

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

CORA-TEXAS MFG. CO., INC.,
Petitioner,

VERSUS **No. 11065D**

KIMBERLY L. ROBINSON,
SECRETARY, DEPARTMENT
OF REVENUE,
STATE OF LOUISIANA,
Respondent

ORDER AND WRITTEN REASONS

This matter came before the Board for hearing on the merits on May 14, 2019 and August 13, 2019, with Judge Tony Graphia (Ret.), Chairman, presiding and Board Members Cade R. Cole and Francis J. “Jay” Lobrano present. Participating in the hearing were Robert Blankenship and Gregory Bodin, attorneys for CORA-TEXAS Mfg. Co., Inc. (“CORA”), and Adrienne Quillen and Aaron Long, attorneys for Kimberly L. Robinson, Secretary, Department of Revenue, State of Louisiana (the “Department”). After presentation of evidence and argument from counsel, the matter was taken under advisement. The Board now unanimously issues this Order and Written Reasons.

CORA seeks refunds for sales and use taxes paid on its purchases and leases of certain equipment CORA claims is excluded from the definition of “sale at retail” pursuant to La. R.S. 47:301(3)(i), (13)(k), and (28)(a) (collectively the “MM&E Statute) as “Manufacturing Machinery and Equipment” (“MM&E”) used to manufacture raw sugar. CORA filed its *Petition to Review Demand for Remittance of Alleged Overpaid Refund and Denial of Resubmit Refund Claim Involving the Manufacturing Machinery and Equipment Exemption* on December 27, 2017 (the

“Original Petition”). As the parties have resolved some of the issues in the case, the Board only addresses those items still in dispute.

CORA claims refunds for sales and use taxes paid on its purchases and leases of MM&E for the years 2013, 2014, 2015, and 2016. For 2014 through 2016, the disputed claims consist of (a) three strata of sampled claims¹; (b) one “strata” of un-sampled claims; and (c) supplemental claims for cane trucks and trailers as set forth in CORA’s *First Supplemental and Amended Petition to Review Demand for Remittance of Alleged Overpaid Refund and Denial of Resubmit Refund Claim Involving the Manufacturing Machinery and Equipment Exemption* (the “Amended Petition”). The disputed amount in Strata 1 is \$25,174.16. The disputed amount in Strata 2 is \$27,002.70. The disputed amount in Strata 3 is \$106,960.75. The disputed amount in the un-sampled Strata is \$7,894.81. The disputed amounts for the supplemental claims as set forth in the Amended Petition are: for 2014, \$47,655.93; for 2015, \$62,666.70; and for 2016, \$69,221.52. The sum of all refund claims remaining in dispute for 2014 through 2016 is \$363,832.20.

The amount still in dispute for 2013 is \$17,255.65, which reflects sixty-four un-sampled claims. The Department initially allowed and paid CORA a refund for some of these claims. However, the Department later changed its position on these items and ultimately filed a Reconventional Demand against CORA seeking a return of the refund on March 28, 2019.² However, CORA paid this amount on March 2, 2018 utilizing the payment under protest procedure, rendering the Department’s

¹ CORA and the Department entered into a sampling agreement under La. R.S. 47:1541. A sampling agreement is a way to save time and money during an audit. The parties selected some of the invoices at issue as representatives of larger classes of invoices. The auditor individually reviewed the sampled transactions. The auditor then determined the ratio of exempt and non-exempt transactions sampled. The auditor extrapolated the ratio on to the class of transactions represented by the sample.

² On March 28, 2019, the Department filed two responsive pleadings. Both pleadings were styled in part as Answers. The Department paired one Answer with its Reconventional Demand and paired the other with Exceptions

reconventional demand moot. The disputed claims for all of the years at issue, including 2013, will therefore be addressed in the context of CORA's appeal of the Department's denial of CORA's refund request.

Background:

CORA manufactures sugar from sugarcane at its Sugar Mill in Iberville Parish (the "Sugar Mill"). CORA offered the testimony of Mr. Daniel Cuervo, an engineer familiar with CORA's manufacturing process. According to Mr. Cuervo, CORA acquires raw sugarcane from farmers. CORA does not own or operate the sugarcane farms that supply the Sugar Mill. The farmers who provide sugarcane to CORA are not CORA's employees. The farmers use combines to harvest sugarcane. The combines sever sugarcane stalks from the ground. The combines feed the stalks into machinery that chops the stalks into small billets. CORA does not own, lease, or operate the combines or the machinery.

CORA also offered the testimony of Dr. Carl Gravois, Extension Sugarcane Specialist at the LSU AgCenter as an expert on billet sugarcane harvesting and the testimony from Mr. Carl Nixon, a farmer of forty-one years with thirty-two years of experience farming sugarcane. As explained by Dr. Gravois and Mr. Nixon, sugarcane growers traditionally harvested cane in whole stalks. In 1994, LSU released a new variety of sugarcane with a number of advantages over traditional breeds. The new sugarcane yielded more sugar, resisted disease, underwent a longer growing cycle, and produced greater numbers of crops from a single planting. The new sugarcane was also larger, which presented a problem for whole-stalk harvesting. The solution was to chop the cane into billets.

