

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-483

RENAL TREATMENT CENTERS - SOUTHEAST, LP

versus

NEWELL D. NORMAND, ET AL

ON APPEAL FROM THE BOARD OF TAX APPEAL
STATE OF LOUISIANA
NO. L00102,
HONORABLE CADE R. COLE, JUDGE PRESIDING

April 02, 2026

SCOTT U. SCHLEGEL
JUDGE

Panel composed of Judges Susan M. Chehardy,
John J. Molaison, Jr., and Scott U. Schlegel

AFFIRMED

SUS
SMC
JJM

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
RENAL TREATMENT CENTERS - SOUTHEAST, LP

Jesse R. Adams, III
Andre B. Burvant

COUNSEL FOR DEFENDANT/APPELLANT,
SHERIFF LOPINTO

Kenneth C. Fonte

SCHLEGEL, J.

Defendant/appellant, Joseph P. Lopinto, III, Sheriff and Ex-Officio Tax Collector for the Parish of Jefferson, in his official capacity as successor in office to Newell D. Normand, former Sheriff and Ex-Officio Tax Collector for the Parish of Jefferson (“Sheriff”), appeals the July 15, 2025 judgment of the Louisiana Board of Tax Appeals (“Board”) granting the motion for summary judgment of plaintiff/appellee, Renal Treatment Centers – Southeast, LP (“Southeast, LP”).

The Sheriff alleges that the Board erred in determining that Southeast, LP’s purchase of prescription drugs is exempt from Jefferson Parish sales tax under La. R.S. 47:337.9(F). This sales tax exemption provides for an exemption from sales taxes for certain sales or purchases of prescription drugs “purchased through or pursuant to” Medicare Part B and D. The issue in this case is whether a healthcare provider’s purchases of prescription drugs from a wholesaler or distributor that are administered to Medicare patients can be exempt from this sales tax. Upon review of the record, we affirm the Board’s ruling.¹

I. *Facts and Procedural History*

A. *Factual Background*

Southeast, LP provides dialysis treatment to Medicare participants at its Medicare-certified dialysis clinic in Jefferson Parish known as Oakwood Dialysis Center – Clinic #2032 (“Clinic #2032”). Many of Southeast, LP’s patients have End-Stage Renal Disease (“ESRD”), indicating permanent and irreversible kidney damage that requires regular treatments and certain prescription drug administrations to maintain life. The costs are significant.

¹ The issues raised in this appeal have also been raised in four companion cases:
(1) *DVA Healthcare Renal Care, Inc. v. Newell D. Normand, et al.*, No. 25-CA-479
(2) *Total Renal Care, Inc. v. Newell D. Normand, et al.*, No. 25-CA-480;
(3) *Renal Life Link, Inc. v. Newell D. Normand, et al.*, No. 25-CA-481;
(4) *Renal Treatment Centers-Southeast, LP v. Newell D. Normand, et al.*, No. 25-CA-482.

We render opinions in these companion cases on this same date.

The prescription drugs used by Clinic #2032 for the period January 1, 2009 to September 30, 2011 (“tax period”) were purchased from AmerisourceBergen Drug Corporation’s (“ABC”) specialty drug distribution unit, ASD Healthcare (“ASD”). Clinic #2032 ordered the prescription drugs for dialysis treatments directly from ASD through the DaVita, Inc. d/b/a DaVita Kidney Care’s (“DaVita”) procurement system. DaVita makes centralized purchases of drugs to fulfill specific orders as needed. DaVita provides administrative services for five clinics in Jefferson Parish (collectively referred to as the “Jefferson Parish Dialysis Clinics” or “Clinics”), including Clinic #2032.

Every ESRD dialysis patient at Clinic #2032 is prescribed a regular, systematic course of dialysis, including the frequency and duration of treatment, and the necessary prescription drugs by the attending physician. Clinic #2032 determines the prescription drugs needed to be ordered based upon prescriptions and standing orders that have been submitted by physicians for Clinic #2032’s population. The prescription drugs purchased by Clinic #2032 were required to be ordered on behalf of patients undergoing dialysis treatment and with the authorization of a licensed physician.

