

# *Louisiana Supreme Court – When tax collector fails to act on refund claim, taxpayer is not compelled to pay under protest and there is no time limitation for refund claim review*

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## *In brief*

Louisiana taxpayers challenging a state or local tax collector's refund claim denial may only seek relief under the state's 'payment under protest' procedure. However, the Louisiana Supreme Court held that when the tax collector *fails to act* on a refund claim (as opposed to issuing a denial), a taxpayer is not required to pay under protest, and therefore may seek relief under alternative remedies such as the state's 'overpayment refund procedure.' Additionally, a refund claim denial cannot serve as a deemed denial of similar subsequent refund claims that include different purchases and different time periods.

The state's 'overpayment refund procedure' provides time limitations for a taxpayer's request for an appeal or redetermination of a tax collector's determination. Such time limitations do not apply when the collector has failed to act on a refund request. The limitations apply only when the collector has affirmatively denied a refund request.

Louisiana taxpayers with state or local refund claims that have not been acted on by the relevant tax administrator may be able to seek refunds despite the amount of time since the claims were originally filed. [*TIN, Inc. v. Washington Parish Sheriff's Office*, La. Supreme Court, No. 2012-C-2056 (3/19/13)]

## *In detail*

### **Facts**

Gaylord Container Corporation (Gaylord) paid use tax on purchases of raw materials used in its papermaking process from 2000 to 2007. Gaylord made several written requests to the Washington Parish Sheriff's

Office (Collector) for a refund of use taxes paid on such purchases, summarized below:

- **2003 Request.** On December 16, 2003, a refund request was made for purchases made between January 1, 2000, and

November 30, 2003. The Collector denied this request.

- **2004 Request.** On December 13, 2004, a refund request was made for purchases, including purchases not described in the 2003 Request, made

between January 1, 2001, and November 30, 2003. The Collector did not respond to this request.

- **2006 Request.** On December 28, 2006, a refund request was made for purchases made between December 1, 2003, and December 31, 2004. The Collector did not respond to this request.
- **2008 Request.** On October 24, 2008, a refund request was made for purchases made between January 1, 2005, and December 31, 2007. On February 27, 2009, the Collector denied the 2008 Request.

TIN, Inc., the plaintiff in this case, is the surviving entity of a merger with Gaylord. After the merger, the refund requests were submitted in TIN's name.

On March 26, 2009, a redetermination hearing was requested regarding the Collector's 2008 Request denial. On May 5, 2009, the Collector declined to reconsider its denial of the 2008 Request.

On May 27, 2009, TIN filed a petition in a Louisiana district court claiming refunds of the use taxes described in the 2004 Request, 2006 Request, and 2008 Request. The district court denied the refunds and TIN appealed to a court of appeal, which also denied the refunds. TIN appealed to the Louisiana Supreme Court (Court).

***Taxpayer was not required to pay tax under protest to seek relief***

Relevant to the refunds in this case, Louisiana generally provides taxpayers with two refund procedures: (1) proceed with administrative appeals or requests for redeterminations for tax overpayments paid voluntarily and without protest (the Overpayment Refund Procedure); and (2) pay the

amount under protest and file suit for recovery (the Payment Under Protest Procedure). The Overpayment Refund Procedure is not available to refund overpaid tax "through a mistake of law arising from the misinterpretation by the secretary of the provisions of any law or of the rules and regulations promulgated thereunder. ***In the event a taxpayer believes that the secretary has misinterpreted the law or promulgated rules, his remedy is by payments under protest*** and suit to recover, or by appeal to the board of tax appeals in instances where such appeals lie" (emphasis added).

TIN did not pay the taxes at issue under protest. Rather, it timely paid the taxes without challenge and later determined that such amounts were not due because of an exclusion.

The lower courts essentially held that the Collector's denial of TIN's 2003 Request operated as an interpretation of law denying all of TIN's subsequent refund requests. Accordingly, TIN's only relief was to pay under protest amounts due to the Collector believed to be a misinterpretation of the law. The Louisiana Supreme Court disagreed for several reasons.

