INTERSTATE & FOREIGN COMMERCE

D. FOREIGN COMMERCE

1. MEANING OF "EXPORT"

Items of tangible personal property imported into Louisiana or manufactured in Louisiana for export are not subject to sales or use tax in Louisiana. *LSA-R.S. 47:305E* provides:

> "it is not the intention of this Chapter to levy a tax upon articles of property imported into this state, or produced or manufactured in this state, for export…"

Furthermore, the regulations promulgated under *LSA-R.S. 47:305E* provide:

> Revised Statute 47:305E makes it clear that the taxes imposed under this Chapter do not apply to tangible personal property manufactured or produced in this state or imported in this state for export outside the state… Specific pieces of property which have been clearly labeled for transshipment outside the State of Louisiana at the time of its manufacture or importation into the state would meet the exemption requirements even though it may be stored for an indefinite period of time. (Emphasis added). Rule 4401E.

Neither the statute nor the regulations define the term "export". However, the United States Supreme Court's decision in *Hooven and Allison Co. v. Evatt, 324 US 652 (1945)*, provides relevant guidance. There, the Court interpreted the word "import" to mean a transaction beginning with a point of origin at some point outside of the territory of the individual states that comprise the United States:

> We conclude that practical as well as theoretical considerations and the structure of our constitutional system require us to hold that articles brought from the Philippines into the United States are imports…both because…they are brought into the United States, and because the place from whence they are brought is not a part of the United States… supra, at 679.

It stands to reason, therefore, that the term "export" must be interpreted to mean a transaction beginning within the United States and ending with a destination at some port outside of the territory of the individual states. Louisiana Courts have clearly adopted this interpretation.

See, e.g., *Mobil Oil Corp/Superior v. McNamara 517 So.2d 278 (1st Cir. 1987); Gulf Fisheries Co. v. Darrouzet, 17 F.2d. 374 (5th Cir. 1926), aff'd 276 US 124 (1928)*.

These same transactions are also exempt from tax if these transactions constitute "interstate coastwise or foreign commerce". When attempting to truly ascertain when there is an "export" of tangible personal property, it is imperative that a determination be made as to what constitutes "foreign commerce". Both of these terms work in tandem since "exports" which go, by definition, beyond the taxing jurisdiction of any one State fall within the province of Article 1, Section 10, Clause 2 of the United States Constitution, which regulates this kind of activity. Jurisprudential decisions issued by Louisiana Appellant Courts and the United States Supreme Court support this conclusion.

In *Tarver v. World Ship Supply, Inc.*, the Louisiana Fourth Circuit Court of Appeals held that the Department of Revenue may not collect tax on the sale of supplies to operators of foreign ports are "exported" from the State of Louisiana, and excluded from tax under the statute excluding from sales tax property bound for export. *Id at 428. See also LSA-R.S. 47:305; LSA-R.S. 47:305.1;* USCA Constitution Article 1, Section 10, Clause 2. If the transactions are

ultimately to culminate in commerce in a foreign nation, then the prerequisites would exist, which would preclude taxation by the Parish or State under such circumstances.

It is the nature and character of the commercial transactions that need to be scrutinized. In *Lord v. Steamship Company 102 U.S. 541 (1880)*, the United States Supreme Court state, in pertinent part:

> "Commerce includes intercourse, navigation, and not traffic alone. This also was settled in *Gibbons v. Ogden, supra*. 'Commerce with foreign nations', says Mr. Justice Daniel, for the court, in Veazie v. Moor (14 How. 568), 'must signify commerce which, in some sense, is necessarily connected with these nations, transactions which either immediately or at some stage of their progress must be extra-territorial'. p. 573.
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> The Pacific Ocean belongs to no one nation, but is the common property of all. When, therefore, the Ventura went out San Francisco or San Diego on her several voyages, she entered on a navigation which was necessarily connected with other nations. While on the ocean her national character only was recognized, and she was subject to such laws as the commercial nations of the world had, by usage or otherwise, agreed on for the government of the vehicles of commerce occupying this common property of all mankind. She was navigating among the vessels of other nations and was treated by them as belonging to the country whose flag she carried. True, she was not trading with them, but she was navigating with them, and consequently with them was engaged in commerce. If in her navigation she inflicted a wrong on another country, the United States, and not the State of California, must answer for what was done. In every just sense, therefore, she was, while on the ocean, engaged in commerce with foreign nations, and as such she and the business in which she was engaged were subject to the regulating power of Congress.
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> Navigation on the high seas is necessarily national in its character. Such navigation is clearly a matter of 'external concern', affecting the nation as a nation in its external affairs. It must, therefore, be subject to the national government."
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> *See also Tarver v. World Ship Supply id at 428.*

Again, the culmination of these commercial transactions ended beyond the territorial limits of any one state, and as such, became the domain of the Federal government. Transactions are in "foreign commerce" and beyond the reach of the Parish or State when goods have been earmarked for shipment to a foreign country under a vessel bearing a foreign flag. As the Louisiana Fourth Circuit Court of Appeals has previously stated in *Tarver v. World Ship Supply*:

> "Unquestionably, the transactions at issue here are bona fide interstate [foreign] commerce since…all tangible personal property involved was delivered to foreign flag vessels. Under general principles of international law, a foreign flag vessel is considered a fictional part of the territory which flag she flies…"

The Louisiana Supreme Court has also held that vessels traveling from points within Louisiana to places in the Gulf of Mexico beyond the territorial waters of Louisiana, constituted "foreign" commerce. *Sales Tax District No. 1 of Lafourche Parish v. Express Boat Company, Inc., 486 So2d 947 (1st Cir 1986), writ denied; Lord v. Goodall Nelson & Perkins Steamship Company 102 US 541 (1881); Abby Dodge, 223 US 166 (1912).*

The Louisiana Supreme Court has invalidated attempts by the Louisiana Department of Revenue to strain common sense interpretation of these terms. The High Court expressly stated that the terms of "foreign commerce" or "interstate commerce" are to be given their commonly accepted meaning as understood by generations by judges, lawyers and members of

the Legislature. See *Lafourche Parish School Board v. Express Boat Company, Inc., 500 So2d 364 (La 1987)*. Any contrary interpretation by the Parish or State would also be rebuffed.

The Department of Revenue, in its Regulations, Section 4403C, Title 61, Volume 10, Louisiana Administrative Code defines "foreign commerce" as "commerce as defined herein from a point in a state to a point in a foreign state". The Louisiana Courts have also held that the meaning of these "terms" is the same as found under Federal constitutional law. Id.

This analysis is also supported by another case. In *International Export Packers of Louisiana, Inc. v. The Department of Revenue, 422 So2d 1361 (4th Cir 1982)*, the Appellant Court held that materials purchased or used for dunnage of goods in foreign and interstate coastwise commerce was exempt for sales tax pursuant to Louisiana Revised Statute 47:305E. This exemption precluded taxation even when these materials may have been temporarily stored in storage facilities before being loaded onto vessels for transport out of the country. *Sales Tax District No. 1 of Lafourche Parish v. Express Boat Company, Inc., 486 So2d 947 (1st Cir 1986)*

Under current law, all that is necessary is that the items of tangible personal property be clearly labeled for transshipment outside of the State of Louisiana. In the instant case, the materials and supplies were clearly documented for ultimate destination outside the United States. Clearly, such transactions constituted foreign commerce and were exempt from tax.

In conclusion, if the materials and/or supplies were never used, consumed or stored for use or consumption in Louisiana. If, the materials and/or supplies were destined for export within the meaning of *LSA-R.S. 47:305E*, and were in fact exported to South America. The export exemption should therefore be allowed. Moreover, assuming these transactions constituted foreign commerce, and as such, any Louisiana sales or use tax would constitute an impermissible imposition on foreign commerce in violation of provisions of both the Louisiana and United States Constitution.

(TO BE CONTINUED)

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