Billet harvesting brought new challenges to the sugarcane industry. The essential component of sugarcane for manufacturing raw sugar is sucrose. In the field, sugarcane has a rind and a waxy layer that protects sucrose from bacteria.

Cutting the cane breaks the rind and waxy layer and exposes the sucrose to bacteria. Bacteria will convert sucrose into dextran. Billet harvesting means many more cuts in a single stalk of cane and thus significantly more exposure to bacteria. Therefore, billet cane will lose sucrose and accumulate dextran faster than whole stalks.

Less sucrose results in the production of less raw sugar per unit of cane billet. Dextran also increases viscosity. Higher viscosity results in thicker syrup that impedes CORA's manufacturing process. Higher viscosity makes CORA's finished product less useful to customers. Customers will accordingly pay less for sugar if the dextran content is too high. Dr. Gravois estimated that dextran begins to cause economic losses twenty hours after harvest. After thirty-six hours of dextran formation, a harvest will lose half its value. After seventy-two hours, the harvest becomes worthless.

CORA does not employ any method of chemical or physical treatment to prevent dextran formation until the sugarcane reaches the Sugar Mill. When the sugarcane reaches the Sugar Mill, CORA extracts the sucrose and removes the bacteria. No further dextran formation will occur afterwards. CORA's success is therefore dependent on transporting the billets to the Sugar Mill as quickly as possible. To do so, CORA depends on the timing of the harvest to coincide with processing at the Sugar Mill – a “just in time” process designed to insure the right amount of billets are delivered to the Sugar Mill and processed at a rate optimal for the mill. As such, the trucks and trailers that are used to transport the sugarcane to the Sugar Mill are a key component of the processing of the billets to sugar.

CORA prepares a loading site on area farms for its trucks and trailers. CORA uses stone pallets as platforms for the trucks so they do not get stuck in the mud. The farmers collect cane billets and deliver them to CORA's leased trucks and

trailers. The trucks and trailers then bring the billets to the Sugar Mill where they are briefly stored before processing.

Mr. Cuervo explained CORA's manufacturing process at the Sugar Mill in great detail. CORA slices the billets open with blades. CORA then feeds the opened billets through a series of magnets to remove metal and debris left over from harvesting. CORA presses cleaned billets in rolling mills to extract sucrose-rich "juice." CORA burns the dried billets to power boilers. The boilers, in conjunction with steam turbines, generate power for the Sugar Mill. Next, CORA heats the juice and adds lime to achieve a basic pH. CORA purifies the juice in clarifiers with devices called mud pumps. CORA dehydrates the purified juice in evaporators, which creates syrup. CORA puts the syrup in pans to crystallize. Afterwards, CORA separates the syrup into sugar crystals and molasses in centrifuges. CORA sells the sugar as its finished product and reprocesses the molasses.

The Sugar Mill operates twenty-four hours a day during a roughly one hundred day milling season. During the milling season, CORA grinds more than 16,000 tons of sugarcane and produces more than 4,000,000 pounds of raw sugar daily. Constant and intense use of the manufacturing equipment results in excess wear and tear and rapid deterioration of the equipment. A stoppage for repairs could mean ruined sugarcane, so CORA keeps ample supplies of spare parts on hand. After the milling season ends, CORA must repair and/or rebuild Sugar Mill property in time for the next milling season.

At the trial of this matter, both CORA and the Department called Ms. Tammy Hines, the Department's Revenue Tax Assistant Director who reviewed CORA's refund claims, to testify. Ms. Hines testified that she disallowed refunds for CORA's claimed purchase of MM&E for those items with a unit price less than \$200.00. Ms. Hines stated that these items were likely not depreciable under federal law as

required under the under the MM&E Statute. The Department argued that the \$200.00 threshold was a measure of determining whether a purchase of an item was that of a “depreciable” asset versus an item more properly characterized as an item of “maintenance and repair” and thus not depreciable under federal law, though the actual cost of the item was not the sole criteria for disallowing any particular item. However, CORA asserted that the \$200.00 “yardstick” was in fact the one and only reason for the majority of the denied claims.

