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Louisiana court of appeal affirms refinery sale properly classified as apportionable income

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An oil company's sale of an in-state refinery yielded apportionable income because the sale was made in the regular course of business, the Louisiana Court of Appeal, First Circuit, held in a recently released decision. [[BP Products North America, Inc. v. Bridges](#), 2010 CA 1860, August 10, 2011]

Background. BP Products North America, Inc., the successor in interest to BP Exploration and Oil, Inc. (hereinafter "BPNA"), is a wholly owned U.S. subsidiary of BP, plc ("BP"). BPNA owned and operated a refinery located in Louisiana. In 2000, as part of a strategic plan, BP sold the entire operations at the refinery, which included the employees, training, records, inventory, underground piping, equipment drawings, and computer programs to run the business. However, neither BPNA nor BP went out of the refining business as a result of this sale.

In 2004, an audit conducted by the Department of Revenue revealed that BPNA had treated the proceeds from the sale of the refinery as apportionable business income. The Department determined that the proceeds should have been classified as gains not made in the regular course of business and, therefore, they were allocable entirely to Louisiana. The Department assessed additional taxes, which BPNA paid before challenging the reclassification in district court.

The district court granted BPNA's motion for summary judgment, concluding that the refinery sale was made in the regular course of BPNA's business and its proceeds were apportionable income. The Department appealed.



The regular course of business. The court of appeal affirmed the judgment of the district court. The court's decision turned on the factual determination of whether a sale is made in the regular course of business. Under Louisiana law, at all times relevant to this case, allocable income included profits from sales not made in the regular course of business. LSA-R.S. 47:287.92(B)(2). La. Admin. Code Sec. 1130 provides that a "factual determination" is required to determine whether a sale is made in the regular course of business. This determination includes the consideration of the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.

The Department argued that BPNA's regular business included the exploration for oil and gas, but that it was not in the business of buying and selling refineries for profit. The Department relied on La. Admin. Code Sec. 1134, which states that sales of "property acquired for use in the production of income" are not considered sales made in the regular course of business. The Department further relied on its stated policy of designating income from sales of property used to produce products sold in the taxpayer's regular course of business as allocable income. The court found the Department's reliance on this regulation misplaced, reasoning that the regulation "undermines the statutory mandate to consider the regular course of business in determining whether or not a sale results in allocable income."

Instead, the court considered all of the facts and circumstances surrounding BPNA's and concluded that the sale of the refinery was made in the regular course of its business. The court noted that BP continually reviews its assets to determine how well each fits into the companies' overall strategic goals and that divestures and acquisitions are made based upon those reviews. In connection with its 2000 strategic plan, BP sold five refineries, including the Louisiana refinery, and bought additional North American refineries. This was noted as a common and necessary business practice among all petroleum companies. Moreover, the refinery sales did not take BPNA out of the refining business, or terminate its operations, and the gain from the sales was invested in other aspects of BP's overall business.

Consequently, the court held that the sale of the refinery was made in the regular course of BPNA's business and that the income from that sale was properly designated as apportionable business income.

Current law. In 2005, Louisiana amended its allocation and apportionment statute. Under current law, the class of gross income to be designated as "allocable income" includes only the following:

- Rents and royalties from immovable or corporeal movable property;
- Royalties or similar revenue from the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights;
- Income from estates, trusts, and partnerships, and
- Income from construction, repair or other similar services.

PwC Observes. "The Louisiana segregation of gross income statute in place at all times relevant to this case was quite unique," notes William Essay, PwC SALT Partner in Houston, Texas. "It was not a classic 'business/nonbusiness' income statute. Rather, it provided for allocation of certain types of income, including profits from sales of property not made in the regular course of business."

"In this case, the gain resulting from the sale of the refinery was attributable to depreciation recapture. Interestingly, BPNA did not allocate the deduction solely to Louisiana, but applied the depreciation to other jurisdictions in which it did business."

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