

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**CORE-MARK DISTRIBUTORS, INC.**

**Petitioner**

**versus**

**B.T.A. DOCKET NO. 13686D**

**SECRETARY OF DEPARTMENT  
OF REVENUE, STATE OF LOUISIANA**

**Respondent**

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**JUDGMENT WITH WRITTEN REASONS**  
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This matter came before the Board for hearing on cross Motions for Summary Judgment on January 8, 2025, with Chairman Francis J. "Jay" Lobrano presiding, and Vice-Chairman Cade R. Cole and Judge Lisa Woodruff-White (Ret.) present. Appearing before the Board were: Robert S. Angelico and Cheryl Kornick, attorneys for Core-Mark Distributors, Inc. ("Taxpayer"); and Sydnee D. Menou, attorney for the Department of Revenue ("LDR"). At the conclusion of the hearing, the Board took the matter under advisement. In accordance with the attached Written Reasons for Judgment, the Board now rules as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment filed by the Taxpayer is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that La. Admin. Code tit. 61, pt. I, § 5103 be and is hereby declared invalid in that it is inconsistent with La. R.S. 47:842(6) in the meaning of "net invoiced price".

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Notice of Assessment issued by LDR for Louisiana Tobacco Excise Taxes, Interest and Penalties for the tax periods January 1, 2019 through July 31, 2022 is vacated.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment filed by LDR is denied and the Affirmative Defenses asserted by LDR are without merit.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,  
LOUISIANA, THIS 10<sup>th</sup> DAY OF MARCH, 2025.

FOR THE BOARD:



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JUDGE LISA WOODRUFF-WHITE (RET.)  
BOARD OF TAX APPEALS  
STATE OF LOUISIANA

CORE-MARK DISTRIBUTORS, INC.

Petitioner

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B.T.A. DOCKET NO. 13686D

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**WRITTEN REASONS FOR JUDGMENT**  
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This matter came before the Board for hearing on cross Motions for Summary Judgment on January 8, 2025, with Chairman Francis J. "Jay" Lobrano presiding, and Vice-Chairman Cade R. Cole and Judge Lisa Woodruff-White (Ret.) present. Appearing before the Board were: Cheryl M. Kornick and Robert S. Angelico, attorneys for Core-Mark Distributors, Inc. ("Taxpayer"); and Sydnee D. Menou, attorney for the Department of Revenue ("LDR"). At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues the foregoing Judgment for the following reasons.

**Facts:**

Taxpayer is a foreign corporation, categorized as a tobacco product and electronic cigarette merchant wholesaler in the business of distributing wholesale tobacco products including cigarettes, cigars, pipe tobacco, and electronic cigarettes to primarily retail convenience stores. Taxpayer is responsible for payment of the Louisiana Tobacco Excise Tax pursuant to La. R.S. 47:841, et. seq.

The tax periods at issue are from January 1, 2019 through July 31, 2022 ("Tax Periods"). During the Tax Periods, Taxpayer paid taxes on tobacco products distributed in Louisiana, to include paying taxes for cigars, smoking tobacco and smokeless tobacco. Thereafter, LDR conducted a Tobacco Tax examination ("Audit") on the books and records of Taxpayer for the Tax Periods. The audit findings



determined that Taxpayer paid excise taxes on the “net invoice price” which was the amount paid after taking a terms and/or timely payment discount (a “cash discount”).

LDR issued a Notice of Tax Assessment and Notice of Right to Appeal to the Louisiana Board of Tax Appeals (“Notice of Assessment”) dated July 27, 2013, assessing tobacco excise tax for the Tax Periods in the amount of \$179,290.52, plus interest in the amount of \$33,000.78, and a penalty of \$1,466.12 for a total assessment of \$213,757.42. Taxpayer timely appealed the Notice of Assessment and related issues to this Board.

**Issues Presented:**

(1) Whether La. Admin. Code tit. 61, pt. I, § 5103 (LAC 61:1.5103), which includes a definition for the “net invoiced price” that does not allow cash discounts, is contrary to La. R.S. § 47:842(6) which is the statutory basis for the Louisiana Tobacco Excise Tax (Tobacco Tax);

(2) Whether LAC 61:1.5103 can be applied retroactively to purchases made prior to November 20, 2022, the date of promulgation; and

(3) Whether the Notice of Assessment issued in this case should be determined invalid based on the adjustments made by LDR.

**Discussion:**

As a preliminary matter, this case is before the Board on cross motions for summary judgment. A motion for summary judgment is a procedural device used when there is no genuine issue of material fact as to all or part of the relief prayed for by a litigant. *Hester v. Walker*, 20-01278 (La. 5/13/21), 320 So.3d 362; *Roach v. Moffatt*, 55,415 (La. App. 2 Cir. 1/10/24), 379 So.3d 268; *Rodessa Oil & Land Co. v. Perkins*, 47-378 (La. App. 2 Cir. 8/8/12), 104 So.3d 52; *In re Clement*, 45,454 (La. App. 2 Cir. 8/11/10), 46 So.3d 804. The motion for summary judgment shall be granted if the motions, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law.

La. C.C.P. art. 966(A)(3); *Minifield v. Gardner*, 54,686 (La. App. 2 Cir. 8/10/22), 345 So.3d 495. Further, despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion and all doubt must be resolved in the opponent's favor. *Rodessa, supra*; *Shelter Ins. Co. v. Broan-Nutone, LLC*, 39,625 (La. App. 2 Cir. 5/11/05), 902 So.2d 1146, *writ denied*, 05-1483 (La. 12/16/05), 917 So.2d 1112.

A material fact is one that potentially ensures or precludes recovery, affects a party's ultimate success, or determines the outcome of the dispute. *Rodessa, supra*. A genuine issue is one about which reasonable persons could disagree. *Id.* If only one conclusion could be reached by reasonable persons, then there is no triable issue and summary judgment is proper. *Id.*; *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So.2d 764. In determining whether a factual issue is genuine for purposes of summary judgment, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *Crescent City Property Redevelopment Assoc., LLC v. Muniz*, 21-00371 (La. 6/1/21), 347 So.3d 682; *Suire v. Lafayette City-Parish Consol. Gov't*, 04-1459 (La. 4/12/05), 907 So. 2d 37. Summary judgment is seldom appropriate for determinations based on subjective facts, such as motive, intent, good faith, knowledge, and malice. *Smith v. Our Lady of the Lake Hospital, Inc.*, 93-2512 (La. 7/5/1994) 639 So.2d 730; *Robins v. Coles*, 23-1343 (La. App. 1 Cir. 8/26/24) 395 So.3d 345.

In the case before the Board, after consideration of the cross motions for summary judgment, the Board finds there is no genuine issue of material fact, and the Taxpayer is entitled to summary judgment as a matter of law for the reasons outlined herein.

#### **A. Validity of LAC 61:1.5103**

Taxpayer alleges that LAC 61:1.5103(E) is contrary to statute and cannot be applied retroactively to purchases made prior to November 20, 2022, the date of



promulgation. More specifically, Taxpayer asserts the dispute arose because LAC 61:1.5103 provides a definition of “net invoiced price” that is different from, and broader than, the term’s statutory definition. Taxpayer asserts that “even where the manufacturer’s net invoiced price as invoiced to the Louisiana tobacco dealer includes a cash discount, that discount cannot be considered for purpose of the Tobacco Tax.” In requesting that LAC 61:1.5103 be rendered invalid, Taxpayer asserts that under the regulation the Tobacco Tax is based on an amount that is higher than the price “as invoiced to the Louisiana tobacco dealer” resulting in the imposition of the Tobacco Tax on an amount higher than what is authorized under La R.S. 47:842(6).

LDR asserts that under La R.S. 47:842(6) a “cash discount” is not included in the definition of “invoice price” and that Taxpayer does not meet their burden in challenging the validity of LAC 61:1.5103. LDR asserts the taxes should be determined based upon the prices of products on the face of the invoice. LDR also states that the Audit found that Taxpayer “paid the Tobacco Tax on its own internal definition of ‘net invoiced price,’ which was the amount paid to the vendor after taking a term and/or timely payment discount (a cash discount).”

LAC 61:1.5103<sup>1</sup> provides, in pertinent part:

A. Definitions

Cash Discounts-reduction to the total invoiced amount based upon a payment method or timing of payment such as payment by electronic funds transfer, automatic withdrawal or full payment within a specified period.

Promotional Incentives-product provided to the Louisiana dealer and listed on the invoice at no cost.

Trade Discounts-reduction in list price or unit price given by a manufacturer or other supplier. These discounts are listed in the product line item as either a percentage or specified amount and are reflected in the extended price of the product on the invoice.

B. The tobacco tax is imposed on the invoice price of cigars, smoking tobacco, smokeless tobacco, and other tobacco products. R.S. 47:842(6) defines invoice price as the manufacturer’s net invoiced price as invoiced to the Louisiana tobacco dealer.

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<sup>1</sup> Promulgated by the Louisiana Department of Revenue, Policy Services Division in 48 La. Reg. 2765 (November 20, 2022).

C. Manufacturer's net invoiced price is the product line item price charged to the dealer by the manufacturer, supplier, jobber or other person who sells the tobacco product to the dealer inclusive of any trade discount reflected in the line item price.

D. Federal excise and other taxes, shipping charges, and freight charges separately stated on an invoice are not considered part of the price of the taxable product and are excluded from the determination of manufacturer's net invoiced price.

E. Cash discounts shall not be considered when determining the manufacturer's net invoiced price.

LAC 61:1.5103(E), clearly prohibits consideration of cash discounts, as defined in LAC 61:1.5103(A), without regard to the language in La. R.S. 47:842(6) wherein the tax base is "the manufacturers net invoiced price as invoiced to the Louisiana tobacco dealer."

Under La. R.S. 47:842(6) the term "invoice price" is defined as follows:

(6) "Invoice price" the manufacturers net invoiced price as invoiced to the Louisiana tobacco dealer, by the manufacturer, jobber, or other persons engaged in selling tobacco products in accordance with the tax levied by this chapter.

There is no dispute that LDR is the administrative body that promulgates rules and regulations designed to carry out the provisions of the Louisiana tax law or that La. R.S. 47:841(D) specifically provides the authority of the Department to adopt and promulgate rules and regulations related to the Tobacco Tax.<sup>2</sup>

The dispute is whether LDR in its promulgation of LAC 61:5103 exceeds the scope of La. R.S. 47:842(6) by determining what the law shall be. LDR relies in part on *State v. Alfonso*, 99-1546 (La. 11/23/99), 753 So.2d 156, 161. The court in *State v.*

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<sup>2</sup> La. R.S. 47:841 (D) Rules and regulations. The collector shall adopt and promulgate rules and regulations, which shall have the effect of law, for the administration and enforcement of the provisions of this section, with specific authority as to the filing of inventory report and payment of additional taxes due. He also may adopt and promulgate rules and regulations establishing or requiring the establishing of an inventory where the dealer fails to timely declare and file the inventory with the collector on the specified date, and for the revaluation of tax stamps in possession of the dealer.



*Alfonso*, noted being guided by the following approach in *Schwegmann Brothers Giant Super Markets v. Commissioner of Agriculture*, 237 La. 768, 788, 112 So.2d 606, 613, *appeal dismissed*, 361 U.S. 114 (1959) in determining whether a particular delegation of power is constitutional:

It is now well settled that the Legislature may make the operation or application of a statute contingent upon the existence of certain conditions, and may delegate to some executive or administrative board the power to determine the existence of such facts and to carry out the terms of the statute. So long as the regulation or action of the official or board authorized by statute does not in effect determine what the law shall be, or involve the exercise of primary and independent discretion, but only determines within prescribed limits some fact upon which the law by its own terms operates, such regulation is administrative and not legislative in nature.<sup>3</sup>

Although the delegation of authority to LDR to promulgate rules is not challenged, the delegation to LDR, as in the *Smith* case, does not provide authority to determine what the law shall be or to exercise primary and independent discretion which expands the clear meaning of the law.

LDR notes the finding in *Coastal Drilling Co., LLC v. Dufrene*, 2015-1793 (La. 3/15/16), 198 So.3d 108, 114:

A regulation can be struck down as being unconstitutional only (1) if the regulation exceeded the authority delegated to the administrative body by the legislature or (2) it exceeded the scope of the statute under which it was promulgated, as evidenced by a construction that is contrary to the statute's purpose.

In applying *Coastal Drilling* to the current case, the Board finds that LDR exceeded its authority in the promulgation of LAC 61:1.5103 because LAC 61:1.5103 does not simply clarify the term 'invoice price' as found in La. R.S. 47:842(6). The definitions of discounts and the explanation of how the discounts and other items are to be considered in determining the manufacturer's net invoiced price exceed the taxing authority of La. R.S. 47:842(6), "the manufacturers net invoiced price as

