

Recent Litigation in State & Local Tax Law

LDR and Practitioner -
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Sales/Use/Lease Tax Litigation



Recent Litigation in State & Local Tax Law

- ***Coastal Drilling Company, LLC v. Dufrene*, 15-1793 (La. 3/15/16); 198 So. 3d 108, 2016 WL 1050541.**
 - Taxpayer restored a rig damaged by fire and did not pay sales tax on component parts for the reconstruction work on the vessel.
 - Local collector sought to tax the reconstruction because it was not an “original construction” under La. R.S. 47:305.1(A).
 - Local collector sought to strike down LDR’s applicable “reconstruction” regulation as unconstitutional.
 - Louisiana Supreme Court upheld LDR’s regulation (LAC 61:I.4403(A)) and held that component parts used for reconstruction of the rig following a fire are exempt from sales tax.

Recent Litigation in State & Local Tax Law

- ***Bridges v. Nelson Industrial Steam Co.*, 15-1439 (La. 5/3/16); 190 So. 3d 276, 2016 WL 2338036.**
 - Taxpayer (NISCO) purchased limestone to produce steam and electricity, and also to produce ash.
 - Taxpayer asserted limestone purchases were excluded because limestone was “further processed” into ash.
 - Louisiana Supreme Court held that limestone purchases were excluded from sales tax.
 - No “primary product” or “primary purpose” test.
 - No requirement that end product must boast an increased value or generate a certain profit.
 - Rehearing requested by Collector, but denied by Court.

Recent Litigation in State & Local Tax Law

- ***Graphic Packaging Int., Inc. v. Lewis*, 50,371 (La. App. 2 Cir. 2/3/16); 187 So.3d 499.**
 - Local sales tax refund claim (City of Monroe).
 - Taxpayer purchased sodium hydroxide/caustic soda, sodium hydrosulfide and emulsified sulfur (“chemicals”) for its Kraft pulping process for paper.
 - Taxpayer claimed the chemicals were purchased for “further processing” and excluded from tax pursuant to La. R.S. 47:301(10)(C)(i)(aa).
 - Court found that the chemicals: remained in the end product; were beneficial to the end product by adding mass, conductivity, sizing and strength properties; and were purchased for further processing into the final product.
 - Court held the chemicals qualified for the further processing exclusion.

Recent Litigation in State & Local Tax Law

- ***Yesterdays of Lake Charles, Inc. v. Calcasieu Parish Sales and Use Tax Dept.*, 15-1676, (La. 5/13/16); 190 So. 3d 710, 2016 WL 2879996.**
 - Local sales tax audit of two nightclubs.
 - Taxpayer could not provide “z-tapes” showing sales.
 - Only had bank deposit slips and bank statements - did not fully tie to actual sales (some cash amounts omitted).
 - Statutory requirement for taxpayer to “keep and preserve suitable records of the sales ... to determine the amount of tax due”
 - Louisiana Supreme Court found statute to be clear and unambiguous
 - Onus on taxpayer to provide sufficient records to support correct sales amounts.
 - Collector’s audit estimations acceptable based on information available
 - However, 2005 and 2006 tax periods prescribed due to lost prescription waiver.

Recent Litigation in State & Local Tax Law

- ***Louisiana Chemical Association v. State of Louisiana, et al*, 19th JDC No. 640,501, Sec. 24. (appeal filed).**
 - In 2015, Louisiana legislature passed House Concurrent Resolution No. 8 (HCR 8).
 - Suspended 1 cent of business utilities sales tax exemption.
 - Louisiana Chemical Association (LCA) filed declaratory judgment action seeking to have HCR 8 declared unconstitutional:
 - Not passed with 2/3 vote of legislature.
 - 19th JDC judge ruled in favor of LDR.
 - Judge held:
 - HCR 8 did not require a 2/3 vote for passage; HCR 8 was not a tax repeal; HCR 8 was not a tax increase; HCR 8 was not void for vagueness; and HCR 8 did not violate due process.
 - LCA has appealed.
- See LDR Statement of Acquiescence No. 15-001

Recent Litigation in State & Local Tax Law

- ***Hitachi Medical Systems America v. Bridges*, 15-0658 (La. App. 1 Cir. 12/9/15); 2015 WL 8479021, writ denied, 16-0042 (La. 2/26/16); 187 So.3d 1004, 2016 WL 903032, unpublished.**
 - LDR sales tax assessment on repairs to MRI machines.
 - Substantive Issue: Whether MRI machines are movable or immovable property.
 - Court of Appeal upheld assessment.
 - MRIs were not component parts of a hospital under La. C.C. art. 466.
 - MRIs were not permanently attached to a building; were not plumbing, heating, electrical or other installations, and were not permanently attached so as to cause substantial damage to the MRI or building if removed.
 - Procedural issue:
 - Subject matter jurisdiction of district court following enactment of Act 198 (2014 Regular Session) - all appeals from BTA now go directly to Court of Appeal.

Recent Litigation in State & Local Tax Law

- ***Odebrecht Const., Inc. v. Louisiana Dept. of Revenue* 15-0013, (La. App. 1 Cir. 9/18/15); 182 So. 3d 132, writ denied, 15-2113 (La. 1/15/16); 184 So. 3d 708.**
 - Taxpayer entered into contract with U.S. Core of Engineers (“COE”).
 - Taxpayer obtained clay from burrow pits and delivered clay to project site to build a hurricane protection levee.
 - Taxpayer asserted its purchases of clay were excluded under La. R.S. 47:301(10)(g) because they were for subsequent sale to the United States government.
 - Court held title to the clay passed to COE prior to its incorporation into to levee; thus, taxpayer qualified for the exclusion

Recent Litigation in State & Local Tax Law

- ***GameStop, Inc. v. St. Mary Parish Sales and Use Tax Department*, 14-0878 (La. App 1 Cir. 3/19/15); 166 So.3d 1090, writ denied, 15-0783 (La. 6/1/15); 171 So.3d 929.**
 - The trade-in amount is excluded from the taxable “sales price” of tangible personal property.
 - Common dictionary definition of trade-in is “merchandise [that is] accepted as partial payment for a new purchase.”
 - Plain language of the trade-in exclusion statute does not restrict the timing of the trade-in, nor does it suggest that a trade-in must occur simultaneously with the sale.
 - Portion of regulation requiring simultaneity of trade-in and subsequent purchase was beyond scope of exclusion statute.

Recent Litigation in State & Local Tax Law

- ***City of New Orleans v. Jazz Casino Co., LLC, 2015-1150 (La. App 4 Cir. 6/22/16); 195 So. 3d 1252.***
 - Sales and use tax audit and assessment of Harrah's Casino.
 - Collector's assessment and Notice of Assessment was untimely, and audit period prescribed.
 - Taxpayer signed collector's prescription waiver form, but marked out 90-day waiver period and wrote in 60 days.
 - Only taxpayer signs City of New Orleans prescription waiver forms.
 - Collector did not look at executed waiver.
 - Court found waiver was only for 60 days, assuming a valid "contract" between the parties.
 - Court found no waiver, assuming no valid "contract."
 - Thus, either way, notice of assessment not issued until after tax periods prescribed.

Recent Litigation in State & Local Tax Law

- ***Topshelf Sports, Inc. v. Robert Simpson, Director, Lafayette Parish School System, Docket No. L00034 (La. B.T.A. 6/29/15)***
 - The Board held that the rental of a facility and athletic equipment by Topshelf Sports, Inc. (“Topshelf”) (along with a concession stand operated by Topshelf), constituted the sale of services subject to local Sales/Use Taxes as access to amusement, entertainment, athletic or recreational facilities.
 - Topshelf owned a building in Lafayette Parish, where it charged fees to patrons for the use of the building and the sports equipment located in the building. Topshelf only permitted its patrons to use the facility during certain hours, but Topshelf retained the exclusive use of a “concession stand” in the building and the right to sell concessions during the time a patron had use of the building and its equipment. Further, Topshelf was required to maintain and keep the building clean, Topshelf maintained its administrative offices in the building, and Topshelf was responsible for all insurance and utilities relating to the facility. Consequently, according to the Board, the patrons were not “tenants” of immovable property where they have actually acquired “real rights” in the immovable under the Louisiana Civil Code. Therefore, the Board found that Topshelf’s fees were taxable services for the access to an amusement, entertainment, athletic or recreational facility, rather than a non-taxable lease of an immovable.

