

BOARD OF TAX APPEALS  
STATE OF LOUISIANA  
LOCAL TAX DIVISION

KELLOGG BROWN & ROOT, LLC

VS.

DOCKET NO. L01016

JOSEPH P. LOPINTO, III, SHERIFF AND EX-  
OFFICIO TAX COLLECTOR FOR THE PARISH OF  
JEFFERSON, AND THE JEFFERSON PARISH  
SHERIFF'S OFFICE, BUREAU OF  
REVENUE AND TAXATION, SALES AND  
USE TAX DIVISION

CONSOLIDATED WITH

JOSEPH P. LOPINTO, III,  
SHERIFF & EX-OFFICIO TAX COLLECTOR  
FOR THE PARISH OF JEFFERSON

VS.

DOCKET NO. L01015

DYNO NOBEL LOUISIANA  
AMMONIA, LLC

AND

DYNO NOBEL LOUISIANA  
AMMONIA, LLC

VS.

DOCKET NO. L01014

JOSEPH P. LOPINTO, III,  
SHERIFF AND EX-OFFICIO TAX COLLECTOR  
FOR THE PARISH OF JEFFERSON,  
STATE OF LOUISIANA

\*\*\*\*\*

INTERIM ORDER AND REASONS

\*\*\*\*\*

On October 28, 29, 30, and 31, 2024, this matter came before the Board for hearing on the merits with Local Tax Judge Cade R. Cole presiding. Appearing before the Board were: Cheryl M. Kornick, Caroline D. Lafourcade, and John P. Leblanc, attorneys for Kellogg, Brown & Root, LLC ("KBR"); David R. Cassidy, Nicole G. Frey, and Kelsey C. Luckett, attorneys for Dyno Nobel Louisiana Ammonia, LLC ("DNLA"); and Kenneth C. Fonte and John A. Kopfinger, Jr., attorneys for Joseph P. Lopinto, III, Sheriff and Ex-Officio Tax Collector for the

Parish of Jefferson, and the Jefferson Parish Sheriff's Office, Bureau of Revenue and Taxation, Sales and Use Tax Division (collectively referred to as the "Collector"). At the conclusion of the hearing, the Board took the matter under advisement and ordered the parties to submit post-hearing briefs on or before December 6, 2024. All parties having filed their briefs by the appropriate deadline, the Board now issues the following Interim Order and Written Reasons.

### **Background and Facts:**

These consolidated matters originated with BTA Docket Nos. L01014, L01015, and L01016. Docket No. L01014 is a Petition for Declaratory Judgment filed by DNLA against the Collector. Docket No. L01015 is a Petition for Recovery of Delinquent Taxes filed by the Collector against DNLA. Docket No. L01016 is a Petition for Redetermination of Assessment filed by KBR against the Collector. All three matters concern the potential taxability of transactions governed by a "Contract for the Dyno Nobel Louisiana Ammonia Project" ("EPC Contract") between KBR and DNLA for the construction of an ammonia plant ("Plant") in Waggaman, Louisiana. The three Docket Numbers were consolidated for all purposes on January 11, 2024.

DNLA, a subsidiary of Dyno Nobel, Inc. ("DNI"),<sup>1</sup> manufactures ammonia for sale to other entities for use in manufacturing explosives like dynamite. In addition, DNLA sells agricultural products such as fertilizer. KBR is a contractor that builds manufacturing facilities. KBR and DNLA entered into the EPC Contract on April 16, 2013. Under the terms of the EPC Contract, KBR agreed to design, execute, and complete construction of the Plant. Construction of the Plant began in 2013 and was completed in October of 2016 ("Construction Period").

Prior to undertaking the Project, DNLA applied for and received Manufacturer's Certificates from both LDR and the Collector. The Manufacturer's Certificates issued by the Collector cover the period of July 31, 2014, through March

---

<sup>1</sup> A subsidiary of Incitec Pivot Limited.

31, 2022. The Business Activity Classification shown on each of the Collector's Certificates is "Nitrogenous Fertilizer Manufacturing." The Manufacturer's Certificates issued by LDR are effective from March 1, 2013, through March 31, 2019. DNLA and KBR also obtained two LDR Forms R-1072, Manufacturer's Designation of Mandate ("1072's"). The 1072's certify that DNLA authorized KBR to purchase tangible personal property ("TPP") that qualifies for the Manufacturing Machinery and Equipment ("MM&E") exclusion<sup>2</sup> on DNLA's behalf. This agency relationship was required by the EPC Contract.

As DNLA's agent, KBR purchased, leased, and/or rented items of TPP that were incorporated into the Plant. KBR was responsible for procuring all goods,<sup>3</sup> "plant,"<sup>4</sup> and materials<sup>5</sup> and having them delivered to the "Works"<sup>6</sup> Site (referred to herein as the "Worksite"). Upon delivery to the Worksite, the apparatus, machinery, and anything else intended to form, or forming, part of the permanent works being designed and executed by KBR under the EPC Contract became the property of DNLA.

The Collector conducted sales and use tax audits of both KBR ("KBR Audit") and DNLA ("DNLA Audit") (collectively, the "Audits"). The KBR Audit was for the tax periods January 1, 2013, through June 30, 2016 (the "KBR Audit Period"). The DNLA Audit was for the tax periods March 1, 2013 through September 30, 2016

---

<sup>2</sup> La. R.S. 47:301(3)(i), (13)(k).

<sup>3</sup> The Contract defines Goods as "Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate." Contractor's Equipment is defined as "all of the Contractor's apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any Defects. . . .[E]xclud[ing] Temporary Works, Owner's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works."

<sup>4</sup> Plant is defined as "apparatus and machinery intended to form or forming part of the Permanent Works."

<sup>5</sup> Materials are defined as "things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under this Contract."

<sup>6</sup> The Contract defines Works Site as "those places within the CCC Site where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other adjacent or non-adjacent tract specifically delineated as the Project ISBL in Annex I [Site Plan]." Works is defined as the "Permanent Works and the Temporary Works, or either of them as appropriate." The CCC Site is defined by an "area designated as such on the Site Plan included in Annex I [Site Plan]." Permanent Works are defined as "the permanent works to be designed and executed by the Contractor under this Contract, all in accordance with the scope set out in the Owner's Requirements." Temporary Works are defined as "all temporary works of every kind (other than Contractor's Equipment) required on the Works Site for the execution and completion of the Permanent Works and the remedying of Defects."

(the “DNLA Audit Period”). As a result of the Audits, the Collector determined that certain purchases of items for construction of the Plant did not qualify for the MM&E Exclusion provided for in Jefferson Parish Code of Ordinances Chapter 35, Article II, Section 35-71 (“Section 35-71”).

On February 12, 2020, the Collector issued a Notice of Intent to Assess to KBR in the amount of \$20,588,147.38. KBR requested an administrative protest hearing. On July 31, 2020, the Collector issued an “Audit and Assessment Procedural Guideline” setting forth an algorithm for determining which “Items of Machinery and Equipment (M&E) May be Qualified for Classification as Excludable Manufacturing Machinery and Equipment (QMM&E) Pursuant to La. R.S. 47:301 (3)(i)(ii), La. R.S. 47:301(13)(k)(i); and La. R.S. 47:301(28)” [sic] (“Guideline”).

On August 17, 2020, the Collector issued a Notice of Intent to Assess DNLA for the amount of \$1,434,325.48. Of that amount, DNLA protested \$258,076.12, plus interest. The Collector held the protest hearing on October 26 through 27, 2020. Both KBR and DNLA appeared at the protest hearing. As a result of the hearing, the Collector revised their determinations. On November 13, 2020, the Collector issued a Notice of Assessment to KBR for the amount of \$13,618,090.08.

After the protest hearing, DNLA filed its Petition in Docket No. L01014, praying for a declaration invalidating the Guideline. On November 13, 2020, the Collector issued an Amended Notice of Intent (“Amended NoI”) to assess DNLA the amount of \$9,340,969. On the same day, the Collector filed their Petition for Recovery of Delinquent Local Sales and Use Taxes against DNLA, which was docketed as No. L01015. KBR filed its Petition seeking redetermination of the Assessment, which was docketed as No. L01016.

On March 2, 2021, the Collector filed an Amended Petition for Recovery of Delinquent Local Sales and Use Taxes with an attachment labeled as Exhibit D, and later introduced into the record as Taxpayers’ Exhibit 17. This document was also attached as Schedule A to the Amended Notice of Intent to Assess DNLA. It



determines the grand total liability for tax, penalties, interest, and audit fees, minus prior payments, to come to a net amount due of \$14,063,374.85.

After several years of exceptions<sup>7</sup> and contested procedural motions, the parties filed Cross-Motions for Summary Judgment. In Written Reasons for denying the Collector's Motion, the Board rejected the premise that the MM&E exclusion could not apply to purchases of TPP made by KBR pursuant to the mandate granted to it by DNLA. The Board also rejected the Collector's argument that Jefferson Parish had adopted the MM&E exclusion only as to use tax.

The Board partially granted KBR's Motion. In the Judgment, we held that:

[T]he MM&E Exclusion does not require that each item of excluded property physically contact the raw material in the manufacturing process. If an item of Tangible Personal Property is shown to have direct and immediate effect on the actual process of manufacturing and otherwise meets all the criteria for the MM&E Exclusion, then that item is subject to the MM&E Exclusion.<sup>8</sup>

However, the Board also partially denied KBR's Motion, holding that the "MM&E Exclusion requires more than that an item of Tangible Personal Property merely be necessary for the manufacturing process and used in that process." The Board further denied DNLA's Motion, finding that "[g]enuine disputes of material fact exist as to which items of Tangible Personal Property qualify for the MM&E Exclusion."

The Board enumerated the eleven categories of items at issue in its Written Reasons. Those categories are: (1) Catalysts; (2) Electrical Equipment and Bulks; (3) Exchangers; (4) Instrumentation, Instrumentation Bulks & Controls; (5) Piping, Valves, and Bulks; (6) Vessel Platforms, Structural Steel, and Pipe Support Steel; (7) Reformer Furnaces; (8) Rotating Equipment; (9) Concrete; (10) Utility / Water Treatment; and (11) Spares. As a result, the questions set up for resolution at trial were which categories qualify for the MM&E Exclusion and which individual line items from the Audit(s) fit within those categories.

---

<sup>7</sup> See *Kellogg Brown & Root, LLC v. Lopinto*, 22-204 (La. App. 5 Cir. 11/2/22), 354 So.3d 69, writ denied, 2022-01761 (La. 2/24/23), 356 So.3d 341.

<sup>8</sup> *Kellogg Brown & Root, LLC v. Lopinto*, BTA Docket No. L01016 c/w L01015, L01014 (La. Bd. Tax App. 9/30/24); 2024 WL 4918018, \*1.

During the merits hearing, Taxpayers<sup>9</sup> produced fact witness testimony from Mr. Seth Hobby. Mr. Hobby was DNLA's general counsel prior to the final decision to construct the Plant. In late 2014, Mr. Hobby became the commercial manager of the construction project for the Plant ("Project"). The construction of the Plant was a component of DNI's efforts to vertically integrate its manufacturing process in order to insulate itself from market volatility. Mr. Hobby testified that construction of the Plant represented a significant financial investment. The decision to construct the Plant in Jefferson Parish followed years of study of potential sites and consideration of many factors. Mr. Hobby testified that Jefferson Parish's adoption of the MM&E exclusion was a significant factor in the decision to build the Plant in Waggaman.

Mr. Hobby testified that it was his understanding that Jefferson Parish would not recognize the agency relationship between KBR and DNLA. Further Mr. Hobby's understanding was that KBR needed to apply for a Contractor-Dealer Sales Tax Exemption certificate ("Contractor Certificate"). Accordingly, KBR applied for, and received, the Contractor Certificates from the Collector effective March 25, 2013, through March 31, 2018. Mr. Hobby testified that the only reason that KBR obtained Contractor Certificates was because the Collector told them to do so. He further testified that KBR's procurement of said Contractor Certificates did not mean that KBR had abandoned its mandate from DNLA.

During the Construction Period, DNLA made monthly payments to KBR in accordance with the terms of the EPC Contract. The payments were contingent on verification of certain milestones reported by KBR in monthly progress reports. The payments did not itemize any property that KBR purchased on DNLA's behalf. Nor did KBR issue invoices to DNLA for the property that it purchased pursuant to its mandate.

---

<sup>9</sup> At trial, KBR and DNLA jointly introduced exhibits, which were labeled as Taxpayers' Exhibits.

### Manufacturing Process at the Plant

Taxpayers provided fact testimony at trial from Mr. Steve Cillessen to describe the processes used in the normal operation of the Plant.<sup>10</sup> Mr. Cillessen's role at the Plant was to provide the specifications to KBR's procurement department. Mr. Cillessen explained that KBR documented the manufacturing process at the Plant on Process Flow Diagrams ("PFD's"). He further identified various items of property that are allegedly used in the manufacturing process using photographs of the Plant.

In addition to PFD's, KBR also used Utility Flow Diagrams ("UFD's") in the construction Project. The UFD's show the systems that deliver utilities such as water and electricity to locations at the Plant. KBR used the PFD's and the UFD's to develop a comprehensive set of diagrams called Piping and Instrumentation Diagrams ("P&ID's"). KBR used the P&ID's to determine the size and specifications of the materials that would be needed to construct the Plant.

Taxpayers offered the expert testimony of Mr. Moris Hoffman and Mr. John Larsen to explain the technical and scientific aspects of the ammonia manufacturing process. They testified that, in their respective expert opinions, the ammonia manufacturing process requires three raw materials: water; natural gas; and air. However, the Collector's expert, Ms. Christine Meerman, testified that steam is a raw material and water is not. Steam provides hydrogen and oxygen and is also used to heat and pressurize materials during the manufacturing process. Water contains the same molecules as steam, but it cannot intermingle with the other raw materials. In fact, introducing the water into the primary reformer would result in damage to the equipment and lead to a shutdown of the Plant.

An adjacent Cornerstone Chemical Co. ("Cornerstone") facility supplies water to the Plant. Cornerstone has a water intake system on the Mississippi River. Cornerstone pumps river water through pipe racks that connect to the Plant. However, the raw river water is too dirty to be used in the manufacturing process.

---

<sup>10</sup> Mr. Cillessen's testimony was based on his first-hand experience with the Plant. He was not tendered as an expert witness.

It must be cleaned before it can be turned into steam for use in the manufacturing process.

The river water must first go through a clarifier. The clarifier separates and removes sediment from the water. From the clarifier, the water is pumped to a water treatment system. In the water treatment system, the clarified water goes through an ionic bed, a cationic bed, and a polisher. These processes turn the clarified water into de-mineralized water ("de-min water"). The de-min water is then converted to steam. The steam is piped to the primary reformer where it will interact with the air and natural gas.

Air supplies the process with nitrogen. The air is obtained through extraction from the surrounding atmosphere. The gathered air goes through a filter to remove particulate matter. A compressor then pressurizes the filtered air and propels it through piping to the primary reformer. The compressed and filtered air enters a convection section of the primary reformer. That is where the air first interacts with the other raw materials.

The natural gas contains methane which is broken down into carbon monoxide, carbon dioxide, and hydrogen. The natural gas is supplied by other companies via pipeline. The natural gas is first run through a separator. The purpose of the separator is to remove sulfur, other contaminants, and condensate. Like the contaminants in the river water, these substances would damage the equipment if not removed. The separated gas is then sent to a feed gas compressor. The feed gas compressor heats and pressurizes the gas for transfer to the primary reformer.

When the raw materials meet in the primary reformer they are subjected to additional heat from the primary reformer furnace. The heated raw materials pass through coils that contain catalysts to produce hydrogen, nitrogen, and carbon monoxide. The materials then pass to and through the secondary reformer.<sup>11</sup> Within

---

<sup>11</sup> A photograph of the secondary reformer was introduced into evidence by the Taxpayers. It shows that the secondary reformer is a large, roughly cylindrical structure with metal walkways and pipe racks bolted to its exterior. The structure sits on top of a round concrete base.



the secondary reformer is a catalytic reactor. This device exerts more heat and pressure on the materials than any other device used in the manufacturing process. In the secondary reformer, the gas from the primary reformer reacts with a catalyst to produce additional hydrogen.

The carbon monoxide produced by reforming is a contaminant. It is removed in the next step in the process: shift conversion. Shift conversion is a two-part process. First, there is a high temperature shift. Gas from the reformer reacts with steam in the presence of an iron oxide catalyst to form water and carbon dioxide. This generates heat, some of which is siphoned off for use elsewhere. Second, the materials undergo a low temperature shift. In the low temperature shift, a catalyst converts more of the carbon monoxide into carbon dioxide. The carbon dioxide is removed in the next step.

This is done by transferring the materials to a carbon dioxide absorber. A solution in the absorber soaks up most of the carbon dioxide. The materials are then transferred to a carbon dioxide stripper. The stripper removes almost all of the remaining carbon dioxide using heat and steam.

Nevertheless, there will still be some residual carbon monoxide and carbon dioxide left. The final step in removing these contaminants occurs in the methanator. Within the methanator, the materials flow over a nickel catalyst and combine with hydrogenate to form methane and water. These reactions convert any remaining carbon dioxide or carbon monoxide into methane. The water is then desiccated out in a dryer.

The dry mixture is then put through a purifier process. This step requires that the mixture be cooled down dramatically, to  $-278^{\circ}$ . The purifier process removes methane and argon. This so that only nitrogen and hydrogen are present for the final step of the process, ammonia synthesis. This is where the two chemicals react with each other to produce ammonia, which is one part nitrogen and three parts hydrogen ( $\text{NH}_3$ ). In this step, the nitrogen and hydrogen pass through a horizontal magnetite converter. The horizontal magnetite converter

consists of four beds of catalyst. Exposure to the catalyst causes ammonia to form as the mixture flows from one bed to another.

The synthesized ammonia is created as a gas. However, it must be chilled and liquefied to be stored. Thus, after the ammonia has been created it is refrigerated by a unitized chiller. While the ammonia is being chilled and liquefied, it is also being circulated by a compressor. The circulation helps with cooling because of the ammonia's own chemical properties. Using ammonia to refrigerate itself avoids contaminating the product with other substances.

The ammonia produced by the manufacturing process is then stored in an ammonia tank at negative 29°. In its chilled, liquid state, the ammonia can be transported by barge. There is a wharf terminal at the Plant for this purpose. However, liquid ammonia cannot be transported by truck, rail, or pipeline. For these modes of transport, the ammonia must be reheated into a gas. This is accomplished by pressurization equipment between the ammonia tank and the pipeline connection, truck terminal, and rail terminal.

In addition to the above equipment, the Plant has several additional systems that play a role in its operation. One example is the flare system. The flare system disposes of emergency releases of gas. Another example is the steam system. The steam system uses waste heat from the ammonia synthesis process to drive equipment and for pressurization. The Plant also has a water cooling system that makes use of a cooling tower. The water in the cooling system is used in various places in the manufacturing process to pick up and disperse excess heat. Finally, the Plant has an instrument air system that drives control valves so that they can modulate and control the flows and levels in the process. There is also a waste disposal system of sumps that collect oily waters and pump them to Cornerstone.

Prior to the merits hearing, the Collector adapted their position on the taxability of certain items in response to the Board's ruling on Summary Judgment. The Collector introduced a summary of its new positions on a Summary of Tax Due

by MPSJ Category, introduced into the record as Collector's Exhibit LTX<sup>12</sup> 910. The total tax now alleged to be due by the Collector is \$7,048,561.82. The Collector also introduced a schedule of all of the items they believe are taxable as Exhibit LTX 907, a schedule of the same items detailed by purchase order as Exhibit LTX 909, and individual schedules for each of the categories identified by the Collector.

The Collector's expert on chemical manufacturing and engineering, Ms. Meerman, testified that the first change in an ammonia component occurs in the primary reformer. Ms. Meerman testified that change is identifiable by examining the input and output of a mass-balance equation. The input of a mass-balance equation is the chemical makeup of materials at a defined point in the process stream. She explained that she looked for the first change in the materials by comparing their mass-balance when they entered a piece of equipment to their mass-balance when they exited that piece of equipment. She found that the first change in mass-balance occurs in the primary reformer.

## **Discussion:**

### **I. Burden of Proof**

The general rule is that the plaintiff in a civil suit bears the burden of proving that they are entitled to relief.<sup>13</sup> In these consolidated cases, each party is a plaintiff in at least one respect. DNLA is the plaintiff with respect to its declaratory judgment action (L01014). The Collector is the plaintiff with respect to their Petition and Amended Petition for Recovery of Delinquent Local Sales and Use Taxes against DNLA (L01015).<sup>14</sup> KBR is the plaintiff with respect to its Petition to

---

<sup>12</sup> An abbreviation for "Lopinto Tax Exhibit."

<sup>13</sup> *Sanga v. Perdomo*, 14-609, p. 5 (La. App. 5 Cir. 12/30/14), 167 So.3d 818, 821, *writ not considered*, 2015-0222 (La. 4/17/15), 176 So.3d 1032, and *writ denied*, 2015-0222 (La. 6/19/15), 172 So.3d 650

<sup>14</sup> KBR is also a defendant as to the Collector's reconventional demand for attorney's fees and costs (L01016).

redetermine the Assessment against it (L01016).<sup>15</sup> Each party bears the burden of proof with respect to the relief they have prayed for.

## II. Questions Presented:

There are two questions presented for each category of property identified in the Board's ruling on the Cross-Motions for Summary Judgment. First, there is the question of whether that category meets all the requirements of the MM&E exclusion. Second, there is the question of which items fit within that category.

## III. Analysis:

"Manufacturing machinery and equipment" is defined as

[T]angible personal property or other property that is eligible for depreciation for federal income tax purposes and that is used as an integral part in the manufacturing of tangible personal property for sale. "Machinery and equipment" shall also mean tangible personal property or other property that is eligible for depreciation for federal income tax purposes and that is used as an integral part of the production, processing, and storing of food and fiber or of timber.

(I) Machinery and equipment, for purposes of this Subparagraph, also includes but is not limited to the following:

(aaa) Computers and software that are an integral part of the machinery and equipment used directly in the manufacturing process.

(bbb) Machinery and equipment necessary to control pollution at a plant facility where pollution is produced by the manufacturing operation.

(ccc) Machinery and equipment used to test or measure raw materials, the property undergoing manufacturing or the finished product, when such test or measurement is a necessary part of the manufacturing process.

(ddd) Machinery and equipment used by an industrial manufacturing plant to generate electric power for self consumption or cogeneration.

\* \* \*

(II) Machinery and equipment, for purposes of this Subparagraph, does not include any of the following:

(aaa) A building and its structural components, unless the building or structural component is so closely related to the machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced.

(bbb) Heating, ventilation, and air-conditioning systems, unless their installation is necessary to meet the requirements of the

---

<sup>15</sup> In its Petition for Redetermination of Assessment in L01016, KBR also prayed for relief in the form of: a declaration invalidating the Guideline; a declaration that LAC 61:I.4301(C)("Cost Price")(h)(iii)(a) impermissibly exceeds the scope of the MM&E exclusion statute; invalidation of occupational license tax included in the Assessment; a declaration that the contract between the Collector and their auditor was invalid; and attorney's fees.



manufacturing process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities.

(ccc) Tangible personal property used to transport raw materials or manufactured goods prior to the beginning of the manufacturing process or after the manufacturing process is complete.

(ddd) Tangible personal property used to store raw materials or manufactured goods prior to the beginning of the manufacturing process or after the manufacturing process is complete. . . .

(ff) “Used directly” means used in the actual process of manufacturing or manufacturing for agricultural purposes.<sup>16</sup>

To qualify for the MM&E exclusion the property must be used directly in the manufacturing process. “Used directly” is defined as “used in the actual process of manufacturing.” La. R.S. 47:301(3)(i)(ii)(ff), (13)(k)(ii).

“Manufacturing” is defined as:

[P]utting raw materials through a series of steps that brings about a change in their composition or physical nature in order to make a new and different item of tangible personal property that will be sold to another. Manufacturing begins at the point at which raw materials reach the first machine or piece of equipment involved in changing the form of the material and ends at the point at which manufacturing has altered the material to its completed form. Placing materials into containers, packages, or wrapping in which they are sold to the ultimate consumer is part of this manufacturing process.

For this purpose, the manufacturing does not include:

- (I) Repackaging or redistributing.
- (II) The cooking or preparing of food products by a retailer in the regular course of retail trade.
- (III) The storage of tangible personal property.
- (IV) The delivery of tangible personal property to or from the plant.
- (V) The delivery of tangible personal property to or from storage within the plant.
- (VI) Actions such as sorting, packaging, or shrink wrapping the final material for ease of transporting and shipping.<sup>17</sup>

LDR’s implementing regulation states that “used directly” describes the manner in which the MM&E alters the physical characteristics of the product during the manufacturing process. LAC 61:I.4301(C)(“Cost Price”)(h)(iii)(a). The

---

<sup>16</sup> La. R.S. 47:301(3)(i)(ii)(aa)(I)(aaa) – (ddd), (II), (ff). Under the authority provided by the legislature in La. R.S. 47:337.10, Jefferson Parish adopted the MM&E exclusion in 2005 through Ordinance No. 22572. Jefferson Parish also adopted the state’s definitional sales tax provisions in La. R.S. 47:301 for purposes of its local sales tax Ordinances. Jefferson Parish Code of Ordinances Chapter 35, Article II, Section 35-17.

