STATE OF LOUISIANA

SUPREME COURT

DOCKET NO. 2021-OC-00552

CALCASIEU PARISH SCHOOL BOARD SALES AND USE TAX DEPARTMENT AND KIMBERLY TYREE, IN HER CAPACITY AS ADMINISTRATOR OF THE CALCASIEU PARISH SCHOOL BOARD SALES AND USE TAX DEPARTMENT,

Plaintiffs-Appellants

VERSUS

NELSON INDUSTRIAL STEAM COMPANY,

Defendant-Appellee

CIVIL ACTION

On Appeal from Judgment after Remand of the Third Circuit Court of Appeal, Docket No. 19-00315-CA; On Appeal from Judgment the 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana, Case No. 2017-1373, the Hon. Ronald F. Ware (Ret.), Presiding

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DEFENDANT-APPELLEE, NELSON INDUSTRIAL STEAM COMPANY'S, SUR-REPLY BRIEF IN RESPONSE TO PLAINTIFFS-APPELLANTS' REPLY MEMORANDUM

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MAY IT PLEASE THE COURT:

Plaintiffs-Appellants, Calcasieu Parish School Board's ("CPSB") Reply Memorandum contains misinformation, mischaracterizations and misrepresentations of the facts and law that should not stand without correction. It also includes new argument regarding testimony in the Louisiana Legislature and statements made by legislators, which testimony and statements are inaccurate. In order to avoid potential material error of fact and law created by misinformation, mischaracterizations, misrepresentations, and inaccuracies, Plaintiff-Appellant, Nelson Industrial Steam Company ("NISCO"), is compelled to seek leave to file this Sur-Reply Brief.

LAW AND ARGUMENT

The crux of Plaintiffs-Appellants' argument is that La. Acts No. 3 (2016 2nd Ex. Sess.) ("Act 3") is not a "new tax" because the Legislature stated its intention that the Act be "clarifying." That logic is flawed in multiple fundamental respects grounded in principles of statutory construction under both civilian and common law principles. In the civil law, Legislation is supreme, and legislative intent is determined by the language of the statute itself, not the stated intention of the Legislators. In the civil law, "if neither grammar nor logic provides the answer which the judge is seeking," only then is the Court "bound to go beyond those limits."[1]

The common law regarding the primacy of the language used by the legislature is not remarkably different. The Louisiana Civil Law Treatise on Legislative Law and Procedure, quoting Justice Scalia states:

> **It is the law that governs** not the intent of the lawgiver. That seems to me the essence of the famous American ideal set forth in the Massachusetts constitution: A government of laws, not of men. **Men may intend what they will; but it is only the laws that they enact which bind us.**[2]

The question presented then, is not whether the drafters of the legislation ***said*** they intended not to change the law or impose a new tax, or increase an existing tax, or raise revenue (and not whether they truly believed what they said), but rather, whether Act 3's amendments to La. R.S. 47:301(10)(c)(i)(aa) in fact did change the law, impose a new tax, increase an existing tax, or raise revenue.

Notably, the common law doctrinal writings are demonstrably consistent with the civil law principles that legislation is the supreme law and that legislative intent is determined first by the statutory text of the statute itself, and resort to a determination of a collective legislative intent is made only if the statutory text is ambiguous. In such cases, the "search of the 'will' of the legislator becomes a search for the historical meaning – a meaning which can be discovered by looking at the historical factors that surrounded the enactment of the rule now subject to interpretation."[3] Here, Act 3 is unambiguously a change in the law that creates a new tax, but even if the Court found that Act 3 is ambiguous (which is denied) and the Court is required to delve into legislative intent, the

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[1] 20 La Civ. Law Treat., Legislative Law and Procedure, §7:9, *quoting* Cueto-Rua, Judicial Methods of Interpretation of the Law (1981), 156.

[2] *Id.*, *quoting* Scalia, A Matter of Interpretation, Princeton, 1997 (p. 17) (emphasis added).

