BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

NATIONAL OILWELL VARCO, L.P.,
Petitioner,

vs. BTA DOCKET NO. L00283

AMANDA H. GRANIER, COLLECTOR
LAFOURCHE PARISH SCHOOL BOARD,
SALES AND USE TAX DEPARTMENT,
AND LAFOURCHE PARISH SCHOOL
BOARD, SALES AND USE TAX
DEPARTMENT,
Respondents.

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JUDGMENT ON TAXPAYER'S MOTION FOR PARTIAL SUMMARY JUDGMENT WITH WRITTEN REASONS

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On November 7, 2024, this matter came before the Board for hearing by Zoom on the *Motion for Partial Summary Judgment* filed by National Oilwell Varco, L.P. ("NOV"), with Local Tax Judge Cade R. Cole presiding. Appearing before the Board were Jesse "Jay" R. Adams, III, attorney for NOV, and Patrick M. Amedee, attorney for Amanda H. Granier in her capacity as Sales Tax Collector for the Lafourche Parish School Board, Sales and Use Tax Department, and the Lafourche Parish School Board, Sales and Use Tax Department (collectively the "Collector"). At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment in accordance with the attached written reasons.

IT IS ORDERED, ADJUDGED AND DECREED that the *Motion for Partial Summary Judgment* filed by NOV is hereby **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that NOV's sales of separately stated and invoiced mud engineering services are not subject to the Sales Tax administered by the Collector.

Judgment Rendered and Signed at Baton Rouge, Louisiana on this 27th day of January, 2025.

FOR THE BOARD:

Cade R. Cole

LOCAL TAX JUDGE CADE R. COLE

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WRITTEN REASONS FOR JUDGMENT ON TAXPAYER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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On November 7, 2024, this matter came before the Board for hearing by Zoom on the *Motion for Partial Summary Judgment*[1] filed by National Oilwell Varco, L.P. ("NOV"), with Local Tax Judge Cade R. Cole presiding. Appearing before the Board were Jesse "Jay" R. Adams, III, attorney for NOV, and Patrick M. Amedee, attorney for Amanda H. Granier in her capacity as Sales Tax Collector for the Lafourche Parish School Board, Sales and Use Tax Department, and the Lafourche Parish School Board, Sales and Use Tax Department (collectively the "Collector"). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues the following Written Reasons for ruling.

Background:

This matter is an appeal for redetermination of a Notice of Assessment dated June 30, 2016 (the "Assessment"), issued by the Collector to NOV for Lafourche Parish Sales Tax, interest, and penalties in the aggregate amount of $450,840.76, for the tax periods beginning on December 1, 2009, up to and including the tax period ending December 31, 2011 (the "Tax Periods"). The Assessment followed an audit of NOV by over a dozen parishes (the "Audit"). NOV has moved for partial summary

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[1] This is the second time NOV has sought partial summary judgment. The Board denied NOV's first *Motion for Partial Summary Judgment* on July 6, 2022. The relief prayed for and the grounds for the relief sought in NOV's second *Motion for Partial Summary Judgment* are entirely distinct from those of the first motion.

judgment vacating the portion of the Assessment that assesses Lafourche Parish Sales Tax on NOV's sales of separately stated and invoiced mud engineering services.

During the Tax Periods, NOV provided goods and services for drilling, completing, remediating, and working over oil and gas wells and service pipelines, flowlines, and other oilfield tubular goods. NOV's business included selling drilling muds and their ingredients. Drilling muds are liquid drilling fluids used when drilling oil and gas wells. The main function of drilling muds is suspending and transporting rock cuttings generated in the well bore to the surface. Drilling muds also serve a variety of other purposes in the oil and gas drilling process.

In addition to selling drilling muds, NOV sold the services of certain employees in connection with the use of drilling muds. These employees are described as mud "engineers" by NOV. However, the Collector describes them as sales representatives. For purposes of this opinion, the Board refers to these individuals as Drilling Mud Employees ("DME"). The DME's worked with NOV's customers to develop specialized mud "programs." Each mud program was tailored to the specific characteristics of the customer's well. The DME would visit the customer's well and would recommend certain chemical compositions and quantities of drilling muds.

NOV did not require its customers to accept the DME's recommendations. In fact, NOV allowed its customers to purchase drilling muds without purchasing DME services at all. Customers who purchased NOV's drilling muds were free to obtain drilling mud services from a third party. Alternatively, NOV allowed customers to purchase a DME's services even if the customer had purchased the drilling muds from another source. Furthermore, the price of NOV's drilling muds was the same regardless of whether the customer used NOV's DME's or not.

In most cases, NOV issued one invoice at the end of a job, referred to as "end-of-well billing." However, certain long-term jobs were billed monthly. At the end of a job, NOV would issue a credit for any unused drilling mud not kept by the customer. When drilling muds and DME services were purchased together, they were separately itemized on one bill.

