

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

BOSSIER CASINO VENTURE, LLC
D/B/A MARGARITAVILLE
RESORT CASINO

Petitioner

VERSUS

DOCKET NO. L01710

THE COLLECTOR FOR THE CITY
OF BOSSIER/PARISH OF BOSSIER;
BOSSIER CITY – PARISH
SALES AND USE TAX DIVISION

Respondent

JUDGMENT WITH REASONS

On October 17, 2024, this matter came before the Board for hearing on the *Motion for Leave to File First Supplemental and Amending Reconventional Demand and Petition for Declaratory Judgment* filed by the Bossier City-Parish Sales and Use Tax Division (“Collector”), the *Motion for Partial Summary Judgment* filed by the Collector, and the *Motion for Summary Judgment* filed by Bossier Casino Venture, LLC d/b/a Margaritaville Resort Casino (“Taxpayer” or “Margaritaville”). Presiding at the hearing was Local Tax Judge *ad hoc* Francis J. “Jay” Lobrano.¹ Present before the Board were Gregory T. Stevens and Erik B. Strupp, attorneys for the Taxpayer, and Drew M. Talbot attorney for the Collector. At the conclusion of the hearing, the Board took the matter under advisement. In accordance with the attached Reasons for Judgment, the Board now rules as follows:

¹ Presiding pursuant to appointment by the Louisiana Supreme Court under the authority of Article V, Section 5(A), Constitution of 1974, and the provisions of La. R.S. 47:1403(A)(5) and La. R.S. 47:1417(C)(3) as amended by 2024 Act 307.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Collector's *Motion for Leave to File First Supplemental and Amending Reconventional Demand and Petition for Declaratory Judgment* be and is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Collector's *Motion for Partial Summary Judgment* be and is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Taxpayer's *Motion for Summary Judgment* be and is hereby DENIED.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA, THIS 6th DAY OF FEBRUARY, 2025.

FOR THE BOARD:



LOCAL TAX JUDGE *AD HOC*
FRANCIS J. "JAY" LOBRANO

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

BOSSIER CASINO VENTURE, LLC
D/B/A MARGARITAVILLE
RESORT CASINO

Petitioner

VERSUS

DOCKET NO. L01710

THE COLLECTOR FOR THE CITY
OF BOSSIER/PARISH OF BOSSIER;
BOSSIER CITY – PARISH
SALES AND USE TAX DIVISION

Respondent

REASONS FOR JUDGMENT

On October 17, 2024, this matter came before the Board for hearing on the *Motion for Leave to File First Supplemental and Amending Reconventional Demand and Petition for Declaratory Judgment* filed by the Bossier City-Parish Sales and Use Tax Division (“Collector”), the *Motion for Partial Summary Judgment* filed by the Collector, and the *Motion for Summary Judgment* filed by Bossier Casino Venture, LLC d/b/a Margaritaville Resort Casino (“Taxpayer” or “Margaritaville”). Presiding at the hearing was Local Tax Judge *ad hoc* Francis J. “Jay” Lobrano.¹ Present before the Board were Gregory T. Stevens and Erik B. Strupp, attorneys for the Taxpayer, and Drew M. Talbot attorney for the Collector. At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues the foregoing Judgment for the following reasons:

¹ Presiding pursuant to appointment by the Louisiana Supreme Court under the authority of Article V, Section 5(A), Constitution of 1974, and the provisions of La. R.S. 47:1403(A)(5) and La. R.S. 47:1417(C)(3) as amended by 2024 Act 307.

I. Background

Margaritaville manages and operates a Casino (“Casino”) and an adjacent Hotel (“Hotel”) in Bossier City, Louisiana. During the tax periods beginning January 1, 2018, through December 31, 2021 (the “Tax Periods”), Margaritaville furnished Complimentary (“Comp”) hotel rooms to patrons. A Comp room is an inducement for a patron to visit the Casino floor. The reason for offering Comp rooms is to incentivize gambling and other activity. However, a patron receiving a Comp room has no obligation to gamble or do anything else after they have checked into the Hotel.

Sometimes Margaritaville provided Comp rooms on a discretionary basis. In most cases, Margaritaville offered discretionary Comps to patrons based on their past gaming activity and spending. Margaritaville tracked patron data and applied a proprietary “theoretical win” formula to predict the potential profit if the patron could be induced to gamble and spend money at the Casino. The success of Margaritaville’s strategy depended on the overall net outcome in terms of increased gaming and spending. Thus, while Margaritaville might lose money on an individual patron who received a Comp room (for example, if the patron did not gamble during their stay or if they won a jackpot on the night that they stayed in the Comp room), the hope was that Margaritaville would still profit in the aggregate through increased gambling and spending overall from all patrons who received Comp rooms.

Past gaming activity was not the only reason Margaritaville offered discretionary Comps. Casino floor managers had discretion to offer Comps for a wide variety of reasons. For example, sometimes managers offered a discretionary Comp room to an intoxicated patron to discourage them from driving home. Managers also offered Comp rooms to patrons who were unknown to Margaritaville, *i.e.* that Margaritaville had no data on. Margaritaville could still benefit from using Comp rooms in this way because of the resulting goodwill and accumulation of customer loyalty.

During the Tax Periods, Margaritaville adhered to FASB ASC 606-10-32.2 ("ASC 606"). ASC 606 is an accounting principle that guides the reporting of revenue on financial statements. For purposes of ASC 606, Margaritaville prepared its financial statements as though a contract existed, indirectly, between Margaritaville and a customer to whom it offered a Comp room. For this purpose, Margaritaville assigned a value to the totality of the transaction between itself and the customer. Margaritaville recognized the contract when the customer accepted the offer of a Comp room. Subsequently, Margaritaville recognized revenue from that contract on its financial statements once the patron's stay at the Hotel was complete.

Margaritaville's accounting analysis looked at transactions on an aggregate, month-end basis. Each month, Margaritaville calculated the total cash earned for Hotel rooms for that month. Margaritaville then divided that sum by the total number of rooms available. Margaritaville lumped all rooms together for this purpose. It did not make separate calculations for rooms that had higher or lower rates. The resulting quotient represented the average nightly cash rate for a room for that month. Margaritaville then multiplied that rate by the number of room nights Comped for that month. On its financial statements, Margaritaville increased its reported Hotel revenue by this product and also reported an equivalent decrease in gaming revenue.

Margaritaville also provided its patrons with non-discretionary Comp rooms. Non-discretionary Comps resulted from patrons redeeming reward points. Patrons who were members of Margaritaville's rewards program accrued reward points by spending money and engaging in various gaming activities. Margaritaville was able to track rewards program member activity through the use of membership cards and a phone app.

For table games, the rewards program member would present their card to a dealer when they were dealt in. The rewards program member would receive credit, *i.e.* begin accumulating points, once they reached a certain level of buy-in. The

required level of buy-in varied for different games. The required buy-in could also increase at times of high overall gambling activity. Table games were not the only way to generate rewards points, however. Members could also accrue rewards while playing slot machines, buying meals and beverages, and otherwise spending money at the Hotel and the Casino.

For accounting purposes, Margaritaville attributed a cash value to reward points as they were accrued and when they were redeemed. When accrued, Margaritaville deferred recognizing income from the particular activity from which points had been accrued. Thus, if a rewards program member accrued points valued at \$0.06 while playing slot machines in a given month, Margaritaville deferred that attributed value (\$0.06) from slot machine revenue. Margaritaville recognized the revenue that had been previously deferred when the points were spent. To do so, Margaritaville would add its valuation of the redeemed points to the relevant revenue source for that month. Points could also be redeemed in other ways, such as food, cash back, or slot play. Each form of redemption had its own "weighted" modifier for attributing a cash value.

According to Margaritaville's corporate deposition testimony, the Hotel was purely a marketing tool that over time built loyalty with patrons. Margaritaville did not maintain the Hotel in order to derive revenue from furnishing rooms. The purpose of the Hotel was to drive traffic to the Casino, to build customer loyalty, and to induce customers to gamble. As a consequence, Margaritaville often lost money on the Hotel. In addition, Margaritaville offered its rooms to the public at a higher price than market. By doing this, Margaritaville dissuaded non-gambling customers from taking up too many rooms. Margaritaville also deliberately chose not to offer rooms even when there was demand so that it would have rooms to use as discretionary Comps. These practices ensured that Margaritaville had enough Comp rooms for its patrons.

