

Bond Case Briefs

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Herman E. v. Robinson

**Court of Appeal of Louisiana, First Circuit - December 27, 2019 - So.3d - 2019 WL 7206881
- 2019-0213 (La.App. 1 Cir. 12/27/19)**

Taxpayers sought review of decision of Board of Tax Appeals finding that their claim for refund of state income taxes from Department of Revenue was prescribed.

The Court of Appeal held that:

- Burden was on Department prove claim was prescribed, and
- Department failed to prove claim was prescribed.

The burden of proving that a cause of action has prescribed rests with the party pleading prescription; however, when the face of the plaintiff's petition shows that the prescriptive period has run, and the plaintiff is contending there is a suspension or interruption of prescription, the burden is on the plaintiff to prove suspension or interruption.

Burden was on Department of Revenue to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, where taxpayers' appeal of decision of Board of Tax Appeals alleged they filed tax return seeking refund within proper time frame.

Department of Revenue failed to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, despite argument that certified mail receipt showed tax return seeking refund was received after deadline for filing, where mailing date, not date of receipt, constituted filing date, and certified mail receipt did not show when return was mailed.