[3] *Id.*, *quoting* Cueto-Rua, Judicial Methods of Interpretation of the Law (1981), 156.

intention to change the original law, enacted in 1948, is obvious when one considers the historical factors that surrounded the original enactment of the further processing exclusion (the language of which remained unchanged for almost 70 years). The further processing exclusion was enacted in 1948. In the post-World War II era, Louisiana faced a choice: maintain a primarily agrarian economy, or diversify by encouraging industrial economic development. History tells us that Louisiana chose to diversify. Quite obviously, in addition to natural resources such as oil and gas and the Mississippi River, a sales tax regime that included a broad further processing exclusion applying to all "tangible personal property for resale," and not only to "primary products," served to encourage and incentivize manufacturers to invest in Louisiana. Any legislation, like Act 3, that narrows the exclusion is contrary to (not clarifying of) the original intent of the exclusion.

A. NISCO's assertions that Act 3 creates a new tax or increases an existing tax and raises revenue are supported in both fact and law.

Below is a reproduction and modification of CPSB's Chart entitled "NISCO's Unsupported Assertions," with a third column added containing the true and relevant facts or law and support for NISCO's assertions.

NISCO's Statements	CPSB's Alleged "Actual Facts"	The True and Relevant Facts or Law
"The only controversy created is resulting from CPSB's disingenuous averments that Act 3 is purely interpretive and not a substantive change in the law."[4]	The language of Act 3: "Section 2. This Act is intended to clarify and be interpretative of the original intent and application of R.S. 47:301(10)(c)(i)(aa)."[5]	The operative language in Act 3 – providing for the first time in the history of the further processing exclusion that materials purchased for further processing into a byproduct shall not be deemed to be sales for further processing and "shall be taxable" – is new, substantive law.[6] A legislature's self-serving stated intent is irrelevant because (i) the judiciary determines whether a statute enacted by the Legislature consists of substantive, procedural, or interpretive law;[7] and (ii) a legislature cannot create a new substantive law in the guise of interpretive legislation to give retroactive effect because it does not like the result of its legislation as it stands.[8]

[4] See NISCO's Original Brief and Opposition, filed in response to CPSB's Writ Application p. 4.

[5] See La. Act No. 3 (2016 2nd Ex. Sess.).

[6] *Id. See also Bridges v. Nelson Indus. Steam Co.*, 15-1439, pp. 8-9 (La. 5/3/16), 190 So.3d 276, 282 ("*NISCO I*") ("We find **nothing in the law** that requires the end product to be the enterprise's primary product. The **plain language of the statute** makes the exclusion applicable to 'articles of tangible personal property.' There simply is **no distinction between primary products and secondary products**.") (emphasis added).

[7] *Unwired Telecom Corp. v. Parish of Calcasieu*, 03-0732, p. 17-18 (La. 1/19/05), 903 So.2d 392,405. *See also Mallard Bay Drilling, Inc. v. Kennedy*, 04-1089, pp. 14-15 (La. 6/29/05), 914 So.2d 533, 544-545 (finding that that a legislative amendment designated by the legislature as "interpretive," but intended to abrogate this Court's prior interpretation of the law, "improperly assume[s] the function of the judicial branch of government;" and that such amendments actually represent "new substantive law" passed under the guise of interpretive legislation).

[8] *Unwired*, p. 5, 903 So.2d 392, 398, referring to statement by Third Circuit Court of Appeal Judge Billy H. Ezell, writing for a unanimous court in *Unwired Telecom Corp. v. Parish of Calcasieu*, 02-839, pp. 5-6 (La. App. 3 Cir. 2/5/03), 838 So.2d 854, 858.