Margaritaville neither charged money nor collected tax on its discretionary furnishing of Comp rooms. However, taxes were paid on rooms that were comped

through its points and rewards programs; i.e., the non-discretionary Comps. However, allegedly in the interest of transparency, Margaritaville included a constructive value for Comp rooms in its gross sales on its monthly sales tax returns. The value that Margaritaville used was based on GAAP and ASC 606. However, Margaritaville backed that amount out of the net taxable sales by claiming a miscellaneous exemption in an amount equal to the reported “revenue.”

The Collector audited Margaritaville for the Tax Periods (the “Audit”). The Collector took the position that Comp room transactions were subject to Bossier Parish sales tax and occupancy tax. During the Audit, the Collector devised its own method for imputing a value to the Comp rooms. The Collector’s method is explained in the Affidavit of the Auditor, Mr. James Driskell, which is attached to the Collector’s Motion for Partial Summary Judgment.

Mr. Driskell states that for each month during the Tax Periods, he divided the gross sales revenue from paid hotel rooms by the number of paid hotel rooms sold to determine an Average Monthly Rate (“AMR”). Mr. Driskell multiplied the AMR by the number of Comp rooms provided in the same month. Mr. Driskell treated the resulting product as taxable sales revenue and calculated tax, penalties, and interest, for each month during the Tax Periods. Mr. Driskell’s method of calculation is reflected on the Collector’s Audit Schedules and in the Notice of Assessment dated January 31, 2023, from which Margaritaville has appealed.

II. Discussion

A. Motion for Leave:

The Collector filed its *Motion for Leave to File First Supplemental and Amending Reconventional Demand and Petition for Declaratory Judgment* on June

21, 2024.² The Collector seeks to challenge the applicability and constitutionality of La. R.S. 47:337.114(A)(1), enacted by 2024 Act 592 (S.B. 500). La. R.S. 47:337.114(A)(1) forbids any “local governing authority, including a local political subdivision or school board, shall levy any fee or tax on nongaming incentives or inducements granted by such licensee to a patron on a complimentary basis, or solely through the redemption of rewards from a loyalty rewards program”

Act 592’s effective date is June 11, 2024, which is after the end of the Tax Periods at issue in this case. However, Section 2 of Act 592 states that “[t]his Act is interpretive and not substantive; it does not change the law or establish new rules, rights, or duties to any person.” The Collector’s proposed expanded Reconventional Demand seeks a declaration that Act 592 is not retroactive. In the alternative, the Collector prays for a declaration that retroactive application of Act 592 is an unconstitutional violation of the Separation of Powers Clause found in La. Const. Art. II, §2. In addition, the Collector prays for a declaration that Act 592 is unconstitutional under the Louisiana Constitution’s uniformity provision “found at La. Const. Art. VI, §29(C) and (D) due to the Act’s codification of disparate local sales and occupancy tax treatment of complimentary rooms furnished by various casinos to known gaming patrons in different jurisdictions.” Finally, the Collector also prays for a declaration that Act 592 is unconstitutional under La. Const. Art. VI, §29(D) to the extent that proceeds from the Bossier Parish sales and occupancy taxes are authorized to secure revenue bonds.

Margaritaville opposes the Collector’s motion. As an initial matter, Margaritaville has already represented that this matter can be entirely disposed of by granting its *Motion for Summary Judgment* without interpreting La. R.S.

² In its original Reconventional Demand, the Collector prayed for a Judgment awarding Bossier Parish sales and occupancy taxes, along with corresponding penalties and interest for the Audit Period, January 1, 2018 and continuing through December 31, 2021, in the total sum of \$5,704,239.19, together with additional interest accruing on any unpaid tax, and for statutory attorney fees and costs.

47:337.114(A)(l). Margaritaville does not cite to or in any way rely upon Act 592 in support of its motion. Indeed, as Margaritaville points out, both cross-motions for summary judgment were already submitted prior to Act 592 being signed into law. In addition, Margaritaville cites to the venerable policy of judicial restraint that “[c]ourts should avoid constitutional rulings when the case can be disposed of on non-constitutional grounds.” *Ring v. State, Dep’t of Transp. & Dev.*, 2002-1367 (La. 1/14/03), 835 So. 2d 423.

Margaritaville is correct in asserting that the doctrine of judicial restraint should apply here. Neither party has asserted that Act 592 applies to the Tax Periods at issue. If Act 592 does not apply to this case, then there is no reason for the Board to examine its constitutionality. Unless Margaritaville invokes Act 592, judicial restraint should be observed. Accordingly, the Board will deny the Collector’s *Motion for Leave*, subject to the proviso that the motion may be renewed if Margaritaville invokes Act 592 at any point in these proceedings.

B. Cross-Motions for Summary Judgment

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. *Hester v. Walker*, 20-01278 (La. 5/13/21), 320 So. 3d 362; *Roach v. Moffatt*, 55,415 (La. App. 2 Cir. 1/10/24), 379 So. 3d 268; *Rodessa Oil & Land Co. v. Perkins*, 47-378 (La. App. 2 Cir. 8/8/12), 104 So. 3d 52; *In re Clement*, 45,454 (La. App. 2 Cir. 8/11/10), 46 So. 3d 804. The motion for summary judgment shall be granted if the motions, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3); *Minifield v. Gardner*, 54,686 (La. App. 2 Cir. 8/10/22), 345 So. 3d 495. Further, despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion and all doubt must be resolved in the opponent’s favor.

Rodessa, supra; *Shelter Ins. Co. v. Broan-Nutone, LLC*, 39,625 (La. App. 2 Cir. 5/11/05), 902 So. 2d 1146, *writ denied*, 05-1483 (La. 12/16/05), 917 So. 2d 1112.

A material fact is one that potentially ensures or precludes recovery, affects a party's ultimate success, or determines the outcome of the dispute. *Rodessa, supra*. A genuine issue is one about which reasonable persons could disagree. *Id.* If only one conclusion could be reached by reasonable persons, then there is no triable issue and summary judgment is proper. *Id.*; *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So. 2d 764. In determining whether a factual issue is genuine for purposes of summary judgment, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *Crescent City Property Redevelopment Assoc., LLC v. Muniz*, 21-00371 (La. 6/1/21), 347 So. 3d 682; *Suire v. Lafayette City-Parish Consol. Gov't*, 04-1459 (La. 4/12/05), 907 So. 2d 37. Summary judgment is seldom appropriate for determinations based on subjective facts, such as motive, intent, good faith, knowledge and malice. *Smith v. Our Lady of the Lake Hospital, Inc.*, 93-2512 (La. 7/5/1994) 639 So. 2d 730; *Robins v. Coles*, 23-1343 (La. App. 1st Cir. 8/26/24) 395 So. 3d 345.

Section 2.1 of Bossier City Ordinance No. 55 imposes tax on sales of services. For purposes of Bossier City's sales tax, the term "sales of services" has the same meaning as provided for in La. R.S. 47:301(14). Therein, sales of services are defined to include the furnishing of sleeping rooms by hotels. La. R.S. 47:301(14)(a). For sales of services, the Bossier Parish sales tax is levied on the "gross proceeds derived from the sale of services."³ Bossier City Ordinance No. 55, Section 2.1(5). In addition to the sales tax, Shreveport-Bossier Convention and Tourist Bureau Ordinance 15-1, Section 1.02, imposes occupancy tax on the "rent or fee charged upon the occupancy of hotel rooms" The Collector asserts that Margaritaville is liable for sales and

³ The language used in the Bossier Parish Ordinances differs from the state sales tax statutes, which levy the tax on "the amounts paid or charged for such services." La. R.S. 47:302(C)(1).

occupancy taxes on Comp rooms, even though no specific fee or charge was collected from the customer on these rooms.

The Collector cites *Columbia Gulf Transmission Co. v. Bridges*, 2008-1006, p. 10 (La. App. 1 Cir. 6/25/09); 28 So.3d 1032, *writ denied*, 2010-0249 (La. 4/5/10), 31 So.3d 369, and *writ denied*, 2010-0116 (La. 4/5/10); 31 So.3d 371, for its proposition that consideration exists in a Comp room transaction. In *Columbia*, the taxpayer charged its customers to transport their natural gas through its pipeline under a FERC Gas Tariff. The Gas Tariff required Columbia's customers to supply Columbia with compressor gas at no additional charge. The compressor gas was used at certain intervals along the pipeline to maintain pressure. In exchange, Columbia had to deduct a 2% retainage from the volume of gas that it billed to customers.

The Department assessed sales tax on the transfer of the compressor gas to Columbia. Columbia argued that the transfer was gratuitous and had no taxable sales price. The Court stated that, "[b]ecause businesses generally do not give away their assets, it can be inferred that some type of consideration is present in any exchange of assets that occurs between two business entities." *Columbia Gulf Transmission Co. v. Bridges*, 2008-1006, p. 10 (La. App. 1 Cir. 6/25/09); 28 So.3d 1032, 1040, *writ denied*, 2010-0249 (La. 4/5/10), 31 So.3d 369, and *writ denied*, 2010-0116 (La. 4/5/10); 31 So.3d 371 (quoting *Bridges v. Production Operators, Inc.*, 07-0648 (La. App. 4th Cir.12/12/07), 974 So.2d 54). The Court also held that neither a set price nor a payment in money were required by the definition of a sale under state sales tax law.⁴ The Court went on to remand for calculation of the sales price. Specifically, the Court stated that the taxable value of the compressor gas was the excess of its market value over the value of the compressor gas services received by customers.

⁴ The Court rejected Columbia's argument based on La. Civ. Code Art. 2439, which establishes the three elements of a sale under the Code: (1) an object; (2) agreement; and (3) a set price.

Offsetting the value of the gas by the value of the services was necessary under the language of La. R.S. 47:301(13)(a), which defines the taxable “sales price” as, “the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs.” The Court’s instructions on remand were that value of the compressor gas services be “based on that portion of the true total value or cost to Columbia of the transmission services for which it did not directly charge its customers in consideration of the factoring into the rate schedule of the value of the gas necessary to fuel Columbia’s compressors.” *Id.* at 1043. Thus, even after finding that consideration existed in the transaction, it was still necessary for the Court to determine the taxable value of that consideration.

In *Columbia*, that valuation was guided by the definition of “sales price.” However, the Comp room transactions in this case are service transactions. The definition of sales price refers to a transfer of tangible personal property and does not contemplate the taxable value of a service transaction. *Columbia* may show that consideration can be inferred to exist in the Comp room transactions. However that does not necessarily mean that the Comp room transactions are taxable without a method for assigning a taxable value to said transactions.

The Collector also argues that *Jazz Casino Company, L.L.C. v. Bridges*, 2019-1530 (La. App. 1 Cir. 7/29/20), 309 So.3d 741, *writ granted in part, judgment rev’d in part*, 2020-01145 (La. 2/9/21), 309 So.3d 729, provides an example of how to value the tax base of a Comp room transaction. In *Jazz Casino*, Harrah’s casino challenged the interpretation and constitutionality of La. R.S. 27:243(C)(1)(i)(2)(e).⁵ That provision was a part of a statutory scheme enacted by 2001 1st Ex. Sess. Act 1. The overall

⁵ Prior to the First Circuit issuing its decision, the statute was amended and re-enacted by La. 2019 Act 171, § 1. Subsequent to the First Circuit’s decision, La. R.S. 47:243 was amended again by 2021 Act 408, § 1.

scheme behind Act 1 was specifically designed to ease Harrah's out of bankruptcy. Accordingly this statutory scheme only applied to Harrah's.

Prior to Act 1, under La. R.S. 27:243(C)(1)(i)(2)2, Harrah's was required to pay the State a minimum compensation amount of \$100,000,000.00 annually. Act 1 changed the amount of that obligation to the greater of: eighteen and one-half percent of gross revenues, or fifty million dollars for Harrah's fiscal year April 1, 2001, through March 31, 2002, and sixty million dollars for each of Harrah's fiscal years thereafter. In addition, Act 1 amended La. R.S. 27:243 to remove a prohibition on Harrah's providing hotel sleeping rooms.

In exchange, Act 1 imposed certain conditions on Harrah's. One such condition was found in La. R.S. 27:243(C)(1)(i)(2)(e). This condition required Harrah's to pay "room taxes" on discounted rooms and Comp rooms at the applicable tax rates based upon average seasonal rates for the prior year of hotels in New Orleans's CBD and French Quarter. Harrah's paid these taxes to the city. However, Harrah's did not pay state sales tax on the Comp rooms and the Department sued Harrah's for these taxes.⁶

Harrah's argued that La. R.S. 27:243(C)(1)(i)(2)(e) was ambiguous and amounted to an unconstitutional tax on the basis that the statute was not enacted in accordance with the procedure for enacting such statutes. In its decision, the First Circuit first found that the term "room tax" unambiguously required Harrah's to pay state sales tax on its complimentary and discounted rooms. The Court then turned to Harrah's constitutional challenges. The first challenge was based on the fact that Act 1 did not originate in the House of Representatives, as required by La. Const. Art. III, §16(B). In addition, the challenge was also based on the fact that Act 1 was not

⁶ The Department also sought taxes on discounted rooms and declaratory relief.

approved by a two-thirds majority of the legislature, as required by La. Const. Art. VII, §2.

However, the Court found that the statute was constitutional. In its ruling, the Court stated:

It is well settled generally, and specifically in Louisiana, that not every imposition of a charge or fee by the government constitutes a demand for money under its power to tax. If the imposition has not for its principal object the raising of revenue, but is merely incidental to the making of rules and regulations to promote public order, individual liberty, and general welfare, it is an exercise of the police power. In similar fashion, the police power may be exercised to charge fees to persons that have received grants or benefits not shared by other members of society. *Audubon Ins. Co. v. Bernard*, 434 So.2d 1072, 1074 (La. 1983).

Act 1 was a measure which had as its principal object the easing of Harrah's financial burden after it had filed for bankruptcy protection. Thus, Act 1 not only eased restrictions on Harrah's insofar as ownership and operation of its own hotel and allowed the casino gaming operator to secure discounted and complimentary rooms at third-party hotels for the purpose of generating revenue that had theretofore been unavailable to Harrah's, it also reduced Harrah's payment to the State by at least forty million dollars per year. Clearly, the enactment of Subsection (e) in Act 1 was merely incidental to the making of rules and regulations to promote public order, individual liberty, and general welfare. Therefore, it is an exercise of the police power by the State to Harrah's of benefits not shared by other members of society, rather than a revenue-raising or money-appropriating measure.

Jazz Casino Co., L.L.C. v. Bridges, 2019-1530, p. 14 (La. App. 1 Cir. 7/29/20), 309 So.3d 741, 750–51, *writ granted in part, judgment rev'd in part*, 2020-01145 (La. 2/9/21), 309 So.3d 729. Thus, the Court found that La. R.S. 27:243(C)(1)(i)(2)(e) was not a tax, and Harrah's arguments attacking the constitutionality of the statute failed.

Finally, the Court ruled that Harrah's had failed to prove that the average nightly rate formula was unconstitutional. Harrah's alleged that the formula inflated the price of the rooms, and therefore constituted an increased tax. The Court described this as a "barebones" allegation. It also noted that Harrah's had not proven that the valuation produced by the statutory formula exceeded the value that Harrah's data analysis used to determine which patrons it would offer Comp rooms

to “in exchange for a theoretical win.” *Jazz Casino*, 309 So.3d at 752. The First Circuit went on to hold that Harrah’s owed room taxes “as set forth in Subsection (e).” *Id.* Notably, the Court quoted the District Court’s reasoning that the valuation formula in La. R.S. 27:243(C)(1)(i)(2) was “necessary because, when you [furnish a complimentary] room, it’s showing a zero [valuation of the service].” *Id.*, at 750 [substitutions in original].

After granting writ of certiorari, the Louisiana Supreme Court affirmed the judgment except with respect to Comp rooms provided through third party hotels. *Jazz Casino Co., L.L.C. v. Bridges*, 2020-01145 (La. 2/9/21), 309 So.3d 729. La. R.S. 27:243(C)(2)(1)(i)(2) provided Harrah’s with the right to provide lodging at hotels that it owned or operated. As noted by the Supreme Court, the third party hotels were neither owned nor operated by Harrah’s. The recitation of facts in the First Circuit opinion shows that Harrah’s had paid hotel room taxes collected by both the City and the Department on the third-party hotel rooms based on the contractual amount Harrah’s had paid to the third-party hotels when Harrah’s reserved blocks of those rooms. *Jazz Casino*, 309 So.3d at 746. The First Circuit also noted that the Department had agreed to credit Harrah’s for those tax payments under the theory that the ultimate consumer of the Comp room was the Comp room patron, rather than Harrah’s. *Id.* at 749, n. 11.