Southeast, LP collected patient and drug administration data through terminals located next to the chairs where patients received treatment. The chairside terminals track data, including the types of drugs and the dosage administered to each patient. The electronic data is tracked to each patient’s electronic medical record and is kept in DaVita’s recordkeeping system. A code for medical necessity is also required in the treatment record to bill Medicare or any insurance for payment. Consequently, after each treatment, each patient’s electronic medical record, as well as DaVita’s electronic records, have a record of the specific prescription drugs administered to each patient, including the specific amount of each dose.

Because Clinic #2032 orders the prescription drugs based on the prescriptions and standing orders that have been submitted for its static patient population, Clinic #2032 does not maintain a “general inventory of drugs.” Instead, Southeast, LP established and maintained “par” levels of each prescription drug to meet the regular needs of its patients based on standing orders in place at Clinic #2032. To ensure that par levels are maintained, each week Clinic #2032 informed DaVita’s procurement group of the amount of each drug that it had on hand. Based upon the difference between the actual in stock medications and the par level, drugs were ordered by DaVita and then delivered to Clinic #2032.

Each month during the tax period, ASD billed DaVita for drugs shipped to DaVita for clinics across the United States, including Jefferson Parish Dialysis Clinics. During this period, all prescription drugs used by Southeast, LP were purchased from ASD through DaVita’s procurement system. ASD submitted digital invoices daily to DaVita. The digital invoices included the invoice date, facility address information, line-item detail, cost per unit, quantities, total cost of each drug purchased, and payment terms.

During this period, DaVita generated a use tax report (“UTX Report”) from its records that included the monthly population of drugs purchased for use by a given clinic. The UTX Reports included use tax accrual data from DaVita’s financial accounting system, including purchases of prescription drugs from ASD and other suppliers. For each month during this period, DaVita also generated a Tax Audit Report (“TAR Report”) that included all Louisiana accounts payable detail including tax lines within UTX reports and prescription drug detail. All of this drug utilization and administration information was recorded and stored in Clinic #2032’s accounting records in the ordinary course of DaVita’s business.

DaVita retained State Tax Services, LLC (“STS”) to assist in calculating the amount of parish taxes owed by Southeast, LP for the purchases of prescription

drugs administered to Medicare patients who received dialysis treatment at Clinic #2032. Morty Steindler, who was employed by STS to prepare the refund claims, stated in his affidavit that he isolated each drug administered to patients at Clinic #2032 by using the drug utilization reports provided by DaVita. He then identified the drugs administered to each payor type (*i.e.*, Medicare and non-Medicare patients), and then calculated the number of doses of each particular medicine administered to Medicare patients alone, versus the total population of patients, to determine the percentage of doses administered to Medicare patients for each drug for each month.

Once the percentage of Medicare administered dosages were calculated for each month, clinic, and drug, STS applied these percentages to purchase data matching the purchases and administrations for each month, clinic, and drug. STS calculated a ratio specific to each drug administered to the Medicare and non-Medicare patients at Clinic #2032 for each month of the tax period. STS was then able to calculate a total dollar value for purchases of the prescription drugs that were administered to Medicare patients. This calculation was consistent across dosages, types of drugs administered, and drug costs. The resulting percentage was multiplied by the purchase data to determine the taxable base for each drug for each month. Mr. Steindler then multiplied the Medicare portion by the applicable sales tax rate to calculate a refund amount, minus vendor's compensation, for each month in the tax periods. He calculated a refund amount for Southeast, LP of \$33,229.79.²

Southeast, LP remitted monthly sales tax to Jefferson Parish on its purchase of all prescription drugs during the tax period. Southeast, LP subsequently filed a

² Mr. Steindler's calculations are attached to his affidavit, including attachments 14(a) and 14(b).

claim for a refund of the sales tax paid in each month of the tax period for Medicare patients only.

