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What Is a 'Component Part' of Real/Immoveable Property: Louisiana's Sales Tax Exemption Roller Coaster

Since "component part" was not defined for tax purposes, Louisiana courts routinely applied the Civil Code's definition; in light of Act No. 442 of 2009, however, a component part for sales tax purposes may not be a component part under the Civil Code.

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"The gods love the obscure and hate the obvious."[1] If that is true, then the gods must be gaga over §2 of the Louisiana legislature's Act No. 442 of 2009,[2] which, with cryptic language, managed to make a critical area of the sales tax law that was already confusing even more muddled.

Section 2 enacts subparagraph (q) of La. Rev. Stat. §47:301(16), which is in the definitional section of the sales tax laws. The provision seems, at first blush, to be innocuous if somewhat enigmatic. It reads as follows:

"For purposes of sales and use taxes imposed by the state, any statewide taxing authority, or any political subdivision, the term 'tangible personal property' shall not include any property that would have been considered immovable property prior to the enactment on July 1, 2008, of Act No. 632 of the 2008 Regular Session of the Legislature."

Although not readily apparent, the provision is dealing with the issue of when an item that otherwise might be considered tangible personal property should be deemed to have become a part or component of the real property to which it is attached.

The question of when tangible personal (also known as corporeal movable) property becomes a "component part" of real (i.e., immovable) property is an important issue in many areas of the law and in most, if not all, states.[3] In Louisiana, the answer determines who is ultimately responsible for sales tax, whether rental taxes are due on the lease of an item, whether repairs to the item are taxable, and whether certain exemptions apply. Despite the importance of this issue, Louisiana's sales tax statutes have not, in the past, defined the term "component part."

Since the term "component part" was not defined for tax purposes, courts routinely applied the Louisiana Civil Code's definition of "component part" in tax cases.[4] In Act No. 442 of 2009, however, the legislature defined component part in such a fashion that a

component part for sales tax purposes may not be a component part under the Civil Code.

The legislature accomplished this separation by adopting, for sales tax purposes, the Civil Code's definition of "component part" that was in effect *prior to 7/1/08.* In so doing, the legislature effectively repealed, for sales tax purposes, the changes to the Civil Code's definition of "component parts" that were made by Act No. 632 of 2008—changes that were meant to bring clarity to the area of "component parts." Instead, taxpayers will have to determine their tax liabilities by applying the principles of law in effect prior to July 2008.

Unfortunately, as noted by the redactor of Act No. 632 of 2008, the issue of what constituted a component part prior to 7/1/08, was the "focus of extensive academic and jurisprudential debate," [5] which is law professorese for "nobody knew for sure." The following is an attempt to cast some light on this very murky area and to provide some guidance to taxpayers as to what was or was not considered a component part prior to July 2008, and, accordingly, what will or will not be considered a component part for sales tax purposes in the future.

Component Parts Prior to 2005

Prior to 2005, La. Civ. Code art. 466 of the defined "component parts of a building or other construction" as follows:

"Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installation, are its component parts.
"Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached."

Art. 466 was generally considered as establishing two categories of component parts of a building. The first category consisted of those enumerated items, such as plumbing, heating, electrical, and cooling fixtures, that were deemed to be component parts of a building as a matter of law. The second category consisted of those items that did not fit into the plumbing, heating, electrical, and cooling category but were, in fact, permanently attached to a building in that they could not be detached from the building without damage to the item itself or to the building.

The judiciary's "societal expectation test." The judiciary grafted onto La. Civ. Code art. 466 a "societal expectation test" (SET) for determining when an item that was not clearly enumerated in the first paragraph would qualify as an "other installation." [6] The SET was developed under a predecessor to art. 466 that used "prevailing notions" in society and the economy to determine whether an item was considered a component part of a building. Initially, this test was used for the purpose of determining the parties' intent relative to acts of sale, mortgages, or similar types of instruments. For instance, in *Lafleur v. Foret,* [7] the issue before the Louisiana appellate court was whether a window air conditioning unit was considered a component part of a house, and thus remained with the house when the house was sold.

