

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1479

LOUISIANA DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

KCS HOLDINGS I, INC.

--CONSOLIDATED WITH--

2013 CA 1480

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

KCS HOLDINGS I, INC.

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2013 CA 1481

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

KCS HOLDINGS I, INC.

Judgment Rendered: MAR 31 2014

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Numbers 618629, 618992 and 619011

The Honorable Todd Hernandez, Judge Presiding

Welch Jr. dissents and assigns reasons

*Whipple, C.J., agreed
with permission
by Judge Crain*

Antonio C. Ferachi
Brandea P. Averett
Frederick Mulhearn
Johnette L. Martin
Jason M. DeCuir
Donald M. Bowman
Adrienne D. Quillen
Kimberly Doley
Baton Rouge, Louisiana

Attorneys for Appellant
Plaintiff – Secretary of the Louisiana
Department of Revenue, State of
Louisiana

John W. Colbert
Barry W. Ashe
Daniel J. Walter
New Orleans, Louisiana

Attorneys for Appellee
Defendant – KCS Holdings I, Inc.

* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

CRAIN, J.

The Louisiana Department of Revenue (Department) appeals a judgment of the district court dismissing its petition for judicial review and application for supervisory writs that challenged an interlocutory order entered by the Louisiana Board of Tax Appeals (BTA) for lack of subject matter jurisdiction. The Department also appeals the district court's dismissal of its petition for a declaratory judgment seeking a decree that the taxpayer is statutorily precluded from seeking a refund under either of two statutes relied upon by the taxpayer. We affirm.

BACKGROUND

The facts forming the basis for this appeal are not disputed by the parties. KCS Holdings I, Inc., is a foreign corporation organized under the laws of Delaware. In 2008, KCS remitted an estimated tax payment of \$85,000.00 with its application for an automatic extension of time to file a Louisiana Corporation Income and Franchise Tax Return for the tax period January 1, 2008 through December 31, 2008. On November 14, 2008, KCS filed its return in which it calculated its franchise tax to be \$79,755.00 and requested that the overpayment of \$5,245.00 be credited to the following year.

By letter dated December 21, 2011, KCS filed an amended 2008 Franchise tax return with the Department and requested that the Department refund the 2008 franchise taxes it paid pursuant to Louisiana Revised Statute 47:1621, which authorizes the Department to refund tax overpayments (sometimes hereafter referred to as "the refund claim"). KCS asserted that it had no franchise tax nexus with Louisiana in 2008 and therefore was not subject to the franchise tax under *UTELCOM, Inc. v. Bridges*, 10-0654 (La. App. 1 Cir. 9/12/11), 77 So. 3d 39, writ denied, 11-2632 (La. 3/2/12), 83 So. 3d 1046.

Pursuant to Louisiana Revised Statute 47:1481, KCS also filed a petition with the BTA on December 27, 2011 against Cynthia Bridges in her capacity as the Department's Secretary and the State of Louisiana, seeking to recover the same 2008 franchise taxes (sometimes hereafter referred to as the "claim against the State"). In the petition, KCS asserted that under the *UTELCOM* decision, it did not owe the 2008 franchise tax because it had no franchise tax nexus with Louisiana.

The Department denied KCS's refund claim, asserting that the amounts paid by KCS were not refundable under any provision of Louisiana law. The Department advised KCS that it may have an alternative cause of action to recover taxes, interest, or penalties it may have overpaid by following the procedure for a claim against the State. KCS then filed a petition in the BTA appealing the denial of its refund claim. The BTA consolidated that appeal with KCS's pending claim against the State.¹

The Department filed exceptions of lack of subject matter jurisdiction, no right of action, and no cause of action relative to the refund claim. The exceptions were based on the Department's contention that KCS's sole remedy to recover taxes it had voluntarily paid was a claim against the State. The Department asserted that KCS has no right or cause of action for a refund claim because subpart F of Section 1621 precluded the issuance of a refund.

