

BOARD OF TAX APPEALS

STATE OF LOUISIANA

CHEVRON U.S.A. INC.

versus

DOCKET NO. 13111D

**SECRETARY OF DEPARTMENT
OF REVENUE, STATE OF LOUISIANA**

REASONS FOR JUDGMENT

On July 9, 2025, this matter came before the Board for hearing on the Motion to Set Aside Dismissal and for Attorneys' Fees filed by Chevron U.S.A. Inc. ("Chevron"), with Chairman Francis J. "Jay" Lobrano presiding and Vice-Chair Judge Lisa Woodruff-White present. Appearing before the Board were Robert S. Angelico and Cheryl M. Kornick, attorneys for Chevron, and Reese F. Williamson, attorney for the Secretary of the Department of Revenue, State of Louisiana ("Department"). After presentation of argument, the Board issued its Judgment in open court granting Chevron's Motion to Set Aside Dismissal, granting the Department's Motion to Strike the Affidavit of Cheryl M. Kornick, vacating the Order of Dismissal signed on May 6, 2025, denying the Department's Ex Parte Motion for Order of Dismissal Without Prejudice for Abandonment, and denying Chevron's Motion for Attorneys' Fees and Costs, which Judgment was reduced to writing and signed on the same day. At the

request¹ of counsel for the Department, the Board now issues the following Written Reasons for ruling.

Chevron fax filed the Petition in this matter on January 14, 2022. On January 28, 2022, the Board served the Petition on the Department and issued an Administrative Order setting the matter for an initial Status Conference before Board Administrator Joe Stevenson. On March 15, 2022, the Department filed an Answer to Chevron's Petition. The initial Status Conference took place on April 20, 2022. Thereafter, on April 30, 2025, the Board Administrator conducted eight further Status Conferences, for a total of nine Status Conferences. The ninth Status Conference took place on April 24, 2025. At that time, Board Administrator determined to set the next Status Conference, which is currently scheduled for October 22, 2025.

Six days after the ninth Status Conference, on April 30, 2025, the Department filed an Ex-Parte Motion for Order of Dismissal Without Prejudice for Abandonment. The Department argued that this matter had been abandoned by operation of law under La. C.C.P. art. 561. In an attached Affidavit, counsel averred that neither party had taken a step in the prosecution of this matter for three years.²

The Order of Dismissal attached to the Motion was signed by the Board on May 6, 2025. The Order of Dismissal was not served by a sheriff in the manner required by La. C.C.P. art. 1314. Consequently, no service return was executed pursuant to

¹ Counsel for the Department orally requested written reasons at the conclusion of the hearing, and also submitted their request in writing on July 11, 2025.

² The Motion was not accompanied by a certification that the pleading had been served on opposing counsel. However, as noted by the First Circuit, "[u]nder Article 561, there is no requirement that an ex parte motion for abandonment be served on opposing counsel before the trial court can validly enter a formal order of dismissal." *Wilkerson v. Buras*, 2013-1328, p. 8 (La. App. 1 Cir. 8/12/14), 152 So. 3d 969, 976, *writ not considered*, 2014-2138 (La. 11/26/14), 152 So. 3d 894.

La. C.C.P. art. 1292.³ Nevertheless, Chevron timely⁴ filed a Motion to Set Aside Dismissal and for Attorneys' Fees on May 20, 2025, within thirty days of the Board signing the Order of Dismissal.⁵

Discussion

Pursuant to La. C.C.P. art. 561(A)(1), an “action . . . is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years.”⁶ In order to avoid abandonment: (1) a party must take some “step” in the prosecution or defense of the action, (2) the step must be taken in the proceeding and, with the exception of formal discovery, must appear in the record of the suit, and (3) the step must be taken within three years of the last step taken by either party. *Louisiana Dep’t of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C.*, 11-0912, pp. 4-5 (La. 12/6/11), 79 So. 3d 978, 981. A “step” is a formal action before the court intended to hasten the suit towards judgment or is the taking of formal discovery. *James v. Formosa Plastics Corp. of La.*, 01-2056, p. 4 (La. 4/3/02), 813 So. 2d 335, 338. Sufficient action by either plaintiff or defendant will be deemed a step. *See Oilfield Heavy Haulers, L.L.C.*, 11-0912 at p. 5, 79 So. 3d at 981.

³ See La. C.C.P. art. 561(A)(2).