Because of the large volume of invoices, the parties jointly filed a *Trial Testimony Stipulation* which set forth factual stipulations as to the content of Ms. Hines’ and Mr. Cuervo’s testimony as to each of the invoices. The Department stipulated to facts based on three general categories of testimony that Ms. Hines was prepared to give. First, Ms. Hines would have testified that certain of CORA’s claims as to its purchases of items that were neither machinery nor equipment, not integral to CORA’s manufacturing process, and not used directly or predominately in the manufacturing of sugar were not MM&E under the MM&E Statute. Second, Ms. Hines identified certain items as non-depreciable repairs to keep equipment in an ordinarily efficient working order, and thus falling outside the definition of MM&E. Third, Ms. Hines disallowed certain items as MM&E because they did not have a useful life beyond one year, or the current period, and were not integral parts or major components of CORA’s sugar manufacturing process. Mr. Cuervo, on the other hand, would have testified that every item in CORA’s claims was (1) equipment or a component part of equipment, (2) with an expected useful life beyond one year, and (3) an integral part of CORA’s manufacturing process, and thus qualifying the purchase of such items as MM&E.

Issues Presented:

While CORA submitted numerous invoices to substantiate its purchases of claimed MM&E, the issues presented by these invoices can be condensed into two basic categories: (1) Whether trucks, trailers, and other transportation equipment used by CORA in its business are MM&E under the MM&E Statute? and, (2) Whether expenditures made with respect to existing equipment owned by CORA are purchases of MM&E, or whether those expenditures are properly characterized as repairs and maintenance and thus not MM&E under the MM&E Statute?

The majority of the refund claims relate to the trucks and trailers, and for the reasons discussed below the Board finds that these items are taxable and not eligible for the MM&E exclusion. There are myriad other items, some are taxable and some are excluded, and a detailed discussion of those items follows. This was a highly fact intensive endeavor, and the Board's classifications are simply based on weighing the record evidence of the present case.

Discussion and Analysis:

La. R.S. 47:301(3)(i), (13)(k), and (28)(a) effectively excludes from the definition of "sale at retail" purchases of MM&E used by a manufacturer in a plant facility predominately and directly in the actual manufacturing process of an item of tangible personal property for ultimate sale to another and not for internal use, at one or more fixed locations within Louisiana (the "MM&E Exclusion"). The MM&E Exclusion modifies the definition of sales price, cost price, or lease price of MM&E for sales and use tax purposes. The MM&E Exclusion is therefore definitional and limits the scope of tax *ab initio*. See *Bridges v. Nelson Indus. Steam Co.*, 2015-1439, p. 7 (La. 5/3/16); 190 So.3d 276, 280.

The Board interprets legal ambiguity in such exclusionary provisions in favor of the taxpayer. See *id.* However, the taxpayer still bears the burden of proving the facts that bring the transactions at issue within the scope of the exclusion. *Willow*

Bend Ventures, LLC v. Collector, St. John the Baptist Parish, Sales & Use Tax Office, 18-660, p. 8 (La. App. 5 Cir. 8/14/19); 2019 WL 3819845, at *5; *see also Yesterdays of Lake Charles, Inc. v. Calcasieu Parish Sales & Use Tax Dep't*, 2015-1676 (La. 5/13/16); 190 So.3d 710.

La. R.S. 47:301(3)(i)(i)(aa) defines MM&E as property that is eligible for depreciation for federal income tax purposes as property that is used as an integral part in manufacturing tangible personal property for resale. MM&E does not include buildings unless so closely related to the machinery and equipment that they house or support that the buildings can be expected to be replaced when the machinery and equipment are replaced. La. R.S. 47:301(3)(i)(aa)(II)(aaa). The same rule applies to the structural components of a building. *Id.* Further, La. R.S. 47:301(3)(i)(aa)(II)(ccc) and (ddd) specifically state that MM&E does not include property used to transport or store raw materials or manufactured goods prior to the beginning of or after the end of the manufacturing process.

“Manufacturing” is defined as putting raw materials through a series of steps that brings about a change in their composition or physical nature in order to make a new and different item of tangible personal property that will be sold to another. La. R.S. 47:301(3)(ii)(cc). Manufacturing begins at the point at which raw materials reach the first machine or piece of equipment involved in changing the form of the material and ends at the point at which manufacturing has altered the material to its completed form. *Id.*

Manufacturing does not include: storage of tangible personal property; delivery of tangible personal property to or from the plant; or delivery of tangible personal property to or from storage within the plant. La. R.S. 47:301(3)(ii)(cc)(III), (IV), (V). La. R.S. 47:301(3)(ii)(ff) defines “used directly” as “used in the actual process of manufacturing.” La. Admin. Code 61:I.4301(h)(iii)(a) states that “used

directly” describes the manner in which the MM&E alters the physical characteristics of the product during the manufacturing process. According to regulation, non-taxable MM&E must have “an immediate effect upon those products manufactured for ultimate sale to another person.” *Id.*

LAC 61:I.4301(h)(vii) provides that the MM&E Exclusion does not apply to repairs to keep property in an ordinarily efficient working order. This is because the labor and materials used in these repairs are typically not depreciable. *Id.* However, purchases of tangible personal property used in the repair would qualify if the property were a major component of the manufacturing process with a substantially useful life beyond the current period. *Id.* In addition, a manufacturer’s purchase of materials that will become component parts of qualifying MM&E are subject to the MM&E Exclusion. LAC 61:I.4301(Cost Price)(i).

