

**STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION**

**CARTER SERVICES, LLC,
Petitioner**

VERSUS

DOCKET NO. L00315

**CADDO-SHREVEPORT SALES
AND USE TAX COMMISSION AND
GAIL HOWELL, IN HER CAPACITY
AS ADMINISTRATOR OF THE
CADDO-SHREVEPORT SALES AND
USE TAX COMMISSION,
Respondent**

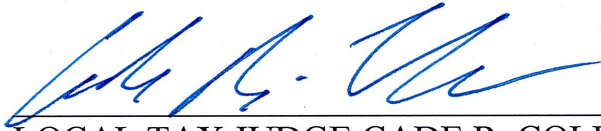
JUDGMENT

This matter came before the Board of Tax Appeals (the "Board") for a hearing on the merits of the Petition of Carter Services, L.L.C. (the "Taxpayer") on December 18, 2018 with Local Tax Judge Cade R. Cole presiding. Participating in the hearing were Richard G. Barham for the Caddo-Shreveport Sales and Use Tax Commission and Gail Howell, in her Capacity as Administrator of the Caddo-Shreveport Sales and Use Tax Commission (the "Collector") and Jason Brown for the Taxpayer. After the hearing, the matter was taken under advisement. The Board now issues Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that there be and hereby is Judgment in favor of the Taxpayer and against the Collector; that the Taxpayer's Petition for Redetermination be granted, and that the assessment against the Taxpayer be vacated.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 9th day of
January, 2019.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

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WRITTEN REASONS FOR JUDGMENT

This matter came before the Board of Tax Appeals (the “Board”) for a hearing on the merits of the Petition of Carter Services, L.L.C. (the “Taxpayer”) on December 18, 2018 with Local Tax Judge Cade R. Cole presiding. Participating in the hearing were Richard G. Barham for the Caddo-Shreveport Sales and Use Tax Commission and Gail Howell, in her Capacity as Administrator of the Caddo-Shreveport Sales and Use Tax Commission (the “Collector”) and Jason Brown for the Taxpayer. After the hearing, the matter was taken under advisement. The Board now issues Judgment for the following written reasons.

The Collector audited the Taxpayer for Caddo-Shreveport Parish (the “Parish”) sales and use tax for the periods beginning December 1, 2012 and ending October 31, 2015 (the “Audit”). As a result of the Audit, the Collector issued to the Taxpayer a Notice of Assessment dated November 16, 2016 for \$31,448.18 in Parish sales and use tax (the “Assessment”). The reason for the Assessment was the Collector’s determination that the Taxpayer should have collected and remitted sales

tax on repairs that the Taxpayer performed on certain oilfield tanks. The Taxpayer timely appealed from the Assessment by filing the instant Petition with the Board on December 14, 2016.

The Taxpayer is a Louisiana limited liability company that provides oil and gas-related services, including mobile repair services to the petroleum storage tanks at issue in this case. These tanks are located above-ground and are attached to pipes which run into the ground. Each tank was constructed at its respective location and spent its entire useful life at that location. The tanks are large and cannot be moved without being disassembled and transported with the aid of heavy machinery like a crane.

The useful life of the tanks may span several decades. Over the course of their useful lives, from time to time, the tanks may develop holes, usually because of corrosion. If not repaired, these holes would allow the contents of the tank to leak into the surrounding environment. The Taxpayer was hired to plug these holes in the tanks and prevent such leaks. To plug the holes, the Taxpayer installed fiberglass coating that it welded or otherwise affixed to the tank's interior. The Taxpayer was required to perform these services at the site of the tank.

The Taxpayer's position is that repairs to the tanks are not taxable because the tanks are immovable property. Repairs to immovable property are not subject to sales tax. *See* La. R.S. 47:301(14)(g)(i)(aa). Under the Louisiana Civil Code, tracts of land, with their component parts, are immovables. La. C.C. art. 462. Civil Code

article 463 provides that buildings and “other constructions permanently attached to the ground” are component parts of a tract of land, and therefore immovable.¹

The Taxpayer contends that the tanks are other constructions. The analysis of whether a thing is an ‘other construction’ under Civil Code article 463 is guided by three considerations: the size of the thing; the degree of its integration or attachment to the soil; and its permanency. *Bayou Fleet P’ship v. Dravo Basic Materials Co.*, 106 F.3d 691 (U.S. 5th Cir. 1997). The Board concludes, based on the evidence presented at the hearing and in the record, that the tanks are of sufficient size to qualify as an immovable. The tanks are so large that they can only be moved by disassembly and the use of heavy equipment, such as a crane. The tanks also have the permanency of an immovable. They spend their entire useful life at their work sites; a period of time that may last many years.

Only the second consideration, the degree of integration with the soil, seems subject to close dispute. The Collector argues that this integration is lacking because the tanks merely rest upon the ground. The Taxpayer argues that the tanks are in fact sufficiently integrated with the ground because they are attached to piping that is buried and runs into the ground.

The Board finds *American Creosote Co. v. Springer*, 241 So.2d 510, 513 (La. 1970) instructive. In *Springer*, our Supreme Court held a line of railroad track to be an ‘other construction.’ The Court found it reasonable to infer that the track became an immovable when “the bed of such a road has been graded and surfaced, the crossties placed in position, the rails laid upon and spiked to the ties, secured or

¹ For purposes of Parish sales and use tax, an other construction will be treated as immovable property regardless of whether there is unity of ownership between the other construction and the underlying land. La. R.S. 47:301(16)(l).

connected, with angle irons and fish plates, and the spaces between the ties filled with ballast.” *Springer*, 241 So.2d at 514 (quoting *Morgan’s La. & T.R. & S.S. Co. v. Himalaya P. & Mfg. Co.*, 78 So. 735, 736 (La. 1918)). The railroad in that case could arguably be said to have merely rested on wooden crossties, resting on a bed of rock, not otherwise embedded into the ground. The Court nevertheless found that the construction was in the nature of an immovable. It does not appear to the Board that there is an absolute rule that an ‘other construction’ must have a “foundation” in the ground in order to establish the degree of integration associated with an immovable. Integration can be established by other means.

Based on the evidence and the record, including photographs introduced at the hearing, the Board finds that that the tanks in question are sufficiently integrated with the underlying ground so as to become other constructions. The tanks are attached to piping that runs into the ground. The size, weight and difficulty of moving the tanks also militates in favor of finding the tanks to be immovable. Based on these facts, the Board concludes that the tanks are “other constructions,” and that repairs to the tanks were therefore not taxable. Accordingly, the Assessment must be vacated.

Baton Rouge, Louisiana this 9th day of January, 2019

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE