This Week in State Tax (TWIST)

February 20, 2023

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Louisiana: Taxpayer Was Selling Pipe to Related Entities

The Louisiana Board of Tax Appeals recently determined that a taxpayer qualified for the Manufacturing Machinery and Equipment Exclusion (MM&E Exclusion), although most of its output was sold to related parties. The taxpayer at issue purchased equipment that it used to fashion customer-provided pipes into specialized joints or connections for use in oil and gas well drilling and production operations. During the tax period in question, ninety-five percent of the taxpayer's jobs were performed for one of the taxpayer's divisions and/or related parties controlled by a common parent corporation. Related or not, the customers were required to pay for the items before they retrieve them. If the customer did not pay, the taxpayer cut the connections or joint that it had fashioned off the pipe and returned the pipe to the customer. Under Louisiana Law, which is incorporated into Jefferson Parish Code, the MM&E Exclusion applies to purchases of machinery and equipment used by a manufacturer for the actual manufacturing of tangible personal property, which is for sale "to another" and is not produced for internal use.

Following an audit, the Jefferson County Collector assessed sales and use tax plus interest on the equipment purchased for use in the taxpayer's manufacturing process. The Collector asserted that the taxpayer did not qualify for the MM&E Exclusion because it did not sell the connections "to another" when ninety-five percent of its jobs were for related party customers. Further, the Collector asserted a sale did not occur because ownership of the pipe was never transferred, as the pipe was supplied to the taxpayer by the customers.

Phrasing the question presented as whether a transfer of ownership is absolutely necessary for there to be a "sale," the Board determined it was not. A "sale" includes both a transfer of ownership or a transfer of possession. Moreover, the definition of sale includes the fabrication of tangible personal property from materials provided by a customer. In a previous case, *Louisiana Power & Light Co. v. Slaughter*, the court defined fabrication as making, creating, or constructing by combining or assembling and found the term "fabrication" was synonymous with manufacturing. Therefore, the Board concluded that a sale occurred because the taxpayer transferred possession of an item fabricated from materials provided by a customer. The Collector also asserted that the fact that the taxpayer's customers were mostly related entities meant that the connections were produced for internal use and not for sale to another. Previous Louisiana cases have concluded that for the separate existence of related entities to be disregarded, the facts must be "such as are normally sufficient to warrant piercing the corporate veil." The Board found that the facts in this case did not support such a piercing. Notably, the related and unrelated transactions were handled in the same manner with the same pricing, and there was no evidence that the related parties had any involvement in the taxpayer's business. In the Board's view, simply having a common parent entity was not a reason to pierce the corporate veil. As such, the Board ruled in the taxpayer's favor. Please contact Randy Serpas with questions on *Hunting Energy Servc., Inc. v. Lopinto.*

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