MM&E is eligible for depreciation if it is a principal component of the manufacturing process that has a substantially useful life beyond the taxable year. LAC 61:I.4301(Cost Price)(h)(iv). Examples of depreciable MM&E under the regulation are “robotic welding machines in a vehicle manufacturing plant; pumps, valves, and compressors in a petrochemical plant; and tractors, trailers, and harvesting equipment on a commercial farm.” *Id.* Examples of non-depreciable MM&E include “nuts, bolts, gaskets, lubricants, filters, and fuel.” *Id.*

With the above framework of the MM&E exclusion, we now turn to an analysis of the specific purchases made by CORA and whether such purchases are of MM&E and thus not subject to the sales and use tax, or whether CORA’s purchases of one or more of these items are something other than MM&E and therefore subject to Louisiana’s sales and use tax.

The Sampled Claims:

A. Air Compressor desiccant valves

Frank Kerrigan & Associates, Invoice FWK-1085

Invoice Number FWK-1085 is for valves needed for a metal drum of desiccant that CORA uses in air compressors. CORA uses the air compressors to operate automatic instruments in the Sugar Mill. CORA claims that the valves are necessary to drain water from the metal drum. If the drum is not drained, it will fill with water and the air compressors will fail. The unit price of the valves is less than \$200.00.

Ms. Hines' stipulated testimony is that the valves do not have a substantially useful life beyond one year and are not integral to CORA's manufacturing process. Mr. Cuervo testified to the contrary. Mr. Cuervo demonstrated a high degree of familiarity with CORA's operations and sugar manufacturing. The Board finds that Mr. Cuervo is the more authoritative witness. Accordingly, the Board finds that the disputed items on this invoice have a useful life of more than a year and are integral to CORA's manufacturing process. The valves are therefore subject to the MM&E Exclusion and are not taxable.

- B. Boilers**
 - Wolseley Industrial Group, Invoice 0058750**
 - FSE Energy, Invoice 632797**
 - Wolseley Industrial Group, Invoice 1498972**
 - Industrial Consulting & Supply Corp., Invoice 26919**

Invoices 0058750 and 1498972 are for gate valves, fittings, and connections for boilers. Invoice 632797 is for "handhole covers," which Mr. Cuervo describes as small windows in the boilers. Invoice 26919 is for "castable" materials and related property for the boilers. CORA uses boilers to produce steam for steam turbines that are the main source of power at the Sugar Mill. The Board will accept Mr. Cuervo's testimony that the items on these invoices have useful lives greater than one year and are necessary for the boilers to function. The disputed items on these invoices are subject to the MM&E Exclusion and are not taxable.

Lightning Bolt & Supply, Inc., Invoice 566336

The items on Invoice 566336 include screws, nuts, and washers. The Board finds these items to be in the nature of nuts, bolts, gaskets, lubricants, filters, and fuel. Such items are specifically removed from the scope of the MM&E Exclusion under LAC 61:I.4301(Cost Price)(h)(iv). We find that the regulation is a reasonable interpretation of the MM&E Statute and not a prohibited expansion or retraction of the statute. *UTELCOM v. Bridges*, 77 So. 3d 39 (La. App. 1st Cir. 2011), *writ denied*, 83 So. 3d 1046 (La. 2012). Accordingly, the disputed items on this invoice are not subject to the MM&E Exclusion and are therefore taxable.

Voorhies Supply Company, Invoice LA45-931528

Invoice LA45-931528 is for “gage glass,” “gylon seals,” and gaskets. The costs of gage glass are not taxable for the same reasons as the handhole covers and fittings discussed above. However, the Board finds the gaskets and “gylon seals” to fall within the category of a repair, not resulting in an increase in the useful life of the equipment beyond one year. Therefore the gaskets and “gylon seals” are taxable in light of LAC 61:I.4301(Cost Price)(h)(iv).

Industrial Consulting & Supply Corp., Invoice 24605

Invoice 24605 is for “castable” materials but also includes costs for studs and nuts. Studs and nuts are the type of property that is not subject to the MM&E Exclusion under LAC 61:I.4301(Cost Price)(h)(iv). The studs and nuts are taxable, but the castable materials (the other disputed items on this invoice) are subject to the MM&E Exclusion and not taxable.

**C. Centrifuges
The Rubber House, Invoice 267539**

Invoice 267539 is for items used in repairing or rebuilding the centrifuges. CORA’s centrifuges separate sugar crystals from molasses. They are directly involved in altering the raw material to create sugar. Purchases of tangible personal

property used in repairs to MM&E are excluded from tax if they are a major component of the manufacturing process and have a useful life longer than one year. Mr. Cuervo testified that the items on this invoice satisfy these requirements. However, this invoice also includes costs for “gasket material.” Gaskets are not subject to the MM&E Exclusion, and are taxable. The Board therefore finds that the disputed items on the invoice, other than the gasket material, are subject to the MM&E Exclusion and are not taxable.

Guzman’s Machine Works, Inc., Invoice 24922

Invoice 24922 is for repairs to the centrifuges’ sugar baskets. The descriptions of work performed: cutting, welding, and rebalancing, establish that this invoice is for taxable repair services. The nature of the repairs indicate that the purpose of the repair was to maintain the baskets in operating condition, and were not a “betterment or improvement made to increase the value” of property under Internal Revenue Code Section 263(a) (entitled “Capital Expenditures). Thus, while under certain circumstances a substantial repair could result in capitalization and thus a “depreciable asset” and included in the definition of “cost price” under La.R.S. 47:301(3)(a), we find that the repairs represented by this invoice are properly characterized as a “maintenance and repair expense” under Internal Revenue Code Section 162 and thus does not fall within the definition of MM&E. Accordingly, the costs on this invoice do not create depreciable tangible personal property and therefore cannot qualify for the MM&E Exclusion. The disputed items on this invoice are taxable.

- D. Evaporator Pan**
 - Moody-Price, L.L.C., Invoice 5323751**
 - Wolseley Industrial Group, Invoice 0134270**
 - Wolseley Industrial Group, Invoice 0134349**

Invoices 5323751, 0134270, and 0134349 are for parts used in the repair of CORA's evaporator pan. The evaporator pan dries sugarcane juice into syrup. The transformation in the raw material by the evaporator pan is a step towards creating CORA's finished product. The Board again accepts the stipulated testimony of Mr. Cuervo that the parts on these invoices were integral and necessary to the manufacturing process and had useful lives of more than a year. Accordingly, the Board finds that the disputed items on these invoices are subject to the MM&E Exclusion and are not taxable.

E. Rolling Mills
The Rubber House, Invoice 271583
Wolseley Industrial Group, Invoice 0106863
McMaster-Carr, Invoice 70303620

Invoices 271583, 0106863, and 70303620 are for parts for rolling mills. CORA uses rolling mills to extract sugarcane juice from cane billets. Extracting the juice is a step in CORA's manufacturing process. Considering Mr. Cuervo's stipulated testimony, the Board finds that the disputed items on these invoices are subject to the MM&E Exclusion and are not taxable.

Lawson Products, Invoice 9304068928
Lightning Bolt & Supply, Inc., Invoice 563835
Teche Mills, Invoice 4055

Invoice 9304068928 is for "welding rods." Invoice 563835 is for screws. Invoice 4055 is for "various mill seals." The Board finds these items to be in nature of nuts and screws under LAC 61:I.4301(Cost Price)(h)(iv). Therefore, the disputed items on these invoices are not subject to the MM&E Exclusion and are taxable.

Allied Bearing & Supply, Inc., Invoice 52156

Invoice 52156 contains both taxable and non-taxable items. The Board finds that the Nitrile Shaft Seals, item numbers 11242SC and 08162TB-H are not subject to the MM&E Exclusion under LAC 61: I.4301(Cost Price)(h)(iv) and are taxable.

The other items on this invoice are component parts of the rolling mills. As discussed above, these component parts of the rolling mills are items subject to the MM&E Exclusion and are not taxable.

F. Mud Pumps

Industrial Municipal Supply Co., Inc., Invoice 11680

Brecheen Pipe & Steel Co., Inc., Invoice 299632

Invoices 11680 and 299632 relate to costs for mud pump parts. CORA operates clarifiers by using mud pumps to remove impurities from cane juice. This is a step in CORA's manufacturing process. Accepting Mr. Cuervo's testimony, the disputed items on these invoices are subject to the MM&E Exclusion and are not taxable.

Allied Bearing & Supply, Inc., Invoice 60871

Invoice 60871 is for parts for the mud pumps and "High temp bearing grease." Grease is a lubricant. Lubricants are expressly disallowed under LAC 61:I.4301(Cost Price)(h)(iv). Accordingly, the costs associated with the grease on this invoice are not subject to the MM&E Exclusion and are taxable. However, the other disputed items on this invoice are for parts of qualifying MM&E. Based on Mr. Cuervo's testimony, the Board finds that the disputed items on this invoice, other than the lubricant, are subject to the MM&E Exclusion and are not taxable.

G. Other/Miscellaneous

Construction Aggregate Supply, Invoice 75544

Construction Aggregate Supply, Invoice 76706

Louisiana Recycled Aggregates, Invoice LRA2016-0754

Invoices 75544, 76706, and LRA2016-0754 are allegedly for purchases of aggregate and calcium sulfate. Accepting Mr. Cuervo's testimony, the Board finds that these items are integral to CORA's manufacturing process. The Board does not find that the evidence supports finding a useful life longer than a year. Consequently the Board finds that the disputed items on these invoices are not subject to the MM&E Exclusion and are taxable.