B. Proceedings Below

On December 30, 2014, Southeast, LP filed its petition for determination of overpayment of taxes before the Board. The Sheriff filed an answer and reconventional demand on June 10, 2019.

On October 4, 2024, Southeast, LP filed its motion for summary judgment with attached affidavits and exhibits, seeking an order from the Board that it was entitled to the requested refund of sales tax and interest. Following oral argument, the Board issued its Interim Order and Reasons granting Southeast, LP's motion for summary judgment on January 27, 2025. The Board issued its final judgment on July 15, 2025, granting summary judgment in Southeast, LP's favor and awarding Southeast, LP a refund in the amount of \$33,229.79, plus interest.

The Sheriff timely sought judicial review of the Board's decision.

II. Law and Analysis

A. Introduction

The main issue in this case is whether a healthcare provider's purchases of prescription drugs from a wholesaler or distributor that are administered to Medicare patients can be exempt under La. R.S. 47:337.9(F). Section F provides:

Notwithstanding any provision of law to the contrary, prescription drugs purchased through or pursuant to a Medicare Part B and D plan shall be exempt from the sales and use taxes imposed by any local governmental subdivision, school board, or other political subdivision whose boundaries are not coterminous with the state.

We find that the tax exemption applies for the reasons discussed more fully below.

B. Assignments of Error

The Sheriff raises five assignments of error on appeal:

(1) The Board misinterpreted and misapplied the exemption in La. R.S. 47:337.9(F) when it found Southeast, LP's purchase of drugs qualified for the tax exemption.

(2) The Board erred by finding that the availability of the tax exemption of La. R.S. 47:337.9(F) and the tax exclusion of La. R.S. 47:301(10)(u) are complementary with respect to the purchase of prescription drugs "through or pursuant to a Medicare Part B and D plan."

(3) The Board erred by favorably comparing the facts, evidence and witnesses of this case with those of *Fresenius Med. Care Lake Forest, LLC v. Foster*, 24-804 (La. App. 4 Cir. 6/25/25), 417 So.3d 1009. In doing so, the Board engaged in evaluating and weighing the evidence, and making credibility determinations, which are not permitted in adjudicating a motion for summary judgment.

(4) The Board erred by awarding Southeast, LP a refund of local sales and use taxes paid by DaVita on purchases of prescription drugs sold by ASD to DaVita, and not Southeast, LP. Whether Southeast, LP purchased the prescription drugs from ASD is a material disputed issue of fact.

(5) The Board erred by calculating the amount of the refund using a formula that did not exclude prescription drugs purchased "through or pursuant" to Medicare Part C plans and Medicaid. La. R.S. 47:337.9(F) does not exempt local sales and use taxes on purchases made through or pursuant to Medicare Part C plans.

C. *Standard for Summary Judgment*

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require the mover to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* The burden is on the adverse party to produce factual support sufficient to establish the

existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.*

Appellate courts review the grant or denial of a motion for summary judgment *de novo*, using the same criteria as the trial court in determining if summary judgment is appropriate: whether there is a genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3); *Barakat v. Timberland Invs., LLC*, 23-122 (La. App. 5 Cir. 11/29/23), 377 So.3d 447, 450-51.

A fact is “material” when its existence or nonexistence may be essential to the plaintiff’s cause of action under the applicable theory of recovery. *Harvest Time Community Dev. Corp. v. St. John the Baptist Par. Sch. Bd.*, 24-571 (La. App. 5 Cir. 3/19/25), 412 So.3d 235, 239, *writ denied*, 25-486 (La. 9/10/25), 415 So.3d 1272. Facts are material if they potentially insure or preclude recovery, affect a litigant’s ultimate success, or determine the outcome of the legal dispute. *Id.*

The party moving for summary judgment must meet a strict standard of showing that the facts are clear and that any real doubt as to the existence of a genuine issue of material fact has been excluded. *Id.* If the mover meets this burden, the burden shifts to the non-mover to present evidence demonstrating that material issues of fact remain. *Id.* “Once the motion for summary judgment has been properly supported by the moving party, the failure of the nonmoving party [who has the burden of proof at trial] to produce evidence of a material factual dispute mandates the granting of the motion.” *Id.* (citing *Portillo v. Progressive Paloverde Ins. Co.*, 13-815 (La. App. 5 Cir. 3/26/14), 138 So.3d 696, 698).

D. Discussion

1. Assignments of Error Nos. 1-3

The Sheriff's assignments of error numbers 1 through 3 overlap and thus, will be addressed together. The Sheriff argues that DaVita made bulk purchases from the supplier, ASD, so the exemption in La. R.S. 47:337.9(F) is not available to Southeast, LP. The Sheriff submits that La. R.S. 47:337.9(F) can only apply to direct purchases made by a Medicare patient, and that DaVita's purchases of prescription drugs were not made "through or pursuant to a Medicare Part B and D plan" as required by La. R.S. 47:337.9(F).

Southeast, LP responds that the Sheriff's position has been rejected numerous times by the Board, and further argues that if accepted, his interpretation would render the Medicare Part B exemption set forth in La. R.S. 47:337.9(F) meaningless.

a. Louisiana Jurisprudence

The issue of whether prescription drugs purchased by a medical provider administering dialysis treatment were exempt purchases "through or pursuant to a Medicare Part B" plan under La. R.S. 47:337.9(F) has been considered by the First Circuit Court of Appeal in *Crowe v. Bio-Med. Application of Louisiana, LLC*, 14-917 (La. App. 1 Cir. 6/3/16), 208 So.3d 473, *adhered to on reh'g*, 14-917 (La. App. 1 Cir. 2/17/11), 241 So.3d 328, *writ denied*, 17-502 (La. 5/12/17), 219 So.3d 1106, and by the Fourth Circuit Court of Appeal in *Fresenius Med. Care Lake Forest, LLC v. Foster*, 24-804 (La. App. 4 Cir. 6/25/25), 417 So.3d 1009.

In *Crowe*, the taxpayer, Bio-Medical Applications of Louisiana ("Bio-Medical"), operated a Medicare-certified dialysis clinic in Washington Parish. The company purchased and administered prescription drugs for ESRD patients and sought an exclusion or exemption from local taxes for the portions of the drugs administered to Medicare patients. Bio-Medical purchased the drugs from

AmerisourceBergen Drug Corporation (“ABC”), which collected and remitted the sales taxes. Bio-Medical calculated the refund claim by dividing the number of dialysis treatments rendered to Medicare patients by the total number of dialysis treatments. Bio-Medical and the Sheriff filed cross-motions for summary judgment as to whether the sales taxes were excluded under La. R.S. 47:301(10)(u) or exempt under La. R.S. 47:337.9(F). The Board granted the Sheriff’s motion for summary judgment and denied Bio-Medical’s motion, finding that the purchases were not excluded or exempt from taxes.

On appeal, the First Circuit determined that based upon the evidence submitted, Bio-Medical was not entitled to the sales tax exemption pursuant to La. R.S. 47:337.9(F).³ The Court reasoned that dividing the number of dialysis treatments to Medicare patients by the total number of dialysis treatments presupposed that all patients were administered the same medicines in the same doses, which was not borne out by the record. *Crowe*, 208 So.3d at 490 n. 23. Notably, the Court intentionally narrowed its ruling and emphasized the words “entire” and “all”:

This clear language [La. R.S. 47:337.9(F)], which must be interpreted strictly against the taxpayer, supports the reading of the statute as not applying to bulk drug sales between a dialysis clinic and pharmaceutical vendor (sales in which the provisions of Medicare play no part in determining which drugs are purchased, which vendor is used, what price is paid, or whether sales tax is charged) to supply the *entire* population of the clinic’s ESRD dialysis patients, including both Medicare and non-Medicare patients. Given that these drugs undisputedly are purchased for administration to *all* patients of the Franklinton clinic and that the purchases are not made through any Medicare Part B or D plan and are not paid by Medicare, we likewise agree with the district court that Bio–Medical is not entitled to a sales tax exemption pursuant to LSA–R.S. 47:337.9(F).

