

FILED

JAN 23 2012

BY *Melody Gates*
MELODY GATES, CLERK

EXCO OPERATING COMPANY, LP

NUMBER: 32,842

VERSUS

2ND JUDICIAL DISTRICT COURT

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

JACKSON PARISH, LOUISIANA

Permanent Assignment

Section

ANSWER

NOW INTO COURT, through undersigned counsel comes **DEBRA JACKSON, ADMINISTRATOR OF THE JACKSON PARISH SALES TAX COLLECTION AGENCY**, who, denies each and every allegation of the plaintiff's original petition except those admitted specifically herein:

1.

In response to the allegations of paragraph 1, it is admitted that Debra Jackson is the Tax Administrator for the Jackson Parish Sales Tax Collection Agency and is the proper party defendant in this proceeding.

2.

In response to the allegations of paragraph 2, it is admitted that Jackson Parish is the proper venue for this matter.

3.

The allegations of paragraph 3 are denied as written.

4.

The allegations of paragraph 4 are denied for lack of information sufficient to justify a belief therein.

5.

The allegations of paragraph 5 are denied as written. Further answering, it is admitted that refund claims were filed by Grant Thornton on behalf of Exco Operating Company, LP, the exact date of the filing is denied.

6.

In response to the allegations of paragraph 6, it is admitted that a letter was mailed on September 21, 2011 by the defendant notifying the plaintiff that after a partial review of the items submitted in support of a refund claim, the auditor reviewing the claim had recommended a refund of \$54,595.89 for tax paid on freight charges, tax on delivery and pick up charges and rental equipment as well as tax on various non-taxable services. The remaining portion of the claim was still under review. The remaining allegations are denied as written.

7.

In response to the allegations of paragraph 7, it is admitted that on or about October 21, 2011, a letter was mailed by Grant Thornton requesting a hearing on behalf of Exco Operating Company, LP f/k/a Exco Partners Operating Partnership, LP.

8.

The allegations of paragraph 8 are denied as written.

9.

The allegations of paragraph 9 are denied as written.

10.

The allegations of paragraph 10 are denied. Further answering, it is admitted that the total refund claims submitted on behalf the plaintiff is approximately \$1,085,893.90.

11.

The allegations of paragraph 11 are denied for lack of information sufficient to justify a belief therein.

12.

The allegations of paragraph 12 are denied as written.

13.

In response to the allegations of paragraph 13, it is admitted that purchases of immovable property are not subject to sales and use tax and repairs to immovable property are not subject to sales and use tax.

14.

The allegations of paragraph 14 are denied as written. Further answering, defendant shows that the purchase of tangible personal property is subject to a sales tax.

15.

The allegations of paragraph 15 are denied as written. Further answering, the bulk of the refund claim is for sales tax charged on materials itemized on invoices that were delivered to plaintiff's job site and taxed in accordance with the terms and conditions of a sales invoice.

16.

In response to the allegations of paragraph 16, it is admitted that materials used by contractors restoring or repairing immovable property are generally considered subject to use tax and not sales tax. Further answering, contractors, well operators or any other persons are free to contract to purchase the material prior to its use, in which case sales tax is due. The remaining allegations of paragraph 16 are denied as written.

17.

The allegations of paragraph 17 are denied.

18.

The allegations of paragraph 18 are denied as written.

19.

The allegations of paragraph 19 are denied. Further answering, La. R.S. 47:337.77 F declares that this section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from misinterpretation by the Collector or the provisions of any law or of any rules and regulations. In the even the taxpayer believes that the Collector has misinterpreted the law or rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover. Defendant further contends that no "overpayment" of tax was made as defined in 47:337.77.

20.

The allegations of paragraph 20 are denied as written.

21.

The allegations of paragraph 21 are denied as written. The issue in this litigation is whether under Louisiana law a sale of tangible personal property took place which requires the interpretation of law.

22.

In response to the allegations of paragraph 22, the taxes at issue are not taxes on services but are taxes on the sale of tangible personal property. Therefore, the allegations of paragraph 22 are denied as written.

23.

The allegations of paragraph 23 are denied as written.

24.

The allegations of paragraph 24 are denied as written.

25.

The allegations of paragraph 25 are denied.

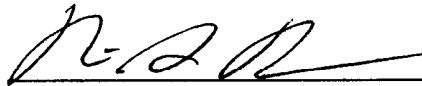
26.

Further answering, the defendant affirmatively shows that the plaintiff, Exco Operating Company, LP, has no cause of action under La. R.S. 47:337.77 because the transfer of tangible personal property between Exco Operating Company, LP, was, in many cases by contract agreed upon as a sale between the parties of tangible personal property and in other cases characterized on the invoices as a sale of tangible personal property, therefore resulting in the sale tax that was paid. If the Collector was incorrect in its interpretation of the law, then the proper method to challenge the Collector's interpretation was to make a payment under protest which was not done by the plaintiff.

WHEREFORE, Appearer prays, after due proceedings had that there be judgment herein in favor of the defendant, Debra Jackson, Jackson Parish Sales Tax Collection Agency, and against the plaintiff, Exco Operating Company, LP, dismissing its claims and demands, with prejudice, and at its cost.

Respectfully submitted,

BARHAM, WARNER, STROUD & MCKAY, L.L.C.
Attorneys for Debra Jackson, Tax Administrator of
the Jackson Parish Sales Tax Collection Agency



Richard G. Barham, #14066
920 Pierremont, Suite 412
Shreveport, Louisiana 71106
(318) 865-0081
Fax: (318) 865-2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been this date forwarded to all counsel by depositing a photocopy of the same in the United States Mail, postage prepaid and properly affixed thereto.

Mr. Andre Burvant
Attorney at Law
201 St. Charles Ave., Suite 5100
New Orleans, Louisiana 70170

Shreveport, Louisiana, this 20th day of January, 2012.



OF COUNSEL