Summary Judgment Standard:

A motion for summary judgment must 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); *Porto v. TBC Grand Bayou, LLC*, 2019-1376, p. 3 (La. App. 1 Cir. 5/11/20), 303 So.3d 1060, 1062. The Board may consider "only those documents filed in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made." La. C.C.P. art. 966(D)(2). The Board may grant partial summary judgment as to a particular legal issue. La. C.C.P. art. 966(E). *Quality Envt'l. Processes, Inc. v. Energy Dev. Corp.*, 2016-0171, p. 14 (La. App. 1 Cir. 4/12/17), 218 So.3d 1045, 1060.

Objections to Evidence:

NOV's Objections

NOV objects to Exhibits C and D to the Collector's opposition. Exhibit C is purportedly a document from the Oklahoma Tax Commission. Exhibit D is purportedly a document from the California State Board of Equalization. NOV objects to these documents on the grounds that they are not attached to any of the types of documents that may be filed in opposition to a motion for summary judgment under La. C.C.P. Art. 966(A)(4)(a), are unauthenticated, and are irrelevant to Louisiana law. The Collector responds that these documents are publicly available and self-authenticating official documents. Further, the Collector represents that these documents are merely meant to illustrate that their position on the taxability of drilling mud services is not an outlier among other tax jurisdictions.

NOV is correct that the documents are not admissible under La. C.C.P. Art. 966(A)(4)(a). Article 966 requires that the public record or public document be certified if it is to be offered in support of, or opposition to, a motion for summary judgment. Under the Code of Evidence, public records may be authenticated by: a statement that the document is true and correct from the custodian of the public document, or other person authorized to make said certification; by a certificate

complying with Article 902(1), (2), or (3); and in situations where the public document is treated as *prima facie* genuine by special statutory designation. La. Code Evid. 905. The Collector's documents do not have the required certification and there is no special statute that makes these documents *prima facie* genuine. Accordingly, the Board sustains this objection and does not consider Collector's Exhibits C and D.

Collector's Objections

At the hearing, counsel for the Collector raised an objection to Attachment C to the Affidavit of Peter J. Horn, submitted in support of NOV's *Motion for Partial Summary Judgment*. This document purports to be an invoice from NOV to a customer for drilling muds only with no DME services. The Collector did not raise this objection in their *Memorandum in Opposition*. Under La. C.C.P. Art. 966(D)(2), any objection to a document filed in support of a motion for summary judgment "shall be raised in a timely filed opposition or reply memorandum." This objection was not raised in the manner required by La. C.C.P. Art. 966(D)(2) and is therefore overruled as untimely.

The Collector did, however, raise timely objections to Attachment A to the Affidavit of Peter J. Horn in their *Memorandum in Opposition*. This document objected to purports to be a copy of "American Petroleum Institute's Recommended Practice 13L, *Training and Qualification of Drilling Fluid Technologies*" ("ARP RP 13L"). The Collector argues that Mr. Horn testified in his deposition that he lacked knowledge regarding the technical aspects of drilling mud, was not a certified mud engineer, and has not participated in the formulation of a mud plan. These objections go to the weight of his testimony as evidence, but are not grounds for excluding a document attached to his Affidavit which contains his sworn statement that he relied on the document and that the copy attached is true and correct.

However, the Collector's additional objection to ARP RP 13L on relevancy grounds is well founded. The ARP RP 13L shows a publication date of November 2017, reaffirmed May 2023. The last of the Tax Periods at issue in this case was December 2011. Thus, the ARP RP 13L that is attached to Mr. Horn's Affidavit was

not published during the relevant Tax Periods. This document could not have had any bearing on the qualifications of DME's during the Tax Periods at issue. Accordingly, the Board sustains the Collector's objection as to relevancy and does not consider the ARP RP 13L.

Discussion:

Drilling mud engineering services are not among the taxable services listed in La. R.S. 47:301(14). The Collector's determination that they are nevertheless taxable is based on La. R.S. 47:301(13)(a), which defines taxable "sales price" as:

> [T]he total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing . . . nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling, or repairing property sold.

Further, LAC 61:I.4301(C)(Sales Price) provides that the taxable sales price of TPP includes "[a]ny part of the sales price that is related to costs incurred by the vendor to bring the product to market or make the product available to customers . . . even if a separate charge is made on the invoice." Thus, the question presented is how to characterize the DME services.