⁴ Pursuant to La. C.C.P. art. 561(A)(3), a party may move to set aside an Order of dismissal on La. C.C.P. art. 561 within thirty days of service by the sheriff. However, where the plaintiff was not properly served by the sheriff, but nevertheless moved to set aside the dismissal within thirty days of being served by other means, the failure to order service in accordance with La. C.C.P. art. 561(A)(2) was held to constitute harmless error. *Wilkerson v. Buras*, 2013-1328, p. 8 (La. App. 1 Cir. 8/12/14), 152 So. 3d 969, 976, *writ not considered*, 2014-2138 (La. 11/26/14), 152 So. 3d 894.

⁵ The Order of Dismissal was apparently served by regular mail, which is the Board's routine practice for serving dismissals granted from Joint Motions to Dismiss.

⁶ In memoranda, Chevron argued that the Board has not formally adopted Article 561. However, during the hearing, counsel did not dispute that the Board routinely adheres to the Code of Civil Procedure and has discretion to dismiss a matter in accordance with Article 561.

Abandonment provided for in Article 561 serves to prevent protracted litigation filed for purposes of harassment or without a serious intent to hasten the claim to judgment. *Oilfield Heavy Haulers, L.L.C.*, 11-0912 at p. 5, 79 So. 3d at 981. Abandonment is not a punitive concept. Rather, it is a balance between two policy considerations. First, is the policy that every litigant have their day in court and not to lose that opportunity through technical carelessness or unavoidable delay. Second, is the countervailing policy that suits, once filed, should not linger indefinitely and thereby preserve stale claims from the normal extinguishing operation of prescription.

Like articles governing liberative prescription, Article 561 is to be liberally construed in favor of maintaining the Petition.⁷ Any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and

⁷ *Williams v. Montgomery*, 2020-01120, p. 5 (La. 5/13/21), 320 So. 3d 1036, 1041; see *Clark v. State Farm Mut. Auto. Ins. Co.*, 2000-3010, p. 11 (La. 5/15/01), 785 So. 2d 779, 787 (“Abandonment is both historically and theoretically a form of liberative prescription that exists independent from the prescription that governs the underlying substantive claim.”)

Some of the jurisprudence concerning abandonment was recently abrogated by the Louisiana Supreme Court in *Foundation Elevation & Repair, LLC v. Miller*, 2024-00810 (La. 5/9/25), 408 So. 3d 893 (“*FER*”). In *FER*, the Louisiana Supreme Court held that a line of decisions following *Clark v. State Farm Mut. Auto. Ins. Co.*, 00-3010, (La.5/15/01), 785 So. 2d 779, erroneously applied principles of “acknowledgment” to find a waiver of abandonment after the period had run.

After the period for abandonment has elapsed, abandonment is effective by operation of law. Thus, the defense of abandonment, once perfected, can only be waived by express *renunciation*. As stated by the Court in *FER*, a number of courts had misinterpreted unfortunate verbiage in dicta from *Clark* as requiring a lesser showing for waiver, as would be the case if the question was one of *acknowledgment*. Acknowledgment is the recognition of an obligation before prescription has run its course. Whereas renunciation requires the defendant to clearly or directly demonstrate a preference and intent to proceed, such as by submitting a case for decision on the merits. As explained further in these reasons, the Board finds that Chevron has continuously and repeatedly taken steps in the prosecution of this matter without objection by the Department. Thus, in this matter, the period of abandonment never ran to completion.

against dismissal for abandonment. See *Oilfield Heavy Haulers, L.L.C.*, 11-0912 at pp. 5-6, 79 So. 3d at 981-82. Nevertheless, abandonment is warranted where the plaintiff's inaction during the three-year period has clearly demonstrated their abandonment of the action. *Id.*, 11-0912, at p. 5, 79 So. 3d at 982. Abandonment functions to relieve courts and parties of lingering claims by giving effect to the logical inference of a plaintiff's intent to abandon their claims after a legislatively-defined period of inactivity.⁸

As stated by the First Circuit, "[i]n determining the issue of abandonment, 'the intent and substance of a party's actions matter far more than technical compliance.'" *Thibaut Oil Co., Inc. v. Holly*, 06-0313, p. 5 (La. App. 1 Cir. 2/14/07), 961 So. 2d 1170, 1172-73. In *Hidalgo v. Catfish Queen P'ship in Commendam*, 2006-1531 (La. App. 1 Cir. 5/4/07), 961 So. 2d 434, the Court held that the plaintiffs' attorneys took a step in the prosecution of their case by filing written requests for Status Conferences for the "ultimate purpose" of hastening their case to judgment by selecting deadlines for the parties to conclude all pretrial matters. *Hidalgo*, 06-1531, p. 6, 961 So. 2d at 438. Similarly, in *Cummings v. W. Feliciana Par. Sch. Bd.*, 2016-0734, p. 6 (La. App. 1 Cir. 2/17/17); 2017 WL 658248, the Court held that the plaintiff took a step in prosecuting their case by filing into the record a "motion and order to set a status conference 'to fix this matter for trial.'" *Id.* Furthermore, the Court noted that the defendant's assertion that the case had been abandoned was belied by the fact that a Status Conference was scheduled when the motion to dismiss for abandonment was filed.

In addition, in *Dendy v. City Nat. Bank*, 2006-2436 (La. App. 1 Cir. 10/17/07), 977 So. 2d 8, the Fourth Circuit held that filing a request for a Status Conference was a step in the prosecution of the case. In *Dendy*, the plaintiff's request for a Status

⁸ *Clark v. State Farm Mut. Auto. Ins. Co.*, 00-3010, p. 10 (La. 5/15/01), 785 So. 2d 779, 786-87.

Conference was “for the express purposes of ‘settling pleadings, fixing discovery deadlines, fixing a pre-trial conference, and setting a trial date.’” *Id.* Just like in *Hidalgo*, the Court found it determinative that “the ultimate purpose of the conference was to hasten the matter to judgment by selecting deadlines for the parties to conclude all pretrial matters.” *Id.* quoting *Hidalgo v. Catfish Queen P’ship in Commendam*, 2006-1531 (La. App. 1 Cir. 5/4/07), 961 So. 2d 434.

Here, the Department filed its Answer on March 15, 2022. The Department contends that that was the last step taken by either party in prosecuting this case. However, in the three year period that followed, counsel for both parties appeared at a series of Status Conferences presided over by the Board Administrator. The Board Administrator plays a vital role in moving matters before the Board towards ultimate disposition.

The Louisiana Constitution requires the legislature to “provide a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.” La. Const. Art. VII, § 3(A). In addition, La. Const. Art. V, § 35. Remedies for Taxpayers, states that the remedies required by La. Const. Art. VII, § 3(A) extend to any unconstitutional tax paid by a taxpayer and continues the existence of the Board, subject to change by law enacted by two-thirds of the elected members of each house of the legislature. Thus, in fulfillment of its constitutional obligation, the legislature provides for the Board of Tax Appeals, in part, “to hear and decide, at a minimum of expense to the taxpayer, questions of law and fact arising from disputes or controversies between a taxpayer and any collector of the state of Louisiana or its political subdivisions in the enforcement of any tax, excise, license, permit or any

other tax, fee, penalty, receipt or other law administered by a collector.”⁹ La. R.S. 47:1401.

La. R.S. 47:1404 authorizes the Board to appoint any employees necessary for its functions delegated by law. Additionally, La. R.S. 47:1413 enables the Board to prescribe and promulgate rules and regulations not inconsistent with law or the provisions of Chapter 17 of Title 47 of Louisiana’s Revised Statutes. Accordingly, the Board has promulgated LAC 69:I.315, “Preliminary Matters.” LAC 69:I.315 states that Board Administrator shall preside over the following preliminary matters: (1) case reviews; (2) status conferences; (3) scheduling orders; and (4) any other matter assigned by the Board. A Status Conferences before the Board Administrator is not a trial, but is preliminary to the trial of taxpayer’s case.

The Board exists to provide a forum for the expeditious and inexpensive resolution of tax controversies. The Board Administrator plays a vital role in the Board’s fulfillment of its purpose by moving disputes along towards hearing or resolution. The vast majority of the thousands of Petitions filed with the Board are set for a Status Conference over which the Board Administrator presides. The Board Administrator’s responsibility in conducting the initial Status Conference is to assess whether a hearing is needed to move a matter to conclusion. Thus, if the Board Administrator determines that a matter is idle, then he will set the matter for hearing and issue a scheduling order with pre-trial deadlines.

Just like the vast majority of civil cases before a District Court, most cases filed with the Board reach settlement without the need for hearing. Thus, in most Status Conferences, the parties will represent to the Board Administrator that they are working towards settlement and ask for additional time to perfect an agreement.

⁹ 2025 Act 285 amends La. R.S. 47:1401 to state that the Board must hear and “timely” decide the questions presented to it.

Generally, these representations to the Board Administrator are sufficient for him to determine that another Status Conference will move the matter towards resolution. Accordingly, he will set a date for a subsequent Status Conference. Thus, it is not necessary for the parties to request a Status Conference.