³ The First Circuit also concluded that the tax exclusion contained in La. R.S. 47:301(10)(u) did not apply to Bio-Medical’s refund claim because its provisions were ambiguous. *Crowe*, 208 So.3d at 489-491. As discussed further below, the provisions of La. R.S. 47:301(10)(u) were deleted as part of a rewrite of the Revenue and Finance section of the Louisiana Revised Statutes, effective December 4, 2024. 2024 La. Sess. Law Serv. 3rd Ex. Sess. Act 11, § 2, eff. Dec. 4, 2024. The provision as modified is currently located at La. R.S. 47:305.2(B)(8).

Crowe, 208 So.3d at 490–91 (emphasis in original). Judge Welch’s concurrence stressed this point, suggesting that the result would have been different if the clinic had not bought in bulk for all patients and had instead purchased the drugs separately for Medicare and non-Medicare patients. *Crowe*, 208 So.3d at 491 (Welch, J., concurring).

On rehearing, a five-judge panel of the First Circuit maintained its original decision, with Judge Welch reissuing his original concurrence. *Crowe*, 241 So.3d 328.

Additionally, the Fourth Circuit Court of Appeal considered the same issue in *Fresenius*, with facts very similar to the present case. In *Fresenius, supra*, the taxpayer, Fresenius, operated a Medicare-approved ESRD dialysis clinic in Orleans Parish. Fresenius purchased drugs both directly through its procurement system and via centralized bulk purchases from AmerisourceBergen’s (“ABC”) subsidiary ASD Healthcare. ASD Healthcare provided reports identifying the clinic, the drugs purchased, and total costs for the relevant periods. Fresenius compiled Drug Utilization Reports showing, by insurance type, the procedures and drug doses administered, calculated monthly Medicare dose percentages for each drug, and created an access database report to match doses purchased and price per dose. Consultant Morty Steindler calculated refunds by multiplying each month’s drug purchase cost by the percentage of doses administered to Medicare patients, aggregating individual and bulk purchases, and applying the tax rate minus vendor compensation. Fresenius filed refund petitions for taxes paid. The Board denied the motion for summary judgment of the City of New Orleans and granted the motion for partial summary judgment filed by Fresenius. The City appealed, arguing that Fresenius’s purchases from ABC were taxable and not exempt under La. R.S. 47:337.9(F).

The *Fresenius* Court held that prescription drugs purchased through or pursuant to a Medicare Part B or D plan are exempt from local sales and use taxes under La. R.S. 47:337.9(F). The Fourth Circuit distinguished *Crowe* by noting that the purchases were not tied to specific medicines and doses given to Medicare patients. Thus, they found that the evidence provided by the taxpayer in *Crowe* was insufficient. The Court reasoned that the methodology used in *Fresenius* was very different. In *Fresenius*, the taxpayer hired a consultant who traced the purchases to Medicare patients with detailed evidence identifying the drug type, exact dosage and units, administration date, patient insurance status, unit price and purchase date, and total cost of drugs administered to Medicare patients. Thus, because *Fresenius* showed its purchases were pursuant to Medicare Part B and had established the exact refund attributable to specific Medicare patients, the exemption of La. R.S. 47:337.9(F) applied and the Board's refund award was affirmed.

We agree with the approach of the Board and the *Fresenius* Court. This approach correctly focuses on whether competent, contemporaneous data can quantifiably tie provider purchases through or pursuant to a Medicare Part B patient. And it is distinguishable from the analysis in *Crowe* because here, as in *Fresenius*, the taxpayer (Southeast, LP) was able to differentiate between the cost of drugs administered to specific Medicare patients as compared to bulk purchases for all patients.

b. *The Plain Language of La. R.S. 47:337.9(F)*

Legislation is the solemn expression of legislative will; as such, statutory interpretations are primarily the search for legislative intent. *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 24-449 (La. 10/25/24), 395 So.3d 717, 723. The interpretation of any statute begins with the statute itself. *Id.* When the law in question is clear and unambiguous, and its application does not lead to

absurd consequences, it shall be applied as written; no further interpretation in search of legislative intent is required. *Id.* See La. R.S. 1:4 (“When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.”). Additionally, a statute must be interpreted and applied in a manner consistent with logic and the presumed fair purpose and intention of the Legislature in enacting it. *Id.*

As previously stated, La. R.S. 47:337.9(F) plainly provides that “[n]otwithstanding any provision of law to the contrary, *prescription drugs purchased through or pursuant to a Medicare Part B and D plan shall be exempt from the sales and use taxes imposed by any local governmental subdivision, . . .*”. (Emphasis added).

Further, the provisions of 42 CFR § 410.50 state:

Medicare Part B pays for the following institutional dialysis services and supplies *if they are furnished in approved ESRD facilities*:

- (a) All services, items, supplies, and equipment necessary to perform dialysis and drugs medically necessary and the treatment of the patient for ESRD . . .”.

(Emphasis added).

It is undisputed that the prescription drugs at issue were administered in a Medicare-approved facility. Accordingly, the purchase of the prescription drugs at issue falls under Medicare Part B, not Part D.⁴ And interpreting La. R.S. 47:337.9(F) as the Sheriff suggests would lead to an absurd result and render the Medicare Part B exemption meaningless.

Further, La. R.S. 47:337.9(F) exempts *drugs* purchased through or pursuant to a Medicare Part B plan, not the purchaser. Nothing in La. R.S. 47:337.9(F) forbids centralized procurement on behalf of Medicare-certified clinics, so long as the provider proves the drugs were purchased through or pursuant to Part B and

⁴ Medicare Part D provides outpatient prescription drug coverage to Medicare beneficiaries enrolled in private plans typically purchased in a retail pharmacy setting. *United States ex rel. Garbe v. Kmart Corp.*, 824 F.3d 632, 635 (7th Cir. 2016).

administered accordingly. The affidavits submitted by Southeast, LP in support of its motion for summary judgment fully explained how the drugs were acquired, stored, tracked, and administered. As noted above, Southeast, LP established and maintained “par” levels of each prescription drug to meet the needs of its patients based on standing orders in place to ensure its patients have uninterrupted access to required medications. It does not maintain a “general inventory of drugs.” Accordingly, we find that the drugs were purchased through or pursuant to a Medicare Part B plan and were not bulk purchases in the general sense.

Consequently, because the prescription drugs administered by Southeast, LP at Clinic #2032 were provided for and purchased “through and pursuant to Medicare Part B,” the exemption in La. R.S. 47:337.9(F) applies to the sales taxes paid by Southeast, LP.

c. Whether La. R.S. 47:337.9(F) and La. R.S. 47:301(10)(u) are in conflict

The Sheriff asserts that the Board erred by finding that the availability of the tax exemption of La. R.S. 47:337.9(F) and the tax exclusion of La. R.S. 47:301(10)(u) are complementary with respect to the purchase of prescription drugs “through or pursuant to a Medicare Part B and D plan.” Southeast, LP responds that any discussion of La. R.S. 47:301(10)(u) is irrelevant because the Board relied upon La. R.S. 47:337.9(F) when granting summary judgment.