Section 1621F states that "[t]his Section shall not be construed to authorize any refund of a tax overpaid 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." The provision further provides that if a taxpayer believes that the secretary has misinterpreted the law, his remedy is to either pay the tax under protest and sue to recover, or appeal to the BTA when such

¹ Although KCS's refund claim and the State claim were consolidated before the BTA, the State claim is not at issue in this appeal.

an appeal lies. The Department argued that because there had been a determination in *UTELCOM* that the secretary misinterpreted the law, the overpayment was based upon that misinterpretation, and KCS's refund claim was entirely based on the *UTELCOM* decision, then subpart F applies and prohibits the issuance of a refund. Regarding the exception of lack of subject matter jurisdiction, the Department argued that because Section 1621F prohibits the Department from issuing a refund, the BTA lacked jurisdiction to hear the refund claim and to order the Department to issue a refund.

The BTA denied the Department's exceptions, finding that while Section 1621F may prohibit the Department from making a refund in this case, it does not prohibit the BTA from making a refund. The BTA also overruled one of its earlier decisions where it held that Section 1621 could not be used to refund taxes paid, but not under protest, where a mistake of law arose due to a misinterpretation by the Department of either the law or the regulations promulgated thereunder. The BTA concluded that Louisiana Revised Statute 47:1625 provided the right to appeal the Department's denial of KCS's refund request and that Louisiana Revised Statute 47:1407 confirms the BTA's jurisdiction to hear KCS's appeal of the Department's denial of its claim for a refund.²

Following the denial of the Department's exceptions, the Department filed a petition for judicial review in the Nineteenth Judicial District Court. The Department alleged that the BTA committed sixteen errors, most of which were based upon its claim that the BTA erred in determining that Section 1621F does not prohibit KCS from obtaining a refund from the Department, and in refusing to

² Section 1407 gives the BTA jurisdiction over all matters relating to appeals for the redetermination of assessments, or for the determination of overpayments, as provided in Louisiana Revised Statutes 47:1431 through 1438, and all matters relating to claims against the state as provided for in Louisiana Revised Statutes 47:1481 through 47:1486. La. R.S. 47:1407(1) and (4).

find that the claim against the State is the sole remedy for recovering the tax overpayment.

The Department also filed an application for supervisory writs in the district court asserting that all of the factors required for the exercise of supervisory jurisdiction as set forth in *Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc.*, 396 So. 2d 878 (La. 1981), are met in this case. In the writ application the Department again challenged the BTA's interpretation of Section 1621F, arguing that it prohibited the secretary from issuing a refund, and the BTA from ordering the secretary to issue a refund.

In addition to its petition for judicial review and writ application, the Department filed a petition for declaratory judgment in the district court. The petition described in detail KCS's attempts to recover the alleged tax overpayment, including the refund claim, based upon *UTELCOM*, and requested that the district court declare that Section 1621F prohibits the Department from issuing a refund when a court has ruled that a regulation promulgated by the secretary impermissibly expanded the imposition of the tax (i.e., the secretary misinterpreted the scope of the statute); and thereafter, a taxpayer requests a refund of the tax voluntarily paid in accordance with that misinterpretation. The petition further requested a declaration that this prohibition is absolute and may not be circumvented by an order of an administrative board, court or other authority.

The Department alleged that it is currently evaluating dozens of refund claims, and there are over one hundred cases pending before the BTA involving appeals of the Secretary's denial of a claim for refund or a claim against the State that are based on facts similar to those presented in this case. The Department contends that a determination of these questions by the courts will provide needed guidance relative to the authority of the Department to issue refunds or the BTA to order such refunds.

By the consent of the parties, the Department's appeal, writ application and petition for a declaratory judgment were consolidated in the district court. KCS then filed exceptions of lack of subject matter jurisdiction and *lis pendens* arguing that the district court lacked appellate jurisdiction to review an interlocutory ruling of the BTA, an administrative body. KCS contended that the principles of separation of powers precluded the district court from exercising jurisdiction and supervising the ongoing activities of a body of the executive branch of government. KCS further characterized the Department's petition for declaratory relief as being an attempt to circumvent Louisiana's prohibition on judicial review of interlocutory decisions of an administrative body, and argued that the statutory procedure for appealing decisions of the BTA is the exclusive means of obtaining judicial review. KCS also stated that all of the requirements for sustaining its exception of *lis pendens* were met.

