BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

RED RIVER RANGE, LLC

Petitioner

versus **DOCKET NO. L01291**

CADDO-SHREVEPORT SALES AND USE TAX COMMISSION

Respondent

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ORDER AND REASONS

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On May 25, 2023, this matter came before the Board for hearing on the merits at the Shreveport City Court, with Local Tax Judge Cade R. Cole presiding. Present before the Board were Richard Barham, attorney for Red River Range, LLC (the "Taxpayer"), and Robert Tarcza, attorney for the Caddo-Shreveport Sales and Use Tax Commission (the "Commission"). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues this Order and Reasons for the following reasons.

Facts:

Taxpayer operates a business Facility (the "Facility") in Shreveport that has on its premises: a storefront, two pistol shooting ranges, one rifle shooting range, a classroom for concealed carry permit classes, and other amenities not at issue in this case. The storefront and classroom are open to the public. However, the shooting ranges are only accessible to customers who pay for memberships or passes. Within each of the shooting ranges are several shooting stalls. Each stall is provided with an apparatus called an integrated Fusion Target system (the "Fusion Targets"). The Taxpayer purchased the Fusion Targets with three payments dated: December 20, 2018, January 31, 2019, and April 23, 2019.

Each of the Fusion Targets possesses a ceiling-mounted track that extends downrange from a stall. A mechanism that hangs down from the track holds paper shooting targets. The hanging mechanism can slide a target along the track toward the stall or downrange. The mechanism can also rotate a target to face any direction. The position and rotation of an individual Fusion Target can be controlled by a tablet supplied with a stall. All of the Fusion Targets can also be controlled by a centralized computer workstation. Customers have use of the tablet to position the mechanism as they desire. The centralized computer workstation is operated by one of the Taxpayer's employees.

The Taxpayer purchased Rushing Air EAHU Packages that function as air filtration systems (the "Filters"). The Filters are necessary for the safety of customers and employees. The discharge of a firearm releases toxins, including lead particles, into the air. The gun ranges are both located indoors, so the toxins do not naturally disperse. If the toxins were not removed by the Filters, they would accumulate in the air and present a health hazard to the occupants of the gun ranges.

There are five separate components of the Filters: two blowers and three exhausts. Each component is housed in a large metal structure, all of which are bolted to the roof of the Facility. One of the blowers is connected by ductwork to the rifle range and the other blower is connected to the two pistol ranges. The blowers push air into the ranges through air grills that are located on the ceiling behind the shooting stalls. The air introduced from the blowers moves over and through the shooting stalls and to the end of the range. Each of the three exhaust components is connected to the end of one of the ranges. The exhausts suck up the air from the end of the range, trap the toxins into disposable hazmat filters, and vent the de-toxified air and condensation out of the Facility.

The Filters serve the additional purpose of maintaining negative air pressure in the ranges. Negative air pressure means that if the door to the range is opened, air is sucked into the range and air inside the range does not escape to the storefront.

This prevents toxins from escaping into other parts of the Facility. Otherwise, the toxins could reach occupants of the storefront and other areas of the Facility.

The Taxpayer's owner and managing partner, Mr. Christopher Bradley Simon, testified that the Taxpayer purchased the Filters from a vendor in Texas. The Filters were drop shipped to the Facility pre-assembled. Mr. Simon contracted with Barnhill Cranes to lift the Filters onto the roof. Mr. Simon, his brother, his father, and one representative from Rushing Ranges attached the Filters to the Facility.

By request of the Taxpayer and with the consent of all parties, the Board and counsel toured the Facility prior to the hearing. The Board had the opportunity to view the Filters on-site. The Filters look like massive metal boxes attached to low scaffolding and bolted onto the roof. Mr. Simon testified that the Filters measure "60 feet by 12 feet."[1]

The various components of the Filters bear some resemblance to air-conditioning systems. However, the Filters do not function as air conditioning and Taxpayer turns the Filters on at the start of the day, and off at the close of business. The Filters are significantly larger than would be expected of an air conditioning unit. The blower component of the Filters that pushes air into the rifle range, for example, is nearly the size of a garbage truck.

In the storefront Taxpayer rents and/or sells guns, ammo, and other items to customers. Taxpayer uses certain Software at point-of-sale in the storefront, and to control mechanisms in the ranges (collectively the "Software"). Taxpayer purchased service and maintenance agreements for the Software, which the Taxpayer characterizes as Warranties (collectively the "Warranties"). Finally, Taxpayer also purchased a 40' High Cube Storage Container ("Cube") that is used to store

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[1] The testimony included only this a two-dimensional measurement. Based on viewing the Filters during the tour, the Board estimates that the Filters are 60 feet long, 12 feet wide, and 15 to 20 feet tall.

equipment. Taxpayer claims that the cost of the Filters, Fusion Targets, Software, and Warranties, and the Cube are covered in the price of admission charged to customers.

For an additional charge, Taxpayer provides fingerprinting services. The Taxpayer uses a Fingerprinting System that it purchased from Secure Outcomes, Inc. (the "Fingerprinting System"). The Fingerprinting System is necessary for background checks that are required for the issuance of concealed carry permits. The Taxpayer offers concealed carry permit classes in the classroom at the Facility. When a customer purchases fingerprinting services, their fingerprints are inked and rolled by nursing students from Northwestern University. Customers do not operate the Fingerprinting System themselves.

The Commission audited Taxpayer for the sales and use Tax Periods ending January 2018, through April 2020 (the "Tax Periods"). The Commission determined that the purchases of the Fusion Targets, Filters, Software, Warranties, Fingerprinting System, and the Cube were taxable sales. The Commission issued audit findings to the Taxpayer dated September 21, 2021, followed by a Notice of Intent to Assess dated October 20, 2021. Taxpayer filed an administrative protest with the Commission that was denied and the Commission issued a Notice of Assessment dated December 20, 2021 (the "Assessment"). The Assessment reflects a balance due of $89,134.82.[2]

Discussion:

The dispute in this case concerns Taxpayer's initial purchases of: the Filters, the Fusion Targets, the Software, the Warranties, the Cube, and the Fingerprinting System. Taxpayer asserts that these purchases were for lease or rental to its

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[2] As noted on the Assessment, Taxpayer paid $89,783.52 under protest. The balance on the Assessment was calculated after applying an adjustment credited in the audit of $648.70 to the payment under protest.

customers, and that the customers are the true ultimate consumers of the property. Taxpayer contends that the initial purchases of the property were subject to the sale for lease exclusion applicable to local sales tax, provided for in La. R.S. 47:301(10)(a)(iii). This local sale for lease exclusion applies to the "sale of any tangible personal property which is sold in order to be leased or rented in an arm's length transaction in the form of tangible personal property." *Id.*

Although the Taxpayer's argument in this case is that its transactions with customers are, at least in part, leases or rentals, the Taxpayer also concedes that the same transactions were, in part, taxable sales of services as well. Specifically, the Taxpayer acknowledges that it sells access to a place of recreation or amusement in transactions that are taxable under La. R.S. 47:301(14)(b)(i)(aa). That provision brings the following activity within the definition of a taxable sale of a service:

> The sale of admissions to places of amusement, to athletic entertainment other than that of schools, colleges, and universities, and recreational events, and the furnishing, for dues, fees, or other consideration of the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities.[3]

Generally, the sale of tangible personal property to a business for use in providing a service in a subsequent transaction is taxable on the initial sale because the business is considered to be the ultimate consumer of the property. *S & R Hotels v. Fitch*, 634 So.2d 922, 927 (La. Ct. App. 1994). However, the Second Circuit, with which an appeal from this case would lie, has recognized that when "goods are not furnished as a normal incident to furnishing professional services and the price of the goods is separable and can be established, the initial sale is not a retail sale but is a sale for resale." *Id.*

The resale exclusion was held to apply to a taxpayer hotel's purchases of food and drink in *S & R Hotels*. In that case, the plaintiff hotel purchased the food and

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[3] *Id.*

drink and then provided it to patrons as, according to the hotel's advertising, "complimentary" amenities. At trial, however, the hotel proved that the food and drink were not actually provided for free. Rather, the cost of these items was included in the total price charged to patrons for staying at the hotel. Further, the hotel was also able to prove the specific, separate, price of the food and drink per customer.

