LMOGA
LOUISIANA MID-CONTINENT
OIL AND GAS ASSOCIATION

730 NORTH BOULEVARD, BATON ROUGE, LOUISIANA 70802 • TELEPHONE (225) 387-3205 FAX (225) 344-5502

May 25, 2016

Chairman J.P. Morrell
Revenue and Fiscal Affairs Committee
Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804

RE: Written Testimony to Re-instate the Exemption on Pollution Control Devices and Systems, R.S. 47:301(10)(l)

Chairman Morrell:

Louisiana Mid-Continent Oil and Gas Association ("LMOGA") is in support of a *change* to re-instate the exclusion on R.S. 47:301(10)(l), pollution control devices and systems, removed by Acts 25 and 26 of the 2016 First Special Session.

When this exclusion was in place, it allowed industry to purchase pollution-control equipment free of general sales tax. This encouraged companies to purchase and install necessary equipment to cut industrial air, noise, groundwater, and other pollution. In fact, the exclusion had a broader scope than other states because it applied to both pollution control devices and pollution control systems. With this more expansive scope, Louisiana was more attractive for multi-state companies completing for the same project dollars. Without it, Louisiana must compete with its neighboring states, and while pollution reduction must be a significant reason for a project, it does not have to be the exclusive reason. Without this incentive, Louisiana puts itself at risk for losing economic growth in the state.

From a tax policy perspective, the current structure potentially reaches into taxing business inputs. When considering broadening the sales tax base, it is important to maintain proper treatment on all final consumer goods and services while exempting all purchases made by businesses that will be used as inputs in the production process. This is not because business deserve special treatment under the tax code, but because applying the sales tax to business inputs results in multiple layers of taxation embedded in the price of goods once they reach final consumers, known as "tax pyramiding." The result is higher and inequitable effective tax rates for different industries and products, which is both non-neutral and non-transparent.

Finally, Louisiana's sales tax base is primarily focused on the purchase of tangible personal property, and services are largely exempted from the tax. Thus, the base has will grow smaller over time. And, Louisiana has the most poorly structured sales tax in the nation according to our State Business Tax Climate Index, putting the state at a disadvantage with its regional competitors, Alabama, Arkansas, Florida, Georgia, Mississippi, and Texas. Louisiana's poor score is driven by two factors, the fact that the state allows local governments set their own sales tax bases, and the state's high combined state and local tax rate, the highest in the country following the 2016 First Special Session.

Thank you for the opportunity to testify on these important issues. Should you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Chris John
President
Louisiana Mid-Continent
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RE: Written Testimony to Re-instate Exemptions and Exclusions, Repairs, Renovations or Conversions of Drilling Rigs, R.S. 47:301(14)(g)(iii), Repairs and Materials Used on Drilling Rigs and Equipment, R.S. 47:305(I), Property Purchased for Exclusive Use Outside the State, R.S. 47:305.10

Chairman Morrell:

Louisiana Mid-Continent Oil and Gas Association ("LMOGA") is in support of a *change* to re-instate the exemptions and exclusions on R.S. 47:301(14)(g)(i)(bb), R.S. 47:301(14)(g)(iii), R.S. 47:305(I), R.S. 47:305.10, R.S. 47:302.1, and R.S. 47:305.19, ("the offshore exemptions") which all affect the offshore oil and gas industry and were removed by Acts 25 and 26 of the 2016 First Special Session. Further, the removal of these exemptions and exclusions puts Louisiana at-risk of losing offshore business considering the proximity of Mississippi and Texas ports. And, there are questions of the constitutionality of this tax considering the goods and services are part of interstate commerce.

Offshore drilling platforms are accessible from ports in Texas, Louisiana, Mississippi, and Alabama. Today, Louisiana dominates this business, but it can be moved to another location. And with the suspension of these exemptions and exclusions, Louisiana is at-risk of losing it considering the proximity of Texas and Mississippi ports, and both states exempt property purchased for exclusive use outside the state (Outer Continental Shelf) from taxation. While the competition for business in Louisiana is critical, there are legal concerns with collecting this tax. Under R.S. 47:305(E), tangible personal property imported into Louisiana, or produced or manufactured in this state, for export, are considered in interstate commerce and therefore not taxable. Considering activity in the outer continental shelf is bona fide interstate commerce, confirmed by *Kerr-McGee Corp. v. McNamara* (La. App. 1 Cir. 6/22/2001); 826 So.2d. 1, removing these offshore exemptions may have the unintended consequences in their attempt to increase revenue to the state.

From a tax policy perspective, the current structure potentially reaches into taxing business inputs. When considering broadening the sales tax base, it is important to maintain proper treatment on all final consumer goods and services while exempting all purchases made by businesses that will be used as inputs in the production process. This is not because business deserve special treatment under the tax code, but because applying the sales tax to business inputs results in multiple layers of taxation embedded in the price of goods once they reach final consumers, known as "tax pyramiding." The result is higher and inequitable effective tax rates for different industries and products, which is both non-neutral and non-transparent.

