

STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION

ST. CHARLES PARISH SCHOOL BOARD,
EX-OFFICIO SALES & USE TAX COLLECTOR
FOR ST. CHARLES PARISH
PETITIONER

VERSUS

No. L00437

N.P STEIN,
AS CEO OF ASSURED COMPLIANCE, INC.
AS AGENT FOR ST. JOHN THE BAPTIST
PARISH SCHOOL BOARD,
EX OFFICIO SALES & USE TAX COLLECTOR
FOR ST. JOHN THE BAPTIST PARISH
RESPONDENT

ORDER AND WRITTEN REASONS

On September 8, 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 at the hearing were Christian N. Weiler, attorney for St. Charles Parish School Board, Ex-Officio Sales & Use Tax Collector for St. Charles Parish (“St. Charles”) and Newton Thophile Savoie, attorney for N.P. Stein, as CEO of Assured Compliance, Inc., as Agent for St. John the Baptist Parish School Board, Ex-Officio Sales and Use Tax Collector for St. John the Baptist Parish (“SJB”). After the hearing, the matter was taken under advisement. The Board now issues this Order and Written Reasons.

This case is a rule for uniformity as provided for in La. R.S. 47:337.101 brought by St. Charles against SJB. St. Charles’ Petition arises from a three-way dispute involving a taxpayer and two local

collectors. Valero Refining New Orleans, LLC (“Valero”) stored parts and equipment in a Lay Down Yard (the “Lay Down Yard”) in St. John the Baptist Parish (“St. John”). The parts and equipment stored in the Lay Down Yard were earmarked and destined for use in the construction of a Hydrocracker facility (the “Hydrocracker”) in St. Charles Parish. Valero held a direct pay permit and paid use tax on these items to St. Charles.

SJB audited Valero and assessed sales and/or use tax on the items stored in the Lay Down Yard for the tax periods January 1, 2010 through September 30, 2012, Valero paid the amount assessed under protest and filed suit to recover with the Board (B.T.A. Docket No. L00018). Valero also sought a refund of the tax it paid to St. Charles. St. Charles denied the refund and Valero appealed the denial in B.T.A. Docket No. L00019. Similar three-way disputes arose for the tax periods October 1, 2012 through December 31, 2014 (B.T.A. Docket Nos. L00306, L00481, L00547), and the tax periods January 1, 2015 through August 31, 2019 (B.T.A. Docket Nos. L00891, L00934, L00830). The parties’ positions are essentially the same in these disputes. St. Charles wants to keep the taxes paid by Valero, SJB wants the taxes it assessed on Valero, and Valero just wants the collectors to work it out between themselves.

Valero received its requested relief when the Board granted summary judgment in B.T.A. Docket No. L00019. The Board found that Valero had shown a good faith effort to recover taxes paid to St. Charles in accordance with La. R.S. 47:337.86(E), and that operation of that credit statute--designed for this very circumstance of good faith payment to the wrong parish--served to satisfy its full liability to SJB. Valero therefore

entitled to a credit resolving its liability and a refund of taxes it paid to SJB under protest.

In the Valero litigation, the Board did not reach the question of whether Valero should have paid the taxes to SJB or St. Charles. *See Valero Refining New Orleans, LLC v. St. the Baptist Parish Sales and Use Tax Office*, B.T.A. Docket No. L00018 (La. Bd. Tax App. 11/11/17); 2017 WL 11219321, at *4. That question is properly raised in the present case. La. R.S. 47:337.86(E)(2)(a) provides that “[i]n instances where a legitimate disagreement exists as to which taxing authority is owed, the involved taxing authorities shall resolve the dispute among themselves through any legal means provided by law, including the filing of a rule or petition against the other taxing authority in the manner provided for in R.S. 47:337.101.”

St. Charles, as plaintiff, is attempting to do so by seeking a rule for uniformity. SJB has defended the action, but has not filed a reconventional requesting action by the Board. Consequently, nothing in the present action prays that Board order St. Charles to pay SJB any taxes found to be properly due to SJB.

St. Charles first tried to resolve this case via summary judgment. The Board partially granted and partially denied that motion. The Board adheres to that prior Judgment issued December 24, 2019 which resolved a number of disputes between the parties. As a result, only one of St. Charles’ prayers for relief still in dispute. Specifically, St. Charles asks for a declaration that Valero’s purchases of tangible personal property, when temporarily stored in the Lay Down Yard and destined for use at

the Hydrocracker, are subject to local tax only by St. Charles and not SJB.

The remaining issues that could not be resolved with the summary judgment evidence previously introduced question: (1) use tax due to SJB because items of tangible personal property were disposed of through scrap sales in SJB Parish; and (2) whether sales tax is due to SJB because a transfer of title or possession occurred in SJB Parish.

(1) Use Tax

As the Board previously ruled, the large majority of property stored in St. John but earmarked for use in St. Charles Parish is not subject to tax in St. John. However, La. Admin. Code 72:I.503(A), provides that if property stored in a parish and earmarked for use in another parish is disposed of in a manner contrary to the earmarked purpose, then the transaction is immediately subject to use tax. No party has established an invalidity of the regulation, so the Board will apply it in accordance with its terms.

At the hearing, Michael Kreider (“Kreider”), a Valero employee who handles audits, testified that some items stored in SJB Parish were sold for scrap. Property scrapped from St. John was no longer earmarked for St. Charles and tax became due at that moment since it was disposed of without being earmarked for use in another parish. Kreider stated that the scrap value of property in the lay down yard was \$304,519.29 in 2014

and \$215,929.02 in 2018. Therefore, use tax is due to SJB on property sold as scrap in St. John at these scrap values.¹

(2) Sales Tax

The use tax is applicable where sales may have occurred elsewhere, but use occurs in Louisiana jurisdictions. The definition of a “sale” of tangible personal property for sales tax purposes includes the transfer of title or possession to the consumer for consideration. La. R.S. 47:301(12). Louisiana’s Uniform Local Sales Tax regulations provide that the transfer of title and possession is a retail sale that is taxable by the parish in which the transfer occurs, regardless of whether the property is earmarked for use in another jurisdiction. LAC 72:I.507. Therefore, in contraposition to use tax, sales tax is due to SJB if the initial transfer of title or possession occurred in SJB Parish, regardless of whether Valero intended and earmarked said items for use in St. Charles Parish.

The relevant evidence on the sales tax issue was provided by St. Charles in the form schedules summarizing voluminous invoices in Exhibits 25 and 29. Michael Madrid (“Madrid”), a Valero employee responsible for transaction tax audits, created both schedules. Exhibit 25 is detail of SJB’s Assessment for the tax periods January 1, 2010 through September 30, 2012. For Exhibit 25, Madrid provided a “Transaction Analysis.” Exhibit 29 is a detail of Valero’s refund request to St. Charles for the tax periods October 1, 2012 through December 31,

¹ The Board recognizes that the tax previously accrued on the purchase values likely far exceeds the applicable tax on the scrap value, but the tax on the value when the amounts come do under the regulation is the relevant amount for this discussion.

2014. For Exhibit 29, Madrid provides a “City,” “Unload Point,” and a column titled “PO Freight/ Inco Terms.”

A portion of the evidence shows certain sales occurring in St. Charles with title passing at the Norco facility. A non-exclusive example from information in Exhibit 29:

CITY	UNLOAD POINT	PO FREIGHT/INCO TERMS
Laplace	Montz Yard	Fob Norco, La - PP&A

Some evidence shows that title and possession transferred prior to shipping outside of either parish. A non-exclusive example in Exhibit 29:

CITY	UNLOAD POINT	PO FREIGHT/INCO TERMS
Laplace	Montz Yard	FCA Point of Manufacture - PP&A

The majority of the evidence fails to establish that title and possession transferred in either parish, By way of non-exclusive examples:

Transaction Analysis
NO FOB INFO - SHIPPED TO LAPLACE

The Board further finds numerous other designations, by way of non-exclusive example, “FOB Jobsite” to be ambiguous. At trial, Madrid stated that FOB Jobsite meant that title and possession transferred at the destination where the goods were shipped. On cross-examination, counsel for SJB presented Madrid with a sample invoice with the FOB

Jobsite designation and a ship-to location of “Valero Refining New Orleans LLC 1386 East Airline Highway, Laplace, Louisiana.” Madrid stated that the jobsite was obviously the Hydrocracker, but that the shipping terms had some ambiguity. The Board agrees with that statement. The evidence contains numerous other ambiguous designations, such as Incoterms like “FOB REFINERY - SHIPPED TO LAPLACE,” or Transaction Analyses that indicate a location that is contradicted by the City and Unload Point. By way of non-exclusive example:

CITY	UNLOAD POINT	PO FREIGHT/INCO TERMS
NORCO	LaPlace Yard	FOB Shipping Point, PP&A

Based on the Board’s review of the evidence, a portion of the evidence does show that a retail sale occurred in St. John. This covers items where the express FOB or FOB destination was specifically stated only to be Laplace or Montz Yard. An example, in Exhibit 25 is:

TRANSACTION ANALYSIS
FOB DESTINATION - SHIPPED TO LAPLACE

Based on this evidence, the amount of sales tax due to SJB for sales in St. John for the tax periods totals \$200,792.24.

For the foregoing reasons, the Board finds that judgment should be rendered in favor of St. Charles and against SJB in part, excluding only those items found herein to be due to SJB. Use tax is due to St. Charles and not SJB with respect to tangible personal property temporarily

stored in SJB Parish but earmarked and intended for use or consumption in St. Charles Parish, except that use tax is due to SJB on any such property that Valero worked on in the Lay Down Yard or disposed of through scrap sales in St. John.

Sales tax is not due to either SJB or St. Charles with respect to tangible personal property for which the transfer of title or possession occurred outside either parish—although we recognize use tax due would be subject to disposition in the prior paragraph. No sales tax would have been due to SJB except that which was shown to be on those actual initial sales occurring in St. John in the amounts specified in record evidence for which title or possession is established to have actually transferred within St. John. If it is ambiguous where title or possession passed, then there is no basis to declare that tax should have been paid to SJB. As SJB has not requested direct relief via a reconventional pleading, this finding is merely one that removes those specified items from the declaration in favor of St. Charles that tax was not due to SJB. Sales tax is due to St. Charles and not SJB with respect to tangible personal property for which title or possession transferred within St. Charles Parish.

Except for the \$114,954.20 referenced in the December 4, 2019 Judgment and the amounts excepted hereinabove, the relief requested by St. Charles is granted. The Board issues a declaratory finding that based on the evidence presented herein that except on the above referenced excluded items the disputed Valero tax is not due by St. Charles to SJB.

Due to the complexity of calculations, IT IS ORDERED that on or before March 12, 2021, the parties shall submit a proposed Judgment with dollar figures conforming to these written reasons.

IT IS FURTHER ORDERED that if St. Charles and SJB cannot agree on the form of a proposed Judgment, then each party may submit a proposed Judgment together with an optional supporting Memoranda which may include a detailing of any supporting calculations derived from the record evidence on or before March 26, 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 9th day of February, 2021.

FOR THE BOARD:


LOCAL TAX JUDGE CADE R. COLE