KCS's exception of subject matter jurisdiction was granted as to all of the consolidated actions, with the district court finding that it lacked appellate, supervisory, or declaratory judgment jurisdiction. A judgment was signed dismissing all three actions with prejudice. The district court specifically noted that it did not reach the merits of the exception of *lis pendens*. The Department appealed and asserts that the district court erred in declining to find that it had jurisdiction.

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is the legal power and authority of a tribunal to adjudicate a particular matter involving the legal relations of the parties and to grant the relief to which the parties are entitled. La. Code Civ. Pro. arts. 1 and 2; *City of Denham Springs v. Perkins*, 08-1973 (La. App. 1 Cir. 3/27/09), 10 So. 3d 311, 318, *writ denied*, 09-0871 (La. 5/13/09), 8 So.3d 568. The Louisiana Constitution provides that district courts have "original jurisdiction" of all civil

matters except as otherwise authorized by the constitution or except as provided by law for administrative agency determinations in worker's compensation matters. La. Const. art. V, § 16. A district court is considered to have general jurisdiction unless it has been specifically denied. *City of Denham Springs*, 10 So. 3d at 318. Further, a district court shall have appellate jurisdiction as provided by law. La. Const. art. V § 16(B). The nature of the relief demanded is determinative of a district court's subject matter jurisdiction. *City of Denham Springs*, 10 So. 3d at 318.

The Louisiana constitution vests the power of taxation in the legislature and mandates that it provide a complete and adequate remedy for the recovery of an illegal tax paid by a taxpayer. La. Const. art. VII, §§ 1 and 3(A). To fulfill this obligation, the legislature provides three remedies to taxpayers: (1) a claim against the State under Section 1481, (2) payment under protest pursuant to Louisiana Revised Statute 47:1576, and (3) a request for a refund under Section 1621. Further, the legislature created the BTA to act as an appeal board to hear and decide questions of law and fact arising from disputes or controversies between taxpayers and the collector of revenue. La. R.S. 47:1401. In performing its fact-finding function and applying the law, the BTA acts as a trial court. *St. Martin v. State*, 09-0935 (La. 12/1/09), 25 So. 3d 736, 740. Thus, jurisdiction to resolve tax-related disputes is constitutionally and statutorily granted to the BTA, which is authorized to hear and decide disputes and render judgments. *St. Martin*, 25 So. 3d at 741.

Louisiana Revised Statute 47:1625 provides for appeals from the Department's denial of a refund claim, and vests the BTA with jurisdiction to "determine the correct amount of the tax for the period in controversy and to render judgment ordering the refunding or crediting or any overpayment or the payment of any additional tax, interest, and penalty found to be due."

Appellate Jurisdiction

The procedure for obtaining judicial review of a judgment of the BTA is set forth in Louisiana Revised Statute 47:1434, which states that “[a]fter a decision or judgment of the board, the collector or the taxpayer may...file a petition with the district court...for review of the said decision or judgment of the board.” The district court has exclusive jurisdiction to review decisions or judgments of the board. La. R.S. 14:1435. The district court’s jurisdiction in reviewing decisions by the BTA is appellate in nature. *Clark v. State of Louisiana*, 02-1936 (La. App. 1 Cir. 1/28/04), 873 So. 2d 32, 36, writ denied, 04-0452 (La. 4/23/04), 870 So. 2d 300.

Louisiana Code of Civil Procedure article 2083 provides that appealable judgments are: (1) “final” judgments in all causes in which appeals are given by law; and (2) interlocutory judgments only when expressly provided by law. The Department contends that the BTA’s judgment denying its exceptions is an appealable judgment because there is no requirement or condition in Section 47:1434 that the decision of the BTA be a *final* decision or a judgment on the merits. It points out that the legislature exempted the Board of Tax Appeals from many of the provisions of the Administrative Procedure Act (APA), including Louisiana Revised Statute 49:951(3), which defines a “decision or order” as “the whole or part of any final disposition.” See La. R.S. 49:951 and 49:967A. It also points out that the APA gives a person who is aggrieved by a final decision or order a right to judicial review. The Department submits that since the legislature did not apply the limitations of the APA’s judicial review provision to the BTA, it must have intended that judicial review of BTA decisions not be limited as provided in the APA.

