

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA  
LOCAL DIVISION**

**FMT SHIPYARD & REPAIR, LLC  
PETITIONER**

**VERSUS**

**DOCKET NO. L00214**

**NEWELL NORMAND, SHERIFF  
AND EX-OFFICIO TAX COLLECTOR  
FOR JEFFERSON PARISH, ET AL  
RESPONDENT**

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**JUDGMENT WITH WRITTEN REASONS**

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A hearing on the Petition for Redetermination of an assessment filed by FMT Shipyard & Repair, LLC (the “Taxpayer”) against Newell D. Normand, in his capacity as Sheriff and Ex-Officio Tax Collector for the Parish of Jefferson (the “Collector”) was held before the Board of Tax Appeals-Local Division on November 16, 2017, Local Tax Judge Cade R. Cole presiding. Present before the Board were: Jason Brown, attorney for Taxpayer, and Kenneth C. Fonte, attorney for the Collector. After the hearing, the case was taken under advisement, and the Board now issues its Judgment for the following written reasons:

Taxpayer appeals the Collector’s formal assessment of underpaid Occupational License Tax (“OLT”) in the amount of \$23,800 (together with applicable penalty and interest).

Taxpayer operated a shipyard in Jefferson Parish. The Taxpayer had paid OLT at a reduced rate as a contractor. However, the Taxpayer now alleges that it was engaged in the business of manufacturing and was therefore exempt from the OLT.

The Collector argues that the Taxpayer was not a state licensed contractor and was therefore ineligible for the reduced rate provided for in Jefferson Parish Code Section 35-182. The Collector contends that the Taxpayer falls within the provisions

of Jefferson Parish Code Section 35-175, which covers “shipbuilders, and contractors...”.

The testimony was that the FMT Shipyard did not manufacture products for sale to the general public, but that its fabrication of custom parts was incidental to its work as a shipyard and ship repairer. The evidence does not support the Taxpayer’s position that it qualified as manufacturer for the purposes of the OLT.

The Board *sua sponte* raised the question of whether the requirement in Jefferson Parish Code Section 35-182 that the taxpayer hold a state contractor’s license in order to be eligible for a reduced contractor rate was itself *ultra vires* due to Act 752 of 1988 which explicitly deleted that requirement from companion statutory provisions. La. R.S. 47:362.

The Collector argues that although La. R.S. 47:362 would impose the annual limitation of \$750 on a contractor’s OLT, the Legislature did not delete the phrase contractor from La. R.S. 47:355. If La. R.S. 47:355 applies, then the assessed Jefferson OLT would fall within state authorized amounts. The Collector points out that this statute uses the term “shipbuilders, and contractors” in the same manner as provided for in its Ordinance.

The Legislature re-enacted Section 355 at the same time that it enacted Section 362. The Board is in a unique position, it is not looking to the statute as the basis for the tax. It is instead looking to the Ordinance as the basis for the tax, but must confirm that the Ordinance is within the authority granted by statute.

Under the Ordinance, it is clear that the more specific provision—requiring a state contractor license for the preferential rate--has not been met. The Board will not disregard this clear provision without a clear lack of any statutory basis for the levy. The retention of shipbuilders and contractors within the text of La. R.S. 47:355

shows no basis to impute a specific denial of authority to the Parish of Jefferson to levy OLT on this Taxpayer at the rate provided for in its ordinances.

The Collector's reconventional demand for attorney's fees, pursuant to La. R.S. 47:337.13.1, of ten percent (10%) of the tax, penalty, and interest, is also granted.

For the written reasons stated hereinabove:

IT IS ORDERED, ADJUDGED, AND DECREED that the Petition for Redetermination filed by the Taxpayer BE AND IS HEREBY DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be and is hereby Judgment rendered in favor of the Sheriff of Jefferson Parish as ex-officio Tax Collector for the Parish of Jefferson and against FMT Shipyard & Repair, LLC in the amount of: \$23,800 in tax and \$5,950 in penalty, together with the interest as provided by law, and 10% attorney's fees on the amount of the tax, penalty, and interest due.

Baton Rouge, Louisiana this 11<sup>th</sup> day of January, 2018.

FOR THE BOARD:



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LOCAL TAX JUDGE CADE R. COLE  
LOUISIANA BOARD OF TAX APPEALS-LOCAL DIVISION