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LOUISIANA BOARD OF TAX APPEALS HOLDS PLANT GAS OF CO-OWNERS AND OTHER PRODUCERS IS NOT SUBJECT TO LOUISIANA SALES & USE TAX

By

Jones Walker State and Local Tax Group

William M. Backstrom, Jr.

Louis S. Nunes, III

Jonathan R. Katz

Brandon A. Lagarde

Kathryn S. Friel

In *Union Pacific Resources, Inc. v. Secretary*, B.T.A. Docket No. 5262 (July 19, 2007), the Louisiana Board of Tax Appeals (“BTA”) ruled that natural gas consumed in a gas processing facility that was supplied by co-owners of the facility and by other third party producers was not subject to Louisiana sales or use taxation.

Union Pacific Resources (“UPR”) operated a cryogenic natural gas processing facility (the “Plant”) in Louisiana that straddles the Trunkline interstate pipeline. The Plant was used to remove impurities, water vapors, and natural gas liquids from “wet gas” to make the gas marketable as “dry gas.” The Plant was co-owned by UPR and other unrelated entities (the “Co-owners”) who produced gas in the Outer Continental Shelf and transported the gas by interstate pipeline to the Plant. The Plant also processed “wet gas” from other producers (the “Other Producers”). The drying process at the Plant was fueled by the use of natural gas in the pipeline owned by the entity whose gas was being processed and dried at the Plant. It was this gas consumed at the Plant that the Secretary unsuccessfully attempted to tax.

The BTA ruled that the Co-owners were not subject to tax because the gas consumed in the drying process was and continued to be the property of that Co-owner. Therefore, there was no sale or sales transaction to tax. Although the Secretary argued there was a joint venture between the Co-owners, the Board ruled there was no evidence to support the Secretary’s position.

The BTA further ruled that the transactions with the Other Producers were not subject to Louisiana sales and use tax, because the Louisiana Constitution prohibits additional tax on oil and gas after the imposition of the severance tax. Although the Other Producers had no ownership in the Plant and they paid a consideration for having their gas dried at the Plant, these transactions were not subject to sales and use tax because a severance tax had already been imposed. Furthermore, the BTA ruled that those impurities removed from the “wet gas” and retained by the Co-owners for further sale were not taxable under the same constitutional prohibition noted above.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

William M. Backstrom, Jr.
Jones Walker
201 St. Charles Avenue, Suite 5100
New Orleans, LA 70170-5100
Telephone: 504.582.8228
Email: bbackstrom@joneswalker.com

Tax (International, Federal, State, & Local)

Backstrom, Jr., William M.	Lagarde, Brandon A.
Benjamin, Jr., Edward B.	Mauldin, B. Michael
Blackman, IV, John C.	Nunes, III, Louis S.
Casey, Robert R.	Ramelli, Rudolph R.
Friel, Kathryn S.	Trostorff, Alex P.
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