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LOUISIANA SUPREME COURT LIFTS LOCAL LIMITATION ON INTEREST, PENALTIES AND ATTORNEY FEES

by

William M. Backstrom, Jr.

In a unanimous opinion authored by Justice Kimball, the Louisiana Supreme Court has reversed itself and ruled that local taxing authorities in Louisiana are authorized to impose, through proper elections, 15% interest, 25% penalties and 10% attorney fees on delinquent local sales/use taxes. The Court specifically overruled its recent decision in *Elevating Boats v. St. Bernard Parish*, 795 So.2d 1153 (La. 2001). *Anthony Crane Rental, L.P. v. Fruge*, Docket No. 03-C-0115 (La. 10/21/03).

In *Elevating Boats*, the Louisiana Supreme Court held that a local taxing authority could not impose a combined rate of interest, penalties and attorney fees on delinquent local sales/use taxes in excess of the 15% interest penalty provided in La. R.S. 33:2746. In Louisiana, most local taxing authorities are governed by ordinances that allow the imposition of a 15% interest penalty on delinquent local sales/use taxes. In addition, most of the local tax ordinances permit penalties that could be as much as 25% of the amount of delinquent taxes and attorney fees equal to 10% of amount of delinquent taxes, interest and penalties ultimately collected through the efforts of the local taxing authority's attorney. Notwithstanding these local ordinances, the Louisiana Supreme Court in *Elevating Boats* limited the aggregate amount of interest, penalties and attorney fees on delinquent local sales/use taxes to the 15% interest penalty provided in La. R.S. 33:2746. This limitation does not apply with respect to state-level sales/use taxes.

In *Anthony Crane Rental*, Calcasieu Parish asked the Louisiana Supreme Court to reconsider its holding in *Elevating Boats*. After explaining the general rules of statutory construction, the Court turned its attention to the provisions of La. R.S. 33:2841, which provides that "[a] political corporation may through the officer whose duty it is to receive and collect the taxes and monies due the corporation, enforce the collection of any taxes due to it, within the time and in the manner provided for the collection of taxes due to the state." Calcasieu Parish argued that the phrase "within the time and in the manner provided for the collection of taxes due to the state" authorizes local tax authorities to collect local sales/use taxes using the same enforcement remedies available to the State of Louisiana. For state sales/use tax purposes, the Louisiana Department of Revenue is authorized to impose interest at the rate of 15% per year, penalties at the aggregate rate of 25%, and attorney fees at the rate of 10%. Calcasieu Parish has adopted the same remedies used by the State for collection of interest, penalties and attorney fees on delinquent Calcasieu Parish sales/use taxes. The taxpayer countered by arguing that the phrase "within the time and in the manner provided for the collection of taxes due to the state" applies only to the assessment and collection procedures utilized by the State (La. R.S. 47:1561 *et seq.*) and not the State's interest and penalty provisions (La. R.S. 47:1602 *et seq.*)

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The Court reviewed the legislative histories of La. R.S. 33:2841 and 33:2746 and concluded that, considering the statutes as a whole in relation to the entire statutory scheme and the legislative history of the state sales/use tax statutes, local tax authorities clearly have the authority, through proper elections, to levy and collect local sales/use taxes in accordance with the definitions, practices and procedures set forth in La. R.S. 47:301 through 47:317, which are the state-level sales/use tax statutes. The Court further concluded that La. R.S. 33:2711-2715 provide local tax authorities with the authority, through proper elections, to impose interest, penalties and attorney fees in the same manner as provided in state law.

The Court then turned its attention to the limitation provided in La. R.S. 33:2746, which it relied on in *Elevating Boats*, to determine whether the state law provisions conflict with the limitation in La. R.S. 33:2746. The Court reviewed the legislative history of La. R.S. 33:2746 and concluded that the "interest penalty" provision in that statute was meant to be applicable only to interest and not to penalties and attorney fees. The Court concluded its opinion by specifically overruling its opinion in *Elevating Boats*. The Court justified its change of position by stating that "... this Court read a requirement into the statute [La. R.S. 33:2746] that did not exist; namely, that penalties and attorney fees must be calculated as part of the 15% interest penalty provision of R.S. 33:2746 when the legislative history shows that the provision is intended to apply to interest only."

The Court concluded its opinion by ruling that the provisions of La. R.S. 33:2746, a provision that is specific to the local tax authorities, must be read together with the state-level interest provision to give effect to the statutes as a whole. Following this approach, the Court concluded that there is no conflict between La. R.S. 33:2746 and La. R.S. 47:1601.

Act No. 73 of the 2002 Regular Sessions of the Louisiana Legislature enacted, among other things, the Uniform Local Sales Tax Code, which is designed to achieve greater uniformity between state and local sales/use tax laws. Act No. 73 includes a new provision, La. R.S. 47:337.4(B)(A), which provides that the amount of penalties, interest, and attorney fees permitted by local tax jurisdictions is "... limited as provided by law, including relevant jurisprudence, until statute or jurisprudence is changed." This provision was intended to perpetuate the effect of *Elevating Boats* until either the law or jurisprudence is changed. With the reversal of *Elevating Boats* by the Court in *Anthony Crane Rental*, local tax jurisdictions now will be able to add interest, penalties and attorney fees to assessments of delinquent local sales/use taxes without the 15% limitation established by the Court in *Elevating Boats*. Any such interest, penalties and attorney fees must be set forth in the local ordinances.

As a result of the Court's decision, taxpayers undoubtedly will be inundated with assessments by local tax authorities of additional interest, penalties and attorney fees, where appropriate. The rate of interest on delinquent taxes at the state level and in most Louisiana parishes is 15% per annum. This rate by itself seems penal, especially considering the current "cost of money" in the major financial markets. By adding additional penalties of up to 25% and potential attorney fees of 10%, taxpayers could find their state and local sales/use tax assessments in Louisiana growing to a very painful amount very rapidly.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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