The SET was often mentioned by courts in their decisions but, more often, a court would determine whether an item was a component part by determining whether the item was "permanently attached" to a building. The SET was rarely, if ever, mentioned in tax cases, however, until a federal court referred to it in a 1985 decision.

In *Equibank v. U.S. Internal Revenue Service,* [8] the federal Court of Appeals for the Fifth Circuit discussed, and seemingly applied, the SET in determining whether, under Louisiana law, a chandelier was considered to be personal/movable property (and thus subject to an IRS lien), or a component part of the real/immovable property and thus subject to a lender's mortgage. The court found that the chandelier was a permanently attached electrical unit and, thus, a component part as a matter of law under La. Civ. Code art. 466. The court also mentioned that under the SET, the chandelier still would be considered a component part of the immovable despite testimony to the contrary by the Service's expert witness. This witness was a prominent law professor who testified that the chandelier would not be a component part under art. 466 despite being attached to the building, because members of society would not expect it to be a part of the house. In effect, it was the professor's testimony that the SET ultimately determined what items would be considered a component part.

In 1999, the Fifth Circuit revisited the SET and, in a strongly worded opinion, dismissed it. In *Prytania Park Hotel, Ltd. v. General Star Indemnity Company* [9] (a fire insurance claims case), the court found, first, that there was only one category of component parts—those items specifically enumerated in the first paragraph of La. Civ. Code art. 466, and items similar to those (i.e. "other installations") that were permanently attached. The court found nothing in the law that supported the adoption of, in the court's words, a "touchy-feely 'societal expectations' test in lieu of the bright-line 'substantial damage' test for permanent attachment," for determining what constituted an "other installation." The court stated that the SET had no basis in Louisiana law; rather, it was the creation of certain academics, in particular the professor who testified in *Equibank.* The court also stated the *Equibank* decision did not intend to establish the SET as a principle of law, and it applied the SET only for the sake of argument to show that it led to the same result as the "permanently attached" standard.

The SET in a state tax case. In 2001, the SET was addressed for the first time in the context of a state sales tax case. In *Showboat Star Partnership v. Slaughter,* [10] the issue before the Louisiana Supreme Court was whether certain gaming equipment aboard a riverboat casino constituted a "component part" for purposes of a sales tax provision that exempted from taxation "component parts of vessels." The taxpayer argued that since society would expect to see gaming equipment on a gaming boat, such equipment was, under the SET, a component part of the vessel and, therefore, exempt. The supreme court seemingly acknowledged the validity of the SET but held that the taxpayer had misconstrued the test. The court stated that the relevant inquiry as to what constituted a component part of a vessel was not *what gaming equipment* would society expect *on a riverboat casino* but, rather, *what equipment* would society expect *on a vessel.* The court held that since gaming equipment is not necessary to the functioning of a vessel as a vessel, the gaming equipment flunked the SET.

The court also held that since the items could be removed without damage to themselves or to the vessel, they were not permanently attached to the vessel and thus were not components of the vessel. Since the court conducted a two-prong analysis as to whether an item was a component part, its approach seemed to indicate that there were two categories of component parts, not just the single category espoused by the court in *Prytania Park.*

The revenue department's rulings. A few years later, in La. Rev. Rul. 02-003, 3/11/02, the Louisiana Department of Revenue analyzed the SET with regard to the sales, use, and lease tax consequences of transactions involving magnetic resonance imaging (MRI) scanners in hospitals. Specifically, the ruling addressed who would be responsible for the taxes if the MRI scanner were deemed to be a component part of the

building, and thus real/immovable property, as opposed to maintaining its status as personal/movable property. The Department opined that the SET applied only in cases of ambiguity as to whether an item constituted a component part under the first paragraph of La. Civ. Code art. 466. It was not applicable, according to the Department, in determining whether an item was a component under the "permanently attached" category in the article's second paragraph.

The Department, in what can only be characterized as circular reasoning, decided that a person walking into an imaging room would expect to find an imaging machine. Thus, the SET was satisfied, and the MRI scanner was a component part of the building. The Department ignored the supreme court's position in *Showboat,* which was that in order for an item to be considered a component part of a building, it must serve the general purpose of the structure and not the specialized purpose of the structure. The Department opined also that the SET required some degree of physical connection to the structure. Noting that the MRI scanner was hard-wired into the imaging room, as opposed to being merely plugged into a socket, the Department found that the connection component of the SET was satisfied and, accordingly, the MRI scanner was deemed to be an immovable.

Just one year later, the Department issued La. Priv. Ltr. Rul. 03-005, 3/17/2003, which discussed whether various types of durable medical equipment constituted component parts of a hospital. In this ruling, the Department did not mention the SET but, instead, looked to whether the equipment was "hard-wired" into the building, and thus constituted an "installation," or in the alternative, whether it was permanently attached to the building.

One wonders if the Department's failure to mention the SET, much less apply it, was intentional and indicated a belated recognition by the Department that perhaps the SET was too "touchy-feely" for tax policy and that "hard wiring" and "permanent attachment" were better bright-line standards. That failure also might have reflected the recognition by the Department that use of the SET facilitated certain tax planning opportunities for taxpayers.

In Louisiana, the purchase of tangible personal/movable property for the purpose of renting it to another party is not subject to sales or use tax. Tax is imposed, however, on the rental payments for the lease of movable property; in contrast, no tax is owed on payments for the rental of real property. Further, although services rendered in repairing tangible personal property are taxable, services rendered in repairing real or immovable property are not. Accordingly, under the logic of Rev. Rul. 02-003, if a leasing company purchased an MRI scanner to lease to a hospital, the entire transaction could be tax exempt because, first, the scanner would be movable property purchased for lease and thus exempt from sales tax, and second, after it became an immovable component part of the hospital, the rental payments would be exempt from tax and any repairs to the scanner would not be subject to tax.[11] While the SET is not the *sine qua non* of this planning technique, it certainly opens the door to more taxpayers' employing it, with a concomitant loss of tax revenue for the state.

Component Parts: 2005 to 2008

In 2005, the Louisiana Supreme Court once again addressed the SET in *Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Commission.*[12] There, the issue was whether certain repair and maintenance contracts applicable to a nuclear camera were taxable. The trial court applied the SET and found that, since society would expect to find a nuclear camera in a full-service hospital, the camera was considered to be a

component part of the hospital and, thus, the repair and maintenance contracts were not taxable. [13] The appellate court reversed, finding that, under *Showboat,* the proper inquiry under the SET was whether the camera was necessary to the operation of the hospital building *as a building,* as opposed to the operation of a hospital building as a hospital. Since the camera was not necessary to the operation of the building as a building, the appellate court held that it was not a component part and, thus, the charges under the service contracts were taxable. [14]

A divided supreme court affirmed the appellate court but rejected the use of the SET for determining whether an item was a component part. Writing for the majority, Justice Weimer found that component parts of a building were things such as "plumbing, heating, cooling, electrical or other installations" that could not be removed without substantial damage to themselves or to the immovables to which they were attached. Thus, under this decision, there was only one category of component parts—those items enumerated in La. Civ. Code art. 466 that also were permanently attached to the structure. The supreme court found that since the camera could be removed without damage to the building or to itself, it was not considered to be permanently attached and therefore was not a component part.

The court rejected the SET on the simple and straightforward grounds that art. 466 did not mention it. The court also referred to the "elusive and nebulous nature" of the SET, stating: "With its near-rhetorical inquiry, the societal expectations test interjects too much open-endedness, flexibility, and discretion in an area of the law that demands certainty and predictability. The societal expectations test, with no basis in legislation, requires excessive, unfettered judicial rule-making." (Internal footnote omitted.)

In a partial dissent, Justice (now Chief Justice) Kimball stated that, in her opinion, La. Civ. Code art. 466 established two categories of component parts—one for plumbing, heating, cooling, and other such installations, and a second for those items permanently attached to a building. Justice Kimball was also of the opinion that the SET was applicable in determining whether an item such as the camera was an "other installation." Further, Justice Kimball advocated that the inquiry under the SET should be: what equipment did society expect to see in a hospital. Although this broader approach would seemingly be contrary to the supreme court's statement in *Showboat* (i.e., that the test was what would society expect to see on a vessel as opposed to a gaming vessel), Justice Kimball distinguished the two cases by stating that in *Showboat,* the statute in question was a tax exemption meant to apply to the ship-building industry, and thus should be narrowly construed, while here, art. 466 was not an exemption but, rather, a property law provision of general application that should be broadly construed.

Act No. 301 of 2005. While *Willis-Knighton* was pending on rehearing, the legislature entered the fray and enacted Act No. 301, which rewrote La. Civ. Code art. 466. As amended, the provision read:

"Things such as plumbing, heating, cooling, electrical or other installations, are component parts of an immovable as a matter of law.
"Other things are considered to be permanently attached to an immovable if they cannot be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they are considered to be component parts of an immovable."

The effective date of Act No. 301 was 6/29/05. [15]

This 2005 version of art. 466 clearly established the two "traditional" categories of component parts—those items that were component parts "as a matter of law," and those items that were permanently attached to an immovable. The Act also codified the SET in the form of "prevailing notions in society." In offering additional reasons in his concurring opinion on rehearing in *Willis-Knighton,* Justice Weimer noted that, by so doing, Act No. 301 created a third category of component parts—those things deemed by society to be component parts.

The Act supports that conclusion. Section 3 of the Act read, in part, as follows:
"According to legislative intent, the two Paragraphs of Article 466 contemplate distinct tests for the classification of things as component parts of buildings or other constructions. The things that are indicatively enumerated in the first Paragraph of Article 466 are component parts as a matter of law. All other things are considered to be permanently attached and, therefore, component parts of a building or other construction under the second Paragraph of Article 466, if they cannot be removed without substantial damage to themselves or the immovable. *Further, Louisiana courts have correctly superimposed on the two Paragraphs of Article 466, the realistic test of 'societal expectations.' Things attached to an immovable may be component parts of the immovable or may remain movables depending on societal expectations, namely, prevailing notions in society and economy concerning the status of those things.*"
(Emphasis added.)

Thus, it appears not only that the SET is a third category but also that the SET is applied to the first two categories to determine whether items otherwise includable in those categories are, in fact, component parts. Although one may wonder how an item that is a component part as a "matter of law" could be deemed not to be a component part under the SET, the author of the Comments in Act §3 was not only one of the academics taken to task by the court in *Prytania Park* but also the professor who testified in *Equibank* that (as discussed above) a chandelier, found by the court to be an electrical installation and thus specifically deemed to be a component part, was in fact not a component part because of societal expectations. Thus, it appears further that, under Act No. 301, it was not enough to prove that an item fell within one of the two enumerated categories; one needed to prove also that society expected the item to be a part of the building. [16]

Component Parts: 2008 to 2009

Apparently, there was some dissatisfaction with Act No. 301's version of La. Civ. Code art. 466, since the article was extensively revised by Act No. 632 of 2008 in what the Comments attached to the legislation represented as a "fresh start" in the area of component parts. [17] Art. 466 now defines component parts as follows:

"Things that are attached to a building and that, according to prevailing usages, serve to complete a building of the same general type, without regard to the specific use, are its component parts. Component parts of this kind may include doors, shutters, gutters, and cabinetry, as well as plumbing, heating, cooling, electrical, and similar systems.
"Things that are attached to a construction other than a building and that serve its principal use are its component parts.
"Other things are component parts of a building or other construction if they are attached to such a degree that they cannot be removed without substantial damage to themselves or to the building or other construction."