<sup>17</sup> La. R.S. 47:301(3)(i)(ii)(cc).

regulation further states that MM&E must have “an immediate effect upon those products manufactured for ultimate sale to another person.” *Id.*; see *Cora-Texas Mfg. Co., Inc. v. Robinson*, BTA Docket No. 11065D (La. Bd. Tax App. 12/5/19); 2019 WL 7605424 (Order and Written Reasons) (hereafter “*Cora-Texas (BTA)*”), *affirmed Cora-Texas Mfg. Co., Inc. v. Robinson*, 2020-0972, (La. App. 1 Cir. 4/16/21), 323 So.3d 886, and *writ denied*, 2021-00684 (La. 9/27/21), 324 So.3d 103 (hereafter “*Cora-Texas (1<sup>st</sup> Cir.)*”).

An exemption statute creates a special privilege for a transaction that would otherwise be taxable. *Harrah’s Bossier City Inv. Co., LLC v. Bridges*, 2009-1916, p. 10 (La. 5/11/10), 41 So.3d 438, 446. Because it is a special privilege, ambiguity in the language of an exemption statute is construed against the taxpayer. *Vulcan Foundry, Inc. v. McNamara*, 414 So.2d 1193, 1197 (La.1982). However, an exclusion statute restricts what is taxable in the first place. Ambiguity in the language of an exclusion statute is construed in favor of the taxpayer and against the collector. *Harrah’s, supra*. The MM&E exclusion abrogates the scope of taxation *ab initio*. It is an exclusion rather than an exemption. Accordingly, any legal ambiguity in the MM&E exclusion is construed in favor of the Taxpayers and against the Collector.

1. Catalysts:

- a. Categorical Analysis

For the Catalysts, the threshold question is whether these items fit within the first part of the definition of MM&E, which is: “tangible personal property or other property that is eligible for depreciation for federal income tax purposes.” In the context of Louisiana law, “tangible personal property” is synonymous with the term “corporeal movable” as used in the Louisiana Civil Code. *S. Cent. Bell Tel. Co. v. Barthelemy*, 94-0499, p. 6 (La. 10/17/94), 643 So.2d 1240, 1243; *City of New Orleans v. Baumer Foods, Inc.*, 532 So.2d 1381, 1383 (La. 1988).

Under LAC 61:I.4301, machinery or equipment that is a principal component of the manufacturing process and that has a substantially useful life beyond one tax year is eligible for depreciation. *Cora-Texas (1<sup>st</sup> Cir.)*, 323 So.3d at 892. Examples of

eligible items are pumps, valves, and compressors. Examples of ineligible items are nuts, bolts, gaskets, lubricants, filters, and fuel. LAC 61:I.4301(C)(“Cost Price”)(h)(iv). For tangible (corporeal) property to be depreciable under federal income tax law, it must, by its nature, be “subject to wear and tear, to decay or decline from natural causes, to exhaustion, and to obsolescence.” Treas. Reg. §1.167(a)-2.

The Board denied summary judgment as to the Catalysts because they were not shown to be depreciable and because it was possible that catalysts were consumed in the manufacturing process. During the merits hearing, Mr. Hofman, identified a list of the Catalysts<sup>18</sup> used in the manufacturing process. This list and its attached Catalyst specification pages were introduced into the record as Taxpayers’ Exhibit 33. The list and Mr. Hofman’s testimony established that all of the Catalysts have a useful life of more than one year. No evidence was introduced to show that the Catalysts were used up in less than one year. Accordingly, the Board finds that the Catalysts are tangible personal property that is eligible for depreciation for purposes of the MM&E exclusion.

The second part of the definition of MM&E limits the Exclusion to property that is “used as an integral part in the manufacturing of tangible personal property for sale.” The purpose of the Catalysts is to interact with the raw materials and trigger chemical reactions.<sup>19</sup> The Catalysts in the hydrotreater and de-sulfurizer convert organic sulphur compounds in the feed gas into hydrogen sulfide. The Catalyst used in the primary reformer reacts with feed gas to produce hydrogen,

---

<sup>18</sup> The Catalyst Summary lists the following Catalysts: Nickel; Iron/Chrome/Copper; Copper/Alumina/Zinc; Iron (pre-reduced); Nickel Oxide; Co-Mo; and Zinc Oxide, and Zeolite. Mr. Hofman identified Zeolite, as an absorbent, which is a substance that absorbs a chemical, rather than catalyzing a reaction. He also testified that the absorbent had a useful life of more than one year and that it was not consumed in the manufacturing process.

<sup>19</sup> Accord *Pinnacle Polymers, LLC v. St. John the Baptist Par.*, 19-310, p. 32 (La. App. 5 Cir. 3/24/21), 316 So.3d 1264, 1283, writ denied sub nom. *Pinnacle Polymers, LLC v. St. John the Baptist Par. Sales & Use Tax Office*, 2021-00562 (La. 6/22/21), 318 So.3d 708. In *Pinnacle*, there was a question as to whether a catalyst, Avant ZN 203, used in manufacturing polypropylene qualified for the further processing exclusion provided for in La. R.S. 47:301(10)(c)(i)(aa). The Court found no error in the Board’s determination that the manufacturer purchased ZN 203 “to serve as a catalyst to trigger a reaction,” rather than the purpose of including a few trace elements in the final product. *Pinnacle*, 316 So.3d at 1284. The Court’s holding in *Pinnacle*, though based on distinguishable law and facts from this case, is in agreement with the Board’s determination here that, generally, the purpose of a catalyst is to trigger a chemical reaction.

carbon monoxide, and carbon dioxide. The Catalyst used in the secondary reformer reacts with process gas to produce hydrogen. The Catalysts in the high-temperature shift and low-temperature shift systems react with steam and process gas to convert carbon monoxide to carbon dioxide. The Catalysts in the methanator promote the reaction of carbon dioxide and carbon monoxide with hydrogen to form methane and water. The Catalyst in the syngas driers is an absorbent that removes water from syngas. The Catalyst in the ammonia synthesizer facilitates the reaction of hydrogen and nitrogen to form ammonia. All of these reactions transform the raw materials during the intermediate steps of the manufacturing process. Furthermore, all of the transformations entail the raw materials progressing on a step towards their ultimate form as end products. Based on these facts, the Board holds that the Catalysts are integral to the transformation of the raw materials into the final product and are used directly in the manufacturing process.

Nevertheless, the Collector maintains that the Catalysts are used to create products for "internal use." The MM&E exclusion applies to property used to manufacture an end product for sale to another. The Exclusion does not apply to property used to create items for internal use. LAC 61:I.4301(C)("Cost Price")(h)(iii)(a). The Collector raises this argument because some of the by-products formed by the chemical reactions that the Catalysts trigger, particularly carbon monoxide, carbon dioxide, and water, are captured and consumed as fuel or used elsewhere in the Plant.

Some amount of by-product will always be created by chemical reactions. Sometimes those by-products are contaminants that must be disposed of. Sometimes they have independent value and can be re-sold. Sometimes, such as in this case, the by-products can be used to achieve greater efficiency in the manufacturing process. However, no matter how such incidental by-products are handled in this manufacturing process, the fact remains that all of the chemical reactions triggered by the Catalysts drive the manufacturing process towards its ultimate conclusion in the creation of the end-product.



If the MM&E exclusion only applied to transformative events that created no incidental by-products then virtually nothing could qualify. This would also lead to a manufacturer being forced to be wasteful with by-products or risk losing the benefit of the Exclusion. Accordingly, the Board finds that, for purposes of the MM&E exclusion, the Catalysts in this case are not used to create products for internal use. Having so concluded; the Board holds that the Catalysts category meets the statutory criteria for the MM&E exclusion and no tax is due on this category.

b. Items that fit within the Catalysts category

There is an apparent dispute as to whether certain items fall within the Catalysts category. This is evidenced by a discrepancy in the amounts at issue computed by the Taxpayers versus the amounts at issue computed by the Collector. According to the Collector, in Exhibits LTX 910 and LTX 911, the tax allegedly due for Catalysts is \$517,880.95. According to the Taxpayers' Exhibit 44, however, the amount of the alleged tax on the Catalysts totals, \$486,117.26.

Based on a comparison of the Collector's schedules to the Taxpayers' schedules, the discrepancy results from the following line items, which are on the Collector's schedules as Catalysts, but which are identified by the Taxpayers as follows:

Control Number	Tax Allegedly Due	Procurement Category	Procurement Description
18964	\$2,627.87	Vessels	Tiles, Circle Briccks & Alumina Balls
18990	\$14,188.43	Vessels	Tiles, Circle Briccks & Alumina Balls
19260	1932.34	Vessels	Ballast Balls
19251	9078.63	Electrical Bulks	Wire, Cable, Cable Tray Etc.
19560	3936.42	Vessels	Tiles, Circle Bricks & Alumina Balls

Based on a review of the invoices and purchase orders associated with the above transactions, the Board finds that the Taxpayers' categorization of the disputed items is correct, except with respect to any Consumables, as explained in the analysis of Consumables below. Subject to that proviso, the Board finds that the

items that fit within the Catalysts category are correctly represented by the Taxpayers' Exhibit 44. Furthermore, the Board finds that no amount of tax is due on items in the Catalysts category except with respect to any Consumables, discussed below.

## 2. Electrical Equipment and Bulks:

### a. Categorical Analysis

The Electrical Equipment and Bulks ("EE&B") category encompasses transformers, wires, switches, insulation, conduits, junction boxes, and other items normally associated with the use of electricity. These items are required to supply power to machinery and equipment. In this way, the EE&B items are necessary for the manufacturing process to work. In its ruling on summary judgment, the Board questioned whether these items were "used directly" in the "actual" process of manufacturing.

There are no Louisiana court decisions defining the terms "directly" or "actual" for purposes of the MM&E Exclusion.<sup>20</sup> However, dictionaries are always a valuable resource for determining the common and approved usage of words. *Gregor v. Argenot Great Cent. Ins. Co.*, 2002-1138, p. 7 (La. 5/20/03), 851 So.2d 959, 964. Merriam Webster's definition of directly is: "in a direct manner . . . in immediate physical contact . . . in the manner of direct variation . . . without delay : immediately."<sup>21</sup> Black's Law Dictionary defines directly as, "[i]n a straightforward manner. . . . In a straight line or course. . . . Immediately."<sup>22</sup> The Merriam Webster Dictionary definition of "actual" is: "existing in fact or reality . . . not false or apparent."<sup>23</sup> Black's Law Dictionary defines "actual" as: "[e]xisting in fact; real."<sup>24</sup>

---

<sup>20</sup> In the context of insurance policy language, the Louisiana Supreme Court has defined "direct" as meaning "immediate or proximate as distinguished from remote." *Cent. Louisiana Elec. Co., Inc. v. Westinghouse Elec. Corp.*, 579 So.2d 981, 985 (La. 1991).

<sup>21</sup> "Directly" Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/directly>.

<sup>22</sup> Directly, Black's Law Dictionary (12th ed. 2024).

<sup>23</sup> "Actual." Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/actual>.

<sup>24</sup> Actual, Black's Law Dictionary (12th ed. 2024).

The Taxpayers stress that the EE&B's are necessary to the manufacturing process and that without them the MM&E could not function. They are therefore "integral" to manufacturing process. Here, the facts show that the EE&B's in question operate in tandem with the MM&E in the manufacturing process. They are mechanical components that operate with the overall system to cause the change in the materials that would bring them closer to their final form. Accordingly, the Board holds that the EE&B's do meet the statutory criteria for the MM&E exclusion.

b. Items that fit within the EE&B category

The Collector's schedules for EE&B's, introduced into the record as Exhibit LTX 914, computes the tax due on items in this category to be \$559,116.49. However, the Taxpayers' Exhibit 44 computes the amount of tax in dispute for items in this category to be \$556,757.68. Having reviewed the evidence in the record, the Board finds that the Taxpayers' computation is more accurate. The Collector's Schedule includes items described I-beams, ball valves, and carbon steel plates. These items are associated with vendors such as Consolidated Pipe & Supply, Co., American Anchor Bolt MFG, LP, and Triple G Steel & Supply, Inc.

Having determined that the Taxpayers' computation is more reliable, the Board finds that 97.28% of the items on Taxpayers' Exhibit 44 associated with the KBR Procurement Categories: Electrical, Electrical Bulks, and Electrical Equipment, except for any consumables discussed below, are not taxable. Taxpayers' Exhibit 71 calculates that 2.72% of EE&B's are used outside the manufacturing process and are taxable. Thus, after the Consumables have been removed, as discussed below, 2.72% of the remaining EE&B's are taxable. The resulting tax due must be calculated in the Judgment to be submitted by the parties.

### 3. Exchangers:

#### a. Categorical Analysis

The Exchangers heat or cool materials at certain points in the manufacturing process. MM&E does not include “[h]eating, ventilation, and air-conditioning systems, unless their installation is necessary to meet the requirements of the manufacturing process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities.” La. R.S. 47:301(3)(i)(ii)(aa)(II)(ccc). The Exchangers are a heating system. Thus, to qualify as MM&E, their installation must be necessary for the manufacturing of ammonia.

The facts established at trial showed that the Exchangers are necessary for the materials to attain certain temperatures. Attaining the correct temperature is required for chemical reactions, in the reforming step, the shift conversion step, the methanation step, and the ammonia synthesis step. The Exchangers function like the Catalysts. Where the Catalysts provide the necessary chemical conditions for transformation, Exchangers provide the necessary temperature conditions. Accordingly, the Board finds that they are necessary and integral to the ammonia manufacturing process.

Whether the Exchangers are used directly in the manufacturing process is a closer question. The MM&E exclusion requires that the property cause a change in the “composition” or “physical nature” of the materials. In the same vein, the MM&E exclusion delimits the manufacturing process based on when the property begins to change the form of the raw materials and when the alteration of the materials has finished creating the end product.

Merriam Websters defines “change” as to make different in some particular,” “to make radically different,” “to replace with another,” “to make a shift from one to another,” “to undergo a modification of,” “to become different,” “to undergo transformation, transition, or substitution,” and “to pass from one phase . . . to



another.”<sup>25</sup> “Alter” is defined as “to make different without changing into something else.”<sup>26</sup> Considering that any ambiguity in the Exclusion is to be construed in the Taxpayers’ favor, the Board interprets the MM&E exclusion to require either a change, alteration, or both to the “composition,” “physical nature,” “form,” or any combination thereof, of the raw materials.

The dictionary defines “composition” as something’s “general makeup,” “the qualitative and quantitative makeup of a chemical compound,” “a product of mixing or combining various elements or ingredients,” and “the quality or state of being compound.”<sup>27</sup> The “nature” of a thing is defined as its “inherent character or basic constitution,” and its “kind or class usually distinguished by fundamental or essential characteristics.”<sup>28</sup> “Form” is defined as, “the shape and structure of something as distinguished from its material,” “the essential nature of a thing as distinguished from its matter: such as . . . the component of a thing that determines its kind,” and “one of the different modes of existence, action, or manifestation of a particular thing or substance.”<sup>29</sup>

As to how significant of a change or alteration is required, the Board looks to the statute’s use of a “series of steps.” The Board interprets this language to mean that any degree of change that is an advancement in the process of producing the end product is sufficient for purposes of the Exclusion. However, because the MM&E’s direct use must be in the “actual” process of manufacturing, the change or alteration must physically exist. This necessarily means that the change must be physically measurable.

The question is whether this language contemplates a change in the temperature of raw materials. On its own, a change in temperature appears to not

---

<sup>25</sup> “Change” Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/change>.

<sup>26</sup> “Alter” Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/alter>.

<sup>27</sup> “Composition” Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/composition>.

<sup>28</sup> “Nature” Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/nature>.

<sup>29</sup> “Form” Merriam Webster (updated Jan. 2025), available at <https://www.merriam-webster.com/dictionary/form>

fit the language of the statute because it is not a change in the essential nature of the thing. However, a change in temperature that resulted in a change in the state of matter, such as evaporation, freezing, or melting, would seem to satisfy the requirements of the MM&E exclusion statute. Furthermore, if heating and cooling could not qualify for the MM&E exclusion, then the legislature would not have needed to enact the provision specifically applicable to systems of that nature in La. R.S. 47:301(3)(i)(ii)(aa)(II)(ccc).

In this case, the facts show that the changes in temperature are intertwined with changes in the chemical composition of the materials. The Exchangers fulfill a role parallel to, and in conjunction with, the Catalysts. Just as the Catalysts provide the necessary chemical conditions for a reaction, the Exchangers provide the needed temperature conditions. For these reasons, the Board holds that the Exchangers meet the statutory criteria for the MM&E exclusion.

b. Which items fit within the Exchangers category

There is an apparent dispute as to which items are considered Exchangers. When filtered by KBR Procurement Category for Exchangers, Taxpayers' Exhibit 44 appears to show an alleged tax due in the amount of \$81,497.55 on tab WP A2-T Final, and an additional alleged tax due in the amount of \$576,849.01 on the tab WP A2- QT Final. However, the Collector's schedule shows a computation of the alleged tax due on Exchangers totaling \$132,196.83. Further, the Taxpayers' Post-Trial Memorandum states that the total tax on Exchangers is \$719,906.56 (\$61,560 more than the amount in the record evidence at Taxpayers' Ex. 44.).

Based on its review of the evidence, some portion of the discrepancy appears to center around start-up heaters that the Collector classifies as Exchangers, but that the Taxpayers classify as Reformer Furnaces. Unfortunately, that does not explain the full amount of the apparent discrepancy. Considering the comparative evidence and its relative ancillary support the Board resolves this issue by holding that the transactions identified on Taxpayers' Exhibit 44 with the KBR Procurement Category "Exchangers" are not taxable, except with respect to any

Consumables, discussed below, and that all the transactions identified on Collector's Exhibit LTX 915 are also not taxable. Subject to that proviso, no tax is due on the items in the Exchangers category.

4. Instrumentation, Instrumentation Bulks & Controls:

The Instrumentation, Instrumentation Bulks, & Controls ("IIBC") are control systems, analysis and measurement systems, gauges, valves, transmitters, regulators, tubing, trays, thermocouples, and the like. The IIBC's are used to operate the manufacturing process and emergency safety systems. By definition, MM&E includes the computers and software that are integral parts of the MM&E and used directly in the manufacturing process. La. R.S. 47:301(3)(i)(i)(aa)(I)(aaa). Furthermore, the definition of MM&E also includes machinery and equipment "used to test or measure raw materials, the property undergoing manufacturing or the finished product, when such test or measurement is a necessary part of the manufacturing process." La. R.S. 47:301(3)(i)(i)(aa)(I)(ccc). The manufacturing process at the Plant entails numerous steps during which it is necessary to control or measure pressure, temperature, and air quantity.

The operation of the IIBC's directly controls the MM&E. There is therefore a direct link between the use of the IIBC's and the resulting transformation in the raw materials. In addition, the IIBC's are specifically designated as MM&E by La. R.S. 47:301(3)(i)(i)(aa)(I)(ccc). Furthermore, Mr. Hofman's testimony credibly established that these items are integral to the manufacturing process and all have a useful life of more than one year. Accordingly, the Board finds that the IIBC's meet the criteria of the MM&E exclusion.

b. Which items fit within the IIBC category

The total amount in dispute for this category is shown on Taxpayers' Exhibit 44 to be \$551,463.39. However, the Collector's schedules reflect an amount of alleged tax due in the amount of \$458,108.39. A comparison of the two schedules reveals that there are 646 line items on the Taxpayers' Exhibit 44 that are associated with vendors that are absent from the Collector's Exhibit LTX 916. Of

these line items, 99 have a \$0.00 amount in dispute according to the Taxpayers' schedule. The remaining 547 line items add up to a total amount of tax due of \$20,793.55. The total discrepancy, however, is \$93,355.00.

The Board finds the Taxpayers' calculation to be more reliable. Accordingly, the Board finds that 99.93% of the items identified as IIBC's on Taxpayers' Exhibit 44 under the KBR Procurement Categories "Instrumentation & Controls" and "Instrumentation Bulks," except with respect to any Consumables, as discussed below, are not taxable. Taxpayers' Exhibit 71 conceded their calculation that 0.0728% of the IIBC's are used outside the manufacturing process and are taxable. Accordingly, after removing any Consumables (which the Board finds to be taxable, as discussed below) from the schedule of IIBC's, tax is due on 0.0728% of the remaining items. The parties' calculation of this amount must be included as part of the Judgment to be submitted to the Board.

5. Piping, Valves, and Bulks:

a. Categorical analysis

Items in the Piping, Valves, and Bulks ("PVB") category convey materials, chemicals, and waste from one location to another. MM&E does not include property "used to transport raw materials or manufactured goods prior to the beginning of the manufacturing process or after the manufacturing process is complete." La. R.S. 47:301(3)(i)(ii)(aa)(II)(ccc). In addition, La. R.S. 47:301(3)(i)(cc)(IV) states that the manufacturing process does not extend to the "delivery of tangible personal property to or from the plant." However, even between the beginning and the end of the process, manufacturing does not include the "delivery of tangible personal property to or from storage within the plant." La. R.S. 47:301(3)(i)(cc)(V).

The raw materials do not interact with each other until they reach the primary reformer. Prior to that, each raw material must undergo a separate pre-treatment process. For the air, this means passing through a filter. For the natural gas, this means passing through a separator and knock-out drum that remove



condensate. The pre-treatment required for Mississippi river water is the most complex of all. In its raw state, the river water is too dirty to be of any value. Thus, it must first be clarified and then polished to become de-min water. However, even the de-min water cannot be introduced into the MM&E; it must be converted to steam first.

In their purified forms, the raw materials are essential to the manufacturing process. However, the exact method by which the raw materials are acquired is not essential. For example, it would make no difference if the steam came from water pumped up from the ground or supplied by another facility. In fact, during startup, Cornerstone pipes steam into the Plant to get the manufacturing process started. Furthermore, the pre-reformer changes that occur to water, air, and natural gas do not necessarily culminate in their transformation into the final product. Some of the river water ends up being used as utility water and fire water. Some of the filtered air is used as instrument air. Finally, some of the natural gas is used to fuel the primary reformer furnace. Prior to entering the primary reformer, the materials are more like general purpose utilities than raw materials. Moreover, ammonia cannot be produced until the three materials co-mingle in the primary reformer. Accordingly, the Board finds that the manufacturing process begins when the raw materials reach the primary reformer. Transportation of raw materials to the primary reformer occurs prior to the beginning of the manufacturing process.

The second issue is determining when the manufacturing process ends. The evidence at trial established that the end product of the manufacturing process is chilled liquid ammonia. This is stored in an ammonia tank until it is time for it to be delivered to a customer. While a customer taking delivery of ammonia by pipeline, truck, or rail requires reheating of the final product into a gas for transport, a customer taking ammonia by barge does not. Moreover, and regardless of the means of delivery, the chilled ammonia is ready to be sold once it reaches the ammonia tank. Accordingly, the Board finds that the manufacturing process ends once the chilled liquid ammonia enters that tank. Transportation of the end product from the ammonia tank occurs after the manufacturing process has ended.

The PVB items that are used during the manufacturing process directly affect the raw materials. In a literal sense, the PVB items are what puts the materials through the series of steps that make up the manufacturing process. Considering that the provision at issue is an Exclusion, the Board finds that these facts satisfy the statutory criteria for direct use in the actual manufacturing process. In addition, the Taxpayers demonstrated at trial that these items have a useful life of more than one year. Therefore, the Board finds that the PVB items used during the manufacturing process meet the statutory criteria for the MM&E exclusion.

b. Which items fit within the PVB category

The PVB items make up the single largest category, with 17,602 line items on the Taxpayers' Exhibit 44. This category encompasses pipes, fittings, valves, blanks and spacers, hoses, flanges, gaskets, pipe supports and parts, plates, strainers, steam traps and the like. The sum of all tax allegedly due on the KBR Procurement Categories "Piping," "Piping Valves," and "Piping Bulks," as computed from Taxpayers' Exhibit 44, is \$2,685,951.62. However, the Collector's schedule on Exhibit LTX 917 computes a total tax due of \$2,681,241.91. As in the foregoing discussions, the Board finds the Taxpayers' calculations to be more reliable.

However, neither exhibit shows the proportion of PVB items that the Board finds to be used outside of the manufacturing process. The Board therefore considers what allocation is supported by the other evidence in the record. The water treatment system and the de-min water system are depicted on UFD's 1 and 2, respectively. Compared to the other 14 UFD's in the record, the water treatment system is roughly average in its complexities and the amount of piping depicted. The de-min water system, however, is one of the more complex systems and uses more piping than many of the other systems depicted on the UFD's. Based on a comparison of the piping depicted on these two UFD's to the piping depicted on all UFD's, the Board finds that a 10% allocation to activities prior to manufacturing is appropriate.

The systems for the ammonia forwarding pumps, barge loading pumps, and ammonia loading heater are depicted on P&ID's 53-D102, 53-D102A, and 53-D103. The Board finds that these diagrams represent the PVB's used after the manufacturing process ends. The Board further finds that the relative complexity and piping depicted on these diagrams compared to that of the other P&ID's supports a 2% allocation to activities after the end of the manufacturing process. Based on these calculations, the Board finds that, except with respect to any Consumables, discussed below, the amount of tax due on PVB's is \$322,314.19.

6. Vessel Platforms, Structural Steel, Pipe Support Steel:

a. Categorical analysis

Items in the Vessel Platforms, Structural Steel, Pipe Support Steel ("Support Structures") category are platforms and structural steel that support pipe racks, equipment, catwalks, and the like. Some Support Structures also permit access to instrumentation. Taxpayers emphasize that without the Support Structures, the equipment at the Waggaman Plant could not function. The Board agrees with that proposition.

However, the Board finds that these items, though integral to manufacturing process do not affect the raw materials directly. Unlike the EEB's, the Support Structures do not operate in tandem with MM&E. The Support Structures simply physically support the MM&E. They are not MM&E themselves.

Accordingly, the Board holds that the Support Structures do not meet the statutory criteria of the MM&E exclusion as enacted by the legislature. While the Board understands the policy goals argued by the Taxpayers, those arguments are best directed to the legislature. We are constrained to apply the law as written, and these items are not within the scope of this Exclusion.

b. Which items fit within the Support Structures category

Taxpayers calculate the amount of disputed tax on Support Structures to be \$526,514.49. This calculation is supported by the sum of tax due on items identified

with the KBR Procurement Categories identified as: “Structural Steel” and “Vessel Platforms / Pipe Support Steel.” The Collector calculates the tax due on Structural Steel to be \$589,506.76, as shown on the Collector’s Exhibit LTX 921. The Board finds that the Taxpayers’ calculation is more reliable. Accordingly, the Board holds that the amount of tax due on the Support Structures is \$526,514.49.

7. Vessels:

a. Categorical analysis

Items in this category are cylinders or drums that hold liquid and control temperature and pressure. The Vessels are also used to heat ammonia for further transport and to provide net positive suction on a long segment of pipeline. However, the Vessels are also used as storage for materials such as steam. Furthermore, some of the Vessels are used outside of the manufacturing process. For example, Ms. Meerman identified Steam Drum 141-D as a storage container for steam before it is sent to the primary reformer.

On balance, the Board finds that the weight of evidence favors the Collector in this category. The Vessels at issue do not directly alter or transform the raw materials used in the manufacturing process. Further, Vessels used as storage prior to the beginning, and after the end, of the manufacturing process do not qualify as MM&E under La. R.S. 47:301(3)(i)(ii)(aa)(II)(ccc).

b. Which items fit within the Vessels category

Taxpayers assert that the amount of tax allegedly due on Vessels is \$138,206.61. The Collector scheduled Vessels on Exhibit LTX 918, which appears to combine Vessels and Reformer Furnaces. The Board finds the Taxpayers’ evidence to be more reliable. Accordingly, the Board holds that the amount of tax due on Vessels is \$138,206.61.



## 8. Reformer Furnaces

### a. Categorical analysis

The Reformer Furnaces house burners and coils that are filled with Catalysts. In its ruling on the Cross-Motions for Summary Judgment, the Board stated that these items are MM&E. However, there was a genuine dispute of material fact as to whether the parts and components of these items directly and immediately affected the manufacturing process.

At trial, Taxpayers introduced Taxpayers' Exhibit 44. That Exhibit shows the Taxpayers' identification of all of the components of the Reformer Furnaces. Moreover, Taxpayers' produced credible expert testimony establishing that every part of the Reformer Furnaces, except for consumables, discussed below, has a direct effect on the raw materials. The Reformer Furnaces were also shown to have a useful life of more than one year. Accordingly, the Board finds that the items in this category meet the statutory criteria for the MM&E Exclusion.

### b. Which items fit within the Reformer Furnaces category

Taxpayers calculate the amount of tax due on Reformer Furnaces to be \$65,134.47. The Collector, combining this category with Vessels, calculates a total tax due of \$413,810.41. The Board accepts the Taxpayers' calculation. The Board holds that the items identified under the KBR Procurement Category: "Reformer / Furnaces" on Taxpayers Exhibit 44, except with respect to any Consumables, discussed below, are not subject to tax. The items that are identified by the Collector as Reformer Furnaces are not taxable as Reformer Furnaces. Whether they are taxable as Vessels is addressed above in the Board's ruling on Vessels.

## 9. Rotating Equipment:

### a. Categorical analysis

The items in the Rotating Equipment category are pumps, compressors, and turbines. The pumps move liquid from one location in the Plant to another. The compressors pressurize gases and liquids and provide temperature control. The

turbines drive compressor motors. Without the Rotating Equipment, a facility like the Plant would need a 25-Megawatt motor. Installing a motor of that size at the Waggaman Plant would be infeasible.

The items in this category change the nature of the materials by altering both their temperature and pressure. In addition, like the PVB's, the Rotating Equipment propels the materials through steps in the manufacturing process. Furthermore, the evidence at trial shows that, within the machinery, these items continue to move the materials through tubes and coils where chemical interactions are triggered by Catalysts. Finally, the Taxpayers' evidence demonstrated that these items have a useful life of more than one year. Accordingly, the Board finds that the Rotating Equipment meets the statutory criteria of the MM&E exclusion.

b.     Which items fit within the Rotating Equipment category

Taxpayers assert that the total tax on Rotating Equipment is \$1,504,374.56. The alleged tax due on Rotating Equipment according to the Collectors' schedule on Exhibit LTX 920 is \$1,528,467.95. Some of the transactions identified on the Collector's Exhibit LTX 920 appear to be taxable, but not as Rotating Equipment. The Board will therefore not apply its ruling as to the following transactions identified on Collector's Exhibit LTX 920:

<b>Audit Control Number</b>	<b>Meerman Description or "Revised Equipment No."</b>	<b>Tax Due</b>
16	Clarifier 2301-L	\$2,005.88
159	Pump - Raw Water System	\$5,881.25
157	Pump - Raw Water System	\$13,953.13
18	Clarifier 2301-L	\$4,013.75
988	Pump - Demin Water	\$482.78
1334	Pump - Raw Water System	\$14,166.88
1692	Pump - Raw Water System	\$299.25
1754	Pump - Demin Water	\$4,103.83
4763	Pump - Demin Water	\$241.39
5805	Pump - RO (Raw Water)	\$1,561.38
65	Clarifier 2301-L	\$613.70
6785	Pump - RO (Raw Water)	\$1,734.85
6853	Pump - Raw Water System	\$1,977.90
8194	Pump - Raw Water System	\$22,186.68
8465	Pump - RO (Raw Water)	\$173.49
69	Clarifier 2301-L	\$12,416.03
87	Clarifier 2301-L	\$2,069.34

The transactions listed in the table above are covered by and included in the Board's below ruling on Water Treatment / Utilities. All other transactions identified on Collector's Exhibit 920 are not taxable. Further, the Board holds that all transactions identified on Taxpayers' Exhibit 44, under the KBR Procurement Categories of Rotating Equipment, Pumps, and Compressors, except with respect to any Consumables, discussed below, are not taxable.

10. Concrete:

a. Categorical analysis

Taxpayers claim that Concrete supports the machinery used in the manufacturing process. When ruling on the Cross-Motions for Summary Judgment, the Board noted that MM&E does not include a, "building and its structural components, unless the building or structural component is so closely related to the machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced." La. R.S. 47:301(3)(i)(ii)(aa)(II)(aaa).

During the trial, Taxpayers presented photographs and testimony identifying examples of Concrete at the Plant. The Concrete was shown to form structures like a large cylindrical column with mounted piping, railing, and instrumentation. Taxpayers' witness, Mr. Cillessen, testified that the concrete structures are specifically constructed based on their location and function in the Plant. He further testified that if the equipment was replaced then the concrete would likely be replaced with a new structure specifically tailored to the new equipment.

However, the Concrete does not directly alter the materials in the manufacturing process. The Concrete shown in the photos at trial was formed into constructions on which machinery and equipment were mounted. The concrete does not affect the raw materials just because it holds MM&E up. The MM&E exclusion only applies to items that are "directly" involved in "actual" process of manufacturing. Like the Support Structures, the Concrete supports MM&E that

affects raw materials, but does not affect those materials itself. Unlike the IIBC's or EEB's, the Concrete is not operated in tandem with the MM&E. Accordingly, the Board holds that the items in the Concrete category do not qualify for the MM&E exclusion.

b. Which items fit within the Concrete category

The Collector's Exhibit LTX 912 computes a tax due on Concrete in the amount of \$12,818.68. Taxpayers' Exhibit 44 computes the tax due on Concrete to be \$19,978.45. As with the above discussions concerning other item categories, the Board finds the Taxpayers' calculations to be more reliable. Accordingly, the Board holds that the amount of tax due on Concrete is \$19,978.45.

11. Utility / Water Treatment:

a. Categorical analysis

DNLA claims that Mississippi river water is one of its raw materials. For the reasons set forth above in the Board's analysis of the PVB's, the Board disagrees with that proposition. The Board holds that the manufacturing process begins in the primary reformer and that steam, not water, is a raw material. The Utility / Water Treatment category items are used to clean river water before the manufacturing process begins. Thus, the Board holds that the items in the Utility / Water Treatment category do not qualify for the MM&E exclusion.

b. Which items fit within the Utility / Water Treatment category

Taxpayers' Exhibit 44 computes the tax due on the Utility / Water Treatment KBR Procurement Category to be \$314,380.05.<sup>30</sup> In addition, Taxpayers' Exhibit 44 identifies a KBR Procurement Category for "Chemicals" which are further given the "KBR Procurement Description" of "Water Treatment." The tax due on Chemicals is calculated to be \$315.53. KBR has conceded that it owes this tax and has tendered a check to the Collector for these and other conceded items. That check has not been deposited. Further, Taxpayers' Exhibit 44 identifies "Cooling Tower" as a KBR

---

<sup>30</sup> In post-trial briefing, Taxpayers assert that the total tax for this category is \$352,228.07. The Collector included in items from this category on their other schedules.



Procurement Category and Mr. Hofman testified that utilities include the Cooling Tower. The tax due on the Cooling Tower is calculated to be \$47.03. The Board holds that all these items are taxable. Accordingly, the tax due for the Utility / Water Treatment category is \$314,742.61. This amount includes the tax on items that the Board identified as Utility / Water Treatment in the above discussion on Rotating Equipment.

#### 12. Spares:

The Spares at issue arise from the DNLA Audit. The Louisiana Administrative Code provides that: “[p]urchases of spare machinery and equipment, such as compressors, pumps, and valves, qualify for the exclusion provided these items satisfy the definition of machinery and equipment provided in R.S. 47:301(3)(i).” LAC 61:I.4301(C)“Cost Price”(h)(viii)(c). The three sub-categories of spares identified by DNLA are: Capital Spares, Instrumentation Spares, and Water Conditioning Spares. Capital Spares are spares needed to keep the Plant running in case something breaks down, such as Rotating Equipment. Instrumentation Spares are spare pieces of instrumentation like those discussed above. Water Conditioning Spares are for the water treatment system. Under the Code, and given the Board’s holdings on these categories, the Board finds that the Capital Spares<sup>31</sup> and Instrumentation Spares meet the criteria of the MM&E exclusion, but that the Water Conditioning Spares do not. Therefore, the Board further holds that the Water Conditioning Spares are taxable in the amount of \$4,235.66.

#### 13. DNLA Audit – Saferack skids used for metering/measuring ammonia at truck/rail loading:

The evidence reflects that the Collector’s demand against DNLA includes \$80,064.93 in tax for “Saferack skids used for metering/measuring ammonia at truck/rail loading.” As explained in the discussion on PVB’s, the equipment associated with truck and rail loading is not used during the manufacturing process

---

<sup>31</sup> This includes the item DNLA describes as “Capital Spare Incorrectly identified in the audit as ‘technical support.’”

and is taxable. Accordingly, the Board holds that these items are taxable in the amount of \$80,064.93.

14. Repairs / Services:

The Repairs / Services category was not part of the Board's ruling on the Cross-Motions for Summary Judgment. Nevertheless, both the Taxpayers and the Collector addressed this category at trial and in post-hearing briefing. The Collector asserts that these are additional contractor tax items for which KBR, and only KBR, is liable.

At trial, Taxpayers produced testimony from Amey Prakash, KBR's Director of Commercial Management. Mr. Prakash explained that the Repair / Services items relate to KBR's payments to sub-contractors. In certain instances the sub-contract showed that equipment was rented or sold by the sub-contractor to KBR. The Collector assessed KBR with tax on those transactions.

However, the testimony and subcontracts introduced at trial showed, by a preponderance of the evidence, that none of the Repair / Services items were taxable. Most of the payments by KBR were for non-taxable commissioning services. The TPP associated with those transactions was consumed by the sub-contractor, not KBR. In other instances, KBR's payment was inclusive of tax, which was collected and remitted by the sub-contractors. The remainder of the payments for Repair / Services transactions were for services performed on immovable property, sales for resale, or instances in which the sub-contractor was consumer of the tangible personal property in the performance of a non-taxable service. For these reasons, the Board holds that no tax is due on items in the Repair / Services category.

15. Conceded Items:

At trial, and in its Motion to Compel Sheriff to Accept Payment of Undisputed Tax and Interest, KBR conceded that it owed \$85,713.84 in tax, plus interest through the date the payment was offered in December 2020, for a total conceded liability of \$135,452.28. This payment relates to items identified as Site Prep Materials, Chemicals, Safety and Medical Supplies, and Miscellaneous. KBR introduced evidence that, in December of 2020, it delivered payment for these items to the Sheriff in the form of a check, and that said check was never deposited. In addition, KBR conceded the taxability of two additional subcontracts in the amount of \$1,671.83, plus interest. In addition, DNLA conceded that it owes tax in the amount of \$1,240.10 prior to trial. This amount relates to Chemicals identified in the DNLA Audit. The Board's Judgment will reflect that these amounts are conceded to be due, and that no further interest will run on the amount of KBR's December 2020 payment from the date of that payment: December 11, 2020.

16. Occupational License Tax:

KBR argues that the Collector's attempt to assess Occupational License Tax ("OLT") for the tax periods 2013, 2014, 2015, and 2016 in the total amount of \$1,400.00 is prescribed. Under Louisiana law, taxes, other than real property taxes, prescribe three years from the 31<sup>st</sup> day of December in the year in which they are due. Further, under La. R.S. 47:343(B)(1), OLT is due on January first of each calendar year for which the license is due. Accordingly, OLT for 2016, the latest of the tax years at issue here, prescribed on December 31, 2019. The Collector issued the Assessment for OLT on November 13, 2020. Furthermore, the Agreements to Suspend Prescription introduced into the record are expressly limited to sales and use taxes. Accordingly, the Board holds that the Collector's Assessment of OLT against KBR for the tax periods 2013, 2014, 2015, and 2016 is prescribed.

17. Consumables:

In its reasons for ruling on the Cross-Motions for Summary Judgment the Board noted that Consumables do not qualify as MM&E. The Board did not separate Consumables out into their own category. However, Collector has created a

separate category for Consumables as shown on the schedule in Exhibit LTX 913. The items that the Collector claims are Consumables are interspersed throughout the Taxpayers' schedules.

With respect to the items identified on Exhibit LTX 913, the Board finds that the evidence favors the Collector and that the items so identified are taxable. However, in order to determine the amount of tax to which the Collector is entitled in total, it is necessary to identify the items on Exhibit LTX 913 that are included in otherwise non-taxable categories as determined in the foregoing analysis. Accordingly, the Order following these reasons directs the parties to submit a proposed Judgment with their final calculations in accordance with the Board's ruling.

18. Other relief prayed for:

The Board further finds that neither DNLA nor KBR are entitled to declaratory relief invalidating the Guideline, the Collector's contract with its auditor, or LAC:61:I.4301(C)("Cost Price")(h)(iii)(a). In addition, the parties agreed to defer any hearing on their respective demands for attorney's fees.

Conclusion:

This Order results in tax due of approximately \$1.4 million together with the amount to be calculated on consumables and the conceded amounts. The final amount for judgment pursuant to this Order should be calculated along with the applicable interest and underpayment penalty. No audit fees are awarded since much of the audit focused on excluded items and there is not record proof allocating audit costs to the amount of tax actually due.

ORDER:

For the foregoing reasons, IT IS ORDERED that on or before February 10, 2025, the parties shall submit a joint proposed Judgment accordance with this



Interim Order and the parties' calculation of the amounts due to the Collector plus interest and underpayment penalties, as provided for by law, and in conformity with the foregoing reasons.

IT IS FURTHER ORDERED that if the parties cannot agree on the form of a proposed Judgment on or before February 10, 2025, that a party may submit its own proposed Judgment and Memoranda by that date. Either party may file a response to the other party's proposed Judgment and Memoranda on or before February 14, 2025. The parties are also authorized to provide briefing and any written stipulations concerning attorney's fees that may obviate the need for a separate hearing thereupon, but either party may request a hearing on that matter with their proposed judgment.

Baton Rouge, Louisiana, this 15<sup>th</sup> day of January, 2025.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE