2006 through March 2013 in the amount of \$36,235.00 plus interest and penalties. The tax at issue is one imposed pursuant to Act 390 of 1987 by the New Orleans Exhibition Hall Authority, which tax is imposed on food and beverages sold by certain food service establishments located in the Parish of Orleans. The Act became effective on July 8, 1987. This Taxpayer came into existence on February 28, 2000. Taxpayer never collected the tax. Taxpayer alleges that it had no knowledge of the tax during the assessment period.

The Taxpayer, having been in the food and beverage business in Orleans parish since 2001, was apparently not aware of the law that imposed the tax on the sellers of food and beverages. However, ignorance of the law is no excuse. La. C. C. Art. 5.

Taxpayer claims that the Secretary should be estopped from collecting the tax. In support of this defense, Taxpayer attached to its petition a number of certificates from the Secretary that are entitled "Department of Revenue and Taxation Sales Tax Clearance Certificate" and certificates from the City of New Orleans entitled "City of New Orleans Department of Finance/Bureau of Revenue Sales Tax Clearance Certificate For Alcohol Beverage Permits". Those certificates are required to be generated by the taxing authorities for a taxpayer in order for the taxpayer to acquire an alcohol beverage permit from both the City of New Orleans and from the state. Rosys' Jazz Hall claims that it relied on those certificates that it had paid all of

the taxes that it owed and therefore the Secretary should be estopped from collecting the NOEHAT.

The law pertaining to detrimental reliance or equitable estoppel is set out in the case *Showboat Star Partnership v. Slaughter* 752 So.2d 390 (La. App. 2000) and cited with approval by the Louisiana Supreme Court at 789 So.2d 554 (La. 2001). That case set out four factors that are required to support a defense of equitable estoppel or detrimental reliance. The first two of these factors are pertinent to the present case. The first element is **unequivocal advice from an unusually authoritative source**. The second is **reasonable reliance** on that advice by an individual.

In this matter, the Taxpayer contends that the “unequivocal advice from an unusually authoritative source” is the aforementioned certificates stating that Taxpayer’s sales taxes had been paid. The obvious purpose of these certificates is to inform the various Alcoholic Beverage Control authorities that, from the face of the records of the taxing authority, no returns were missing and the taxes reported on those returns had been paid. The certificates did not represent a response to a specific inquiry to the taxing authorities from this Taxpayer.

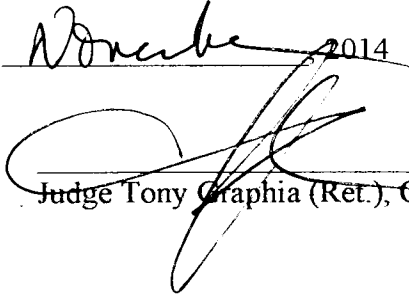
The certificates could not reasonably be interpreted to mean that the filed returns were correct and correctly reflected all of the taxable sales made, nor could the certificates be reasonably be interpreted to mean that taxpayer had reported and paid taxes that, unknown to the taxing authorities, the Taxpayer was required to collect and report but had failed to do.

It is the ruling of the Board that the certificates were not “unequivocal advice from an unusually authoritative source”, and the Taxpayer could not “reasonably rely” on the certificates so that the Secretary was barred by detrimental reliance or judicial estoppel from collecting the taxes at issue. If we ruled in that fashion then any business issued a clearance certificate would be immune from audit. There is no logical reason to give such weight to the ministerial function of issuing a clearance certificate.

The Taxpayer is a business located in Orleans Parish and was required to collect and report the NOEHAT. Certainly this Taxpayer, after thirteen years in business, could have determined that it was required to collect and remit this tax. Presumably most businesses in Orleans Parish knew of the tax and complied with the provisions of the act creating the tax.

For the foregoing reasons, there is judgment in favor of the Secretary, and IT IS ORDERED, ADJUDGED, AND DECREED, that the Taxpayer's petition for redetermination is hereby DENIED and is thereby dismissed at the petitioner's cost.

Baton Rouge, Louisiana, this 19 day of November 2014



Judge Tony Graphia (Ret.), Chairman