Thus, under revised art. 466, there are two categories of component parts of a building:

(1) Those items that have a modicum of physical attachment to a building and, under prevailing usages in society, are thought of as serving to complete the building's purpose.
(2) Those things attached in such a manner that they cannot be removed without damaging the thing itself or the building to which it is attached.

In place of the "societal expectations" or "prevailing notions in society" standards, revised art. 466 adopts a "prevailing usages" standard. The prevailing usages concept is put forth in La. Civ. Code art. 4, which provides: "When no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity. To decide equitably, resort is made to justice, reason, and prevailing usages."

Although "prevailing usages" is not a defined term and has not been discussed extensively in the case law, it may be thought of as "stare decisis light," in that a court may look to other judicial decisions to determine whether an item is a component part, but it is not required to do so.

In conjunction with "prevailing usages," revised art. 466 also adds the concept of "completion" of a building. This concept is not new, however, having been discussed by the courts in both *Showboat* and *Willis-Knighton,* and, indeed, the revised article adopts the position expressed by the state supreme court in *Showboat,* and by Louisiana's Second Circuit in *Willis-Knighton,* that one looks to whether an item completes a building as a building, as opposed to completing a building as, for example, a hospital. [18]

Component Parts: 2009 and Forward

Although the new La. Civ. Code art. 466 is, when compared to its immediate predecessors, a model of clarity, some taxpayers were apparently unhappy with it, since Act No. 442 of 2009, in effect, repeals Act No. 632 of 2008 for sales tax purposes. [19]

Supposedly, some hospitals were concerned that local tax collectors would use art. 466, as revised by Act No. 632, as a vehicle to tax durable medical equipment, which apparently was not being taxed under the "old" art. 466. (One of the Revision Comments in Act No. 632 of 2008 may have given rise to that fear, as it states that nuclear cameras would not be considered as completing the purpose of a building housing a hospital but that the camera could be a component part of the building based on the degree of difficulty of removing the camera from the building. [20]) The local tax collectors denied having such "evil" intent, but the potential targets were apparently not convinced and proceeded to push Act No. 442 as a supposed fix to the problem.

The question is whether Act No. 442 fixed anything, because one can certainly argue that taxpayers are worse off under the new sales tax provision (La. Rev. Stat. §47:301(16)(q)) embodied in Act No. 442 than they were under art. 466 as enacted in Act No. 632 of 2008. For instance, the new law reintroduces the superimposition of the SET on the component parts issue, requiring that taxpayers prove not only that an item comes under one of the two established categories but also that society expects to see it in a building. Obviously, this creates great uncertainty since an item's status as a component can never be known until society's expectations are proven.

It is unclear, however, how a taxpayer is supposed to prove what items society expects to see in a particular building. It is not even clear which persons make up the society whose prevailing notions a taxpayer is required to prove. For example, if a taxpayer is trying to prove that a piece of medical equipment is a component part of a hospital

building, does "society" consist of the hospital administrators, the medical staff, or the patients in the hospital, or does "society" consist of the average person on the street?

Further, it is unclear what geographic vicinity is used when proving "prevailing notions." That is, must a taxpayer prove the "prevailing notions" throughout the state when dealing with the state sales tax, while having to prove the prevailing notion in only a parish when dealing with a parish tax?

In addition, it is not clear for what period societal expectations must be proved. Act No. 442 could be interpreted as imposing currently those expectations society had prior to July 2008 as to a particular item. In the alternative, Act No. 442 could be interpreted as applying currently only the principles of law with regard to component parts that applied prior to July 2008. If the former, it is unclear how a taxpayer in the year 2018, for instance, is supposed to prove what the expectations of society were in 2008. (Since societal expectations evolve, present-day standards would have little, if any, impact on what societal expectations were in the past.) If it is the latter, then, as previously noted, there was "extensive debate" as to just what those principles were and, in any event, those principles would be subrogated to the current SET.

