

BOARD OF TAX APPEALS
STATE OF LOUISIANA

LOUISIANA MACHINERY CO., LLC
PETITIONER

VERSUS

B.T.A. DOCKET NO. 6379

CYNTHIA BRIDGES, SECRETARY, LOUISIANA
DEPARTMENT OF REVENUE
RESPONDENT

JUDGMENT

A hearing on this matter was held before the Board, by special setting, on October 22, 2013. Present before the Board were: Jessie R. Adams, Andre B. Burvant and Kathryn S. Friel, attorneys for Louisiana Machinery Co., LLC (Taxpayer) and Florence Bonaccorso-Saenz, attorney for the Secretary, Louisiana Department of Revenue (Secretary). At the conclusion of the hearing, the matter was taken under advisement.

On September 15, 2003 Taxpayer filed its 2002 Louisiana corporate income tax return. The return reported a net overpayment of \$2,688,673.00 and requested a refund in that amount. The Secretary neither denied nor allowed the overpayment, and on September 8, 2006 Taxpayer filed a Petition for Refund with the Board as allowed by R.S. 47:1625.

Taxpayer is the retail dealer of and sells Caterpillar products in the state of Louisiana. Taxpayer maintains construction equipment, parts and other supplies related to its operations at its various locations in Louisiana. In 2002 Taxpayer paid annual *ad valorem* taxes to various political subdivisions on the construction equipment, parts and supplies that it owned on January 1, 2002. Taxpayer's 2002 tax return requested a refund of a portion of the *ad valorem* taxes that it had paid the various political subdivisions, the sum of \$2,688,673.00.

R.S. 47:6006 states in part:

"A. There shall be allowed a credit against any Louisiana income or corporate franchise tax for *ad valorem* taxes paid to political subdivisions on inventory held by...retailers...

C. ...The term 'retailer' as used herein means a person engaged in the sale of products to the ultimate consumer..." (emphasis supplied)

It is the position of the Secretary that the portion of the *ad valorem* taxes paid by the Taxpayer to political subdivisions on its inventory of construction equipment that had been leased or rented by Taxpayer, was not "inventory held by...retailers" as contemplated by R.S.47 :6006, and therefore refused to grant the requested refund.

The testimony at the hearing was as follows: Taxpayer has the right to sell Caterpillar construction equipment in Louisiana. Taxpayer has numerous locations throughout Louisiana. The construction equipment (Equipment) that Taxpayer owns and is at issue in this matter is all held for resale. The Equipment is expensive. While the Equipment is being held for sale, some of it is rented. The Equipment is rented to promote sales of the Equipment. One of the reasons that the Equipment is rented is that many of the persons who rent would like to try the Equipment before they buy, and renting gives them an opportunity to do so. Many of the renters do not have the funds necessary to pay the required down payment and renting gives a prospective purchaser the ability to accumulate a down payment by renting. It is the intention of Taxpayer to sell the Equipment and renting facilitates the sale. The Equipment that was rented was listed on Taxpayer's computer list as things that were for sale. It was not uncommon for an item of Equipment that was being rented to be sold to a person other than the renter who was

then was provided with a like piece of equipment. Virtually all (99+ %) of the items that were rented in 2002 were in fact sold in that year or in succeeding years. Only 6 % of the Taxpayer's sales were from rental of Equipment. Parts and service were a highly profitable segment of Taxpayer's business, and the more Equipment Taxpayer sold, the more Equipment there was to repair and to be in need of parts. Some of the *ad valorem* tax that Taxpayer paid to political subdivisions was for immovable property, furniture, fixtures and non-inventory equipment, which tax is not recoverable under the provisions of R.S. 47:6006.

It is the Secretary's position that any Equipment that was once rented was no longer considered inventory as contemplated by R.S. 47:6006 A. and not qualified to receive a credit.

R.S.47:1961.1 which defines inventories of merchants, states in part:

"For the purpose of the classification of property subject to ad valorem taxation and the determination of the applicable percentage of fair market value in determining assessed valuation, the term 'inventories of... merchants' shall mean all goods held in inventory as... finished goods... held by...retailers."

In LAC 61:V. 1701 the Louisiana Tax Commission has defined "inventory" for *ad valorem* purposes as follows:

"A. The definition of inventory. The term *inventory* is defined as the aggregate of those items of tangible personal property which are:

1. Held for sale in the ordinary course of business;...
4. Are utilized in marketing or distribution activities.

B. The term inventory embraces the following:

1. Goods awaiting sale—goods ...awaiting sale which include , but are not limited to: the merchandise of a retail ...concern...goods which are used or trade-in merchandise..."

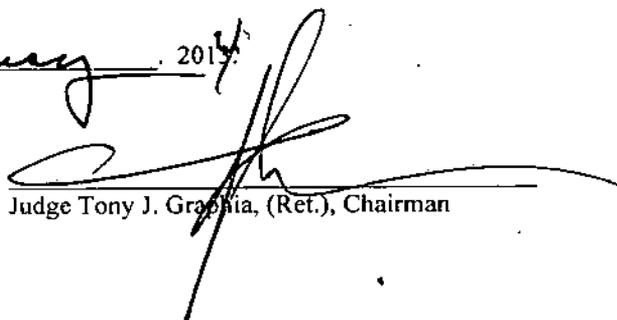
The evidence presented to the Board revealed that the Equipment under consideration in this case is held by Taxpayer for the purpose of sale in the ordinary course of Taxpayer's business.

There is nothing in the foregoing statutes or regulation to suggest, in any way, that "inventory" in Section 6006 A. does not include things that are rented while being held for sale.

For the foregoing reasons it is the ruling of the Board that the Equipment that was rented was inventory as contemplated by R.S. 47:6006 and was entitled to the credit afforded by that section.

This ruling should not be understood to mean that any item that is owned by a business and on which the *ad valorem* tax is self-reported as inventory and paid to a political subdivision is entitled to the credit provided by R.S. 47:6006. Only that inventory which is held with the good faith intention of selling it in the ordinary course of the taxpayer's business would qualify.

Baton Rouge, Louisiana this 7 day of January, 2014


Judge Tony J. Graglia, (Ret.), Chairman