

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

HUNTING ENERGY SERVICES, INC.

VS.

BTA DOCKET NO. L01064

JOSEPH P. LOPINTO, III,
SHERIFF AND EX-OFFICIO TAX COLLECTOR,
JEFFERSON PARISH

JUDGMENT ON CROSS MOTIONS FOR SUMMARY JUDGMENT

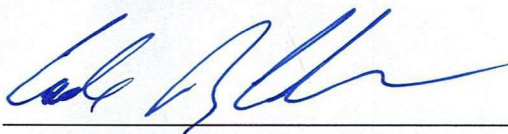
On November 3, 2022, this matter came before the Board for hearing on the Cross Motions for Summary Judgment filed by Hunting Energy Services, Inc. ("Taxpayer") and Joseph P. Lopinto, III, Sheriff and Ex-Officio Tax Collector, Jefferson Parish ("Collector"). Present at the hearing were Jason Cerise and Geoffrey Polma¹, attorneys for Taxpayer and Drew Talbot, attorney for the Collector. At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment in accordance with the attached written reasons.

IT IS ORDERED, ADJUDGED AND DECREED that the Taxpayer's Motion for Summary Judgment IS HEREBY GRANTED

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Collector's Motion for Summary Judgment IS HEREBY DENIED.

Judgment Rendered and Signed at Baton Rouge, Louisiana on this 8th day of December, 2022.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

¹ Appearing *pro hac vice*.

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REASONS FOR JUDGMENT ON CROSS MOTIONS FOR SUMMARY
JUDGMENT

On November 3, 2022, this matter came before the Board for hearing on the Cross Motions for Summary Judgment filed by Hunting Energy Services, Inc. (“Taxpayer”) and Joseph P. Lopinto, III, Sheriff and Ex-Officio Tax Collector, Jefferson Parish (“Collector”). Present at the hearing were Jason Cerise and Geoffrey Polma¹, attorneys for Taxpayer and Drew Talbot, attorney for the Collector. At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment for the following reasons:

Background

Taxpayer has a facility in Marrero where it fashions “hollow steel pipe” or “range three casing” (“Pipe”) into specialized, threaded, tubular joints or connections (“Connections”) usable in an oil and gas well drilling and production operations. To accomplish this, Taxpayer utilizes sophisticated processes developed by Taxpayer’s engineers. The Connections must perform in extreme external pressure conditions for the duration of the life of the well. Taxpayer has been assigned NAICS code 333132 for oil and gas field machinery and equipment manufacturing. Taxpayer conducts no oil or gas well operations itself and has no use for the finished Connections except as inventory.

¹ Appearing *pro hac vice*.

Generally, the Connections consist of a “box” (or “female”) connection at one end and/or a “pin” (or “male”) connection at the other end. Taxpayer fashions many different types of Connections. Each type of Connection has complex engineered geometry, sealing surfaces, and torque shoulders tailored to the conditions in which it will be utilized. Taxpayer’s processes are painstakingly developed and are closely-guarded trade secrets.²

Taxpayer’s primary raw material is Pipe. Except in exceedingly rare instances, Taxpayer does not buy or sell Pipe. Instead, Pipe is supplied by Taxpayer’s customers. Taxpayer receives the customer’s pipe at its Marrero Facility (“Facility”). At the Facility, Taxpayer performs a series of steps to transform the ends of the Pipe into Connections.

First, Taxpayer inspects newly arrived Pipe. After initial inspection, Taxpayer stores the Pipe until ready to begin cutting. After removal from storage, Taxpayer cuts both ends of the Pipe with a large industrial band saw and tubular clamping devices. Once cut, Taxpayer compresses what will become the “pin” Connection and expands what will become the “box” Connection. Compression and expansion is accomplished with a swage/expansion press, swage die, expansion mandrels, clamping and fixturing hardware, and outside and inside diameter thickness and length inspection equipment.