KCS contends that a district court lacks appellate jurisdiction to review an interlocutory decision that is part of the executive branch of government. It urges

that this conclusion is compelled by the decisions in *Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Board*, 01-0185 (La. 10/16/01), 797 So. 2d 656, and *Franklin Press, Inc. v. McNamara*, 479 So. 2d 657 (La. App. 1 Cir. 1985). We agree.

In *Franklin Press*, a taxpayer filed a petition with the BTA contesting a portion of a tax assessment by the Department. The Department filed an exception of lack of subject matter jurisdiction which was overruled by the BTA. The Department appealed that ruling to the district court. The district court dismissed the appeal after finding that the BTA's ruling was interlocutory and not appealable absent a showing of irreparable injury. The Department appealed to this court. This court held that because BTA's decision denying the exception of subject matter jurisdiction was not final, but was interlocutory in nature, the judgment was not appealable absent a showing of irreparable harm, and the Department did not prove it would suffer irreparable harm. This court concluded that the Department had no right to appeal the interlocutory judgment to the district court and did not have a right to have this court address the merits of its appeal. It was noted that Section 1435 mandates that appeals of rulings of the BTA shall be "in accordance with law" and that the legislation establishing the BTA gave no indication that the rules regarding appeals of interlocutory judgments should not apply to those proceedings. *Franklin Press*, 479 So. 2d at 657-658.³

In *Metro Riverboat*, the Louisiana Gaming Control Board conditionally approved the transfer of an ownership interest in a gaming license from one corporation to a yet-to-be-formed corporation. *Metro Riverboat Associates, Inc.*,

³ Although *Franklin Press* recognized that interlocutory judgments causing irreparable harm are appealable, the case was decided before the legislature amended Louisiana Code of Civil Procedure article 2083 in 2005 to provide that interlocutory judgments are appealable only when expressly provided by legislation such as Article 3612 (injunctions) or Article 592 (class actions). La. Code Civ. Pro. art. 2083, comment (a). Thus, the interlocutory ruling denying the Department's exceptions is not an appealable judgment under Article 2083. See *Land v. Vidrine*, 10-1342 (La. 3/15/11), 62 So. 3d 36, 41 (stating that with respect to venue rulings, which are threshold inquiries, litigants are required to seek review via supervisory writs).

which held an ownership interest in the licensee, filed a petition in the district court challenging the Gaming Board's resolution conditionally approving the transfer and its failure to hold a public hearing at Metro Riverboat's request. The gaming law vested appellate jurisdiction in the district court over "any decision" of the gaming board. La. R.S. 27:26. The supreme court noted that a cursory reading of the gaming statutes' judicial review provisions could lead to the conclusion that the district court obtains appellate jurisdiction over any decision of the board at any point in any proceeding. However, the court concluded that such a literal interpretation would produce absurd results and raise constitutional separation of powers issues. It pointed out that allowing an appeal of any decision of the board could result in piecemeal appeals and an overwhelming burden on the courts, could constitute an infringement on the administrative process, and would undoubtedly disrupt the functioning of both the courts and the administrative agency. To avoid the absurd results caused by a literal interpretation of the judicial review provision and to eliminate the potential constitutional problems resulting therefrom, the court read those provisions in conjunction with the judicial review provisions of the APA, particularly Louisiana Revised Statute 49:964A(1), which provides that judicial review is available when there is a "final decision or order in an adjudication proceeding," and the provisions of the gaming law providing that hearings and appeals from decisions of the board should be handled in accordance with the APA. See La. R.S. 27:25B; La. R.S. 27:89 (prior to its repeal by 2001 La. Acts No. 1222, §2). The court held that appeals could only be taken from a final decision or order of the board in an adjudication proceeding. Because it was undisputed that there had been no "final" adjudication by the Gaming Board, the court held that the district court could not obtain appellate jurisdiction over the case. *Metro Riverboat Associates, Inc.*, 797 So. 2d at 661-662.

In accordance with *Franklin Press* and *Metro Riverboat*, we hold that a district court's appellate jurisdiction under Louisiana Revised Statute 47:1434 over a "decision or order" of the BTA extends only to "final" decisions or orders by the BTA. Because it is undisputed that the judgment denying the Department's exception is interlocutory in nature, we find that the district court correctly dismissed the Department's petition for judicial review under Section 1434 for lack of subject matter jurisdiction.

