BOARD OF TAX APPEALS
STATE OF LOUISIANA

QUEST DIAGNOSTIC CLINICAL LABORATORIES, INC.
PETITIONER

VERSUS **DOCKET NO. 8633**

T.A. BARFIELD, JR.
SECRETARY, DEPARTMENT OF REVENUE,
STATE OF LOUISIANA AND THE STATE OF LOUISIANA
RESPONDENT

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JUDGMENT
WITH ADDITIONAL WRITTEN REASONS

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A hearing was held on the merits of this matter on March 11, 2015 with Judge Tony Graphia (ret.), Chairman, Cade R. Cole and Kernan A. Hand, Jr. present and no Board members absent. Present before the Board were: Miranda Y. Conner, attorney for the Secretary, and John F. Fletcher and Justin B. Stone, attorneys for Quest Diagnostic Clinical Laboratories, Inc. ("Taxpayer"). After the hearing, the matter was taken under advisement, and this Judgment is now unanimously rendered.

Taxpayer appeals the Secretary's failure to act on its claim for refund of Louisiana corporation income taxes for 2005 and 2006 in the amount of $191,690. The Taxpayer filed an alternative plea for the same amount under the provisions of R.S 47:1481, a claim for money erroneously paid into the state treasury.

The Taxpayer operates a network of medical laboratories where it performs clinical, diagnostic testing services, including specialized laboratories, regional laboratories and rapid response laboratories. Phlebotomists collect, package and send specimens to one of Taxpayer's laboratories for testing.

Prior to Hurricane Katrina, Taxpayer had a laboratory in Metairie, Louisiana where it performed some of the testing of the specimens, and some of the specimens were sent out of Louisiana to be tested in Taxpayer's out-of-state laboratories.

After Hurricane Katrina, the laboratory in Metairie was destroyed, and virtually all of the testing of the specimens was tested in Taxpayer's laboratories outside of Louisiana. In 2006 Taxpayer's laboratory in Metairie was rebuilt but it no longer performed the diagnostic services that it had done prior to Katrina. The Taxpayer, after Katrina in 2005

and in 2006, the Refund Period, treated its income the same as it had prior to Katrina. The Taxpayer asserts that the treatment of its income tax for the Refund Period was improper for the reason stated hereinafter and seeks a refund of the taxes that it claims to have improperly paid.

The issue is whether Taxpayer is a "Service enterprise" under R.S.47:287.95(D) as claimed by the Taxpayer and, if so, entitled to the requested refund, or whether Taxpayer is to be treated under R.S. 47:287.95(F) "Manufacturing, merchandizing and other business", as claimed by the Secretary, and, if so, not entitled to the refund.

The parties agree to the amount of the refund if the Taxpayer is entitled to a refund.

The evidence revealed that after Hurricane Katrina, the phlebotomists in the employ of Taxpayer would take specimens from patients at the direction of physicians, and then send the specimens to Taxpayer's laboratories outside of Louisiana for testing.

The analysis of the specimens during the Refund Period was performed outside of Louisiana by the Taxpayer's professional staff of physicians and the other highly trained personnel employed by Taxpayer, and this testing used Taxpayer's equipment located outside of Louisiana.

Prior to the Refund Period, the Taxpayer performed certain tests on the specimens in Metairie, Louisiana with equipment located in Metairie. During the Refund Period, due to the destruction of its facility in Metairie, the Taxpayer no longer performed the tests in Louisiana. Taxpayer claims that it improperly filed its Louisiana income tax return for the refund period based on the incorrect idea that it was still doing the tests in Louisiana.

Corporations doing business both in Louisiana and in other states are required to apportion their income within and without the state for purposes of income tax. The apportionment percentages are found in R.S. 47:287.95. Taxpayer contends that it is a "Service enterprise" as contemplated by R.S. 47:287.95(D). The Secretary contends that Taxpayer is not a "service enterprise" but instead falls under the default provision for "...any business not included in Subsections A through E of this section..." under R.S. 47:287.95(F)(1).

In the Secretary's Post-Trial Memorandum, the Secretary stated that he was prohibited from granting the requested refund under the provisions of R.S. 47:1621(F).

This defense was not urged prior to or at the trial of this matter. We find that it is too late to urge it at this time. However, had the Secretary urged that defense timely, it would have been to no avail, the Board has ruled that § 1621(F) is not a restriction on a refund action before the Board. See e.g., *General Electric Capital Services, Inc. V. Barfield*, 2013 WL 3465284, p. 3 (La. Bd. Tax. App. 6/19/13), *citing Tin, Inc. v. Washington Parish Sheriffs Office* 2012-2056, p. 7 (La. 2013) 112 So.3d 197, 202 (where the Supreme Court held that the exception written within § 1621(F) refers to this Board's jurisdiction pursuant to R.S. 47:1625).

R.S.47:287.95(D) provides in pertinent part:

> "D. **Service enterprises.** The Louisiana apportionment percent of any taxpayer whose net apportionable income is derived primarily from a service business in which the use of property is not a substantial income-producing factor shall be…". (emphasis supplied)

An examination of Taxpayer's Louisiana tax returns for the periods under consideration shows that the Taxpayer owned buildings, other depreciable fixed assets and land valued in excess of $335,000,000. The testimony adduced at trial revealed that the Taxpayer owned a significant amount of expensive testing equipment that it used to accomplish much of the testing from which its income was derived. The fact that much of its "property" contemplated in R.S. 47:287.95(D) above was located outside of this state is of no consequence. The statute does not provide that the "property" be located in Louisiana. The nature of apportionment of business activity across state lines and our state's apportionment formulas necessarily contemplate that certain of the "property" will be located outside of Louisiana.

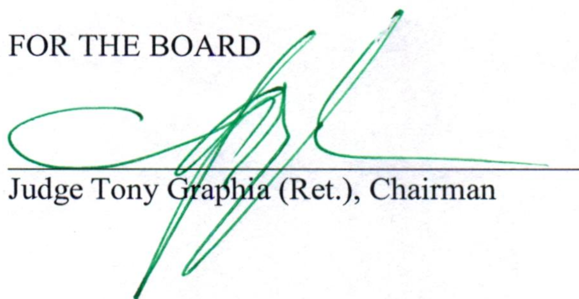
The Board finds that Taxpayer is not a "Service enterprise" under R.S.47:287.95(D), but should instead be properly classified in the default category of "any business not included in Subsections A through E of this Section…" La. R.S. 47:287.95(F). The Taxpayer therefore properly apportioned when it filed its returns and no refund is now due.

IT IS ORDERED, AJUDGED AND DECREED that Taxpayer's appeal pursuant to R.S. 47:1625 IS HEREBY DENIED and DISMISSED;

IT IS FURTHER ORDERED, AJUDGED AND DECREED that Taxpayer's alternative prayer for a claim against the state under R.S. 47:1481 IS HEREBY DENIED and DISMISSED.[1]

Baton Rouge, Louisiana this 13 day of May, 2015.

FOR THE BOARD



Judge Tony Graphia (Ret.), Chairman

[1] Although the remainder of this Judgment is appealable to the relevant Court of Appeals pursuant to the provisions of La. R.S. 47:1434, *et seq*; pursuant to R.S. 47:1486, the Board's denial of the §1481 claim is not appealable.