Cutting, expansion, and compression all weaken the metal. Taxpayer restores its strength by heating it to tightly controlled temperature ranges with electric induction coils. Then, Taxpayer machines the ends of the Pipe to Connection specifications. Taxpayer inspects the machine work. After inspection, Taxpayer coats the Connection with an anti-galling chemical, most commonly phosphoric acid. The term “galling” refers to the seizing or fusing together of the box and pin Connections that can result from downhole pressure conditions during installation. Galling, if not prevented, will lead to the casing becoming non-removable unless cut out. Cutting

² Taxpayer filed its exhibits concerning these processes under seal.

out downhole casing is prohibitively expensive. The phosphoric acid coat prevents this by reacting with steel to create Iron Phosphate, which in turn deposits protective Zinc Phosphate on the Connection surfaces.

Once chemical coating is complete, the Connection goes through a penultimate inspection. If there are no visible imperfections or damage, the Connection is covered with a long-term storage compound to prevent corrosion. Threaded caps made of a composite extruded plastic resin and steel material are screwed on to the Connections for protection during handling and storage. Afterwards, Taxpayer stencils order and operational information and product identification on the Connection. Once that is done, the Connections are moved to a pickup location. Taxpayer's customers will come to pick up the finished Connections.

During the Tax Period, ninety-five percent of Taxpayer's jobs were performed for one of Taxpayer's divisions and/or related parties controlled by a common parent corporation: Hunting PLC. However, related or not, customers must pay for the Connections before they can get them up from the pickup location. If a customer does not pay, Taxpayer cuts the connections off of the Pipe and returns the Pipe to the customer. Taxpayer charges a price based on the quantity and types of Connections fashioned. The price is not based on the footage of Pipe. In addition, each invoice to a customer incorporates a document referred to as the General Terms and Conditions of Sale. A copy of the General Terms and Conditions of Sale was introduced into evidence. The General Terms and Conditions of Sale govern Taxpayer's transactions with its customers.

The five percent of Taxpayer's customer base made up of unrelated entities is a distribution network of companies that sell Oil Country Tubular Goods ("OCTG") to oil exploration and production companies. To some extent, Taxpayer's unrelated customer base also includes the exploration and production companies directly. Taxpayer's customer base with respect to related entities is essentially the same except that the unrelated entity first contacts a related entity, and the related entity

contacts the Taxpayer. It is undisputed that the transactions with related entities and unrelated entities were the same in all other respects.

During the tax period beginning on January 1, 2010, and continuing through December 31, 2016 (the "Tax Period"), Taxpayer purchased items used in the Connection forming process. After an audit, the Collector assessed sales and use tax on these purchases in the amount of \$132,574.39 plus interest in the amount of \$107,809.13 (the "Assessment"). Taxpayer paid \$9,869.50³ of the assessed amounts and filed the instant appeal challenging the remainder of the Assessment. The Taxpayer claims it purchased Manufacturing Machinery and Equipment ("MM&E") under La. R.S. 47:301(3)(i), (13)(k), and (28) (the "MM&E Exclusion").

Collector's Objections to Taxpayer's Evidence:

The Collector objects on grounds of relevance to Paragraphs 5, 6, 8, 9, and 10 of the Affidavit of Jerry Vielmas and the attached Exhibits 1 and 3. Mr. Vielmas testified that the Louisiana Department of Revenue and the Collector issued a manufacturer certifications to the Taxpayer. The alleged certifications are not relevant to the Board's ruling on the Motions for Summary Judgment. The Board is an independent trier of questions of law and fact. *See* La. R.S. 47:1401. The Board will determine if the Taxpayer qualifies for the exemption. The Board does not defer to the taxing authority's determination, nor will the Board consider Mr. Vielmas' conclusions and opinions. It is well settled that conclusory statements and the legal opinions of witnesses cannot be utilized on a summary judgment motion. *Thompson v. S. Cent. Bell Tel. Co.*, 411 So.2d 26, 28 (La. 1982). For these reasons, the Collector's objection is sustained.

Summary Judgment Standard:

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits show that there is no genuine

³ This amount is not in dispute.

issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). The party bringing the motion bears the burden of proof; however, where the moving party will not bear the burden of proof at trial, the moving party must only point out that there is an absence of factual support for one or more elements essential to the adverse party's claim. La. C.C.P. art. 966(C)(2). Thereafter, if the adverse party fails to produce factual support sufficient to show that he will be able to meet his evidentiary burden of proof at trial, no issue of material fact exists and the moving party is entitled to summary judgment. *Id.*

Discussion:

The exclusion for Manufacturing Machinery and Equipment is set forth in La. R.S. 47:301(3)(i), (13)(k), and (28) and is adopted by reference in Jefferson Parish pursuant to La. R.S. 47:337.10(I) as Jefferson Parish Code ("JPC") § 35-71(a) (the "MM&E Exclusion"). JPC § 35-71(a) provides:

In accordance with LSA-R.S. 47:337.10(1), for purposes of the imposition of the sales and use tax levied by the Parish of Jefferson, the cost price of machinery and equipment used by a manufacturer in a plant facility predominately and directly in the actual manufacturing⁴ for agricultural purposes or the actual manufacturing process of an item of tangible personal property, which is for ultimate sale to another and not for internal use, at one (1) or more fixed locations within Jefferson Parish, the cost price shall be reduced by one hundred (100) percent beginning January 1, 2006.

The Collector's position is that Taxpayer does not sell its Connections "to another." The Taxpayers do acquire or transfer ownership of the Pipe. Furthermore in ninety-five percent of the Taxpayer's transactions, the other party shares a common parent entity with the Taxpayer.

⁴ La. R.S. 47:301(3)(ii)(cc) defines manufacturing in relevant part 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." The provision further identifies certain activities, not relevant in this case, as specifically included or excluded from the definition of manufacturing.

The question presented is whether a transfer of ownership is absolutely necessary for a transaction to be a sale. Sale for purposes of Jefferson Parish's sales and use tax⁵ is defined in La. R.S. 47:301(12):

“Sale” means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, preparing or serving, for a consideration, of any tangible personal property, consumed on the premises of the person furnishing, preparing or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

Taxing statutes must be strictly interpreted against the taxing authority and any legal ambiguity in a taxing statute must be resolved in the taxpayer's favor. *Lopinto v. Expedia, Inc. (WA)*, 21-132, p. 9 (La. App. 5 Cir. 12/23/21), 335 So.3d 432, 440 (quoting *Am. Multi-Cinema, Inc. v. Normand*, 18-487 (La. App. 5 Cir. 3/27/19), 267 So.3d 197, 200)). Likewise, an exclusionary provision, one that removes a certain transaction from the scope of the tax, *ab initio*, is construed liberally in favor of the taxpayer and against the collector. *Harrah's Bossier City Inv. Co., LLC v. Bridges*, 2009-1916, p. 13 (La. 5/11/10); 41 So.3d 438, 448. JPC § 35-71(a)

The definition of sale is not limited to a transfer of ownership when the statute provides that a transfer of possession can constitute a sale. Moreover, the definition of sale includes a fabrication of tangible personal property from materials provided by the customer. In the jurisprudence, the meaning of the term “fabrication” in La. R.S. 47:301(12) has been examined only once in an opinion of the First Circuit in *Louisiana Power & Light Co. v. Slaughter*, 2004-2361 (La. App. 1 Cir. 11/4/05), 917 So.2d 532, *writ denied*, 2006-0217 (La. 4/24/06), 926 So.2d 550 (“*LP&L*”).

In *LP&L*, the Court was compelled to determine if “fabrication” encompassed the conversion and enrichment of uranium. As explained by the Court, 1989 1st Ex.

⁵ JPC § 35-17 adopts by reference the definitional provisions of La. R.S. 47:301.

Sess. Act 3 “broadened the state’s tax base by increasing the number of transactions that were subject sales tax.” *Id.* at 539. Act 3 expanded the definition of a “sale” by adding the language presently under discussion: “the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work.” Finding no definition of the term in the statutes, the Court looked to dictionaries in order to determine the “common and approved usage” of the term. *Id.* at 542. These sources led the Court to recite the following definitions of “fabrication”: “to form by art and labor” (synonyms: manufacture, produce); to form into a whole by uniting parts” (synonyms: construct, build); “to make, shape, or prepare (parts) according to standardized specifications so as to be interchangeable”; **“to cause (raw material or stock) to be manufactured”** (synonym: shape); (other synonyms: invent, formulate, create). *Id.* at 542-43 (emphasis in original).

The Court found fabrication to be synonymous with manufacture and found the dictionary definition of that term to be: to “make”; to “create”; to “construct by combining or assembling diverse, typically standardized parts” *Id.* The Court then restated the salient inquiry as whether “the conversion and enrichment processes involved the creation, making, or manufacturing of something new.” *Id.* at 543. Under those criteria, the Court held that the creation of a gas from yellow cake uranium during conversion and enrichment was a fabrication. *Id.*

In this case, the Taxpayer forms Connections from Pipe. The Taxpayer makes and shapes its product by cutting, expanding, compressing, and machining the ends of a metal tube. These activities cause structural changes in the material. The material is further altered by the strengthening process. Chemical transformation occurs through reactions between the metal and phosphoric acid coating. These changes cause the raw material to take a new form: a finished product that will fulfill a function that could not be fulfilled by the raw materials.

On its face, La. R.S. 47:301(12) provides a broad definition of sale as a “transfer of title **or possession**, or both, exchange, barter, conditional or otherwise, in any

manner or by any means whatsoever, of tangible personal property, for a consideration” Further still, the clause concerning fabrication explicitly allows for a transaction in which the materials are supplied by the customer. That is what is occurring in this case when the customers supply the Pipe to be transformed by the Taxpayer into Connections.

The Collector argues that the fact that Taxpayer’s customers are related entities means that the Connections are produced for “internal use” and not for sale “to another.” Courts have considered whether sales tax should be applied in a manner that disregards the separate existence of related entities. The Louisiana Supreme Court has observed that: “transactions between commonly owned legal entities are an everyday commercial reality, we cannot assume that the legislature meant, but simply neglected, to provide for an exemption for such situations.” *Associated Hospital Services, Inc. v. Department*, 588 So.2d 356, 358 (La. 1991). For the separate existence of related entities to be disregarded, the facts ought to be “such as are normally sufficient to warrant piercing the corporate veil.” *Hilton Hotels Corp. v. Traigle*, 360 So.2d 245, 246 (La. Ct. 1 App. 1978). The Board examined this line of cases in *Compass Energy Operating, LLC v. Robinson*, Docket No. 9523D (La. Bd. Tax App. 6/3/21); 2021 WL 2961357 and recited a list of pertinent factual considerations: the separate legal existence of the entities; custody of books and records; ownership of the property where the businesses are located; which entity purchased the raw materials and equipment used to make the product; the existence or absence of a mark-up on the sale between the two entities; the existence of separate bank accounts; whether the entities filed consolidated tax returns; and which entity hires employees. *Id.*; See *Associated Hospital Services, Inc.*, 588 So.2d 356; *United Companies Printing Co. v. City of Baton Rouge*, 569 So.2d 186 (La. App. 1 Cir. 1990); *Cajun Contractors, Inc. v. Department*, (La. App. 1 Cir. 1987), 515 So. 2d 625; *Hilton Hotels Corp.*, 360 So.2d 245.

The only factor in this case that could support piercing the veil is that Taxpayer's related customers purchased the raw materials. However, this was also true in transactions with unrelated customers. The summary judgment evidence consistently shows that related and unrelated transactions were handled in the same manner. There is no evidence that the Taxpayer charged a mark-up to unrelated entities while providing its products at cost to related entities. There is no evidence of consolidated returns, shared bank accounts, that the related entities were the ones who hired Taxpayer's employees, or that the related entities owned the Taxpayer's Facility. To disregard the separate existence of the Taxpayer and the related entities under these facts would be to do so solely because of common parent entity. That is not a proper application of veil piercing analysis.

For the foregoing reasons, the Board finds that the Taxpayer has established its right to summary judgment in its favor. The Assessment appealed from is based on the erroneous denial of the MM&E Exclusion. Taxpayer is a manufacturer that sells Connections to distinct and separate entities through fabrication with materials supplied by the customer. Accordingly, the Taxpayer's Motion will be granted, the Collector's Motion will be denied, and Judgment will be entered in the Taxpayer's favor.

Baton Rouge, Louisiana, this 8th day of December, 2022.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE