

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

**COOLING TOWER DEPOT, INC.  
PETITIONER**

**VERSUS**

**DOCKET NO. L00020**

**ST. JAMES PARISH SCHOOL BOARD  
SALES & USE TAX DEPARTMENT  
RESPONDENT**

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**ADDITIONAL WRITTEN REASONS**

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A trial on the merits of this matter was held before Local Tax Judge Cade R. Cole, Board of Tax Appeals, Local Tax Division on April 16, 2015. Present before the Local Tax Division were: Drew Talbot, attorney for respondent St. James Parish School Board Sales and Use Tax Department (Collector), and Martin Hout, CFO of Cooling Tower Depot, Inc. (Taxpayer). After the presentation of evidence and argument of the parties, the matter was taken under advisement.

Taxpayer appeals Collector's assessment of sale and/or use tax in the amount of \$26,146.56 plus interest and penalties for the period January 1, 2010-December 31, 2012.

The assessment is based on five different "projects" that Taxpayer performed in St James Parish. The Collector claims that the cooling towers were immovable under Louisiana law and therefore Taxpayer was liable for sales or use tax on purchase of, or use of, the movable items that were used to construct or repair the cooling towers.

It is the position of the Taxpayer that the cooling towers were movable and therefore Taxpayer is not liable for the sales or use tax on the purchase of materials used in the construction of, or repair to, the cooling towers. It appears that Taxpayer's position is that the purchases at issue are purchases for resale and are not taxable. In regard to the construction of a cooling tower for Nucor Steel Louisiana, LLC, Taxpayer claims that Nucor is excluded from paying sales or use tax on the purchase of "manufacturing machinery and equipment".

Under consideration are five (5) projects. The first involves the construction of a new cooling tower for Nucor Steel Louisiana, LLC. At the hearing on this matter the

Taxpayer introduced a number of exhibits, and its witness, Dennis Sheldon, testified about the construction of this cooling tower. A copy of the plans and specifications was introduced and testified about. The cooling tower was an "industrial" tower and consisted of four cells. It was specifically designed for the Nucor job. It was assembled on the job site and was secured to a concrete basin, its foundation by 200 to 230 anchor bolts that were imbedded in the concrete basin.

The basin was constructed by another of Nucor's contractors and was designed specifically to support the cooling tower. The four-cell cooling tower consisted of many parts that were assembled at the job site. Taxpayer's Exhibit Five is a shipping list of all of the numerous parts that made up the tower. It took eight to ten weeks to assemble the cooling tower.

The tower was specifically designed to meet the requirements of the Nucor plant. The tower was hard-wired to the Nucor plant. The tower receives hot water from the Nucor plant by piping in order to have the temperature of the water reduced in the towers and then returned to the Nucor plant by other piping.

Mr. Dennis Sheldon testified that during his career dealing with cooling towers, he has been involved with approximately 600 to 1000 cooling towers of which only one had ever been moved to another location. To move the cooling towers they would have to disassemble the tower and then reassemble it at another location. The Nucor tower was approximately 30 feet high and it was over 100 feet long. The pictures of the tower introduced into evidence revealed that it was very large.

The next tower in question was a new two-cell tower constructed for Louisiana Sugar Refining, LLC. It was similar the to Nucor tower, being slightly smaller.

The next three projects were repairs made to three different towers belonging to Noranda Alumina, LLC. These three towers were similar to the two towers discussed above. At least two of the towers were three-cell towers.

The testimony and exhibits revealed that all of the five towers were generally similar towers.

The question is whether the towers were movable or immovable. Although the taxpayer was interested in certain common law real estate concepts, the only relevant enquiry is the classification under Louisiana's Civil Code. The answer to the question is found in the Louisiana Civil Code and the cases interpreting it:

LA C. C. Art. 462 states:

"Tracts of land with their component parts are immovable". (Emphasis supplied)

LA C.C. Art. 463 states in part:

"Buildings, or other constructions permanently attached to the ground...are component parts of a tract of land when they belong to the owner of the ground..."(Emphasis supplied)

LA C.C. Art. 466 states:

"Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its component parts.

Things that are attached to a construction other than a building and that serve its principal use are its component parts.

Other things are component parts of a building or other construction if they are attached to such a degree that they cannot be removed without substantial damage to themselves or to the building or other construction.

In interpreting what is an "other construction" in LA. C.C. Art. 463, it was stated in *Bayou Fleet Partnership v. Dravo Basic Materials Company Incorporated*, 106 F.3d 691, (5<sup>th</sup> Cir. 1997):

"Louisiana courts generally rely on three criteria: the size of the structure, the degree of its integration or attachment to the soil, and its permanency. If there is a failure of any of these criteria, an object will not be deemed to be an immovable."

The cooling towers under consideration here meet all three criteria to be an "other construction" under C.C. 463 and therefore are an immovable. They are large. They are attached to the ground on concrete basins with as many as 200 plus anchor bolts. They were obviously intended to be permanent. The taxpayer's own evidence is that they are constructed and practically never moved.<sup>1</sup>

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<sup>1</sup> The writer has seen houses being moved down the interstate, the fact that something can theoretically be moved does not make it a movable.

Additionally, C.C. Art. 466 specifically states that plumbing, cooling and electrical installations permanently attached to an other construction are its component parts.

In the case of *EPA V. NOPSI*, 826 F. 2d. 361 (5<sup>th</sup> Cir. 1987), in deciding that three electrical transformers in a brewery building were its component parts and therefore immovable, the 5<sup>th</sup> Circuit Court of Appeal considered the degree of skill needed to install and disconnect the transformers. In the matter before this Board, it is clear that the degree of skill that was necessary to build the cooling towers and would be necessary to disassemble and reassemble the cooling towers is great and would take a considerable period of time.

The Board finds as a matter of fact that the cooling tower itself is an “other construction” and therefore is immovable.<sup>2</sup> It is well settled that a construction contractor owes tax on its purchase or use of building materials. *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226, 1229 (La. 3/13/89).

It is the ruling of the Board, that all five of the cooling towers at issue in this matter are immovable, and sales or use taxes were due by Taxpayer to the Collector on the sales price or cost price of the movables used in the construction or repairs of the cooling towers.

In regard to any sales and use taxes that Taxpayer collected from Noranda Alumina, LLC on two of the three towers that Taxpayer repaired, those transactions were not before the Board, and there is no proof in the record about whether the taxpayer at issue wishes to pursue its own right of action for a refund. This ruling only pertains to taxes that were due by this Taxpayer on the purchase or use of things acquired by Taxpayer in the construction or repair of the aforementioned towers.

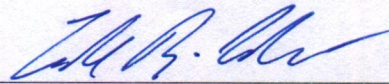
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<sup>2</sup> However, even if the taxpayer disputes this designation, it cannot reasonably dispute that the large concrete basins are “other constructions,” and under the middle prong of CC. art. 466 things that are attached to an other construction and which serve its principal use are immovable as its component parts. The use of the concrete basin is to support the cooling tower, so the cooling tower functioning would be supporting that use. At an absolute minimum the cooling tower is a thing attached to an other construction serving its principal use, and is therefore immovable under the middle prong of art. 466.

Collector has filed a reconventional demand seeking attorney fees from Taxpayer as provided for R.S. 47:331.13.1, due to Collector's employment of private counsel in this matter. The request for attorney fees is granted in the amount of ten percent of the tax, penalty, and interest found due.

Judgment has been rendered of even date herewith for these written reasons and those orally stated.

Baton Rouge, Louisiana this 29 day of June, 2015.



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