Unlike Harrah’s, Margaritaville is not subject to a specifically prescribed valuation formula for determining the taxable basis for Comp room transactions. In fact, the reasoning for the decision in *Jazz Casino* relied on the premise that the statutory formula was “necessary,” or else the value of furnishing a Comp room would be zero. Thus, contrary to the Collector’s assertions, *Jazz Casino* does not take the next step from *Columbia* by showing an example of how the AMR valuation formula can be applied to Comp rooms to determine the taxable value of the implied consideration. To the contrary, *Jazz Casino* implies that a special statutory

framework is required to apply the AMR formula to Comp room transactions. No such statute applies to Margaritaville.

The Collector also cites to the Board's decision in *Department of Revenue v. Golden Nugget Lake Charles, LLC*, BTA Docket No. 13493D (La. Bd. Tax App. 8/17/23); 2023 WL 9290316. *Golden Nugget* involved the operator of a casino and a hotel that furnished Comp rooms based on a theoretical win formula. In *Golden Nugget*, the Department was the plaintiff and the taxpayer was the defendant. In response to the Department's petition, the taxpayer raised the exception of no cause of action. The taxpayer argued that the Department was required to allege a fixed price as an element of a taxable sale. The Board rejected this argument, holding that the Department had stated a cause of action by alleging the existence of consideration that was susceptible to valuation in money.

Despite the similarities in the underlying facts, *Golden Nugget* is irrelevant to this case because of the posture in which the decision was rendered. An exception of no cause of action can only be sustained "when it appears beyond doubt that the plaintiff cannot prove any set of facts which would entitle him to relief." *Kendrick v. Estate of Barre*, 2021-00993, p. 3 (La. 3/25/22), 339 So.3d 615, 617. To prevail on summary judgment, however, the movant must actually prove that there is no genuine dispute of material fact that they are entitled to relief. In *Golden Nugget*, the Board did not determine if the alleged consideration actually existed or whether its value, if any, was determinable. The Board simply held that the Department had alleged the existence of a taxable sale of a service and that it was not beyond doubt that the Department could prove what it had alleged. That was all that was required for the Department's petition to withstand the exception of no cause of action.

Conclusion:

Under the Bossier Parish Ordinances, sales tax is levied on the gross proceeds derived from the furnishing of sleeping rooms. Occupancy taxes are levied on the rent

or fee charged for occupancy of a hotel room. While the issue as presented may seem simple; i.e., whether sales, use and occupancy taxes are due on the furnishing of complimentary hotel rooms, the underlying facts as to whether the recipient patrons of complimentary rooms have in fact paid a consideration for those rooms, and if so, the value of the consideration paid for those rooms, are complex and to the extent turn on the credibility of witness testimony, the motive, intent and knowledge of Margaritaville, are best resolved through a full trial on the merits. It should be noted that the issue is *res nova*, with the ultimate determination of the issue affecting multiple taxpayers in this state. It is unlikely that the Collector can impose tax on the Comp rooms using an average nightly or monthly rate formula absent authorization by a specific statutory scheme like the statutory scheme in *Jazz Casino*. Moreover, the Taxpayer's summary judgment evidence raises material questions as to whether such a formula would yield a reasonable estimation of the amount of tax due, if any. Further, while the Board may infer consideration in the furnishing of a Comp room, it remains to be determined if that consideration has a taxable value

The Court finds that neither party has satisfied their burden under La. Code Civ. Pro. Art. 966, *et seq.* Accordingly, both motions will be denied.

BATON ROUGE, LOUISIANA, THIS 6th DAY OF FEBRUARY, 2025.

FOR THE BOARD:



**LOCAL TAX JUDGE AD HOC
FRANCIS J. "JAY" LOBRANO**