NISCO's Statements (cont'd)	CPSB's Alleged "Actual Facts" (cont'd)	The True and Relevant Facts or Law (cont'd)
"Unhappy with the outcome in *NISCO I*, the taxing authorities lobbied heavily for an amendment to the further processing exclusion, and disingenuously advocated to the legislature that the *NISCO I* decision misinterpreted the law and was inconsistent with the original intent of the further processing exclusion."[9]	Footnote 5 purpose to support this lobbying contention but fails to cite any fact evidencing it. The footnote instead relates to statements in the Collector's Original Brief and *NISCO I*.	The Legislative Record evidences that representatives and/or attorneys of LDR and local tax collectors misrepresented to the House Ways and Means Committee that (i) Louisiana's further processing exclusion has a "primary purpose" requirement;[10] and (ii) Act 3 is the Legislatures first attempt to clarify the 3-part test for the further processing exclusion;[11] and misrepresented to the Legislative Fiscal Office that in *Bridges v. Nelson Indus. Steam Co.*, 15-1439, pp. 8-9 (La. 5/3/16), 190 So.3d 276, 282 ("*NISCO I*"), this Court broadened the further processing exclusion, thus reducing revenue.[12]
"To the contrary, NISCO explains the historical interpretation of the further processing exclusion, wholly adopted and concurred in by this Court in *NISCO I*, which interpretation, i.e., the three-pronged test is both decades old and far from ambiguous."[13] "In *NISCO I*, the Court reaffirmed that the further processing exclusion has always unambiguously applied to all purchases of materials for further processing into any tangible personal property, without regard to whether the tangible personal property is a primary product or a byproduct."[14]	"However, the jurisprudential test created over the last few decades, which was necessitated by litigation concerning the exclusion's scope, and the regulation promulgated by the Louisiana Department of Revenue, which was drafted to aid in deciphering the meaning of the 'further processing exclusion,' **clearly evidence inherent ambiguity in the provision.**"[15]	The quoted language refers to the LDR regulation, not the statutory language, as being ambiguous. Further, it recognizes that the jurisprudentially-created three-pronged test clarified any ambiguity. Notably, that test makes **no distinction** regarding whether the material was further processed into a primary product or a byproduct. As to the exclusion's applicability to byproducts, this Court recognized that there was no ambiguity in the law: "The **plain language** of the statute makes the exclusion applicable to 'articles of tangible personal property.' There simply is **no distinction** between primary products and secondary products."[16]

[9] *See* NISCO's Original Brief and Opposition, filed in response to CPSB's Writ Application, p. 4.

[10] House Ways and Means Testimony of Kimberly Robinson, Secretary of Louisiana Department of Revenue, June 8, 2016 @ 40:28-41:44, available at http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2016/jun/0608_16_WM. *But see International Paper, Inc. v. Bridges*, 07-1151, pp. 19-22 (La. 1/16/08), 972 So.2d 1121, 1134-1135, and *NISCO I*, pp. 4, 11, 190 So.3d at 279, 283 **both expressly rejecting** a "primary purpose" requirement.

[11] House Ways and Means Testimony of Attorney for Amici Ascension, Rapides and St. James, June 8, 2016 @ 1:13-1:14:31 and 1:16:23-1:17:02, available at http://house.louisiana.gove/H_VideoArchivePlayer.aspx?v=house/2016/jun/0608_16_WM. *But see* SCR 136 (2007 Reg. Sess.) **restating and clarifying the three-pronged test**; stating that deviations from the three part test make the taxability of property required for manufacturing in Louisiana uncertain and undermine the efforts of Louisiana to attract additional investment dollars to the state; and **urging the Secretary of the Louisiana Department of Revenue to recognize the interpretation of the further processing exclusion that has been long recognized by Louisiana courts** and embrace the three prong test for the non-taxable materials for further processing/ (emphasis added).

[12] *But see* NISCO's Original Brief on the Merits, pp. 16-17; R. 2:366 (Revenue Statement provided by LDR) ("According to the Department and committee testimony, the bill may also restrict existing interpretations regarding raw materials purchased for primary purpose, which **could also significantly increase sales tax collections** . . . Further if the bill makes taxable additional raw material purchases currently excluded due to purpose, **increase to the general fund and local funds could be substantial**.") (emphasis added).

[13] *See* NISCO's Original Brief and Opposition, filed in response to CPSB's Writ Application, pp. 3-4.

