

SECOND JUDICIAL DISTRICT COURT

PARISH OF JACKSON

STATE OF LOUISIANA

DOCKET NUMBER

32,842

DIVISION/SECTION " "

EXCO OPERATING COMPANY, LP

VERSUS

DEBRA JACKSON, TAX ADMINISTRATOR OF  
THE JACKSON PARISH SALES TAX COLLECTION AGENCY

FILED: December 20, 2011

Laura C. Pepper  
DEPUTY CLERK

APPEAL FROM PARTIAL DENIAL OF REFUND

EXCO Operating Company, LP ("EXCO"), an entity authorized to conduct and conducting business under the laws of the State of Louisiana and which was formerly known as EXCO Partners Operating Partnership, LP, respectfully represents the following:

1.

Defendant, Deborah Jackson, is the duly appointed Tax Administrator for the Jackson Parish Sales Tax Collection Agency (the "Tax Collector"). Defendant is officially domiciled in the Parish of Jackson and is the sole necessary and proper party defendant in this suit.

2.

Defendant, in his official capacity as Tax Administrator for the Jackson Parish Sales Tax Collection Agency, is legally domiciled in, doing business in and/or has his principal place of business in Jackson Parish. As such, this Court is the proper venue for this matter.

3.

EXCO petitions this Court, pursuant to La. R.S. 47:337.81, for a determination that EXCO is entitled to a refund of the entire amount of the overpayment, as defined in La. R.S. 47:337.77(A), of certain Jackson Parish sales and use taxes (collectively, the "Taxes") for the period that began on January 1, 2007, and for each subsequent taxable period thereafter through and including the taxable period that ended on December 31, 2009 (collectively, the "Refund Periods"), in the aggregate amount of approximately \$1,085,893.90 (the "Overpayment"), plus interest thereon as provided in La. R.S. 47:337.80.

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## BACKGROUND

4.

EXCO engaged the firm Grant Thornton LLP (“Grant Thornton”) to review EXCO’s books and records to determine if EXCO overpaid sales and use taxes in Louisiana during the Refund Periods.

5.

On September 26, 2010 and December 22, 2010, Grant Thornton submitted refund claims with the Tax Collector on behalf of EXCO for a refund of the Overpayment made during the Refund Periods.

6.

On or about September 21, 2011, the Tax Collector sent Grant Thornton a letter by certified mail informing it that a partial review of the refund claims had been completed and that the reviewing auditor recommended a tax refund of \$54,595.89. On information and belief, the Tax Collector has denied the remainder of the refund claims.

7.

By letter dated October 21, 2011, Grant Thornton, on behalf of EXCO, requested a hearing with the Tax Collector for a redetermination of the refund denial. To date, the Tax Collector has not granted a hearing for redetermination.

8.

This appeal seeks a review of the Tax Collector’s final decision of September 21, 2011 denying part of the refund of tax and interest claimed by EXCO for the Refund Periods.

9.

EXCO’s appeal of the Tax Collector’s September 21, 2011 decision is timely in accordance with the provisions of La. R.S. 47:337.81.

10.

The refund owed by the Tax Collector to EXCO is approximately \$1,085,893.90 in tax plus applicable interest. The exact amount of refund to which EXCO is entitled will be determined at trial.

## TAX OVERPAYMENTS

11.

EXCO owned and operated natural gas wells in Jackson Parish during the Refund Periods. In the course of its natural gas exploration and production operations, EXCO contracted for various services related to its wells located in Jackson Parish.

12.

During the Refund Periods, EXCO's service providers and contractors (hereinafter "Contractors") improperly charged Jackson-Shreveport Sales Tax on several non-taxable transactions between the Contractors and EXCO. These non-taxable transactions include, but are not limited to, the construction, repair and servicing of immovable property, installation services, well fracturing services, other down-hole services, and other non-taxable transactions.

13.

EXCO's purchases of immovable property and repairs to immovable property are not subject to Jackson Parish sales tax.

14.

The services upon which the Contractors improperly charged Jackson Parish sales tax are not among the specifically enumerated taxable services defined in La. R.S. 47:301(14).

15.

Many of the Contractors used and consumed materials when performing their non-taxable services for EXCO. The materials used and consumed by the contractors were integral to and inseparable from the non-taxable services provided by the contractors. In some cases, contractors charged sales tax only on the materials used by the contractors in providing non-taxable services.

16.

Materials used by providers of non-taxable services are deemed consumed by the service providers and are not, for sales tax purposes, considered sold to customers. Likewise, materials used by contractors in constructing, restoring, maintaining and repairing immovable property are considered used and consumed by the contractor and are not, for sales tax purposes considered sold to the contractor's customers. Thus, the Contractors should not have charged EXCO sales tax on the materials used by the Contractors.

17.

Alternatively, if any materials were deemed sold from the Contractors to EXCO at the conclusion of the non-taxable services, the sales did not occur until the materials were incorporated into and a part of immovable property and, therefore, were not subject to Jackson Parish Sales Tax.

18.

The Contractors, acting as agents of the Tax Collector, collected sales tax from EXCO on the aforementioned non-taxable transactions. Consequently, EXCO paid Jackson Parish sales tax when none was due.

19.

La. R.S. 47:337.77 requires the Tax Collector to refund tax overpayments such as those at issue in this case.

20.

EXCO's Overpayment was made as a result of errors, omissions or mistakes of fact of consequence to the determination of tax liability.

21.

The Overpayment was not the result of any mistake of law arising from the misinterpretation by the Tax Collector of the provisions of any law or of any rules and regulations.

22.

On information and belief, the Tax Collector agrees with EXCO's interpretation of the law that sales tax is not due upon the purchase of services that are not among the specifically enumerated taxable services defined in La. R.S. 47:301(14).

23.

On information and belief, the Tax Collector agrees with EXCO's interpretation of the law that sales tax is not due upon either the sale or repair of immovable property.

24.

For the reasons stated, EXCO is entitled to a refund of taxes paid on transactions that are not subject to sales tax under applicable law, plus interest.

The Tax Collector's refusal to approve a refund of the tax overpayments does not have reasonable basis in fact or law. Accordingly, EXCO is entitled to attorney's fees and costs up to ten percent of the amount of the tax overpayments and interest at issue.

WHEREFORE, the plaintiff, EXCO Operating Company, LP, prays as follows:

1. That after due proceedings are had, the Court reverse the decision of the Tax Collector and issue a judgment in EXCO's favor and against the Tax Collector for the approximate amount of \$1,085,893.90 in tax refund and for applicable interest as provided by law and costs of these proceedings; and
2. That it receive all general and equitable relief to which it may be entitled under the facts and circumstances of this case.

Respectfully Submitted,



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