STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION

HILCORP ENERGY COMPANY

Petitioner,

vs. DOCKET NO. L01282

PLAQUEMINES PARISH GOVERNMENT THROUGH ITS SALES TAX DEPARTMENT; TRENESE AUGUSTUS IN HER OFFICIAL CAPACITY AS SALES TAX MANAGER FOR THE PLAQUEMINES PARISH GOVERNMENT SALES TAX DEPARTMENT,

Respondent.

* *

JUDGMENT
ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT
WITH WRITTEN REASONS

* *

On December 5, 2024, this matter came before the Board for hearing on the *Motion for Partial Summary Judgment* filed by the Plaquemines Parish Government through its Sales Tax Department, and Trenese Augustus in her official capacity as Sales Tax Manager for the Plaquemines Parish Government Sales Tax Department (collectively, the "Collector") and the *Cross-Motion for Partial Summary Judgment* filed by Hilcorp Energy Company ("Hilcorp" or "Taxpayer") with Local Tax Judge Cade R. Cole, presiding. Appearing before the Board were Jesse R. Adams, III, attorney for Hilcorp, and Patrick Amedee, attorney for the Collector. At the

conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment for the reasons set forth in the attached Written Reasons.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Collector's *Motion for Partial Summary Judgment* be and is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Hilcorp's *Cross-Motion for Partial Summary Judgment* be and is hereby DENIED AS MOOT.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Hilcorp is precluded from claiming a refund based on La. R.S. 47:337.77(F) precludes the portion of Hilcorp's Refund that relates to sales and use and/or lease tax paid on "gas-lift compression" agreements for the Tax Periods January 1, 2017 through December 31, 2017.

Judgment Rendered and Signed at Baton Rouge, Louisiana, on this 10th Day of February, 2025.

FOR THE BOARD:

LOCAL TAX JUDGE CADE R. COLE

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WRITTEN REASONS FOR JUDGMENT ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT

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conclusion of the hearing, the Board took the matter under advisement. The Board now issues the following Written Reasons for ruling.

Background:

Hilcorp produces oil and gas at wells within the taxing jurisdiction of Plaquemines Parish. At the wells, compressors are used to draw hydrocarbons from the ground. The use of compressors in this manner is described by Hilcorp as the "gas lift" method. This method involves injecting concentrated, compressed, high-pressure natural gas into the bottom of the well's production tubing. There, the gas mixes with fluids in the tubing. This reduces the fluids' density and thereby makes them lighter and more buoyant. The injected compressed gas increases the pressure difference between the bottom of the well and the oil layer and allows the reservoir pressure to lift the liquids to the surface.

Since 2006, Hilcorp contracted with USA Compression Partners, LLC ("USAC")[1] for compressors and the installation and maintenance thereof. The contract between Hilcorp and USAC is called the "Master Services Agreement" ("MSA").[2] Hilcorp points to various sections of the MSA in which USAC's obligation is described as a rendition of "services." The MSA requires Hilcorp to provide housing, meals, and amenities at the jobsites at issue[3] for USAC's personnel at Hilcorp's

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[1] In April 2018, USAC acquired CDM Resource Management, LLC, a successor entity to CDM Resource Management, Ltd. (collectively, "CDM").

[2] The MSA was submitted under seal and is subject to the Board's March 14, 2024 *Protective Order*.

[3] These amenities are required for USAC employees who stayed at Hilcorp's over-water jobsites and were available 24-7.

expense. Except in emergencies, only USAC's employees are allowed to operate the compressors. However, USAC is responsible for damages to its own equipment.

The MSA provides that Hilcorp can request "services" by issuing a "Services Order" to USAC. The Services Order specifies the location, commencement date, term, whether the service is land or water-based. In addition, the Services Orders recite USAC's guarantee that the equipment supplied would be able to perform the services described in the MSA under the conditions described in the Services Order. If a compressor stopped working, Hilcorp would lose almost all production from the associated well. USAC's personnel would select and assemble the appropriate compressor equipment based on the conditions specified in the Services Order and ship it to Hilcorp's job site at Hilcorp's expense. USAC's employees would then install and set up the compressor at the job site.

A compressor has a low pressure side and a high pressure side. Low pressures are typically 40 to 70 PSI. High pressures are typically 1,100 PSI. The "gas load" comes from the high pressure side. A valve controls the pressure at which the compressor will discharge. Essentially, once the pressures are set, they remain constant. All that is required after the compressor is running is periodic inspection and maintenance. The compressors can run without adjustment, except when adjustment is required in response to changes in the conditions in the field.