[14] *Id.*, p. 8.

[15] *NISCO I*, p. 5, 190 So.3d at 279 (emphasis added by CPSB).

[16] *NISCO I*, pp. 8-9 (La. 5/3/16), 190 So.3d at 282 (emphasis added).

NISCO's Statements (cont'd)	CPSB's Alleged "Actual Facts" (cont'd)	The True and Relevant Facts or Law (cont'd)
Thus, Act 3 is a substantive change in the tax law, **utilizing express tax-imposition language.**[17]	Act 3 amended a provision found in La. R.S. 47:301—the statute providing "definitions" to the tax code. La. R.S. 47:302, 321, and 321.1 are actual imposition statutes.	"Shall be taxable" is tax imposition language. Where it is located in the tax code is irrelevant. It does not have to be in the section of the law originally levying the tax, it can be in the amendment to an exclusionary definition and still impose a tax that did not previously exist for excluded transactions.
"The logic is based on a false premise because Act 3 is revenue raising legislation."[18]	The fiscal note to Act 3 shows the legislature anticipated zero additional revenue from its enactment.[19]	Fiscal notes are inadmissible to prove legislative intent.[20] Alternatively, the Original Fiscal Note correctly stated that to the extent Act 3 makes taxable additional raw material purchases then currently excluded from tax – which it does – "**increases to the general fund and local funds could be substantial.**"[21] Because Act 3 narrows an exclusion from tax, it is axiomatic that it broadens the tax base and thereby will increase revenue. Because Act 3 creates a tax on transactions previously not taxable, it is by definition, revenue raising.[22]
"Act 3 raises revenue . . ."[23]	As previously stated, the fiscal note to Act 3 shows the legislature anticipated no additional revenue.[24] Additionally, NISCO fails to articulate how providing taxpayers a new credit (i.e., tax reduction) somehow raises revenue.	See above. The referenced "credit" provided in Act 3 is not a full credit for the new tax imposed by Act 3 on purchases of materials for further processed into a byproduct. Thus, Act 3 is not revenue neutral. It provides for an apportionment of the exclusion and an apportioned tax, but still a new tax that increases revenues.

B. Act 3 was intended to, and does in fact, impermissibly "legislatively overrule" *NISCO I.*

CPSB argues that Act 3 does not "overrule" *NISCO I* because (i) *NISCO I* simply establishes that any manufacturer's final product – whether primary, secondary, or byproduct – is the product to analyze when applying the further processing exclusion; and (ii) Act 3 does not change that starting point. Thus, CPSB implicitly recognizes that the further processing exclusion had always, historically, applied to byproducts. CPSB ignores that Act 3, for

[17] *See* NISCO's Original Brief and Opposition, filed in response to CPSB's Writ Application, p. 4 (emphasis added by CPSB).

[18] *See id.*, p. 13.

[19] R. 368.

[20] La. R.S. 24:177(E)(2).

[21] R. 2:366 (emphasis added).

[22] *See Calcasieu Parish School Board Sales & Use Tax Dep't v. Nelson Indus. Steam Co.*, 2019-215 (La. App. 3 Cir. 4/7/21), 318 So.3d 271 (Conery, J., concurring) ("Act 3 clearly raised revenue by bringing into the taxable ambit items previously excluded from taxation under La. R.S. 47:301.").

[23] *See* NISCO's Original Brief and Opposition filed in response to CPSB's Writ Application, p. 14.

[24] R. 2:368; *but see* R. 366, fn. 12, *supra.*

the first time in the history of the further processing exclusion, removes purchases of materials for further processing into a byproduct from the exclusion and makes them taxable. In that regard, Act 3 is directly contrary to this Court's holding in *NISCO I* (before Act 3) that there was nothing in the law that required the end product to be a primary product of the taxpayer's enterprise. This Court held that "[t]he plain language of the statute makes the exclusion applicable to 'articles of tangible personal property.' There simply is no distinction between primary products and secondary products."[25]

C. Act 3 does violate the Tax Limitation Clause

1. NISCO relies upon long-established, analogous case law to establish that Act 3 create a new tax in violation of the Tax Limitation Clause.

CPSB argues that NISCO relies upon "readily distinguishable cases." First, CPSB argues that in *Dow Hydrocarbons & Resources v. Kennedy*, 96-2471 (La. 5/20/97), 694 So.2d 215, Justice Lemmon (concurring) notes that the primary object of Act 690 was to "amend and reenact . . . relative to the classification of income for the purposes of the corporation income tax," and here, the fiscal notes says the purpose is "to clarify and be interpretive of the original statute." CPSB is simply underscoring the disingenuousness of the Legislature's statement in Act 3. Act 3, like Act 690 also expressly states its intent to "amend and reenact" an exclusionary definition in the tax law. For reasons explained in LaGen's Original Brief on the Merits, Act 3 is **not** clarifying, but rather a substantive change in the law creating a new tax. Further, the Legislature in 2016 is not authorized to determine what the 1948 Legislature originally intended in enacting the further processing exclusion. This Court is the ultimate arbiter of that intent, and it determined in *NISCO I* that the exclusion was intended originally to apply to all "tangible personal property," without regard to whether that "tangible personal property" was a primary product or a byproduct.

Second, CPSB argues that *Cox Cable New Orleans, Inc. v. City of New Orleans*, 92-2311 (La. 9/3.93), 624 So.2d 890, is distinguishable because there, the parish's amendment taxing live entertainment violated La. Const. art. VI, § 29 by levying a tax above the maximum municipal rate of 3%. In fact, the amendment at issue related to cable television subscription services, and the issue was whether the amendment, for the first time taxing such services, and also exceeding the maximum 3% municipal rate, must be authorized by the Legislature and approved by a majority of the voters in an election held for that purpose. The City contended the approval of the Legislature and majority of the voters was not required, because the amendment adding cable subscription services to the definition of "amusements," and specifically "productions," was merely "clarifying" and "did not enact a new tax, but rather modified the amusement tax." The Court found that cable subscriptions were not contemplated as taxable "productions" before the modification, and therefore the amendment constituted a new tax. Likewise, here, the definition of "retail sale" did not contemplate **any** purchases of material for further processing into **any** tangible personal property before Act 3. Act 3 makes purchases of materials for further processing into byproducts taxable, and therefore constitutes a new tax.

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[25] *NISCO I*, 15-1439, pp. 8-9 (La. 5/3/16), 190 So.3d 276, 282.

Third, CPSB argues that *Radiofone, Inc. v. New Orleans*, 92-1523 (La. 4/12/93), 616 So.2d 1243, dealt with an ordinance that previously taxed one company, South Central Bell, and after the amendment all companies in the City's jurisdiction were taxed for the same **and more** services not previously taxed. The fact that the ordinance at issue originally included only one taxpayer is a distinction without a difference. The key analogous element between *Radiofone* and this case is that in *Radiofone,* the amendment expanded the services or transactions subject to the tax, just as Act 3 expands the breadth and scope of taxable transactions subject to the sales tax. In both cases, the amendment creates a new tax on transactions previously not subject to tax.

Fourth, CPSB argues that both *Radiofone* and *Cox Cable* "vastly expanded exclusive lists of services and goods subject to the tax." CPSB ignores that such an exclusive listing necessarily excludes from the breadth and scope of the tax, *ab initio*, any services not included in the list. Thus, the provisions at issue in *Radiofone* and *Cox Cable* were definitional exclusions. Likewise, here, we are dealing with a definitional exclusion as well – it is just more express. Purchases of materials for further processing into tangible personal property for resale are expressly ***not*** sales at retail, but they would be excluded from tax, *ab initio*, whether or not expressly stated, because by their very nature, they are not retail sales. The Legislature just very emphatically stated the obvious when enacting the sales tax law in 1948 – that the term "retail sale" does not include purchases of material for further processing into tangible personal property for resale. In that way, the Legislature evidenced the importance of the exclusion to the post-World War II economy of the State. The obvious intent was to attract manufacturing investment dollars to a historically, primarily agrarian state economy by not taxing chemicals or other materials required for manufacturing.[26] In all three cases – *Cox Cable*, *Radiofone*, and this case, transactions originally excluded from the tax were made taxable by amendments to definitions in the tax law. In all three cases, the amendments were found to constitute a new tax.