H. Steam Turbines
National Governor and Controls Inc., Invoice 4225
Oilquip, Inc., Invoice F-20432-0

Invoices 4225 and F-20432-0 are for parts for CORA's steam turbines. As mentioned above, CORA uses steam turbines to power the Sugar Mill. Based on Mr. Cuervo's testimony, the Board finds that these parts are integral to CORA's manufacturing process and have a useful life longer than one year. The oil misting devices described on Invoice F-20432-0 are distinguishable from the grease referenced above in the discussion of Allied Bearing & Supply, Inc., Invoice 60871. Invoice F-20432-0 does not itself relate to a lubricant. This invoice is for the permanent equipment that disperses the lubricant. For these reasons, the Board finds that the disputed items on these invoices are subject to the MM&E Exclusion and are not taxable.

FC Plant Solutions, Invoice 632

Invoice 632 is for repairs to the Steam Turbines. The invoice describes work performed and does not separately itemize costs for parts used in the repair. The Board finds that this invoice reflects payment for taxable repair services.

I. Sugar Warehouse
Mueller, Inc., Invoice 4391356

Invoice 4391356 is for parts and repairs related to a warehouse used for storing raw sugar. CORA claims that raw sugar is a perishable commodity that must be stored in a well-ventilated, climate-controlled warehouse. However essential the warehouse may be, La. R.S. 47:301(3)(i)(cc) expressly provides that manufacturing does not include the storage of tangible personal property or the delivery of tangible personal property to or from storage within the plant. Further, La. R.S. 47:301(3)(i)(aa)(II) provides that MM&E does not include a building or its structural components. The warehouse is a building.

In addition, property used to store manufactured goods after completion of the manufacturing process is not MM&E. *Id.* Raw sugar is CORA's finished product. CORA's property used for storage of raw sugar cannot qualify for the MM&E Exclusion. Accordingly, the disputed items on this invoice are not subject to the MM&E Exclusion and are taxable.

J. Heavy Equipment
H&E Equipment Services, Inc., Invoice 91834834
H&E Equipment Services, Inc., Invoice 92089236
Mobile Electric Supply, LLC, Invoice 55170

Invoices 91834834, 92089236, and 55170 are for parts and repairs for heavy equipment such as wheel loaders, excavators, dozers, and cranes. CORA uses heavy equipment to load and transport sugarcane and raw sugar. Transporting raw materials or finished products prior to the beginning or after the end of the manufacturing process is not manufacturing within the meaning of the MM&E Exclusion. CORA uses heavy equipment to move waste such as crop residue and filter press mud. Transporting waste material does not transform a raw material into a finished product. These items are not directly used in CORA's actual manufacturing process. Accordingly, the disputed items shown on these invoices are not subject to the MM&E Exclusion and are taxable.

K. Un-sampled Claims from 2013

CORA submits sixty-four invoices from 2013. Unlike the 2014 through 2016 claims, CORA did not divide the 2013 invoices into categories of MM&E.

Briggs Equipment, Invoice 40S9227910
H&E Equipment Services, Inc., Invoice 91211717
H&E Equipment Services, Inc., Invoice 91352289
H&E Equipment Services, Inc., Invoice 91251357
H&E Equipment Services, Inc., Invoice 91235580

Invoices 40S9227910, 91211717, 91352289, 91251357, and 91235580 relate to repairs and parts for heavy equipment. For the reasons given above, CORA's

heavy equipment does not qualify for the MM&E Exclusion. The Board therefore finds the disputed items on these invoices to be taxable.

A&F Texas, Inc., Invoice 00031057
Cierra Pipe, Inc., Invoice S-61027
Corporacion POK, Invoice A 3499
Corporacion POK, Invoice A 3605
Corporacion POK, Invoice A 3624
Corporacion POK, Invoice A 3647
Corporacion POK, Invoice A 3648
Corporacion POK, Invoice A 3695
Corporacion POK, Invoice A 3710
Ewart Chain (UK), Inc., Invoice 100308
Lufkin Gear Repair, Invoice 90361744
Wear-Con, Invoice 36349A
Wear-Con, Invoice 36350

Invoice 00031057 is for copper tubes. Invoice S61027 is for pipes. Invoice A 3499 is for bearing housings for a mill. CORA uses pipes and fittings in its rolling mills. Invoices A 3605, A 3624, A 3647, A 3648, A 3695, A 3710, 36349A, and 36350 are for mill plates. Invoice 100308 is for a pintle chain. Invoice 90361744 is for gears and pinions. The Board finds that the items on these invoices are all parts of the rolling mills subject to the MM&E Exclusion and are not taxable.