In *Pot-O-Gold Rentals, LLC v. City of Baton Rouge*, 014-2154 (La. 1/16/2015), 155 So.3d 511, the taxpayer leased portable toilets and portable toilet cleaning services. The taxpayer provided its customers with three options: (1) leasing a portable toilet with no services; (2) leasing a portable toilet with cleaning services; and (3) furnishing portable toilet cleaning services only. The Louisiana Supreme Court, in a *per curiam* opinion, found that the "true object" of the transactions in the second category, be they for the lease of property or the provision of a service, was at least debatable. Under the canon of construction applicable to taxing statutes, the Court adopted the interpretation more favorable to the taxpayer. In reversing the First Circuit's majority decision, the Supreme Court also stated, "[m]oreover, we also note the dissent's reasoning that to hold that providing cleaning services for portable

toilets is not a taxable event if the toilet is owned by someone else, but is a taxable service if the toilet is owned by the lessor, creates an absurd result." *Id.* at 512.

In *Monsanto Company v. St. Charles Parish School Board*, 93-847 (La. App. 5th Cir. 5/11/94), 638 So.2d 257, the Fifth Circuit found that administrative charges, operating expenses, and electricity costs were incidental to the sale of "dry" CO_2 and therefore taxable. The incidental charges represented the cost to the seller of converting "wet" CO_2, which is a waste by-product of ammonia production, into dry CO_2, which has been purified by heat and compression. These charges were separated from charges for the dry CO_2 (by volume) on the seller's invoices.

However, the Court looked to the substance of the contract between the seller and the purchaser. Under the contract terms, title and risk of loss transferred at the point where delivery of the dry CO_2 occurred. Based on the contract, the Court found that the sale occurred after the materials had been processed into dry CO_2. Accordingly, the Court determined that the end product was the dry CO_2 and that the costs of creating said end-product were labor or service costs included in the taxable "sales price" of the final product.[2]

Similarly, in *Modern Homes & Equipment Company, Inc. v. Collector of Revenue*, (La. App. 1st Cir. 10/12/82), 422 So.2d 1237, a seller of roof trusses collected tax on the cost of materials but did not collect tax on charges for labor or freight. The seller was an out-of-state entity that constructed the trusses at its facility and then shipped them by common carrier to a job site in Louisiana. The labor charges at issue were for the seller's labor in assembling the property prior to shipment. These charges were separately stated on the seller's invoices. The labor for actually installing the trusses at the job site was not at issue.

The Court determined that the charges were taxable. The definition of sales price expressly includes labor or service costs, except for installing, applying, remodeling, or repairing the property sold. La. R.S. 47:301(13)(a). The seller's labor

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[2] The Court also found the charges for electricity to be taxable because they were a component of the costs of the process used to manufacture the dry CO_2.

in assembling the property prior to shipping did not fit within one of the exceptions to taxable labor charges. Notably, it was undisputed that a third-party contractor, not the taxpayer, performed the installation at the job site.

In *Lake Charles Memorial Hospital v. Parish of Calcasieu, et al*, 98-519 (La. App. 3 Cir. 12/9/98), 728 So.2d 454, the Court found that services provided by a pharmaceuticals vendor to a hospital were incidental to the sale of said pharmaceuticals and included in their taxable sales price. The services that the vendor provided were: calculating dosages; determining drug interactions; providing information on new drugs; and keeping down the cost of drug therapies to patients. The services were not sold independently of the pharmaceuticals, nor were they separately itemized on the vendor's bills to the hospital.

Here, the services involved are not part of the manufacturing process that produces the end product. The DME's services are not like the CO_2 conversion services in *Monsanto*. The DME services are not pre-delivery assembly and so they are also unlike the services in *Modern Homes*. *Modern Homes* is further distinguishable from this case because the DME services are performed at the job site and are tailored to the specific properties of the customer's well. Those facts make the DME services more similar to performing an on-site installation than remotely assembling a product in the seller's warehouse. The DME services are also separately stated and can also be sold independently of the drilling muds. Thus, they are distinguishable from the incidental pharmaceutical services in *Lake Charles Memorial*.

The facts of this case are most comparable to *Pot-O-Gold*. In both fact patterns, the seller offers three options: the sale of TPP only; the sale of TPP and a service; or the sale of the service only. Based on the competent summary judgment evidence in this case, like in *Pot-O-Gold*, the "true object" of the mixed transactions (the second category) is at least debatable. Most compelling, however, is the Supreme Court's directive to avoid the absurdity of a holding that makes a vendor's services taxable when the vendor provides the related TPP, but not taxable when that same TPP is

provided by someone else. However, the statutory provisions governing the lease tax in *Pot-O-Gold* are not the same as the statutory provisions governing the sales tax at issue in this case. Nevertheless there is no reason why the absurdity noted by the Supreme Court should be permissible for purposes of the sales tax when it was impermissible for purposes of the lease tax. Accordingly, the Board finds that the charges for separately stated and invoiced DME services are not taxable. NOV is therefore entitled to partial summary judgment as prayed for on the limited subset of transactions identified in their motion.

Baton Rouge, Louisiana, this 27th day of January, 2025.

FOR THE BOARD:

LOCAL TAX JUDGE CADE R. COLE