The Court reviewed several decisions from Louisiana and other jurisdictions. Reconciling the superficially different tax outcomes, the Court found that goods typically provided in connection with a particular service were not considered to be purchased for resale, including snacks furnished at a hotel bar[4], dental prosthetic devices implanted by dentists in patients[5], and meals purchased by a catering company served to the employees of the customer[6]. The Court also found that the proof of a separate price was significant by examining cases dealing with meals purchased by airlines, noting that the exclusion had been held to apply when the price of the meal was shown to be "separable" from the price of the ticket and the cost of the meal was actually charged to the customer. *S & R Hotels*, 634 So.2d at 927. The will consider whether each category of property at issue could qualify for the resale exclusion under *S & R Hotels*.

Filters:

The Taxpayer uses the Filters to remove toxins that are released into the air by firearms. Toxins from gunfire are an expected hazard of the normal operation of an indoor shooting range. Customers would expect the Facility to offer some form protection from foreseeable health hazards. Thus, in order to operate an indoor gun range in a safe and viable manner, the Taxpayer must have a way to de-toxify the

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[4] *Broadmoor Hotel, Inc. v. Department of Revenue, State of Colorado*, 773 P.2d 627 (Colo.App.Div. 1, 1989).

[5] *City of Shreveport v. Kleowdis*, 408 So.2d 956 (La. Ct. App. 1981),

[6] *Collector of Revenue v. J.L. Richardson Co.*, 247 So.2d 151 (La. Ct. App. 1971), *writ denied*, 248 So.2d 586 (La. 1971).

air. The Filters fulfill this basic necessity. There is nothing atypical about meeting the basic needs of the business. For that reason, the Board views the filtration of toxins as incidental to the service of providing access to an indoor shooting range. It follows that the use of the Filters is incidental to the Taxpayer's service. In addition, the Taxpayer maintains complete control of the Filters. Customers cannot turn the Filters off or adjust their operation. Because the Filters are incidental to providing a service and are not furnished to customers, they do not meet the criteria for the resale exclusion set forth in *S & R Hotels*.

Fusion Targets

The Fusion Targets allow the Taxpayer's customers to move, rotate, and retrieve their shooting targets. Unlike the Filters, the customers exercise control over the Fusion Targets. Use of the Fusion Targets allows customers to enjoy a greater range of use and control of the shooting stall than they would if the Taxpayer only provided paper targets. Thus, the Fusion Targets go beyond meeting the basic needs of the business. The Board therefore finds that the Fusion Targets are not incidental to the service that Taxpayer provides. Furthermore, the fact that the customers actually control the Fusion Targets shows that they were actually provided to customers. Additionally, the testimony provided at trial established that the Taxpayer separately monitors the duration for which a customer has rented a shooting stall and Fusion Target. Thus, the rental transaction with respect to the Fusion Targets can be separated from the general sale of membership or admission to the Facility. For these reasons, the Board finds that the Taxpayer's purchases of the Fusion Targets satisfy the criteria set forth in *S & R Hotels*. Taxpayer is entitled to a refund of the taxes, penalties, and interest assessed on the sale of the Fusion Targets.

Software and Warranties

The Software is necessary for operating the Fusion Targets, the point of sale system in the storefront, the air conditioning system, and other systems in the Facility. The Warranties were acquired for the maintenance of the Software.

The Software used in the storefront, where guns and ammo were rented to customers, was not leased, sold, rented, or in any other way provided to the customers. The only instance in which customers actually used the Software was through the tablets that could move and rotate the Fusion Targets. However, during the site visit, the Board's attention was directed to the central computer workstation where an employee of the Taxpayer operated and controlled the Software.

Thus, although enabling customers to control the Fusion Targets, the Taxpayer maintained ultimate control of the Software itself. The Software was therefore not provided, sold, or leased to the customers. The purchase of the Software was a taxable sale at retail.[7] The Warranties were not provided to, or even possessed by, customers in any way. The Taxpayer's purchases of the Warranties were likewise taxable sales at retail.