FC Plant Solutions, Invoice 348
FC Plant Solutions, Invoice 361
Power Equipment Company of Memphis, Invoice INV01-138344
Specialty Maintenance and Repair Technology, Invoice 1335

Invoices 348 and INV01-138344 are for tanks. Invoice 361 is for parts of a turbine. CORA uses boilers and turbines to power its manufacturing process. Invoice 1335 is for a lubrication system. CORA uses lubrication systems in its turbines. The Board finds that the items on these Invoices are parts of the boilers and steam turbines subject to the MM&E Exclusion and not taxable.

Interunion, Invoice 041747

Invoice 041747 is for a sensor. La. R.S. 47:301(3)(i)(ii)(aa)(I)(ccc) provides that MM&E includes machinery and equipment “used to test or measure raw

materials . . . when such test or measurement is a necessary part of the manufacturing process.” Accepting Mr. Cuervo’s testimony, the Board finds that the sensor is necessary to CORA’s manufacturing process. Accordingly, the items on Invoice 041747 are not taxable.

The Western States Machine Company, Invoice 5897207
The Western States Machine Company, Invoice 5897620
Wolseley Industrial Group, Invoice 0037674

Invoices 5897207, 5897620, and 0037674 are similar to the invoices for gate valves that the Board found to be components of CORA’s air compressors. For the reasons stated above, the air compressors are MM&E and the parts on these invoices are subject to the MM&E Exclusion and not taxable.

FC Plant Solutions, Invoice 358
FC Plant Solutions, Invoice 375
FC Plant Solutions, Invoice 376
FC Plant Solutions, Invoice 395
FC Plant Solutions, Invoice 416
FC Plant Solutions, Invoice 436
M.C. Electric, L.L.C., Invoice 0104011
Motion Industries, Invoice LA61-451236
Wear-Con, Invoice 36360

These invoices relate to repairs. The charges on these invoices appear to be for services. There are no separately itemized costs for parts. As explained above, services do not qualify for the MM&E Exclusion. The Board finds that these invoices are not subject to the MM&E Exclusion and are taxable.

Industrial Babbitt Bearing Services, Inc., Invoice 5632
Industrial Babbitt Bearing Services, Inc., Invoice 5726
Industrial Babbitt Bearing Services, Inc., Invoice 5673

Invoices 5632, 5726, and 5673 are for machining that CORA alleges was required to prolong the useful life of certain equipment and that was “incorporated into that equipment.” CORA takes the position that these invoices represent a “rebuild” and not a repair. Services, whether described as a “rebuild” or “repair,”

are not themselves tangible personal property and cannot be depreciated under federal income tax law (an integral consideration for the exclusion).

However, Invoices 5632, 5726, and 5673 list distinct charges for the parts used in repairs. Parts used in the repairs of the qualifying MM&E can qualify for the MM&E Exclusion. Accepting Mr. Cuervo's testimony, the Board finds the following amounts to be for parts subject to the MM&E Exclusion. On Invoice 5632: \$3250.00 and \$3,850.00 for "Long Terry Knife Turbine Bearing[s]." On Invoice 5726: \$4,350.00 for "#5 Draft Fan Bearing." On Invoice 5673: \$14,980.00 for "2.250" ID x 5.437" Long S. Thrust Bearing." The Board finds all other disputed amounts shown on these invoices to be for taxable services that are not subject to the MM&E Exclusion.

R.J. Tricon Co., LLC, Invoice 227424-001
R.J. Tricon Co., LLC, Invoice 227745-001
R.J. Tricon Co., LLC, Invoice 227745-003
R.J. Tricon Co., LLC, Invoice 227934-002
R.J. Tricon Co., LLC, Invoice 227992-001
R.J. Tricon Co., LLC, Invoice 227992-002
R.J. Tricon Co., LLC, Invoice 228225-002
R.J. Tricon Co., LLC, Invoice 228225-003
R.J. Tricon Co., LLC, Invoice 228339-002
R.J. Tricon Co., LLC, Invoice 228452-001

These invoices relate to purchases for a belt system in the Sugar Mill. The Board finds that the belt system is directly involved in the process of transforming raw sugarcane into sugar. Accordingly, the Board finds that the items on these invoices are subject to the MM&E Exclusion and are not taxable.

FC Plant Solutions, Invoice 396
National Governor and Controls, Inc., Invoice 4176
National Governor and Controls, Inc., Invoice 4179
National Governor and Controls, Inc., Invoice 4180
Metro Boiler Tube Company, Inc., Invoice 25998
The Rubber House, Invoice 254675
The Rubber House, Invoice 260016
The Rubber House, Invoice 260467
The Rubber House, Invoice 261899
The Western States Machine Company, Invoice 5897814

Wolseley Industrial Group, Invoice 0032587

Invoices 396, 4176, 4179, and 4180 are for parts of a steam turbine. Invoices 25998, 254675, 260016, 260467, and 261899 are for boiler parts. Invoice 5897814 is for parts of the centrifuges. Invoice 0032587 is for parts of the clarifiers. For the reasons discussed above, all disputed transactions shown on these invoices are subject to the MM&E Exclusion and are not taxable.