The Board has employed the Board Administrator to preside over Status Conferences as described above for the past ten years. During that time, the Board's jurisdiction and caseload have expanded greatly. The Board Administrator's Status Conferences have been vital for the Board to continue providing taxpayers and tax collectors with a constitutionally adequate forum for the expedient resolution of their disputes. If the Board were to accept the Department's arguments in this case, it would upend the Board's established practice in fulfilling its purpose under the law and managing its caseload. Additionally, many taxpayers would find their Petitions suddenly and unexpectedly treated as abandoned. The consequences would be particularly harsh for the hundreds of self-represented litigants who have relied on statements by the Board and the Department that their tax disputes before the Board are progressing towards resolution.

The vast majority of motions to dismiss a filed with the Board are Joint Motions to Dismiss. It is exceedingly rare for the Board to receive a motion to dismiss based on civil abandonment. The Board is aware of only two instances of such a motion being granted in the last thirty-three years.¹⁰ The Department cites to these cases in its briefs. However, the Board Administrator's Status Conferences were not conducted in those cases. The petition in *Howard Bros. Disc. Stores v. Secretary*, B.T.A. Docket No. 2464 (La. Bd. Tax App. 4/24/92) was filed on December 5, 1983.

¹⁰ See *Plaquemines Dirt & Clay, LLC v. Plaquemines Parish Gov't*, B.T.A. Docket No. L00305 (La Bd. Tax App. 4/13/21); *Howard Bros. Disc. Stores v. Secretary*, B.T.A. Docket No. 2464 (La. Bd. Tax App. 4/24/92). Consequently, the Board's administrative staff were likely unaware of the service requirements imposed by La. C.C.P. art. 561(A)(2).

The record in *Howard Bros.* reflects that the Department notified the Board of the taxpayer declaring bankruptcy. After filing the petition, the taxpayer never made any further appearance, nor did they communicate with the Board in any way. No Status Conference was ever conducted. The Department did not file an answer. Eventually, on March 25, 1992, more than eight years after the last communication from the taxpayer, the Department moved for Dismissal based on abandonment. The record in *Howard Bros.* reflects a taxpayer who virtually disappeared after filing their petition. Here, Chevron did not vanish, but has repeatedly participated in the Board Administrator's Status Conferences.

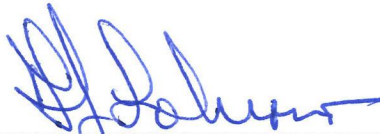
Plaquemines Dirt & Clay, LLC v. Plaquemines Parish Gov't, B.T.A. Docket No. L00305 (La Bd. Tax App. 4/13/21) was a dispute before the Board's Local Tax Division. The Local Tax Judge, not the Board Administrator, presides over Status Conferences in the Local Tax Division. Moreover, the record in *Plaquemines Dirt & Clay, LLC* reflects that the last Status Conference in that case was held on February 7, 2018, more than three years prior to April 6, 2021, when Plaquemines Parish moved to dismiss the matter as abandoned. Thus, *Plaquemines Dirt & Clay, LLC*, is not relevant to this matter. Here the record reflects that the parties continuously and repeatedly appeared for Status Conferences, including one that occurred just six days before the Department moved for dismissal.

Accordingly, the Board holds that participation in a Status Conference before the Board Administrator is a step in the prosecution of a taxpayer's Petition when the record reflects that the Board Administrator's determination that the matter is progressing towards resolution. The Board Administrator has the authority to set a matter for hearing if progress is not being made. Here, the record reflects the Board Administrator's determination that this matter was progressing towards final judgment. Furthermore, there is no evidence in the record suggesting that the Department ever objected to the Board Administrator's determination.

The Board Administrator plays a vital role in the Board's fulfillment of its constitutional and statutory responsibilities to provide an expedient and inexpensive forum for the resolution of tax disputes for all Louisiana taxpayers. These taxpayers include the numerous self-represented litigants whose cases would be deemed abandoned if the Board were to accept the Department's position. For all of the foregoing reasons, the Board has determined to set aside its Order of Dismissal and to deny the Department's Motion to Dismiss for Abandonment.¹¹

SIGNED AT BATON ROUGE, LOUISIANA, THIS DAY JULY 29, 2025.

FOR THE BOARD:



FRANCIS J. "JAY" LOBRANO
CHAIRMAN, BOARD OF TAX APPEALS
STATE OF LOUISIANA

¹¹ The Board also ruled on the Department's Motion to Strike the Affidavit of Cheryl Kornick and Chevron's Request for Attorneys' fees. Both of those rulings were in the Department's favor and Chevron did not request written reasons. Nevertheless, as stated during the hearing: the Board found the stricken Affidavit offered by Chevron irrelevant and unnecessary to decide the Motion to Set Aside in Chevron's favor. Further, the Board found the issue presented by the Motion to Set Aside to be *res nova* and that an award attorneys' fees was not required under the law.