Fingerprinting System

The Fingerprinting System was used in connection with concealed carry permit training classes offered at the Facility. A concealed carry permit was not prerequisite for access to the Facility. Offering concealed carry classes on-site was an added convenience for patrons and potential customers. The services provided using the Fingerprinting System further enhanced this convenience. It does not follow that this convenience met a business necessity. The Fingerprinting System was not incidental to the Taxpayer's service. Further, the testimony at the hearing established that there was a distinct and separate price charged to customers for having their fingerprints taken.

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[7] There is an exclusion for custom software, but it only applies to sales and use tax imposed by the state of Louisiana. La. R.S. 47:301(16)(h)(iv).

Nevertheless, the Fingerprinting System, like the Filters, the Software, and the Warranties, still does not satisfy the *S & R Hotels* criteria. Customers did not operate the Fingerprinting System at the Facility. Nor did Customers take the Fingerprinting System from the Facility for their own use. The Fingerprinting System was not itself provided to customers, but instead was used to provide a convenient, on-site service to customers. The purchase of the Fingerprinting System was therefore a taxable sale at retail.

The Cube

The site visit and testimony at the hearing suggested that the Cube is used for storage of equipment. No evidence, however, was offered to show that customers stored anything in the Cube. Like the Filters, Software, Warranties, and the Fingerprinting System, the Cube was not furnished to customers. The Taxpayer's purchase of the Cube was a taxable sale at retail.

Double taxation

Taxpayer argues that the Commission cannot tax the initial purchases of the property and then repeatedly tax the same property every time it is used in providing a taxable service. This argument is premised on a misunderstanding of the nature of sales tax. Sales tax is levied on a transaction, or activity, not on the property. *J & B Pub. Co. of Louisiana, Inc. v. Sec'y, Dep't of Revenue & Taxation, State of La.*, 34,105, p. 3 (La. App. 2 Cir. 12/15/00), 775 So.2d 1148, 1151. The Taxpayer engaged in taxable activity when it purchased property. Subsequently, the Taxpayer and customers partook in distinct taxable activities through sales of access to the Facility. The fact that the same property was involved in both transactions does not result in double taxation.

Conclusion:

The Taxpayer uses the Filters in the normal course of providing a service to customers. Further, the Taxpayer does not provide any of these the Filters, Software,

Warranties, the Cube, or the Fingerprinting System to customers. Consequently, the Taxpayer has not proved that it purchased the foregoing items for lease or resale. These purchases were taxable sales at retail separate from the subsequent taxable sales of services involving said property. However, with respect to the Fusion Targets, the Taxpayer demonstrated that these items are not incidental to the service, are actually provided to customers, and that this is a rental that is separable from service transaction. Thus, the Taxpayer has made the required showing to apply the sale for lease exclusion in La. R.S. 47:301(10)(a)(iii) to the Fusion Targets.

Accordingly, **IT IS HEREBY ORDERED** that the Taxpayer's purchases of the Fusion Targets by payments dated December 20, 2018, January 31, 2019, and April 23, 2019, were non-taxable sales for lease under La. R.S. 47:301(10)(a)(iii).

IT IS FURTHER ORDERED that the Taxpayers purchases of the Filters, the Software, the Warranties, the Cube, and the Fingerprinting System were taxable sales at retail.

IT IS FURTHER ORDERED that on or before November 13, 2023, the parties shall submit a joint proposed Judgment containing the parties' agreed-upon calculation of the amount of the payment under protest for which the Taxpayer is entitled to a refund, and further ordering the Commission to issue said refund to the Taxpayer.

IT IS FURTHER ORDERED that the Judgment submitted by the parties shall contain a decree rendering Judgment in part in favor of the Taxpayer and against the Commission with respect to the Fusion Targets, and further rendering Judgment in part in favor of the Commission and against the Taxpayer with respect to the Filters, the Software, the Warranties, the Cube, and the Fingerprinting System.

IT IS FURTHER ORDERED that if the parties cannot agree on the form of a proposed Judgment, that each party may submit a proposed Judgment together with a Memorandum in support thereof on or before November 13, 2023. The

opposing party shall be permitted to file a Memorandum in response on or before November 24, 2023.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

BATON ROUGE, LOUISIANA, THIS DAY SEPTEMBER 14, 2023.

FOR THE BOARD:

LOCAL TAX JUDGE CADE R. COLE