2. CPSB ignores that Act 3 plainly and unambiguously imposes a new tax.

CPSB argues that NISCO ignores the legislative intent behind Act 3. But, CPSB ignores that despite the stated intent by some legislators, Act 3 unambiguously imposes a tax on purchases of materials for further processing into a byproduct for the first time in the history of the sales tax law. Because Act 3 is unambiguous in that respect, collective legislative intent is irrelevant. Whether or not the Legislature intended to impose a new tax – it did so. Whether or not the Legislature intended for Act 3 to be revenue neutral – it is not. The legislators who made statements that the Act was not creating a new tax and was revenue neutral were simply wrong. They were either being disingenuous, or they misunderstood the tax law and this Court's interpretation of the further processing exclusion over the decades since the sales tax law was enacted. Representative Broadwater, who sponsored the bill, admitted that he was "not well-versed" in sales tax law.[27] He stated that "-the intent behind the amendment as well

[26] This intent or purpose of the further processing exclusion was recognized by the Legislature in SCR 136 (Reg. Sess. 2007).

[27] House Ways and Means Testimony of Rep. Broadwater, June 8, 2016 @ 1:13-1:14:31 and 1:16:23-1:17:02, available at http://house.louisiana.gove/H_VideoArchivePlayer.aspx?v=house/2016/jun/0608_16_WM.

is that businesses should not see anything new taxed."[28] But, that is exactly what Act 3 does – it makes purchases of materials for further processing subject to tax. That is "something new taxed." Rep. Broadwater may have intended to do one thing, but he actually achieved the opposite.

D. Act 3 violates the Separation of Powers Doctrine.

CPSB's argues that Act 3 does not violate the Separation of Powers Doctrine because it does not apply to cases already pending when Act 3 was passed. They ignore that this Court's interpretation of the further processing exclusion applying to **all** purchases of **all** materials further processed into **any** tangible personal property without regard to primary or secondary products (byproducts) predates *NISCO I*.[29] It ignores that this express holding in *NISCO I* has retroactive effect. It ignores that Act 3 applies to transactions that occurred and taxes that were accrued, reported and paid before Act 3 was enacted. This retroactive application of Act 3 violates the Separation of Powers Doctrine whether or not LDR and the local collectors had already assessed the taxpayer, or the taxpayer had already sued for refund, on completed transactions and completed tax returns, creating a "pending case" when Act 3 was enacted. In this context, Act 3's interference with a "pending tax claim" (or defense thereto), identical to that at issue in *NISCO I*, for years pre-dating the retroactive *NISCO I* decision, is just as much an impingement on the judicial authority and the integrity of the judiciary as if Act applied directly to the *NISCO I* case itself. Such an impingement violates the Separation of Powers Doctrine, regardless of procedural status of the tax claim (or defense thereto) at issue.

E. Act 3 violates Due Process.

CPSB argues that there is no due process violation because the United States Supreme Court has held on multiple occasions that a taxpayer has no vested right in a tax statute. What that means is that the taxpayer has no *per se* due process protection against legislative amendments to the tax law. If a taxpayer has no "vested" due process right, then why is there an entire body of federal jurisprudence and a jurisprudentially-created test for determining if a retroactive amendment to the tax law violates federal due process? CPSB's argument is actually that Act 3 does not meet the criteria for a finding of a due process violation set forth in federal jurisprudence – *U.S. v. Carlton*, 512 U.S. 26 (1994). That argument was shown to be insupportable by NISCO in its Original Brief on the Merits.[30] Moreover, and more importantly, CPSB ignores that the due process protections provided by a state constitution may exceed the protections afforded by the federal constitution. Louisiana civil law provides a broad interpretation of "property" protected by due process that includes causes of action and defenses to causes of action. If CPSB has a cause of action to collect pre-Act 3 taxes, it accrued when the taxes became due. Likewise, NISCO's

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[28] Plaintiffs-Appellants' Reply Brief, p. 4.

[29] *See Traigle v. PPG Industries, Inc.*, 332 So.2d 777 (La. 1976) (applying the three-pronged further processing exclusion test to only one of three products created by PPG's manufacturing process); *see also* cases cited by NISCO in its Response Brief to Amicus Briefs Filed on Behalf of Louisiana Department of Revenue, *et al.*, Original Brief on the Merits, pp. 8-9.

[30] NISCO's Original Brief on the Merits, pp. 28-32.

defense – the further processing exclusion – accrued at the same time. NISCO cannot be retroactively deprived of that defense under Louisiana's law of due process.[31]

F. Act 3 violates Equal Protection

Act 3 creates a clear disparity between use tax and sales tax. The former does not include the "byproduct" exception found in the latter. Plaintiffs rely solely upon La. R.S. 47:301(19)(b), which provides that no use tax can be imposed "if the sale of such property would have been exempted or excluded from sales tax." The operable language in Act 3 does not exempt or exclude purchases of materials for further processing into a byproduct from taxation. It creates an exception from the exclusion for byproducts. The transactions at issue are not "exempted or excluded from sales tax" under Act 3. The operable language in Act 3 is not exclusionary. To the contrary, it imposes a new tax. Therefore, La. R.S. 47:301(19)(b) does not apply in this case, and Plaintiffs-Appellants' argument for its application is grossly misrepresentative and disingenuous.

G. CPSB's claim for 2013 taxes is prescribed.

CPSB argues that its claim for 2013 taxes are not prescribed because the 14th JDC is a "competent court" and "proper venue" for this case. But this case was not filed until April, 4, 2017[32] too late for a claim to collect 2013 taxes. What CPSB points to as having "interrupted" prescription is a "reconventional demand" for the taxes filed in the *NISCO I* suit **after** the court had been divested of jurisdiction in that case. There was never any jurisdiction over that "reconventional demand." Therefore, the "reconventional demand" was not filed in a court of competent jurisdiction over that "reconventional demand," and could not have interrupted prescription. This new lawsuit followed, but too late to preserve the claims for 2013 taxes.

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[31] *Id.*, pp. 25-28.

[32] R. 1:3-6.

AFFIDAVIT OF VERIFICATION AND CERTIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared Linda S. Akchin, who deposed and stated that she is an attorney for Plaintiff-Appellee, Nelson Industrial Steam Company; that all of the allegations in the foregoing Sur-Reply Brief in Response to Reply Memorandum of Plaintiffs-Appellants are true and correct to the best of her knowledge; and that copies of this Sur-Reply Brief have been delivered to the Clerk of the Louisiana Third Circuit Court of Appeal, the Presiding Judge in the Fourteenth Judicial District Court, Calcasieu Parish, by overnight mail; to the Louisiana Attorney General by overnight mail, and to all counsel of record by electronic mail and overnight mail, as follows:

Hon. Judge Kendrick Guidry
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Lake Charles, LA 70601

Presiding District Court Judge

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Mr. Jeff Landry
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1885 North Third Street
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Baton Rouge, Louisiana, this 26th day of August, 2021.

Linda S. Akchin

SWORN TO AND SUBSCRIBED before me, Notary, this 26th day of August, 2021.

Notary Public
(My Commission is for Life)

Motion Filing - Filing # SC049605

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Status	Status Date/Time
Accepted	09/07/2021 4:04:51 PM
Reviewing	09/07/2021 4:03:32 PM
Pending	08/28/2021 8:40:16 PM
Reviewing	08/27/2021 9:57:27 AM
Pending	08/26/2021 4:35:51 PM
Submitted	08/26/2021 4:35:00 PM
Draft	08/26/2021 4:26:49 PM