Ironically, it is not even clear that the proponents of Act No. 442 resolved the issue as to the status of durable medical equipment. Based on Comments to Act No. 632 of 2008 that cited *Showboat,* the Second Circuit's opinion in *Willis-Knighton,* and a 1925 Second Circuit case, [21] the law prior to 2008 was that the specific use of a building or the activity carried on in a particular building were not to be considered for purposes of determining whether an item was a component part of the building. [22] It would appear, therefore, that under either the 2008 Act or the new sales tax provision, durable medical equipment can be considered a component part only if it is found to be "permanently attached" to a building and, in addition, satisfies the SET.

Finally, Act No. 442 may have unwittingly given the local tax collectors greater power since it is fairly easy for a tax collector to establish its position as to the movable or immovable nature of an item. All a tax collector need do to establish an item's status as a component is to file a summary proceeding against a taxpayer, accompanied by an affidavit alleging that an item is or is not, as the case may be, a component part. [23] By filing such an affidavit, the tax collector is deemed to have established a prima facie case, and the burden shifts to the taxpayer to prove otherwise. The taxpayer would then have to prove the item's status by establishing "prevailing notions" in society through, it is assumed, the use of expert witnesses, surveys, polls, or similar evidence.

Conclusion

Act No. 442 of 2009 provides for a "collaborative working group of state and local tax administrators and industry representatives" to develop policy regarding "which items should be considered as movable or immovable property for the purposes of state and local sales and use tax." [24] Unless the group's pronouncements are codified, however, they would be, at best, on a par with regulations and, at worst, merely advisory, thus easily ignored by judges. Further, if Act No. 442 intends that the SET look to current or prevailing notions of society at the time an item's status is being determined, any statements made by the group about such notions likely would soon be "old and cold" and of little value in determining what current notions are prevailing in society at a later date.

Act No. 442 creates uncertainty where certainty is required, by allowing the SET to trump both the "deemed to be component" category and the "permanently attached" category.

One can only hope that someday soon the legislature will risk the wrath of the gods and shed the obscure "touchy-feely" SET for a more concrete and obvious definition of "component part" for tax purposes. **[]**

Sidebar

Practice Note: Louisiana "Component Parts": The State of the Law Today

In Louisiana, the term "component part" is defined not in the tax statutes but in the state's Civil Code. Effective 7/1/08, under La. Civil Code art. 466 (as amended by H.B. 388, 7/1/08 (L. 2006, Act No. 632), §1), "component parts of a building or other construction" is defined as follows:

"Things that are attached to a building and that, according to prevailing usages, serve to complete a building of the same general type, without regard to its specific use, are its component parts. Component parts of this kind may include doors, shutters, gutters, and cabinetry, as well as plumbing, heating, cooling, electrical, and similar systems.
"Things that are attached to a construction other than a building and that serve its principal use are its component parts.
"Other things are component parts of a building or other construction if they are attached to such a degree that they cannot be removed without substantial damage to themselves or to the building or other construction."

Under La. Rev. Stat. §47:301(16)(q) (a sales tax provision added by S.B. 9, 7/8/09 (L. 2009, Act No. 442), §2), however, the following rule applies, effective 7/1/09, in connection with that Civil Code provision:

"For purposes of sales and use taxes imposed by the state, any statewide taxing authority, or any political subdivision, the term 'tangible personal property' shall not include any property that would have been considered immovable property prior to the enactment on July 1, 2008, of Act No. 632 of the 2008 Regular Session of the Legislature."

Thus, taxpayers now must look to La. Civil Code art. 466 as in effect prior to July 2008. That version of the article provides as follows: "Component parts of an immovable":

"Things permanently attached to an immovable are its component parts.
"Things such as plumbing, heating, cooling, electrical or other installations, are component parts of an immovable as a matter of law.
"Other things are considered to be permanently attached to an immovable if they cannot be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they are considered to be component parts of an immovable."

END NOTES

[1] The Upanishads (Hindu scriptures from 800-500 BCE).

[2] S.B. 9, 7/8/09 (L. 2009, Act No. 442). Section 2 is "declared to be remedial, curative, and procedural and therefore shall be applied retroactively as well as prospectively, and shall apply to all transactions occurring on or after the enactment on July 1, 2008, of Act No. 632 of the 2008 Regular Session of the Legislature." *Id.,* §5.

[3]

See, for instance, Sprout, "Pennsylvania's Treatment of Telecommunications Towers for Purposes of Real Property Taxation," 16 J. Multistate Tax'n 20 (May 2006), and the cases cited therein. See also Shop Talk, "Natural Gas Compressors Were Real, Not Personal, Property; Thus No Wyoming Sales Tax on Maintenance Services," 19 J. Multistate Tax'n 37 (October 2009).

[4]

See, e.g., Cajun Contractors, Inc. v. State Dept. of Revenue and Tax'n, 515 So 2d 625 (La. App. 1st Cir., 1987); Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Comm'n, 903 So 2d 1071 (La., 2005).

[5]

Revision Comments to H.B. 388, 7/1/08 (L. 2006, Act No. 632).

[6]

See Willis-Knighton Medical Center, *supra* note 4.

[7]

213 So 2d 141 (La. App. 3d Cir., 1968).

[8]

55 AFTR 2d 85-649, 749 F2d 1176, 85-1 USTC ¶9242 (CA-5, 1985).

[9]

179 F3d 169 (CA-5, 1999).

[10]

789 So 2d 554 (La., 2001).

[11]

Unity of ownership of the component and the immovable is not required.

[12]

903 So 2d 1071 (La., 2005).

[13]

Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Comm'n, First Judicial Dist. Ct. for the Parish of Caddo, No. 429,318, 3/28/03, 2003 WL 25748285 .

[14]

Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Comm'n, 862 So 2d 358 (La. App. 2d Cir., 2003), *reh'g den.* 1/22/04.

[15]

S.B. 196, 6/29/05 (L. 2005, Act No. 301). As the bill was awaiting the governor's signature, the supreme court in Willis-Knighton, on rehearing (6/22/05), adhered to its original opinion "eschewing a disjunctive reading of the two paragraphs of Article 466 and use of the societal expectations test as a method of determining what is a component part within the meaning of the first paragraph of that article," but declared that "that portion of the decision shall not be retroactive, but shall be given prospective effect only." Accordingly, the court's Willis-Knighton 4/1/05 decision had a life span of less than three months.

[16]

In 2006, Act No. 765 was enacted to amend La. Civ. Code art. 466 so that it applied only to buildings as opposed to all immovables. According to its express language, Act No. 765 had retroactive application to 6/29/05, the effective date of Act No. 301. The retroactivity provision is of questionable constitutionality. See La. Const. art. 1, §23.

17

Revision Comments to H.B. 388, *supra* note 5.

18

In contrast, to determine whether an item is a component part of a "construction other than a building," one determines whether the item is necessary to the principal purpose of the "other construction."

19

See La. Rev. Stat. §47:301(16)(q), as added by Act No. 442 and quoted at the beginning of this article. Subparagraph (q) excludes from the definition of "tangible personal property" "any property that would have been considered immovable property prior to the enactment ... of Act No. 632...."

20

Revision Comments to H.B. 388, *supra* note 5.

21

Day v. Goff, 2 La App 75, 1925 WL 3318 (2d Cir., 1925).

22

Revision Comments to H.B. 388, *supra* note 5.

23

La. Rev. Stat. §47:1574 (collection by summary court proceeding authorized).

24

S.B. 9, 7/8/09 (L. 2009, Act No. 442), §4. The group is to "study and develop specific proposals on the definition of tangible personal property," and report its policy recommendations to the chairs of the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than 1/31/11. *Id.*