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<sup>3</sup> *Schwegmann Brothers Giant Super Markets v. Commissioner of Agriculture*, 237 La. 768, 788, 112 So.2d 606, 613, *appeal dismissed*, 361 U.S. 114 (1959), as cited by the court in *State v. Alfonso*, 99-1546 (La. 11/23/99), 753 So.2d 156, 161 (La. 1999)



invoiced to the Louisiana tobacco dealer, by the manufacturer, jobber, or other persons engaged in selling tobacco products in accordance with the tax levied by this chapter.” More specifically, LAC 61:1.5103(E), by providing that cash discounts “shall not be considered when determining the manufacturer’s net invoiced price” in effect increases the tax base beyond “the manufactures net invoiced price as invoiced to the Louisiana tobacco dealer.” Further, Taxpayer correctly notes the Legislature’s use of the term “net invoiced price” does not allow the LDR by Regulation, “to pick and choose which discounts would be recognized by the Department and which would not.” LDR’s redetermination of the meaning of manufacturer’s net invoiced price in LAC 61:1.5103(E) is determinative of La. R.S. 47:842(6). To that extent, LAC 61:1.5103 is invalid.

This Board further finds there is not ambiguity in the term “net invoiced price” in La. R.S. 47:842(6). However, it is well settled that if the Board considered the term “net invoiced price” to be ambiguous, the Board must read that term in favor of the Taxpayer. The fundamental question in all cases of statutory interpretation is legislative intent. *Black v. St. Tammany Parish Hospital*, 2008–2670 (La.11/6/09), 25 So.3d 711. The principal rule is the “text of a statute is considered the best evidence of legislative intent or will.” *State v. Williams*, 2000–1725 (La. 11/28/01), 800 So.2d 790, 800. If the language of the law is clear, unambiguous and its application does not lead to absurd consequences, then the law must be applied as written. *Barfield v. Bolotte*, 2015-0847, p. 6 (La. App. 1 Cir. 12/23/15), 185 So.3d 781, 785, *writ denied*, 2016-0307 (La. 5/13/16), 191 So.3d 1058.<sup>4</sup>

If a taxing statute is ambiguous, *i.e.*, susceptible of more than one reasonable interpretation, then that ambiguity is to be strictly construed against the taxing

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<sup>4</sup> Core-Mark alleges in its Petition that it is a foreign corporation qualified to do and doing business in the state of Louisiana. As shown on the Notice of Assessment attached to the Affidavit of Helen Hayes and introduced into the summary judgment record as Exhibit A, Core-Mark’s address is in Westlake, Texas. Under La. R.S. 47:1436(A)(2), review of an appeal from a Judgment of the Board as to a juridical person lies with the First Circuit unless: the juridical person has a principal office or agency in Louisiana, or if the relevant Court of Appeal is stipulated to in an agreement between the Department and the taxpayer. Thus, an appeal from the Board’s decision in this matter would appear to lie with the First Circuit.

authority and in favor of the taxpayer. *Goudchaux/Maison Blanche, Inc. v. Broussard*, 590 So.2d 1159, 1161 (La.1991). In addition, ambiguity in tax exclusion statutes, those which restrict the scope of taxation *ab initio* from reaching certain transactions, is also construed in the taxpayer's favor and against the collector. *Harrah's Bossier City Inv. Co., LLC v. Bridges*, 2009-1916, p. 10 (La. 5/11/10), 41 So.3d 438, 446, *quoting* Bruce J. Oreck, Louisiana Sales & Use Taxation (2d ed.1996), § 3.1. However, ambiguity in tax exemption statutes is strictly construed in favor of the collector. *Vulcan Foundry, Inc. v. McNamara*, 414 So.2d 1193, 1197 (La. 1982). A "tax exemption is a provision that exempts from tax a transaction that would, in the absence of the exemption, otherwise be subject to tax." *Harrah's Bossier City*, 2009-1916, p. 10, 41 So.3d 446.

In the case before the Board, strict construction of La. R.S. 47:842(6), further supports the position of Taxpayer and the interpretation of "invoiced price" to include the cash discounts invoiced by Taxpayer.

#### **B. Retroactive Application of LAC 61:1.5103**

Taxpayer asserts if LAC 61:1.5103 is determined to be consistent with the statute, LAC 61:1.5103 would make a substantive change to the amounts subject to tax. Thus, LAC 61:1.5103 may not be applied retroactively to the tax periods at issue, January 1, 2019, through July 31, 2022.

LDR asserts LAC 61:1.5103 "merely clarifies and codifies the definition of "invoice price" pursuant to its original meaning. LDR in support of its position relies on *Genusa v. Dominique*, 97-0047, p. 10-11 (La. App. 1 Cir. 2/20/98), 708 So.2d 784, 791, wherein the court differentiated between substantive laws that can only be applied prospectively and procedural laws and interpretive laws that are applied retroactively. The court explained:

Interpretive laws . . . merely establish the meaning the statute had from the time of its enactment. It is the original statute, not the interpretive one, which establishes the rights and duties. When an existing law is not clear, a subsequent statute clarifying or explaining the law may be regarded as interpretive, and the interpretive statute may then be given



retroactive effect because it does not change pre-existing law, it merely clarifies it. Interpretive laws change existing standards by redefining and returning to their original meaning, providing the legislature with the opportunity to pronounce the correct interpretation to be given to existing laws. Legislation, however, which changes settled existing law falls outside the category of interpretive legislation.

LDR further notes the Notice of Intent for LAC 61:1.5103 provides that the rule “clarifies the term ‘invoice price’ as found in Louisiana Revised Statute 47:842(6) by providing definitions of discounts commonly allowed by manufacturers to customers and an explanation of how the discounts and other items are to be considered in determining the manufacturer's net invoiced price.” However, Taxpayer argues that LDR’s “Notice of Intent,” is evidence that LAC 61:1.5103 is not interpretative because LDR expressly recognized that the discounts at issue here are “routinely reflected on invoices,” but LAC 61:1.5103 stated it will not consider discounts stated on invoices in determining the “net invoiced price.”

La. R.S. 49:965(B), regarding a rule promulgated under the Administrative Procedure Act states:

Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that if a later date is required by statute or specified in the rule, the later day is the effective date.

Substantially identical language in prior versions of the statute has been held to pretermitt retroactive application. *Bartee v. Children’s Clinic of Sw. Louisiana*, 2007-798, p. 8 (La. App. 3 Cir. 12/26/07), 972 So.2d 471, 477, *writ denied sub nom. Bartee v. Children’s Clinic of Sw. Louisiana, Inc.*, 2008-0201 (La. 4/25/08), 978 So.2d 365; *Kelty v. Brumfield*, 96-0869, p. 6 (La. App. 4 Cir. 3/12/97), 691 So.2d 242, 246, *writ denied*, 97-0918 (La. 5/16/97), 693 So.2d 800, and *writ denied*, 97-0936 (La. 5/16/97), 693 So.2d 801.

In the matter before the Board, all transactions at issue occurred prior to November 20, 2022, the date of promulgation of LAC 61:1.5103. Although, LDR asserts LAC 61:1.5103 merely interprets La R.S. 47:842(6), LAC 61:1.5103 prohibits



cash discounts in determining the “net invoiced price.” LAC 61:1.5103 changes La R.S. 47:842(6) from its original meaning and is a substantive amendment, which does not apply retroactively.

Even if this Board had not determined LAC 61:1.5103 to be invalid, the Board finds LAC 61:1.5103 to be substantive and not to be applied retroactively to purchases made prior to November 20, 2022, the date of promulgation of LAC 61:1.5103. More specifically, LAC 61:1.5103 is not applicable to the Taxpayer herein for the Tax Periods.

### **C. Validity of the Notice of Assessment**

Taxpayer prays that the Notice of Assessment be annulled and vacated. Taxpayer argues that since LAC 61:1.5103 contradicts the plain meaning of “net invoiced price,” the Notice of Assessment should be declared null and void pursuant to the statute.

LDR cites La. R.S. 13:5034, which sets forth the burden of proof as to any disputed facts. LDR argues that the facts alleged in the Reconventional Demand are presumed true and that Taxpayer failed to carry its burden of proof. La. R.S. 13:5034, provides:

Whenever the pleadings filed on behalf of the state, or on behalf of any of its officers charged with the duty of collecting any tax, excise, license, interest, penalty or attorney’s fees, shall be accompanied by an affidavit of the officer or of one of his deputies or assistants, or of the counsel or attorney filing the same, that the facts as alleged are true to the best of the affiants knowledge or belief, all of the facts alleged in the pleadings shall be accepted as *prima facie* true and as constituting a *prima facie* case, and the burden of proof to establish anything to the contrary shall rest wholly on the defendant or opposing party.

Taxpayer bears the burden of proof of refuting LDR’s verified Reconventional Demand. LDR’s Verification is attached to the pleading and the facts asserted are accepted as LDR’s *prima facie* case against Taxpayer. Regardless, however, Taxpayer already bears the burden of proof as Plaintiff, and also bears the burden of proof as movant with respect to its own Motion for Summary Judgment. Furthermore, there

is no actual dispute that the cash discounts are the reason that LDR issued the Notice of Assessment. The affidavit attached to LDR's Motion for Summary Judgment acknowledges that the Notice of Assessment arises from the fact that: "Core-Mark Distributors, Inc. uses a composite term/cash discount rate of 2- 3% based on recent vendor invoice data across all vendors."

The real issue is how a cash discount should be treated under La. R.S. 47:842(6) prior to the promulgation of LAC 61:1.5103. Taxpayer suggests the Board should look to the dictionary definition of "net" and "net price." Taxpayer cites to Black's Law Dictionary (Black's), which defines net as "that which remains after all deductions, such as charges, expenses, discounts, commissions, taxes, etc. are made." Black's further defines "net price" as "[t]he lowest price, after deducting all deductions, discounts, etc."

LDR argues that a taxpayer could manipulate its invoices to include various conditional cash discounts that were never actually applied. Taxpayer herein argues that there is no factual dispute that it did receive the cash discounts at issue and did actually pay the discounted price. The sample invoices in the record show that the cash discounts were conditional. In some cases, the condition was payment by a certain date, and in others the condition was payment by electronic funds transfer (EFT). Two of the three sample invoices also note that payment would be taken through automatic debit of the purchaser's account.

As noted above, it is not disputed that the invoices allowed a cash discount when there was a timely payment of the invoices. The evidence indicates Taxpayer provided proof to the auditor of books and records sufficient to establish invoices paid based on the "net invoiced price." Further, it does not appear that LDR notified Taxpayer that it did not have sufficient information to determine that Taxpayer paid the invoices based on the "net invoiced price." Lastly, it appears the Notice of Assessment is based on the difference between the net invoiced price as paid by Core-Mark and the gross invoiced price used by LDR's Auditor as the basis for the Tobacco



Tax. As previously noted, multiple pleadings of LDR assert their position that the audit found that, "Core-Mark paid Tobacco Tax on its own internal definition of 'net invoiced price,' which was the amount paid to the vendor after taking a term and/or timely payment discount (a 'cash discount')." LDR further acknowledged that the Auditor or LDR, "did not include cash discounts in its calculation of taxes owed" in the Notice of Assessment. This evidence relates back to the fundamental issue that LDR asserts - that "net invoiced price" as that term is defined in La. R.S. 47:842 does not include cash discounts. The Board has already sufficiently opined on LAC 61:1.5103(E) and determined it to be invalid. This Board now finds, the Notice of Assessment was based on the exclusion of cash discounts by LDR to which Taxpayer was entitled pursuant to La. R.S. 47:842(6). Because the Notice of Assessment excluded cash discounts from the actual "net invoiced price," the Notice of Assessment will be vacated.

**Conclusion:**

For the reasons noted herein, the Board finds Taxpayer is entitled to summary judgment in its favor finding LAC 61:1.5103 is inconsistent with LA R.S. 47:842(6) in the meaning of "net invoiced price". As such, LAC 61:1.5103 is hereby declared invalid. Although, moot by the determination that LAC 61:1.5103 is invalid, the Board nonetheless opines that LAC 61:1.5103 reflects substantive changes to the meaning of "net invoiced price" within the meaning of La. R.S. 47:842(6) and only applies prospectively.

Further, consistent with the findings herein, this Board finds the Taxpayer has met their burden of proof for this Board to determine that the issuance of the Notice of Assessment was based on the exclusion by LDR of cash discounts to which Taxpayer was entitled pursuant to LA R.S. 47:842(6). More specifically, the Board finds that the term "net" in LA R.S. 47:842(6) contemplates factoring in a cash discount. The evidence presented on the motions for Summary Judgment was sufficient to determine that the Audit findings and the Notice of Assessment were



based on the omission of cash discounts. Therefore, the Notice of Assessment issued by LDR will be vacated in the Board's Judgment.

Lastly, the Motion for Summary Judgment filed by LDR is denied and the Affirmative Defenses asserted by LDR are without merit. The evidentiary objections, not otherwise ruled upon at the hearing on the motions for summary judgment, are overruled.

The Board will issue judgment consistent with this ruling.

BATON ROUGE, LOUISIANA, THIS 10<sup>th</sup> DAY OF MARCH, 2025.

FOR THE BOARD:



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JUDGE LISA WOODRUFF-WHITE (RET.)  
BOARD OF TAX APPEALS  
STATE OF LOUISIANA