Finally, Louisiana's sales tax base is primarily focused on the purchase of tangible personal property, and services are largely exempted from the tax. Thus, the base has will grow smaller over time. And, Louisiana has the most poorly structured sales tax in the nation according to our State Business Tax

Climate Index, putting the state at a disadvantage with its regional competitors, Alabama, Arkansas, Florida, Georgia, Mississippi, and Texas. Louisiana's poor score is driven by two factors, the fact that the state allows local governments set their own sales tax bases, and the state's high combined state and local tax rate, the highest in the country following the 2016 First Special Session.

Thank you for the opportunity to testify on these important issues. Should you have any questions, please do not hesitate to contact me.

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RE: Written Testimony to Re-instate the Exclusion on R.S. 47:301(18)(d)(ii) Use Tax on Residue or By-products Consumed by the Producers

Chairman Morrell:

Louisiana Mid-Continent Oil and Gas Association ("LMOGA") is in support of a *change* to re-instate the exclusion on R.S. 47:301(18)(d)(ii), use tax on residue or byproducts consumed by the producer, which was removed by Acts 25 and 26 of the 2016 First Special Session.

LMOGA's membership includes refineries, which are affected by this use tax because state and local taxing bodies seek to tax coke-on-catalyst, a by-product consumed during the refining process. During the refining process, crude oil is converted to gasoline, diesel, naphtha, etc., using a catalyst. In this case, the catalyst is a chemical, which can have coke, another by-product, build up on the catalyst making it unusable. To preserve the integrity of the catalyst, the coke must be burned off. The taxability of this by-product has been litigated and the Louisiana Supreme Court determined coke-on-catalyst has no taxable value in *BP Oil Co. v. Plaquemines Parish Government*, 93-1109 (La. 9/6/94); 651 So.2d 1322. Finally, the Louisiana Department of Revenue issued Revenue Information Bulletin No. 16-028, speaking to "Black Liquor" which is another by-product from the processing of raw materials and in the same statute as coke-on-catalyst.

Thank you for the opportunity to testify on these important issues. Should you have any questions, please do not hesitate to contact me.

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RE: Written Testimony to Re-instate Manufacturing Machinery and Equipment Exclusion, R.S. 47:301(3)(i)(i), (13)(k)(i) and (28)(a), and R.S. 47:337.10(I)

Chairman Morrell:

Louisiana Mid-Continent Oil and Gas Association ("LMOGA") is in support of a *change* to re-instate the exemption on La. R.S. 47:301(3)(i)(i), (13)(k)(i) and (28)(a), R.S. 47:337.10(I), the purchases of Manufacturing Machinery and Equipment exclusions ("MM&E"), removed by Acts 25 and 26 of the 2016 First Special Session.

The MM&E exclusions, phased in over seven years, allow manufacturing machinery and equipment to be purchased free from the state sales, use, lease, and rental tax by eligible manufacturers. To qualify for the exclusion, the machinery and equipment must be used by the manufacturer in a plant facility and be used predominantly and directly in the actual manufacturing process. These exclusions were put in place to incentivize the expansion of current facilities or encourage businesses to relocate to Louisiana (the "State"). Now, the removal of these exclusions will delay, or potentially eradicate, the expansion, or construction, of facilities in the Louisiana. Further, the expected revenue collections[1] will decrease because the collection estimates assume business will behave the same way with or without the exclusions. However, once the exclusion is removed, facilities may choose not to expand or buy equipment under the MM&E definition. So by collecting the tax, the State will fall short of its revenue expectations and disincentivizes business expansion, thus pushing potential growth to neighboring states and denying Louisiana citizens the opportunity for jobs and economic growth.

From a tax policy perspective, the current structure potentially reaches into taxing business inputs. When considering broadening the sales tax base, it is important to maintain proper treatment on all final consumer goods and services while exempting all purchases made by businesses that will be used as inputs in the production process. This is not because business deserve special treatment under the tax code, but because applying the sales tax to business inputs results in multiple layers of taxation embedded in the price of goods once they reach final consumers, known as "tax pyramiding." The result is higher and inequitable effective tax rates for different industries and products, which is both non-neutral and non-transparent.

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[1] Pursuant to the Tax Exemption Budget for 2015-2016, published on March 24, 2016, the Louisiana Department of Revenue estimates collecting $78,106,000 in fiscal year 2017 and $76,575,000 in fiscal year 2016.

state allows local governments set their own sales tax bases, and the state's high combined state and local tax rate, the highest in the country following the 2016 First Special Session.

Thank you for the opportunity to testify on these important issues. Should you have any questions, please do not hesitate to contact me.

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