Silver Weibull, Invoice 5280
Stephens-Harris Associates, Inc., Invoice 29017
The Rubber House, Invoice 253269

Invoices 5280 and 29017 are for parts for the centrifuges. Invoice 253269 is for parts for the evaporator pans. These invoices include parts in the nature of “nuts, bolts, gaskets, lubricants, filters, and fuel.” We find that the portion of these invoices billing for maintenance and repair and thus taxable are: (1) on Invoice 5280, costs associated with “Screw MC6S 6x25 A4”; (2) on Invoice 29017, costs associated with “Style # 226x24” DIA x 3-7/16” DIA Screw Conveyor”; (3) on Invoice 253269, costs associated with “Red Rubber Ring Gasket.” All other disputed items on these invoices relate to qualifying MM&E discussed above and are not taxable.

Stephens-Harris Associates, Inc., Invoice 28616

Invoice 28616 is for screws and bolts. These parts are in the nature of “nuts, bolts, gaskets, lubricants, filters, and fuel”; in other words, repair and maintenance items. None of the costs shown on Invoice 28616 are subject to the MM&E Exclusion, they are all taxable.

Wear-Con, Invoice 36349

Invoice 36349 is listed on CORA’s spreadsheet of 2013 claims, but was not introduced into evidence. At the hearing, counsel for CORA stated that it would withdraw its claim for refunds on certain invoices. The Board deems this invoice’s refund claim to be withdrawn.

L. Cane Trucks and Trailers; Unsampled 2014-2016 Invoices

CORA claims that the MM&E Exclusion applies to lease payments, repairs, and parts for cane trucks and trailers. MM&E does not include property used to transport raw materials prior to the beginning of the manufacturing process. La. R.S. 47:301(3)(i)(aa)(II)(ccc). CORA's position cannot be correct unless the manufacturing process begins at (or before) the time when the cane billets are loaded for transport to the Sugar Mill.

Under the express terms of La. R.S. 47:301(3)(i)(cc), the manufacturing process begins at the point at which raw materials reach the first machine or piece of equipment involved in changing the form of the material. The only transformation that happens during transport is dextran formation, which is actually a naturally occurring event that inhibits the manufacturing process as opposed to benefitting it. Dextran formation is not a step in the process of producing raw sugar. CORA does everything in its power to prevent dextran from forming. Consequently, CORA's manufacturing process does not begin when the billets are loaded into the trucks and trailers.

At the hearing and in its *Post Trial Brief*, CORA claims that the manufacturing process actually begins when the combines harvest cane in the field. However, CORA owns neither the farms nor the combines. Nor do CORA's employees harvest the cane in the field. More importantly, La. R.S. 47:301(3)(i)(cc)(IV) provides that manufacturing does not include the "delivery of tangible personal property to or from the plant." The plant in this case is the Sugar Mill. The trucks and trailers are used to deliver property to the plant. They are not used in the manufacturing process. Because they are not used in the manufacturing process, the trucks and trailers cannot qualify for the MM&E Exclusion. Whether the cane is delivered to the plant 10 minutes after its harvest or 10 weeks after its harvest is of

no legal relevance – the statute is clear that transportation equipment does not qualify as MM&E.

Finally, CORA claims that it uses the trucks and trailers when weighing and sampling cane after it arrives at the Sugar Mill. Cora is essentially arguing that the trucks and trailers are used to test or measure raw materials in a way that is a necessary part of the manufacturing process. However, CORA has not shown that the trucks and trailers contain scales or some other weighing and measuring equipment. The trucks and trailers are therefore not MM&E within the meaning of La. R.S. 47:301(3)(i)(ii)(aa)(I)(ccc).

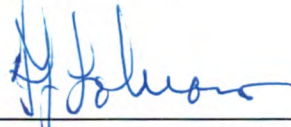
Consequently, the costs associated with the trucks and trailers, including repairs, parts, and lease payments, are not subject to the MM&E Exclusion. All of the transactions shown on the cane trucks and trailers invoices in the Original Petition and the Amended Petition are taxable. This includes the invoices so identified in Taxpayer Exhibit 1 and all invoices in Taxpayer Exhibits 2, 3, and 4.

Accordingly,

IT IS ORDERED AND DECREED that CORA and the Department submit within sixty (60) days from the date of this Order a joint proposed Judgment that properly calculates the amount of the refund due CORA, together with interest as required by law, in accordance with the Board's foregoing written reasons. If the parties cannot agree on a joint proposed Judgment, they shall submit separate proposed Judgments and Memoranda in support of their respective positions together with detailed calculations. This is an interlocutory order and not subject to appeal.

Thus done and signed at Baton Rouge, Louisiana this 5th day of December,
2019.

For the Board:



Francis J. "Jay" Lobrano
Louisiana Board of Tax Appeals