We agree that such a discussion is irrelevant. The statutes are not in conflict, but instead complement one another. Thus, a taxpayer, such as Southeast, LP, may be entitled to relief under the exemption provided by La. R.S. 47:337.9(F) upon the proper showing.⁵

⁵ The tax exclusion contained in La. R.S. 47:301(10)(u) was deleted as part of a rewrite of the Revenue and Finance section of the Louisiana Revised Statutes effective December 4, 2024. 2024 La. Sess. Law Serv. 3rd Ex. Sess. Act 11, § 2, eff. Dec. 4, 2024. The provision as modified is currently located in La. R.S. 47:305.2(B)(8).

Accordingly, we find that the Sheriff's assignments of error Nos. 1-3 are without merit.

2. *Assignment of Error No. 4*

In assignment of error No. 4, the Sheriff argues that the Board erred by awarding Southeast, LP a refund of local sales and use taxes paid by DaVita on purchases of prescription drugs sold by ASD to DaVita, and not Southeast, LP. The Sheriff contends that whether Southeast, LP purchased the prescription drugs from ASD is a material disputed issue of fact.

We disagree. As noted above, Southeast, LP provided extensive detail about the purchase and use of the prescription drugs and was able to calculate the exact refund amount for prescription drug purchases to Medicare patients and showed that Southeast, LP's purchases were pursuant to the Medicare Part B plan. The party moving for summary judgment must meet a strict standard of showing that the facts are clear and that any real doubt as to the existence of a genuine issue of material fact has been excluded. *Id.* If the mover meets this burden, the burden shifts to the non-mover to present evidence demonstrating that material issues of fact remain. *Harvest Time Community Dev. Corp. v. St. John the Baptist Par. Sch. Bd.*, 412 So.3d at 239.

Considering the extensive proof provided by Southeast, LP, the Sheriff was required to respond with evidence demonstrating that material issues of fact remained as to whether Southeast, LP purchased the prescription drugs from ASD. The Sheriff failed to do so. His argument in his reply brief that he objected to Mr. Steindler's refund affidavit by responding "Objection. Not Relevant. Not Material" is insufficient. The arrangement between Southeast, LP and DaVita for the procurement of the prescription drugs for Clinic #2032 is clear. And Southeast, LP established that the drugs were purchased through or pursuant to a Medicare Part B plan. It is of no consequence that Southeast, LP used a wholesaler or

distributor to procure the necessary drugs. La. R.S. 47:337.9(F) clearly states that “*prescription drugs* purchased ... shall be exempt...” without any reference to the purchaser. The Sheriff did not produce any factual support to establish the existence of any material fact in dispute.

The Sheriff’s assignment of error No. 4 is without merit.

3. *Assignment of Error No. 5*

In assignment of error No. 5, the Sheriff argues that the Board erred by calculating the amount of the refund using a formula that did not exclude prescription drugs purchased “through or pursuant” to Medicare Part C plans and Medicaid. La. R.S. 47:337.9(F) does not exempt local sales and use taxes on purchases made through or pursuant to Medicare Part C plans.

The Sheriff did not raise this issue before the Board. Appellate courts generally will not consider issues raised for the first time on appeal. *Goines v. Cash America, Inc. of Louisiana*, 21-727 (La. App. 5 Cir. 10/5/22), 351 So.3d 714, 719; Uniform Rules – Courts of Appeal, Rule 1-3. Considering this long-standing rule of law, we will not consider the Sheriff’s argument on this point.

III. *Conclusion*

We conclude that Southeast, LP’s purchase of prescription drugs qualifies for the tax exemption under La. R.S. 47:337.9(F), and that Southeast, LP is entitled to a refund of the sales tax paid on these prescription drug purchases, plus interest. We affirm the judgment of the Louisiana Board of Tax Appeals.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 2, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-483

E-NOTIFIED

BOARD OF TAX APPEALS (CLERK)

HONORABLE CADE R. COLE (DISTRICT JUDGE)

ANDRE B. BURVANT (APPELLEE)

JESSE R. ADAMS, III (APPELLEE)

KENNETH C. FONTE (APPELLANT)

MAILED