Recent Litigation in State & Local Tax Law

- ***Crowe v. Bio-Medical Application of Louisiana, LLC, 14-0918 (La. App. 1 Cir. 6/3/16), __ So.3d __, 2016 WL 3126425.***
 - Bio-Medical operates a dialysis facility in Washington Parish. Bio-Medical submitted a claim for refund for parish sales taxes for various purchases of prescription drugs.
 - Bio-Medical alleged that such purchases were exempt or excluded from local taxation pursuant to La. R.S. 47:301(10)(u) which provides a broad exclusion from local taxes for sales of tangible personal property made “under the provisions of Medicare” and La. R.S. 47:337.9(F) which provides an exemption from local sales tax for prescription drugs purchased “through or pursuant to a Medicare Part B and D plan.”
 - The Court disagreed and held the language “sale...made under the provisions of Medicare” contained in La. R.S. 47:301(10)(u) was ambiguous and found the legislative history of the enactment of the provision showed there was no intention to broaden the applicability of the exclusion to include the third-party transactions at issue.
 - The Court also held that the language of La. R.S. 47:337.9(F) is clear that the exemption did not apply to bulk drug sales between a dialysis clinic and pharmaceutical vendor (sales in which the provisions of Medicare play no part in determining which drugs are purchased, which vendor is used, what price is paid, or whether sales tax is charged) to supply the entire population of the clinic’s patients, including Medicare and non-Medicare patients.

Recent Litigation in State & Local Tax Law

- ***Arrow Aviation Co. v. St. Martin Parish Sch. Bd. Tax Sales Dept.*, 16-1132 (La. 12/6/16), __ So.3d __, 2016 WL 7118912.**
 - Arrow leases and repairs helicopters, including shipping repaired helicopters to customers outside of Louisiana. Parish audit found Arrow failed to pay a use tax or charge sales tax to its customers.
 - Arrow asserted that the Collector failed to apply a legislative tax exclusion, La. R.S. 47:301(14)(g)(i)(bb), which excludes from state and local sales tax the charges for repairs on certain property that is delivered to customers out of state. The Collector asserted that St. Martin Parish did not adopt the exclusion.
 - Parties also sought a ruling on whether the exclusion violated La. Const. art. VI, § 29(D)(1), in which the legislature may provide for “exclusions uniformly applicable to the taxes of all local government subdivisions, school boards and other political subdivisions...”
 - The Court held that the 2013-amendment to the exclusion does not treat all local governmental subdivisions, school boards, and other political subdivisions the same because tax authorities in all parishes are not able to apply the exclusion in the same form, manner or degree. Because the exclusion was mandatory for tax authorities in East Feliciana, but optional for those in other parishes, was an example of non-uniformity prohibited by the constitution. The Court held that, under La. Const. art. VI, § 29(D)(1), the exclusion provided by La. R.S. 47:301(14)(g)(i)(bb), as amended in 2013, is unconstitutional. The Court ordered that the offending language applicable to tax authorities in East Feliciana Parish, be severed and removed.

Income/Franchise Tax / Credits Litigation



Recent Litigation in State & Local Tax Law

- ***Sasol North America, Inc. v. Louisiana Dept. of Revenue*, 15-569 (La. App. 3 Cir. 2/10/16); 184 So. 3d 902**
 - Court held the prescriptive period for taxpayer's claim for refund on state income taxes was suspended during time from which LDR sued taxpayer to collect additional taxes until such time as suit dismissed by involuntary dismissal.
 - Court held taxpayer's overpayment of taxes was the result of an error, omission, or mistake of fact.
 - Court disagreed with Louisiana Board of Tax Appeals' discounting of taxpayer's witness as "self-serving," based on other documentary evidence in record.

