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Arrow Aviation Company, LLC v. St. Martin Parish School Board Tax Sales Dept.

Supreme Court of Louisiana - December 6, 2016 - So.3d ----2016 WL 7118912 - 2016-1132 (La. 12/6/16)

Taxpayer petitioned to recover amount of sales and use tax paid under protest, claiming collector failed to apply a legislative tax exclusion.

The 16th Judicial District Court, St. Martin Parish, ruled in favor of the collector, finding the exclusion to be unconstitutional. Taxpayer appealed

The Supreme Court of Louisiana held that:

- A legislative tax exclusion must treat all local governmental subdivisions, school boards, and other political subdivisions the same, otherwise it is prohibited by the constitution's uniformity provision, abrogating *Anthony Crane Rental, L.P. v. Fruge*, 833 So.2d 1070;
- State constitution's uniformity provision did not act to compel statewide local tax authorities to apply a permissive tax exclusion adopted by a different local tax authority;
- Statutory exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, was constitutional as applied to taxpayer for audit periods during which the exclusion could be applied by tax authorities in all parishes in the same form, manner, or degree; but
- The exclusion was unconstitutional as applied for audit periods during which the exclusion was mandatory for tax authorities in one particular parish, but optional for tax authorities in all other parishes; and
- Unconstitutional portion of the statute would be severed and removed.

State constitution's uniformity provision placed a limitation on the legislature, rather than on local tax authorities, and therefore, did not act to compel statewide local tax authorities to apply a permissive tax exclusion from sales and use taxes adopted by a different local tax authority, as permitting one local tax authority to direct the actions of another would undermine each authority's power to tax.

Statutory exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, was constitutional as applied to taxpayer for audit periods during which the exclusion could be applied by tax authorities in all parishes in the same form, manner, or degree.

Statutory exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, was unconstitutional as applied for audit periods during which the exclusion was mandatory for tax authorities in one particular parish, but optional for tax authorities in all other parishes, as an example of non-uniformity prohibited by the constitution.

Unconstitutional portion of statute mandating tax authorities in one parish apply tax exclusion from state and local sales tax, of charges for repairs to tangible personal property that was delivered to customers out of state, would be severed and removed. Because earlier versions of the exclusion did not mandate that only one parish apply the exclusion, the purpose of the statute was not dependent on the unconstitutional portion.

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