

2017 WL 8315357 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

BLUESTREAK SERVICES, LLC, PETITIONER

v.

SECRETARY, DEPARTMENT OF REVENUE AND TAXATION STATE OF LOUISIANA, RESPONDENT

Docket No. 9548D

November 7, 2017

WRITTEN REASONS FOR JUDGMENT

*1 A hearing on the merits of this case was heard by the Board on August 8, 2017, with Judge Tony Graphia (Ret.), Chairman, presiding, and with Board Members Cade R. Cole and Francis “Jay” Lobrano present, and no member absent. Participating in the hearing were: Theodore D. Vicknair, attorney for Bluestreak Services, LLC. (the “Taxpayer”), and Aaron D. Long, attorney for the Secretary, Department of Revenue (the “Secretary”). After the hearing, the case was taken under advisement, and the Board now unanimously renders Judgment for the following Written Reasons:

Taxpayer appeals the Secretary's assessment of sales tax in the amount of \$249,191.58 plus interest and penalties for the period January 1, 2010 through October 31, 2013.

It appears that the assessment is based on the Secretary's assertions that the Taxpayer's transactions are a “Sale” as contemplated by the provisions of La. R.S. 47:301(12) which subsection states in relevant part:

“(12) ‘Sale’ means any transfer of title or possession, or both, in exchange, barter...in any manner, or by any means, whatsoever, of tangible personal property, for a consideration, and includes the fabrication of tangible personal property for a consideration and includes the fabrication of tangible personal property for consumers who furnish either directly or indirectly the material used in fabrication work..

Taxpayer alleges the activities in which it is engaged, and which the Secretary seeks to assess it, are the “leasing” of workmen by the hour to Petrohawk and later to BHP oilfield service companies. The term “Petrohawk” as used herein includes the activities after Petrohawk transferred its business operation to BHP.

The Secretary's filed a general denial.

The question before the Board is whether the Taxpayer's activities, are a “fabrication” as contemplated by La. R.S. 47:301(12).

The evidence produced at trial show the facts as follows. Taxpayer is located in Sibley, Louisiana. Sibley is in the Haynesville Shale gas field. Taxpayer performed work under contract for Petrohawk, an oil and gas exploration company. Petrohawk intended to drill wells in the Haynesville Shale. Petrohawk needed welders to do much of its needed work. Petrohawk did not want to have welders as its own employees. It was agreed between Taxpayer and Petrohawk

that Taxpayer would hire welders and welders' helpers as its employees and then “lease” them to Petrohawk on an hourly basis. The “leased employees” were to work for and under the direction of Petrohawk.

The “leased employees” were generally welders and welders' helpers. The testimony revealed that about half of the work done by the “leased employees” was done at well sites at which Petrohawk was working, and the other one-half of the work was done at the yard of Taxpayer. It appears that the work that was done by the “leased employees” was creating various items to be used by Petrohawk on the wells that Petrohawk was working. The testimony revealed that the raw materials used by the “leased employees” were all ordered by and to the specifications of Petrohawk. At the instruction of Petrohawk, the raw materials were delivered to either the yard of Taxpayer or to the wells on which Petrohawk was working.

*2 These raw materials were billed to the account of, paid for by, and were at all times the property of Petrohawk. When the raw materials were delivered to the yard of Taxpayer, they remained there only for a short period of time until they were utilized. The testimony revealed that the “leased employees” always worked under the supervision of Petrohawk supervisors. The plans and specification of the products worked on or created by the “leased employees” were plans and specifications created or procured by Petrohawk. The items created by the “leased employees” were at all times the property of Petrohawk. The same is true for both the items created at Taxpayer's yard and at the Petrohawk well sites.

The invoices submitted in evidence by the Taxpayer showed that Petrohawk was charged daily for the hours, and this charge was on the hourly basis that the “leased employees” worked. The invoices were payable “due upon receipt.” The invoices recited a specified job. The invoices were created daily listing the name and category of the “leased employee,” the hourly rate, and the number of hours worked each day. Petrohawk employees verified the accuracy of the invoices.

The Board finds that the “leased employees” worked for-and at the direction of-Petrohawk. The things that were created by the “leased employees” were things that were created by Petrohawk for its own use. The “leased employees” were not fabricating items for the Taxpayer, who would then sell those items to Petrohawk.

During 2010, the Taxpayer only conducted business from the middle of May, 2010 through the end of 2010. The audit was done on a sampling basis and included all of 2010. Even if you accept the Secretary's view of the taxability of these transactions, the Secretary incorrectly assessed Taxpayer for sales from January 1, 2010 through the middle of May 2010, a time Taxpayer was not conducting business.

The Board finds that Taxpayer herein was not fabricating things for Petrohawk, nor was it selling or repairing things for Petrohawk. Therefore, Judgment will be rendered in favor of the Taxpayer.

Baton Rouge, Louisiana this day of 7 November, 2017.

Judge Tony Graphia (Ret.)
Chairman

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