First, the 2004 Request included items not described in the 2003 Request and it provided a more detailed explanation to support an exclusion. Accordingly, there was no reason for TIN to believe that the Collector's denial of the 2003 Request equated to a "mistake of law arising from the misinterpretation" of any law or rule with regard to the items in the 2004 Request. Similarly, the Collector's denial of the 2003 Request did not serve as a 'mistake of law' that covered those taxes subject to the 2006 Request and 2008 Request.

Second, while the Court has recognized that payment under protest is the only remedy available for refund cases after the tax collector denies a refund request, the Court has never gone so far as to hold that a taxpayer must pay under protest when the tax collector *fails to act on a refund request*, as the Collector did regarding the 2004 Request and 2006 Request.

Finally, the Payment Under Protest Procedure requires that any taxpayer protesting the payment of any 'amount found due' by the collector or the 'enforcement or any provision of law' shall remit the amount to the collector. In this case, there was no 'amount found due' by the Collector, nor was there any 'enforcement of any law.' TIN simply paid the taxes based on its own calculation and interpretation of the amount due and later requested a refund.

Accordingly, TIN was not required to pay taxes under protest in order to obtain a refund.

***Collector's failure to respond is not a constructive denial of claims***

Louisiana's Overpayment Refund Procedure was amended in 2003. Accordingly, there were two standards that the court reviewed: one for periods before July 1, 2003, and one for periods on or after July 1, 2003. Both standards were substantially similar.

The relevant statute in place for tax periods before July 1, 2003 provided that if "the collector fails to act on a properly filed claim for refund or credit within one year from the date received by him . . . the taxpayer claiming such refund or credit may appeal to the board of tax appeals for a hearing on the claim filed. . . . [n]o appeal may be filed before the expiration of one year from the date of filing such claim . . . nor after the

expiration of sixty days from the date . . . of a notice of the disallowance.”

The lower courts in this case interpreted the statute to require, when the collector fails to act, that the taxpayer file an appeal 60 days after the expiration of one year from the date of the refund claim.

The Court disagreed and found that the clear language of the statute provides that when the collector fails to act on a claim, the taxpayer may appeal to the board of tax appeals for a hearing. While such appeal may not occur *sooner* than one year after filing the claim, after that year there is no time limit for when the appeal must be requested.

The Court interpreted the similar statute applicable for tax periods on or after July 1, 2003, in the same manner.

The Court found unpersuasive the Collector’s concerns that such an interpretation would compromise the fiscal ability of local governments if they were exposed to taxpayer refunds with no time limitations. The Court

found that it is “within the sole control of the tax collector to begin the running of the time periods for requesting redetermination or appeal. He or she must simply do his or her job and respond to properly filed refund requests.” Further, the state’s general one-year or three-year prescription period to file refund claims places such a limitation on taxpayers so as to avoid potential unlimited exposure to local governments. As the Court stated, contrary to the court of appeal’s holding, there is no requirement that the taxpayer *file a lawsuit* within the period, “only that the taxpayer **file a claim for credit or refund with the collector**” within the one-year or three-year period, which was done here.

### **The takeaway**

*TIN, Inc.* is a victory for Louisiana taxpayers’ due process rights with respect to refund claims. This decision should help preclude tax collectors from failing to act on refund requests because such failure will no longer result in taxpayers losing appeal rights with the passage of time.

While *TIN, Inc.* addresses a tax collector’s silence with regard to refund claims, there remains an open issue regarding silence following the challenge of an assessment. Generally, following a final assessment, a taxpayer has 60 days to either; (1) pay the assessment; (2) request a hearing; or (3) pay under protest. If a hearing is requested, but the taxing authority fails to act by the end of the 60-day period, does that have an effect on the timing of a taxpayer’s right to pay under protest and file suit for recovery of the tax?

The takeaway here is that the procedures required by statute in Louisiana to protect a taxpayer’s due process rights are highly restrictive and must be adhered to very strictly or a taxpayer runs the risk of being denied those rights purely as a result of a procedural technicality. To that end, taxpayers wishing to exercise their due process rights in Louisiana should strongly consider seeking help from tax professionals with experience in Louisiana state and local sales and use tax matters.

### **Let’s talk**

If you have questions about the *TIN, Inc.* decision, please contact one of the following individuals:

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