Recent Litigation in State & Local Tax Law

- ***Bridges v. Polychim USA, Inc.*, 14-0307 (La. App. 1 Cir. 4/24/15); ___ So.3d ___, 2015WL 1882474, reh'g denied, 14-0307 (La. App. 1 Cir. 6/24/15); ___ So.3d ___, 2015 WL 1882474, unpublished.**
 - LDR argued that the business structure of the taxpayer and its affiliates was a tax avoidance scheme.
 - “[H]owever, there is nothing that prevents a business from setting up its structure in such a way as to avoid paying taxes, as long as the business structure is legal.”
 - Court of Appeal relied heavily on its prior holding in *Utelcom*.
 - Court dismissed the common control, single business enterprise, and tax avoidance arguments raised by LDR.

Recent Litigation in State & Local Tax Law

- ***Barfield v. Bolotte*, 15-0847, (La. App. 1 Cir. 12/23/15); 185 So. 3d 781, writ denied, 191 So. 3d 1058 (La. 5/13/16).**
 - Taxpayer purchased a flex-fuel vehicle that had the capability of running on either gasoline or a mixture of gasoline and ethanol (E85).
 - Taxpayer claimed entitlement to the alternative fuel tax credit provided by La. R.S. 47:6035 and for the applicable refund due.
 - The Court was called upon to consider the definition of “qualified clean-burning motor vehicle fuel property” as defined as “equipment necessary for a motor vehicle to operate on an alternative fuel and shall not include equipment necessary for operation of a motor vehicle on gasoline or diesel.”
 - Court held taxpayer qualified for the credit as the tax credit statute does not contain any exclusion for flex fuel or require separate, different, or additional equipment for operation only on alternative fuels as opposed to gasoline.

Recent Litigation in State & Local Tax Law

- ***Louisiana Machinery Co., LLC v. Bridges*, 15-0010 (La. App. 1 Cir. 9/18/15); 2015 WL 5515156, writ denied, 16-0047 (La. 2/26/16); 187 So. 3d 1009, unpublished.**
 - Taxpayer sells, leases and services heavy construction equipment.
 - Taxpayer claimed a credit for ad valorem taxes paid to various political subdivisions (La. R.S. 47:6006) on items claimed to be inventory.
 - Court held that equipment that had been previously leased or rented could still qualify as “inventory” under La. R.S. 47:6006.
 - Taxpayer was attempting to sell all of its equipment and used the lease and rental agreements to promote its sales.

Recent Litigation in State & Local Tax Law

- ***Bridges v. Bullock*, 16-494 (La. App. 2 Cir. 2/19/16), 188 So. 3d 280.**
 - Taxpayer's company, JPS Equipment, LLC ("JPS") sells and leases new and used construction equipment.
 - JPS claimed a credit for ad valorem taxes paid to political subdivisions (La. R.S. 47:6006) on items claimed to be inventory.
 - Court held that equipment that had been previously leased or rented could still qualify as "inventory" under La. R.S. 47:6006.
 - Taxpayer was attempting to sell all of its equipment , including any equipment being leased.

Recent Litigation in State & Local Tax Law

- ***Quest Diagnostic Clinical Laboratories, Inc. v. Barfield*, 15-0926 (La. App. 1 Cir. 9/9/16), 2016 WL 4719894.**
 - Quest operated a network of laboratories that performed medical diagnostic testing and services. Prior to Katrina, much of the testing was done at its lab in Metairie. After Katrina, most testing was forwarded to Houston, Texas.
 - At issue was whether income from medical testing services performed for Louisiana patients should be attributed to Texas or Louisiana for income tax purposes. Quest attributed to Louisiana all income derived from testing done in Louisiana, but attributed to Texas all income derived from testing done in Texas.
 - Quest argued that it was eligible to utilize the 2 factor formula provided by La. R.S. 47:287.95(D). The Department contended that Quest's use of property in Louisiana precluded its ability to use La. R.S. 47:287.95(D). According to the Department, by default, Quest was required to apportion its income using La. R.S. 47:287.95(F)-the general formula.
 - The Court held Subsection (F) did not "clearly and unambiguously express an intent to attribute income derived from general services performed in another state to Louisiana. The Court found income from collecting samples in state does not constitute "net sales" in La. R.S. 47:287.95(F). Rather, net sales refers to tangible goods and not services performed. The Court held the income was correctly attributed to Texas by Quest.

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