Supervisory Jurisdiction

Louisiana Code of Civil Procedure article 2201 provides that "[s]upervisory writs may be applied for and granted in accordance with the constitution and rules of the supreme court and other courts exercising appellate jurisdiction." Additionally, Article V § 2 of the Louisiana Constitution provides that "[a] judge may issue writs of habeas corpus and all needful writs, other orders, and process in aid of the jurisdiction of his court"

The Department challenges the ruling that the district court lacked subject matter jurisdiction to consider the Department's application for a supervisory writ. It relies on *Realty Mart, Inc. v. Louisiana Board of Tax Appeals*, 336 So. 2d 52 (La. App. 1 Cir. 1976), wherein this court upheld a ruling by the district court setting aside an order of the BTA that directed the plaintiff to answer interrogatories propounded by the tax collector. The Department notes that there is no question that a discovery order is interlocutory in nature and that *Realty Mart* has never been overruled. The Department also cites *Green v. Winn-Dixie Louisiana Inc.*, 03-0947 (La. App. 1 Cir. 8/15/03), 859 So. 2d 153, in which this court held that a district court has jurisdiction to issue supervisory writs as "needful writs" in the aid of its jurisdiction.

KCS argues that the issue of whether a district court has supervisory jurisdiction over the rulings of an administrative body is controlled by *Metro*

Riverboat. In *Metro Riverboat*, while recognizing that the district court lacked appellate jurisdiction to consider the ruling of the administrative body, this court exercised its supervisory jurisdiction and considered the merits of the decision of the administrative body. The supreme court found that this court's exercise of supervisory jurisdiction was inappropriate, noting that it would be "an unacceptable encroachment upon our executive branch of government." *Metro Riverboat Associates, Inc.*, 797 So. 2d at 663. The supreme court held that once this court determined that the district court's judgment vacating the administrative body's ruling was void for lack of appellate jurisdiction, there was nothing left to review, and the appeal to this court should have been dismissed. *Metro Riverboat Associates, Inc.*, 797 So. 2d at 663.

While *Metro Riverboat* is factually distinguishable from the present case, which involves a request that a *district court* exercise supervisory jurisdiction over an administrative proceeding, the risk of a violation of the separation of powers by an encroachment upon the authority of the executive branch is equally present. Consequently, we find that the exercise of supervisory jurisdiction over administrative proceedings is properly governed by the standards set forth by this court in *In re Shintech*, 98-2024 (La. App. 1 Cir. 3/31/99), 734 So. 2d 772, 774, *writ denied*, 99-1262 (La. 6/25/99), 746 So. 2d 601, providing:

Not everything an agency does must be subject to the immediate availability of judicial review in order to insure the agency's action is valid. The right to judicial scrutiny exists when there is a claim of deprivation of a constitutionally protected right or the assertion that agency action exceeds constitutional authority. The right to judicial scrutiny also exists to determine if actions of administrative agencies are in excess of their legislative grant of authority.

(Citations omitted.) These limits on the judiciary's supervisory jurisdiction over executive branch administrative proceedings minimize the risk of an unacceptable encroachment upon the executive branch. The Department's application for supervisory writs neither asserts a claim of deprivation of a constitutionally

protected right, nor contends that an agency exceeded its constitutional or statutory authority; therefore, the trial court correctly dismissed the application for supervisory writs based upon a lack of subject matter jurisdiction.

Declaratory Judgment Action

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of “rights, status, and other legal relations whether or not further relief is or could be claimed.” The action for a declaratory judgment simply functions to establish the rights of the parties or express the opinion of the court on a question of law without ordering that anything be done. *Code v. Department of Public Safety and Corrections*, 11-1282 (La. App. 1 Cir. 10/24/12), 103 So. 3d 1118, 1126-27, writ denied, 12-2516 (La. 1/23/13), 105 So. 3d 59.

In its petition for a declaratory judgment, the Department is seeking a declaration that Section 1621F prohibits the Department from issuing a refund when a court has ruled that a regulation promulgated by the secretary impermissibly expanded the imposition of the tax (i.e., the secretary misinterpreted the scope of the statute); and thereafter, a taxpayer requests a refund of the tax voluntarily paid in accordance with that misinterpretation. The petition further requested a declaration that this prohibition is absolute and may not be circumvented by an order of an administrative board, court or other authority. These are the same arguments advanced by the Department before the BTA in support of its exceptions of no cause of action, no right of action, and lack of subject matter jurisdiction with respect to KCS’s refund claim.

The Department maintains that the petition for a declaratory judgment is an independent and separate cause of action falling under the original jurisdiction of the district court. It asserts that the allegations of its petition relate to the existence of an actual, bona fide, present dispute over the construction and/or interpretation of the tax laws, namely Section 1621F. The Department also claims that it is

seeking a determination on the Department's rights regarding the enforcement and administration of the tax laws, specifically, the Department's legal authority to issue refunds pursuant to Section 1621 when subpart F is triggered. The Department insists that such declarations are essential to the collector's statutory duty to "administer the legislative mandates" within Title 47. It posits that the fact that there is a matter before the BTA does not deprive the district court of its original jurisdiction to determine what the law is through a declaratory judgment.

KCS argues that the Department is precluded from using a request for declaratory relief to circumvent Louisiana's prohibition against appealing non-final decisions of an administrative board. It points out that Louisiana Code of Civil Procedure article 1871 recites that declaratory relief is not precluded "in cases where it is appropriate." According to KCS, this language evinces the legislature's intention that declaratory relief *not* be available in every type of action. It cites *Gulotta v. Cutshaw*, 258 So. 2d 555, 558 (La. App. 1 Cir. 1972), *rev'd on other grounds*, 283 So. 2d 482 (La. 1973), where this court stated that it is settled jurisprudence that a litigant is not entitled to institute an action for declaratory judgment as a matter of right. KCS also cites a case from another state in support of the general proposition that "jurisdiction of a declaratory judgment action will not be entertained if there is pending at the time of the commencement of the declaratory action another action or proceeding to which the same persons are parties, in which are involved and may be adjudicated the identical issues that are involved in the declaratory action." *McRae & DeLand v. Felch*, 669 P.2d 404, 405 (Utah 1983) (quoting 1W. Anderson, *Actions for Declaratory Judgments* §209, at 447 (2d ed. 1951 and Supp. 1959)). KCS submits that the district court correctly applied this general rule in dismissing the Department's declaratory judgment petition.

This court has previously held that a district court lacks original jurisdiction to consider the merits of claims pending before the Board of Tax Appeals. *Clark*, 873 So. 2d at 36. In the present case the Department's petition seeks a ruling on the merits of its defense that Section 1621F prohibits the Secretary from issuing a refund where the overpayment of taxes arises out of a misinterpretation by the Secretary of a provision of any law or of the rules and regulations promulgated thereunder. The Department asserted this same defense in opposition to the claim filed by KCS with the Board of Tax Appeal.

As this court recognized in *Clark*, the substance of Sections 1434-36 "clearly establishes that district courts' jurisdiction in judicial review of decisions of the Board is appellate in nature." *Clark*, 873 So. 2d at 36. The existence of a specific statutory procedure generally implies a legislative intent that the special statutory procedure be the exclusive means of obtaining judicial review in the situations to which it applies. *Metro Riverboat Associates, Inc.*, 797 So. 2d at 660. Thus, "the trial court lacks original jurisdiction to consider the *merits* of plaintiffs' claims, as distinguished from the *legality* or *constitutionality* of the procedural mechanisms for assertion of those claims." *Clark*, 873 So. 2d at 36 (emphasis in original).

The Department's request for a declaratory judgment concerning the merits of its defense to the refund claim requires an interpretation of Section 1621, but it does not involve a challenge to the statute's legality or constitutionality. The Department is simply attempting to litigate the merits of KCS's claim in district court, as a court of original jurisdiction, rather than before the Board of Tax Appeals, which is the proper body vested with exclusive original jurisdiction over the claim. *See Clark*, 873 So. 2d at 36.

Although the Department styles its petition as a request for declaratory relief that invokes the original jurisdiction of the district court, our courts have

consistently rejected “semantic endeavors” by parties who attempt to circumvent an administrative agency’s original jurisdiction by filing a petition in district court. *See Daily Advertiser v. Trans-La, a Division of Atmos Energy Corporation*, 612 So. 2d 7, 27 (La. 1993); *Bass v. Department of Public Safety and Corrections, Louisiana State Penitentiary*, 94-1974 (La. App. 1 Cir. 5/5/95), 655 So. 2d 455, 457; *Raborn v. Louisiana Health and Human Resources Administration*, 349 So. 2d 903, 904 (La. App. 1 Cir. 1977), writ granted, 351 So. 2d 175 (La. 1977). Because the Board is vested with original jurisdiction over the merits of KCS’s claims, the trial court correctly sustained the exception of lack of subject matter jurisdiction and dismissed the petition for declaratory judgment.

CONCLUSION

For the foregoing reasons, we affirm the judgment sustaining the objection raising the exception of lack of subject matter jurisdiction and dismissing the Department’s petition for judicial review, application for supervisory writs, and petition for declaratory judgment. Costs of this appeal in the amount of \$2,888.00 are assessed to the Louisiana Department of Revenue.

AFFIRMED.

LOUISIANA DEPARTMENT OF
REVENUE, STATE OF LOUISIANA

VERSUS

KCS HOLDINGS I, INC.

NO. 2013 CA 1479

FIRST CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

--CONSOLIDATED WITH--

SECRETARY, LOUISIANA
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

KCS HOLDINGS I, INC.


NO. 2013 CA 1480

FIRST CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

--CONSOLIDATED WITH--

 SECRETARY, LOUISIANA
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

KCS HOLDINGS I, INC.

NO. 2013 CA 1481

FIRST CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

WELCH, J., agreeing in part, concurring in part, and dissenting in part.

I agree that the trial court correctly dismissed the Department's petition for judicial review under La. R.S. 47:1434 for lack of subject matter jurisdiction. I disagree that the district court properly granted the exception of lack of subject matter jurisdiction as to the application for supervisory writs; however, because I conclude that the exercise of supervisory jurisdiction is not warranted under the circumstances of this case, I would affirm the dismissal of the Department's application for supervisory writs. Lastly, I find that the district court erred in ruling that it lacked "declaratory judgment jurisdiction," and I would remand that action to the district court and order it to stay the matter pending the conclusion of the administrative adjudication in the Board of Tax Appeals (BTA).

First, I do not believe that **In re Shintech**, 98-2024 (La. App. 1st Cir. 3/31/99), 734 So.2d 772, 774, writ denied, 99-1262 (La. 6/25/99), 746 So.2d 601, or the jurisprudence of this state commands a finding that a district court lacks subject matter jurisdiction to consider an application for supervisory review of an interlocutory ruling of an administrative body unless a claim of the deprivation of a constitutionally protected right or a claim that an administrative agency exceeded its constitutional or statutory authority is present. In fact, **In re Shintech** squarely supports the position that a district court does have subject matter jurisdiction to entertain an application for supervisory writs challenging an administrative agency's ruling.

In **In re Shintech**, during the course of a permitting action, a citizens group filed a motion to recuse various Department of Environmental Quality officials from the permitting process. Following the denial of their motion, the group filed an application for supervisory writs in the 19th Judicial District Court. The district court concluded that it had supervisory jurisdiction under La. C.C.P. art 2201 and issued an order to DEQ to conduct an evidentiary hearing on whether the recusal was appropriate. DEQ sought supervisory relief with this court. In analyzing the propriety of the district court's action, this court began from the premise that the district court had subject matter jurisdiction to entertain the application for supervisory writs incident to the court's appellate jurisdiction. In so ruling, this court cited La. C.C.P. art. 2201, which provides that "[s]upervisory writs may be applied for and granted in accordance with the constitution and rules of the supreme court and other courts exercising appellate jurisdiction." This court also cited La. Const. Art. V, § 2, which provides that "a judge may issue...all needful writs, orders and process in aid of the jurisdiction of his court" However, this court found that it was **imprudent** for the district court to exercise its supervisory

jurisdiction at that juncture of the permit approval process because there was no basis for the exercise of a district court's supervisory jurisdiction. **In re Shintech**, 734 So.2d at 774.

While I am mindful that the exercise of supervisory jurisdiction by a district court over proceedings conducted by an administrative tribunal may raise separation of powers concerns,¹ such issues should be decided on a case-by-case basis rather than by a bright-line rule adopted by the majority. And although there may be some cases in which the exercise of supervisory jurisdiction by a district court over an administrative tribunal may be appropriate, this case simply is not one of them. Granting the Department's application that challenges KCS's 1621 refund claim will not terminate the administrative adjudication because there is a pending 1481 refund claim to be adjudicated by the BTA. Additionally, while the Department is essentially challenging the BTA's construction of a statute, it has a remedy to challenge that ruling by filing a petition for judicial review at the conclusion of the tax adjudication proceeding. Moreover, the BTA may determine that KSC is not entitled to a refund on its 1621 claim, which would moot the issues raised in the application for supervisory review. Thus, I conclude that the factors identified by the supreme court in **Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia**, 396 So.2d 878 (La. 1981), which warrant the exercise of supervisory jurisdiction, are not present in this case. Because I find that the exercise of supervisory jurisdiction would be imprudent under the facts of this case, I would affirm the dismissal of the Department's application for supervisory writs on that basis.

Further, I find that the allegations of the Department's petition challenging the BTA's interpretation of a statute in its petition for a declaratory judgment

¹ See **Metro Riverboat Associates, Inc. v. Louisiana Gaming Board**, 2001-0185 (La. 10/16/01), 797 So.2d 656, 663.

invoked the original jurisdiction of the district court. The district court's original jurisdiction is conferred by the Louisiana Constitution and not by statute. **Piazza's Seafood World, LLC v. Odom**, 2007-2191 (La. App. 1st Cir. 12/23/08), 6 So.3d 820, 826. District courts have original jurisdiction over all civil matters except as otherwise authorized by the constitution or except as provided by law for administrative agency determinations in workers' compensation matters. La. Const. art. V, §16.

I do not believe that this court's decision in **Clark v. State**, 2002-1936 (La. App. 1st Cir. 1/28/04), 873 So.2d 32, writ denied, 2004-0452 (La. 4/23/04), 870 So.2d 300, mandates a finding that the district court lacked original subject matter jurisdiction over the Department's declaratory judgment action challenging the BTA's interpretation of a statute. That case stands for the proposition that a district court does not have subject matter jurisdiction to entertain a taxpayer's request for a refund based on theories set forth in the Civil Code because the legislature has established exclusive statutory procedures for seeking a refund and because the district court's jurisdiction to review the merits of a BTA ruling is "appellate" in nature. However, in matters of statutory interpretation, it is clear that no deference to an administrative body's interpretation of statutes and judicial decisions is owed by a court. Instead, on legal issues, a district court gives no weight to the findings of the administrative body; it is free to make its own determination of the legal meaning of appropriate statutes and conducts a de novo review of questions of law and renders judgment on the record. **Bowers v. Firefighters' Retirement System**, 2008-1268 (La. 3/17/09), 6 So.3d 173, 176; **Twin B. Casinos, Inc. v. State ex rel. Louisiana Gaming Control Board**, 2000-1681 (La. App. 1st Cir. 9/28/01), 809 So.2d 995, 999. Thus, when reviewing an issue involving an administrative entity's statutory interpretation, the district court

is not exercising appellate jurisdiction, but is exercising its constitutionally-endowed original subject matter jurisdiction.

I find, therefore, that while the BTA may have original jurisdiction over the merits of KSC's refund claim, it does not have exclusive original jurisdiction over matters of statutory interpretation. At best, on issues of statutory interpretation arising during the course of a refund proceeding, the BTA and the district court have concurrent subject matter jurisdiction. Thus, I find that the district court erred in granting the exception of lack of subject matter jurisdiction as to the declaratory judgment action. However, I believe that it is inappropriate for the district court to exercise its original subject matter jurisdiction while there is an ongoing tax adjudication in the BTA. It is my opinion that the proper procedural disposition of this issue is to stay the declaratory judgment proceeding in the district court pending the conclusion of the administrative adjudication in the BTA between KCS and the Department under this court's inherent authority to render "any judgment which is just, legal, and proper upon the record on appeal." La. C.C.P. art. 2164.

For these reasons, I would affirm the dismissal of the petition for judicial review and the application for supervisory writs. I would reverse the judgment dismissing the petition for a declaratory judgment for lack of subject matter jurisdiction, but would stay resolution of the issues raised therein until the administrative proceedings have been concluded.