On December 2, 2004, the Louisiana Department of Revenue ("Department") issued Revenue Ruling 04-009 ("RR 04-009"). RR 04-009 addressed the tax treatment of contracts involving the furnishing of gas compression equipment. The Department

determined that these were contracts for lease of tangible personal property. When treated as leases, the contracts are subject to lease tax, which is paid by the lessee. RR 04-009, though not binding on local collectors, generally settled the issue of gas-lift/compression contracts in the oil and gas industry.

On February 21, 2007, the Collector initiated a sales tax audit of USAC's predecessor CDM (the "CDM Audit"). The Collector's contract auditors initially took the position that CDM was a service provider. Based on that position, the auditor issued findings stating that CDM owed use tax on equipment used in providing gas lift services. This led to CDM initiating a payment under protest action in the 25th JDC. The Collector and CDM reached a settlement in that litigation in December of 2008. This occurred after the Collector's legal counsel rendered advice that CDM's protest payment should be refunded and that the transactions should be treated as leases in accordance with RR 04-009.

The Collector audited Hilcorp for sales tax for the tax periods 2011 through 2014 (the "2011-14 Audit"). Emily Behrend was the Collector's lead examiner for the 2011-14 Audit. During the audit, she communicated with Hilcorp's contract CPA, Devon Dixon. Attached to Ms. Behrend's deposition is a February 3, 2017 email from her to Mr. Dixon, stating: "RR 04-009 treats compression contracts as a taxable lease or rental. The Parishes follow this ruling."

The 2011-14 Audit culminated in an assessment from the Collector and a refund claim by Hilcorp. Hilcorp paid the assessment under protest and filed a Petition with the Board on May 7, 2018, which was docketed as BTA Docket No.

L00509. Hilcorp also filed a Petition with the Board appealing the Collector's denial of its refund request on February 7, 2019, which was docketed as BTA Docket No. L00708. The last unresolved issue in those appeals is the same gas-lift dispute that is presented in the instant Cross-Motions.

Until November 2023, Hilcorp paid the lease tax on gas-lift compression contracts without protest. On December 30, 2021, Hilcorp submitted a refund claim to the Collector for purported overpayments for the sales tax periods that began on January 1, 2017, and ended on December 31, 2017 (the "Tax Periods"). A portion of Hilcorp's refund claim for the Tax Periods seeks recovery of lease taxes paid on the transactions between Hilcorp and USAC related to gas-lift compression contracts. Hilcorp has moved for partial summary judgment in its favor on that portion of their refund claim. The Collector has moved for partial summary judgment in its favor on the same issue. The parties disagree as to whether the subject transactions should be treated as leases under RR 04-009 or as services. The Collector additionally raises La. R.S. 47:337.77(F) as a bar to Hilcorp's refund claims.

USAC, who is not a party to this dispute, characterized the transactions as leases in a separate matter before the Board (BTA Docket No. L01285). In its decision in BTA Docket No. L01285, the Board acknowledged the Collector's efforts to protect the public fisc from the consequences of a refund of the tax to Hilcorp. Nevertheless the Board found that there was no genuine dispute between USAC and the Collector as to either the facts or the law. Both parties viewed the transactions as leases and

correctly taxable to Hilcorp in accordance with RR 04-009. Consequently, the Board granted summary judgment in USAC's favor.

Discussion:

La. R.S. 47:337.77(F) prohibits a refund of tax overpaid through a mistake of law arising from the misinterpretation by the collector of the provisions of any law, rule, or regulation. If a taxpayer "believes that the Collector has misinterpreted the law or rules and regulations contrary therewith," then the taxpayer's remedy is "by payment under protest and suit to recover or petition to the Board of Tax Appeals, as provided by law." *Id.*

The Louisiana Supreme Court examined La. R.S. 47:337.77(F) in *Tin, Inc. v. Washington Parish Sheriff's Office*, 2012-2056, p. 12 (La. 3/19/13), 112 So.3d 197, 205. In *Tin*, the collector denied the taxpayer's refund request for use tax on caustic soda, stating, "[a]t this time, we must respectfully decline your request for the refund of sales taxes outlined in your correspondence."' *Id.* at p. 2, 112 So.3d at 199. The Taxpayer made a second refund request, again seeking a refund of use tax on caustic soda and also raising additional refund claims related to sodium hydrosulfide. The collector did not respond to the second refund request. Absent any other indication of the Collector's position in the record, the Court found that there was "no reason for TIN to believe that the Collector had made a 'mistake of law arising from the misinterpretation . . . of the provisions of any law or of the rules and regulations promulgated thereunder'" with regard to the second refund request. *Id.* at p. 12, 112

So.3d at 205. The Court applied the same reasoning to the taxpayer's third and fourth refund requests.

