

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**WILLIAM OLEFINS, LLC**  
Petitioner

**VERSUS**

**DOCKET NO. 7779**

**DEPARTMENT OF REVENUE, STATE  
OF LOUISIANA**  
Respondent

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**JUDGMENT ON TAXPAYER'S EXCEPTION OF PRESCRIPTION**  
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A hearing was held before the Board on William Olefins LLC's ("Taxpayer") exception of prescription on December 10, 2014 with Judge Tony Graphia (ret.), Chairman; Cade R. Cole and Kernan A. Hand, Jr. present and no member absent. Present before the Board were: Andre Burvant, attorney for the Taxpayer, and Brandea Averett, attorney for the Secretary, Department of Revenue (Secretary).

Taxpayer filed a request with the Secretary for a refund of sales taxes in the amount of \$216, 033.65 plus interest for the period beginning January 1, 2008 through December 31, 2010. The request for the refund was submitted to the Secretary on December 19, 2011. As of December 20, 2012 the Secretary had neither allowed nor denied Taxpayer's request for the refund. On December 20, 2012 the Taxpayer filed the instant petition with the Board as allowed by R.S. 47: 14:1625.

The Taxpayer has filed an exception of prescription, which is the matter under consideration.

The Taxpayer's exception prays that the Board rule that in regard to its claim for a refund of 2008 taxes, the Secretary is barred by prescription from asserting a claim for sales taxes for that year as a setoff against any refund to which Taxpayer might be otherwise entitled. The parties stipulated that they wanted the Board to hear and render judgment limited to the taxpayer's affirmative defense of prescription, which had been styled as an exception.

Although the Secretary has not heretofore assessed sales taxes in 2008, it wishes to conduct an audit for that year and use any unpaid taxes that it may discover to offset any refund to which the Taxpayer may be entitled. Both of the parties seek a ruling from

the Board as to whether any taxes that may be found due for 2008 can be used to set off any refund.

It is unquestioned that it is too late for the Secretary to assess the Taxpayer for the time in question. As provided by Article 7, Sect. 16 of the Louisiana Constitution of 1974, any assessment for January through November 2008, to be timely, would have had to be filed by December 31, 2011 and for December 2008, by December 31, 2012. No such assessments have been made.

It is the position of the Taxpayer that it is too late to use any deficiency for 2008 as a setoff against any refund because of the above recited constitutional article. It is the position of the Secretary that even if it may be too late to assess taxes, it is not too late to use prescribed taxes as a setoff against a refund.

R.S. 47:1622 A. states:

“A. Before refunding any overpayment, the secretary may first determine whether the taxpayer who made the overpayment owes any other liability under any law administered by him. If such be the case, the secretary may credit the overpayment against such liability and notify the taxpayer of the action taken.”

The question is whether the phrase “owes any other liability under any law administered by him” means any amount that could be owed or whether it means a liability that the secretary can still assess and which is not time barred.

That question has been answered in the case of *Cajun Industries, LLC, et al v. Vermillion Parish School Board, Et Al*, 139 So.3d 706 (La. App. 3 Cir. 2014). In that case, the court of appeal held that despite the provisions of R.S. 47:337.78 (which contains the same language as R.S. 47:1622(A), but pertains exclusively to local taxes), the local tax collector could not use as a setoff against a refund, taxes for which collection has become time barred.

The Secretary cites the U. S. Supreme Court of *Lewis v. Reynolds*, 52 S. Ct. 145 (1/4/1932) which came to a different conclusion in a similar situation involving a federal statute. That case has no application to the case under consideration here because that ruling is based on a federal statute which is different from the Louisiana statute at issue.

For the foregoing reasons, the Taxpayer's affirmative defense of prescription is affirmed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the exception is SUSTAINED and the Secretary is prohibited from using as a setoff any taxes that the Taxpayer may owe for 2008 that have not been timely assessed.

Baton Rouge, Louisiana, this 2<sup>nd</sup> day of January, 2015.

FOR THE BOARD:



JUDGE TONY GRAPHIA (Ret.)  
CHAIRMAN