

W.W. GRAINGER, INC.,  
Petitioner

vs.

B.T.A. DOCKET NO. 13028D

KIMBERLY LEWIS,  
SECRETARY OF THE DEPARTMENT  
OF REVENUE,  
STATE OF LOUISIANA,

Defendant

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**ORDER AND REASONS  
GRANTING MOTION TO COMPEL IN PART  
AND DENYING MOTION TO COMPEL IN PART,**

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On November 29, 2023, this matter came before the Board for hearing on the *Motion to Compel* filed by the Department of Revenue (“Department”) with chairman Francis J. “Jay” Lobrano presiding, Judge Lisa Woodruff-White (Ret.) present, and Vice-Chairman Cade R. Cole present by Zoom. Appearing before the Board were Loretta Mince on behalf of the Department and Nicole Crighton on behalf of W.W. Grainger, Inc. (“Taxpayer”). At the conclusion of the hearing, the Board took the matter under advisement. The board now rules as follows.

**Background**

The principal issue in this case is the Department’s invocation of its authority under La. R.S.47: 287.480(3)(b), which allows the Department to require affiliated corporations to file “consolidated statements” in order to determine the taxable income of any one of the affiliated were related corporations. The Department invoked La. R.S.47:287.480(3)(b) after auditing the Taxpayer for Corporate Income and Franchise Tax relating to the calendar years ended December 31, 2012 though December 31, 2014 (the “Tax Period”).<sup>1</sup>

In 2012, Taxpayer formed Grainger Management, LLC (“Grainger Management”) as a wholly owned subsidiary and restructured its business. The Department claims that Taxpayer the restructuring was intended to avoid state income tax by diverting substantial profits to Grainger Management. The Department further alleges that the restructuring lacked substance because it made

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<sup>1</sup> For clarity, Taxpayer alleges that the Tax Period constitutes the Franchise Tax Years 2013 through 2015.

no changes to Taxpayer's operations. After the restructuring, there was allegedly a significant reduction in the Taxpayer's reported income. In addition, Grainger Management, allegedly, did not report any taxable income in Louisiana.

The Department represents that the restructuring resulted in tax disputes with Louisiana and three other states. The other states identified are: Arkansas; North Carolina; and South Carolina. The Department seeks to discover the statements that the Taxpayer made to those other jurisdictions concerning the purpose and implementation of the restructuring. At the hearing, counsel for the Department stated that this was sole remaining point of contention with respect to the *Motion to Compel*, and specifically relates to Request for Production No. 8 ("RFP 8").

In RFP 8 the Department requests:

All documents related to any legal or administrative proceedings brought against W.W. Grainger, Inc. from 2011 to the present related to the tax treatment of transactions between Grainger Management, LLC or W.W. Grainger, Inc.

Taxpayer asserts that the disputes in other jurisdictions are irrelevant because they dealt with different facts and law. Taxpayer further responds that audit workpapers, protests, and settlement agreements from other states are confidential.

### Relevance

Taxpayer views disputes in other states as irrelevant to Louisiana law. La. R.S.47: 287.480(3)(b) appears to be unique in its use of the term "consolidated statements." The South Carolina and Arkansas statutes, in contrast, appear to provide their respective collectors with the authority to require "any" method of reporting when necessary to effectuate an equitable allocation and apportionment of the taxpayer's income. S.C. Code Ann. § 12-6-2320; Ark. Code Ann. § 26-51-718. The North Carolina statute permits the collector to require any information reasonably necessary to determine if intercompany transactions lack economic substance, or to require the filing of a combined return. N.C. Gen. Stat. Ann. § 105-130.5A(a), (b), (d).

Evidence which is not relevant is not admissible. La. Code Evid. Art. 402. However, the Board does not need to decide if the information sought will be admissible when ruling a Motion to Compel. For a Motion to Compel, the question is whether the information sought is discoverable. The Code of Civil Procedure describes the general scope of discovery as follows:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.<sup>2</sup>

If the particular information sought appears reasonably calculated to lead to the discovery of admissible evidence, then it is discoverable. *Lehmann v. Am. S. Home Ins. Co.*, 615 So.2d 923, 925 (La. Ct. 1 App. 1993), *writ denied*, 617 So.2d 913 (La. 1993).

The purpose of the Louisiana discovery process is to afford all parties a fair opportunity to obtain facts pertinent to the litigation, to discover the true facts and compel disclosure of these facts wherever they may be found, and to assist litigants in preparing their cases for trial. *Hicks v. USAA Gen. Indem. Co.*, 2021-00840 (La. 3/25/22, 7–8), 339 So.3d 1106, 1112, (quoting *Hodges v. S. Farm Bureau Cas. Ins. Co.*, 433 So. 2d 125, 129 (La. 1983)) *reh'g denied*, 2021-00840 (La. 5/10/22); 347 So.3d 735. Discovery statutes are to be liberally and broadly construed to achieve their intended objectives. *Id.* Under a broad and liberal construction of the rules of discovery, the Board agrees that, generally, the Petitioners' statements to other jurisdictions regarding the purpose and implementation of the restructuring may be discoverable.

### Confidentiality

The Department acknowledges that settlement agreements with other states are confidential. However, the Department asserts that information and documents

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<sup>2</sup> La. C.C.P. Art. 1422.

concerning the proceedings in those other states are not confidential. At the hearing, counsel for the Department stated that they are seeking the following categories of documents: correspondence sent to other states; protest letters; pleadings; and discovery responses. The Board asked the Department's counsel why those items could not be obtained from the other states' agencies. Counsel responded that they had contacted those agencies and been told that the protests were not available.

Settlement agreements with other states are clearly confidential. However, confidentiality does not extend to these documents if they were later filed, not under seal or protective order, into the public record of a court case. Counsel for the Taxpayer stated that she was not sure if any of the disputes made it to litigation. Nevertheless, if the Taxpayer has documents fitting this criteria in their possession, they are discoverable. The Board agrees that documents filed by the Taxpayer in administrative protests with other states such as, protest letters and, audit workpapers are discoverable under seal.

Accordingly, IT IS ORDERED that the *Motion to Compel* is GRANTED IN PART: Taxpayer shall provide the Department with any documents in its possession in which the Taxpayer states it's position concerning the purpose and implementation of the 2012 restructuring that were filed, not under seal or protective order, into the public record of a court case in North Carolina, South Carolina, and/or Arkansas. The *Motion to Compel* is also GRANTED IN PART as to documents filed by the Taxpayer in administrative protests with other states such as, protest letters and, audit workpapers subject to the proviso that, due to the confidential nature of this information, the documents produced pursuant to this Order shall be deemed under Seal. The *Motion to Compel* is DENIED IN PART as to RFP 8 except as provided above and the *Motion to Compel* is in all other respects DENIED AS MOOT.

Signed in Baton Rouge, Louisiana, this 8<sup>th</sup> day of February, 2024.

**FOR THE BOARD:**



**CADE R. COLE, VICE-CHAIRMAN  
LOUISIANA BOARD OF TAX APPEALS**