Before being repealed by 2019 Act 367, the state tax refund statutes contained La. R.S. 47:1625(F), an analogous provision to La. R.S. 47:337.77(F). La. R.S. 47:1625(F) was interpreted by the First Circuit in *Bannister Properties, Inc. v. State*, 2018-0030 (La. App. 1 Cir. 11/2/18), 265 So.3d 778, *writ denied*, 2019-0025 (La. 3/6/19), 266 So.3d 902. The taxpayers in *Bannister* were foreign corporations that had paid Louisiana's corporate franchise tax without protest because pursuant to LAC 61:I.301(D). That regulation was invalidated in *UTELCOM, Inc. v. Bridges*, 2010-0654 (La. App. 1 Cir. 9/12/11), 77 So.3d 39, 48-50, *writ denied*, 2011-2632 (La. 3/2/12), 83 So.3d 1046. *UTELCOM*'s holding spawned numerous refund claims from similarly situated corporate taxpayers. The Department denied these claims under La. R.S. 47:1625(F).

This Board found that the refund claims were permissible under La. R.S. 47:1625(F) because the statute allowed taxpayers to appeal to the Board "in instances where such appeals lie." The Board's decision was reversed on appeal by the First Circuit. The Court emphasized that La. R.S. 47:1625(F) prohibited "any" refund arising from the Department's own misinterpretation of the law. The Department's regulation was undoubtedly its official interpretation of the law and it was the reason that the taxpayers had paid the franchise tax.

La. R.S. 47:337.77(F) was examined by this Board in *Noranda Intermediate Holding Corp. v. St. James Parish School Board*, B.T.A. Docket No. L00328 (La. Bd.

Tax App. 03/03/21); 2021 WL 2961383. In *Noranda*, the taxpayer claimed a refund for purchases of materials for further processing into tangible personal property for sale to others. The collector raised La. R.S. 47:337.77(F) as a defense, based on a previous audit of the taxpayer. However, the evidence at trial showed that the collector never communicated a position on the taxability of the chemical at issue during the audit. In addition, the collector admitted that they had never issued any notice to the taxpayer regarding the further processing exclusion. The fact that the taxpayer has been audited is not necessarily an automatic prohibition on any future refund request, especially with respect to issues that were not addressed in the audit.

The Board addressed La. R.S. 47:337.77(F) again in *ATCO Structures and Logistics (USA), Inc. v. Tyree*, B.T.A. Docket No. L00931 (La. Bd. Tax App. 6/1/22); 2022 WL 5237072. The collector in that matter raised La. R.S. 47:337.77(F) on an exception of no right of action. However, the collector's factual support for their exception was a Notice of Tax Due that merely stated that the Taxpayer's remittance was deficient without identifying any transactions, property, or reason for the deficiency. The Board held that "[t]o successfully raise the exception of no right of action under La. R.S. 47:337.77(F), the Collector should be able to point to a clear instance where it disclosed its legal position."

Here, unlike in *Tin*, there is a clear reason for the Taxpayer to have believed that "the Collector had made a mistake of law arising from the misinterpretation of the provisions of any law or of the rules and regulations promulgated thereunder." *See Tin* 2012-2056 at p. 12, 112 So.3d at 205. Unlike *Noranda*, the Collector has

shown that their auditor addressed the specific legal issue that presented in the instant Cross-Motions. Unlike the conclusory notice in *Atco*, Mr. Behrend's communication was not a mere statement of deficiency. Here, the auditor articulated the Collector's position and the basis in law for that position. The Collector's reasoning was based on RR 04-009. Mr. Behrend's statement was sufficient to put Hilcorp on notice that it would be followed by the Collector.

Thus, by at least February 3, 2017, the Collector's representative had advised Hilcorp's representative of the Collector's position. After that date, under La. R.S. 47:337.77(F), Hilcorp was obliged to pay any taxes resulting from the Collector's interpretation of the law under protest. Further, under La. R.S. 47:337.18(A)(1)(a), monthly sales tax returns are due on the twentieth day of the month following the month in which this tax becomes effective. The earliest due date for the any of months in the Tax Periods at issue here would be February 20, 2017, for the month of January 2017. There is no evidence that Hilcorp paid the tax for that month before February 3, 2017. Therefore, based on the competent summary judgment evidence in this matter, the Board concludes that La. R.S. 47:337.77(F) bars Hilcorp from pursuing a refund of overpayment of taxes for compressor gas/lift services for the Tax Periods at issue.

For the foregoing reasons, the Board will grant the Collector's *Motion for Partial Summary Judgment*. The Taxpayer's *Cross-Motion for Summary Judgment* is directed at the transactions and tax periods. Analysis of whether RR 04-009 provides the correct tax treatment of gas-lift compression contracts is pretermitted

by the granting of the Collector's motion. Consequently, Hilcorp's motion will be denied as moot.

Baton Rouge, Louisiana, this day, February 10, 2025.

FOR THE BOARD:

LOCAL TAX JUDGE CADE R. COLE