

STATE OF LOUISIANA  
BOARD OF TAX APPEALS  
LOCAL DIVISION

NORANDA INTERMEDIATE HOLDING CORP., SUCCESSOR IN  
INTEREST TO: NORANDA ALUMINA, LLC  
PETITIONER

VERSUS

No. L00329

ST. JAMES PARISH SCHOOL BOARD SALES & USE TAX  
DEPARTMENT, AS CENTRAL COLLECTOR OF SALES/USE  
TAX FOR THE PARISH OF ST. JAMES; AND NESHELLE S.  
NOGESS, IN HER CAPACITY AS ADMINISTRATOR OF THE ST.  
JAMES PARISH SCHOOL BOARD SALES & USE TAX  
DEPARTMENT

RESPONDENT

Consolidated with

No. L00748

NORANDA ALUMINA, LLC, AND NORANDA INTERMEDIATE  
HOLDING CORP, SUCCESSOR IN INTEREST TO NORANDA  
ALUMINA, LLC

VERSUS

ST. JAMES PARISH SCHOOL BOARD SALES & USE TAX  
DEPARTMENT, AS CENTRAL COLLECTOR OF SALES/USE  
TAX FOR THE PARISH OF ST. JAMES; AND NESHELLE S.  
NOGESS, IN HER CAPACITY AS ADMINISTRATOR OF THE ST.  
JAMES PARISH SCHOOL BOARD SALES & USE TAX  
DEPARTMENT

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ORDER AND WRITTEN REASONS

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On October 15, 2020, and October 23, 2020, this matter came before the Local Tax Division of the Board of Tax Appeals (the “Board”) for a hearing on the Merits, with Local Tax Judge Cade R. Cole presiding. Present before the Board were Linda S. Akchin and Randal R. Cangelosi, attorneys for Noranda Alumina, LLC, and Noranda Intermediate Holding Corp, as Successor in Interest to Noranda Alumina, LLC

(collectively “Petitioner”), and Drew M. Talbot, attorney for the St. James Parish School Board Sales & Use Tax Department, as Central Collector of Sales/Use Tax For the Parish of St. James; and Neshelle S. Nogess, in her Capacity as Administrator of the St. James Parish School Board Sales & Use Tax Department (“Collector”). After the hearing, the Board took the matter under advisement. The Board now issues this Order and Written Reasons.

Petitioner appeals from denials of refund claims for local sales and/or use tax in the amounts of: \$839,200.36 for the period January 1, 2007, through December 31, 2011; \$886,568.21 for the period January 1, 2012, through December 31, 2015; and \$150,000.00 for the period January 1, 2016, through October 31, 2016. The dispute in this case concerns Petitioner’s purchases of lime and its use in the manufacture of Smelter Grade Alumina (“SGA”) through the Bayer Process.

**I. Collector’s Affirmative Defense Under La. R.S. 47:337.77(F)**

As a preliminary matter, the Collector raises a procedural objection based on La. R.S. 47:337.77(F), which provides:

This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the collector of the provisions of any law or of any rules and regulations. In the event a taxpayer believes that the collector has misinterpreted the law or rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover or petition to the Board of Tax Appeals, as provided by law.

The Collector claims that it conducted one or more audits of Petitioner for sales and use tax in prior years. According to the Collector, its decision at the conclusion of the audit constitutes an interpretation of

law. La. R.S. 47:337.77(F) bars taxpayers from claiming refunds for taxes if the taxes were paid because of the Collector's interpretation of law.

The Collector argues that *Bannister Properties, Inc. v. State of Louisiana* applies. 2018 CA 0030 (La. App. 1 Cir. 11/2/18), 265 So.3d 778, *reh'g denied* (12/7/18), *writ denied*, 2019-C-0025 (La. 3/6/19), 266 So.3d 902. The Court in *Bannister* interpreted a virtually identical state tax statute: La. R.S. 47:1621(F). At that time, La. R.S. 47:1621(F) stated:

This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the secretary of the provisions of any law or of the rules and regulations promulgated thereunder. In the event a taxpayer believes that the secretary has misinterpreted the law or promulgated rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover, or by appeal to the Board of Tax Appeals in instances where such appeals lie.

The Court held that the quoted paragraph precluded taxpayers from utilizing the refund overpayment procedure for state franchise taxes paid in accordance with a regulation that had been promulgated by the Department of Revenue, but later struck down as illegal. *UTELCOM, Inc. v. Bridges*, 2010-0654 (La. App. 1 Cir. 9/12/11), 77 So.3d 39, *writ denied*, 2011-2632 (La. 3/2/12), 83 So.3d 1046.

The meaning of the phrase "appeal to the Board of Tax Appeals in instances where such appeals lie" has perplexed our courts. The Supreme Court has stated that "'instances where such appeals lie' refers to La. R.S. 47:1625" [an appeal under the refund statute]. *Tin, Inc. v. Washington Parish Sheriff's Office*, 2012-2056, p. 7 (La. 3/19/13), 112 So.3d 197, 202. This Board took the Supreme Court at face value. *Bannister Properties, Inc. v. Louisiana*, Docket Nos. 7389, 7585, 7390,

7584 (La. Bd. Tax App. 9/12/17), 2017 WL 6013418, at p. 4. The First Circuit reversed, finding that the Supreme Court made its statement as *dicta* in a recitation of facts and procedure rather than in a discussion of substantive legal issues. The legislature rendered the debate academic for state taxes by repealing of La. R.S. 47:1625(F) in 2019. However, the legislature did not repeal the virtually identical language in the local tax statute that is at issue here.

Nonetheless, the Board finds that *Bannister* has little, if any, relevance to this case. The First Circuit's holding in *Bannister* read "where such appeals lie" to mean a claim against the state under La. R.S. 47:1481. This cannot make sense in the local tax context because there are no equivalent procedure for local taxes. More importantly, in *Bannister*, the Department actually took a position when it promulgated a regulation. The Collector in this case has not promulgated any regulation applicable to this dispute. Nor did the Collector publish guidance on which the Petitioner relied.

There is no evidence that the Collector and Petitioner disputed the applicability of the Further Processing Exclusion to lime during previous audits. The Collector's Field Auditor testified that the Collector had never issued any notice to taxpayers regarding the interpretation of the Further Processing Exclusion. In an e-mail exchange between an employee of a predecessor in interest and the Field Auditor, the Field Auditor asked the employee for a list of raw materials. The employee identified bauxite and caustic. Lime was not included, nor was it discussed. An auditor's daily log from another prior audit has a list titled

“Raw Materials & Processing Supplies” which contains an entry stating “Tx Lime - processing Carmeus (was Dravo Lime).” There was no testimony on the meaning of this entry.

The Collector had never taken a legal position on whether the lime qualified for the Further Processing Exclusion. The Collector did not communicate a position to the Petitioner. The Petitioner did not pay tax on lime because of the Collector’s misinterpretation of law. The Petitioner’s alleged overpayment resulted from the Petitioner’s own tax treatment of its purchases of lime. Consequently, La. R.S. 47:337.77(F) does not bar the Petitioner from utilizing the refund overpayment procedure.

## II. Facts

From 2004 until around October 31, 2016, Petitioner, or its predecessor in interest, owned and operated a facility in St. James Parish. At this facility, Petitioner manufactured SGA through the use of the Bayer Process. The Bayer Process is a method of dissolving alumina out of raw bauxite ore through the use of alkaline solutions. During the tax periods at issue, Petitioner purchased lime for use in the Bayer Process.

It should be emphasized that the Bayer Process produces *alumina*, not *aluminum*. Alumina is composed of two aluminum atoms and three Oxygen atoms ( $\text{Al}_2\text{O}_3$ ). Petitioner’s SGA is essentially 98% alumina and 2% other elements, including calcium, trapped within the alumina’s crystalline lattice structure. Petitioner’s customers, various smelters, turn SGA into aluminum.

The essential raw material in the Bayer Process is bauxite ore. Bauxite generally contains aluminum hydroxides, iron oxides, silica, and aluminosilicates. For the tax periods at issue, Petitioner used Jamaican bauxite. The predominant mineral in Jamaican bauxite is gibbsite, which is frequently associated with boehmite. Jamaican bauxite also typically contains silica, kaolinite, halloysite, iron, and small amounts of titania, phosphorous, manganese, zinc, and other trace elements. Calcium is present in Jamaican bauxite, but the parties' experts disagree over whether it occurs in the form of lime or calcium carbonate.

Alumina is amphoteric, meaning that it dissolves equally well in alkaline or acidic solutions. Other elements in bauxite ore, such as iron, do not dissolve (are insoluble) in alkaline solutions. The Bayer Process allows for insoluble impurities to be removed through filtration. Only trace amounts of insoluble impurities remain in the end product.

The first step in the Bayer Process is "Digestion." In Digestion, raw bauxite ore is pressurized and submerged in an alkaline solution commonly referred to as caustic (sodium hydroxide or NaOH). Digestion extracts aluminum monohydrate ( $\text{Al}_2\text{O}_3\cdot\text{H}_2\text{O}$ ) or aluminum trihydrate ( $\text{Al}_2\text{O}_3\cdot 3\text{H}_2\text{O}$ ) (aluminum hydrates) from the bauxite. Aluminum hydrates react with caustic to form sodium aluminate ( $\text{Na}^+\text{Al}(\text{OH})_4$ ) or aluminate ( $\text{Al}(\text{OH})_4$ ) (aluminates).

Raw bauxite ore contains soil and organic material like pieces of tree roots. These materials dissolve in caustic along with the bauxite. The dissolution of organic materials creates carbon dioxide. Carbon dioxide reacts with caustic to form sodium carbonate ( $\text{Na}_2\text{CO}_3$ ). The

presence of sodium carbonate reduces the concentration and effectiveness of caustic. To restore the usefulness of the caustic, Petitioner adds lime (calcium oxide, abbreviated as CaO) to the process. Lime reacts with sodium carbonate and creates fresh caustic in a reaction called causticization. Causticization also creates calcium carbonate (CaCO<sub>3</sub>). Calcium carbonate exits the process as a residue during filtration. Causticization and filtration removes roughly 98% of the calcium atoms from Petitioner's end product.

The reactions between caustic, lime, and water create hydroxyl ions ( $\bar{\text{O}}\text{H}$ ). Hydroxyl ions contain an oxygen atom. The oxygen atom in the hydroxyl may originate from any of the three substances: caustic, lime, or water. Hydroxyl ions go on to exchange oxygen with other chemicals in the Bayer Process, and some of that oxygen ultimately becomes part of the end product.

Digestion creates a slurry of dissolved aluminates, undesirable solid impurities, and caustic liquor. Solids are removed through filtration. Liquor and aluminates continue to the second phase of the Bayer Process, called "Precipitation." During Precipitation, aluminates crystallize, settle, and are separated from the liquor. Smaller crystals are recycled into precipitation tanks. The smaller crystals act as "seeds" that encourage faster crystallization as new aluminate and liquor enter the tanks. Large aluminate crystals then proceed to the next step in the process.

In the final stage, "Calcination," aluminate crystals are heated to remove bonded water molecules. Prior to Calcination, the aluminate

particles are washed with water to remove any remaining liquor. During Calcination, calcium atoms are trapped between alumina molecules as they shed water and dry out. After Calcination concludes, what remains is 98% alumina molecules ( $\text{Al}_2\text{O}_3$ ) and 2% so-called “impurities,” including calcium. This mixture is what the Petitioner refers to as SGA.

The parties are in dispute as to the source of the trace amounts of calcium that remain in SGA. Calcium is a component of lime. Petitioner’s expert witness Dr. William Daly testified that, based on his calculations, some calcium from lime makes its way into in the SGA. The Collector’s expert witness, Dr. Brian Goodall, testified that there are other potential sources of calcium in SGA. In addition to being present in the lime, calcium is also present in the raw bauxite ore and in water.

Petitioner’s first expert witness, Mr. Antonio Melo, a consultant for Petitioner with over twenty years’ experience ensuring SGA product quality, testified that, based on his familiarity with Petitioner’s procedures, Petitioner decalcifies its water before adding it to the Bayer Process. Mr. Melo and Dr. Daly testified that the calcium present in bauxite ore exists in the form of calcium carbonate. Unlike lime, calcium carbonate does not participate in causticization. Calcium carbonate is insoluble in caustic and exits the process through filtration. For these reasons, Petitioner’s experts conclude that calcium from bauxite is largely removed by filtration, and that the calcium in SGA originates mostly from lime.

The desirability of calcium in the SGA is also a subject of controversy. Petitioner’s alleged purpose for including calcium in its end

product is that it is necessary to meet its customer's needs. Petitioner's customers are smelters. Smelters operate large pots or cupolas full of a molten metal mixture called "bath." Calcium in the bath bonds with fluoride. Calcium fluoride allegedly reduces the energy that smelters need to operate the bath in a productive state. Calcium fluoride also purportedly softens the crust that forms on top of the bath. The softer crust is easier for smelters to work with. If smelters need to increase the amount of calcium fluoride in the bath they can add that chemical themselves. However, Mr. Melo claimed that calcium from alumina is the best source of calcium for keeping a smelter's bath in balance.

Dr. Goodall testified that calcium in the SGA is an impurity. Dr. Goodall based his opinion in part on the numerous instances in scientific literature where calcium is described as an impurity. Dr. Goodall disputed calcium's usefulness to smelters. Dr. Goodall performed calculations which he claims show that calcium from SGA would make negligible contributions (for example an increase of 0.000256%) of calcium to the bath. Further, Dr. Goodall pointed to the fact that the aluminum smelting industry is not expanding as it once was. When the industry was expanding, there was a market for excess bath. However, without a resale market, excess bath is a costly disposal problem for smelters. Dr. Goodall also claimed to have attempted to contact smelters to confirm his opinions. He stated in his trial deposition that the industry participants he reached out to told him that there was no minimum calcium content required for SGA. Finally, Dr. Goodall demonstrated

that the Bayer Process results in a net decrease in the amount of calcium and oxygen from the raw materials to the end product.

Petitioner objected to Dr. Goodall's admission as an expert witness. Petitioner's stated reason for objecting to Dr. Goodall was because of a lack of sufficient knowledge of SGA, what SGA smelters want, and how this ties into the Further Processing Exclusion. The Collector tendered Dr. Goodall as an expert in the fields of inorganic and organometallic chemistry. After reviewing Dr. Goodall's trial deposition, the Board finds him eminently qualified to give expert testimony as tendered. The Petitioner's objections are not germane to Dr. Goodall's qualifications, but they do relate to the weight that the Board should afford his testimony on the question of whether smelters want calcium in SGA.

Petitioner attempted to call Mr. Frank Davis, a former aluminum smelter, to rebut Dr. Goodall's testimony. Mr. Davis was not listed on Petitioner's witness list as required by the scheduling order in this case. For this reason, the Collector objected to the introduction of Mr. Davis' testimony. The exact assertion that Mr. Davis was offered to rebut was not immediately clear because Dr. Goodall's testimony was not provided to the Board until after the hearing. By agreement of the parties, Dr. Goodall's direct testimony was taken via Zoom and introduced after the hearing in the form of a trial deposition transcript. Therefore, the Board deferred ruling on the Collector's objection.

Petitioner stated in its post-hearing memorandum that Mr. Davis was called to rebut Dr. Goodall's testimony that aluminum smelters (like Petitioner's customers) do not want calcium in their SGA. The Code of

Evidence provides a plaintiff the right to rebut evidence adduced by their opponents. La. C.E. art. 611. Rebuttal evidence is limited to new matters adduced by the defendant. *Bernard v. Cox Commc'ns, Inc.*, 01-1321, p. 12-13 (La. App. 5 Cir. 3/26/02), 815 So.2d 259, 267, *writ denied*, 2002-1157 (La. 6/14/02), 818 So.2d 782. The issue of what smelters want was raised during Mr. Melo's testimony. Dr. Goodall attempted to refute that claim by contacting smelters and inquiring about the minimum amount of calcium they would require in SGA. Dr. Goodall did not raise any new issues. Accordingly, the Collector's objection to Mr. Davis's testimony will be sustained.

### **III. Law and Discussion**

The substantive disagreement in this case is over whether Petitioner purchased lime for the purpose of inclusion in its SGA end product. The controlling statutory provision is La. R.S. 47:301(10)(c)(i)(aa)(I)(ccc) (the "Purpose Test"). The Purpose Test requires raw materials to be purchased for "the purpose of inclusion into the end product" in order to qualify for the Further Processing Exclusion. This is not a "primary" purpose test. Inclusion in the end product may be a secondary or tertiary purpose. *Bridges v. Nelson Indus. Steam Co.*, 2015-1439, p. 11 (La. 5/3/16), 190 So.3d 276, 283.

The Further Processing Exclusion does not apply to impurities. An impurity is the residue of an article purchased only to be used in the process of producing the end product, and that remains in the end product because of an unintended but unavoidable inefficiency in the process. *Traigle v. PPG Indus., Inc.*, 332 So.2d 777, 781 (La. 1976). An

impurity provides no benefit, or only an unintended and incidental benefit, to the end product. *Id.*; *Vulcan Foundry, Inc. v. McNamara*, 414 So.2d 1193, 1199 (La. 1981). Whether a benefit is incidental or intentional is a factual question, and each case must be evaluated on its own record evidence. *Compare Int'l Paper*, 2007-1151 at p. 20-21, 972 So.2d at 1135 *with Vulcan*, 414 So.2d at 1198-99 (La. 1981). Therefore, the Board must determine whether inclusion in the end product was “the purpose, though not necessarily the primary purpose” for which the Petitioner purchased lime. *Id.*

Calcium in the SGA is not an impurity for purposes of the Further Processing Exclusion. The evidence shows that a small but regular amount of calcium in the SGA end product is desirable. This is essentially what Mr. Melo testified to when he stated that Petitioner wanted some calcium in SGA, but not a lot. Further, Mr. Melo testified that if a smelter’s “bath” was out of equilibrium, the smelter would have to add or purge calcium. This is an expense that smelters do not want to incur. Mr. Melo described SGA as the best steady supply of calcium for maintaining balance in the bath. Petitioner had an incentive to make its SGA meet its customer’s needs by regulating its calcium content.

Added calcium in the SGA is not simply an incidental benefit of using lime. Lime is the only reliable source of calcium for SGA. Calcium from the bauxite is irregular and removed during filtration. Water could potentially add too much calcium so Petitioner has to decalcify it first. Lime presents a source of calcium that Petitioner can control.

Dr. Goodall pointed out that calcium from SGA makes only a tiny difference in the bath. However, both Mr. Melo and Dr. Daly pointed out that refining and smelting are continuous processes. SGA is constantly added to the bath. Small amounts of calcium are continuously lost as smelting occurs. The minute difference in calcium content from SGA adds up over time and balances out the smelter's continuous calcium loss.

The Board finds the testimony of Mr. Melo to be persuasive when it comes to the question of what smelters want in SGA. Mr. Melo has over twenty years of experience ensuring that SGA meets product quality standards. Mr. Melo would have had more hands on experience interacting with aluminum smelters. When cross-examined, Dr. Goodall admitted that he never found an aluminum smelter who required that SGA contain no calcium at all. Further, some of Dr. Goodall's testimony appears to suggest that alumina refiners could produce alumina without the use of lime. While that may be true as a matter of chemistry, it is undisputedly not a commercially viable proposition.

The Further Processing Exclusion is an exclusionary provision construed in the taxpayer's favor. Courts have declined to divide up raw materials into their components when applying the exclusion. *Graphic Packaging Int'l, Inc. v. Lewis*, 50,371, p. 14-15 (La. App. 2 Cir. 2/3/16), 187 So.3d 499, 509 (rejecting divisible sales approach). Petitioner prevails in this case because it has met the test with respect to the calcium. It is not necessary for Petitioner to meet the test of the Further Processing Exclusion with respect to the oxygen as well.

Nevertheless, with respect to the oxygen, Petitioner relies on *Tarver v. Ormet Corp.*, 597 So.2d 1172 (La. Ct. App. 1992), *writ denied*, 604 So.2d 964 (La. 1992). *Tarver* did not establish, as a matter of law, that every material containing oxygen used in the Bayer Process qualifies for the Further Processing Exclusion. Further, Petitioner did not replicate the *Tarver* experiment in order to demonstrate that oxygen from lime is present in the end product. The Purpose Test is a factual inquiry and each case must stand on its own facts.

The raw material at issue in *Tarver* was caustic. Caustic contributes oxygen molecules to SGA. The raw material in this case is lime. Lime contributes oxygen molecules to caustic. The presence of an additional transfer step between the raw material and the end product is not itself significant. What is significant is the Petitioner's intent in purchasing the lime. Petitioner's experts testified that Petitioner purchased lime for use in causticization. Causticization regenerates spent caustic so that it can continuously react with bauxite ore in the Digestion step of the Bayer Process.

Using lime in causticization ultimately results in some of the oxygen from the lime becoming a part of alumina in the SGA. Oxygen is not an unavoidable impurity remaining in the end product. Oxygen atoms are a necessary component of the alumina molecule. Without oxygen atoms from lime, some alumina molecules would not exist. Petitioner knew this when it purchased lime for use in causticization. If Petitioner acted with this knowledge, then Petitioner must have intended for the oxygen from the lime to become a part of the SGA. Petitioner's

intentional action satisfies the Purpose Test of the Further Processing Exclusion with respect to oxygen in the lime.

The parties stipulated to some of the amounts of the refunds to which Petitioner is entitled. Subject to the Collector's right to offset, discussed below, for the tax periods January 1, 2007 through December 31, 2011, Petitioner is entitled to a refund of \$839,200.36 in taxes paid, plus interest as provided by applicable local ordinances, or at the rate of 2% per annum, whichever is greater, from the date of payment of the taxes to August 8, 2016; and at the average prime or reference rates as computed by the commissioner of financial institutions pursuant to La. R.S. 13:4202(B) for the period from August 9, 2016 to the date the refund is paid. For the tax periods January 1, 2012 through December 31, 2015, Petitioner is entitled to a refund of \$886,568.21 in taxes paid, plus interest as provided by applicable local ordinances, or 2% per annum, whichever is greater, from the date of payment of the taxes to October 24, 2016; and at the average prime or reference rates as computed by the commissioner of financial institutions pursuant to La. R.S. 13:4202(B) for the period from October 25, 2016 to the date the refund is paid.

The Petitioner and the Collector reached limited stipulations with respect to the Collector's claims for offset. The Collector's claim for offset for the tax periods January 1, 2007 through December 31, 2011 is based on the existence of a final and unappealable Revised Notice of Assessment. This Assessment was entered into the record during the hearing. By stipulation, the Collector is entitled to no more than \$46,176.13 as offset for these periods, plus penalties not to exceed 25%,

plus interest as stipulated. The remaining stipulations concerning the Collector's offset claims are that interest will cease to accrue on any taxes becoming due in 2007 on December 31, 2010; for any taxes becoming due in 2008 on December 31, 2011 ; for any taxes becoming due in 2009 on December 31, 2012; for any taxes becoming due in 2010 on December 31, 2013; for any taxes becoming due in 2011 on December 31, 2014; for any taxes becoming due in 2012 on December 31, 2015; for any taxes becoming due in 2013 on December 31 , 2016; for any taxes becoming due in 2014 on December 31, 2017; for any taxes becoming due in 2015 on December 31, 2018; and for any taxes becoming due in 2016 on December 31, 2019.

The Collector does not have a final assessment for any of the other tax periods at issue. Instead, the Collector introduced estimates of Petitioner's liability into the record. The Collector argues that these assessments should be treated as prima facie correct under La. R.S. 47:337.28 and *Yesterdays of Lake Charles, Inc. v. Calcasieu Par. Sales & Use Tax Dep't*, 2015-1676, (La. 5/13/16), 190 So.3d 710. La. R.S. 47:337.28(A) states:

In the event any dealer fails to make a report and pay the tax as provided in this Chapter or in case the dealer makes a grossly incorrect report or a report that is false or fraudulent, the collector shall make an estimate of the retail sales of such dealer for the taxable period . . . and it shall be the duty of the collector to assess and collect the tax together with any interest and penalty that may have accrued thereon, which assessment shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

There is no assessment for these tax periods, only estimates. La. R.S. 47:337.28(A) does not apply to the Collector's un-assessed estimates.

Furthermore, the operation of this statute is triggered by the taxpayer's failure to file returns or by filing grossly incorrect, false, or fraudulent returns. There is nothing in the record showing that Petitioner failed to file returns or filed grossly incorrect, false, or fraudulent returns. Accordingly, the Board finds that the Collector is not entitled to an offset for the tax periods January 1, 2012 through October 31, 2016.

For the tax periods January 1, 2016, through October 31, 2016, the Collector argued in its post-hearing memorandum that Petitioner failed to exhaust its administrative remedies. However, Paragraph 11 of the Joint Stipulations states in relevant part that Petitioner timely submitted claims for refund, and appealed from the Collector's inaction for period January 1, 2007, through October 31, 2016, thereby mooting any arguments concerning administrative prematurity.

Finally, Petitioner introduced evidence of its lime purchase invoices and sales and use tax records for the tax periods January 1, 2016 through October 31, 2016. The amount of the refund to which Petitioner is entitled for these tax periods is not stipulated to by the parties. The Board will order the parties to calculate the amount of the refund of taxes paid on purchases of lime, plus interest as provided by law, in accordance with the foregoing reasons.

#### **IV. Conclusion and Order**

IT IS ORDERED AND DECREED that on or before April 5, 2021, the parties shall submit a proposed Judgment conforming to the foregoing Order and Written Reasons containing the correct dollar amounts of the refunds to which Petitioner is entitled plus interest,

minus the offset, penalties, and interest to which the Collector is entitled, calculated in accordance with the law and the parties' Joint Stipulations.

IT IS FURTHER ORDERED AND DECREED that if the Petitioner and the Collector cannot agree on the form of a proposed Judgment, then each party may submit a proposed Judgment together with a Memorandum in support thereof on or before April 5, 2021. The opposing party shall be permitted to file a Memorandum in response on or before April 15, 2021.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

Baton Rouge, Louisiana, this 3<sup>rd</sup> day of March, 2021.

FOR THE BOARD:



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LOCAL TAX JUDGE CADE R. COLE