NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0658

HITACHI MEDICAL SYSTEMS AMERICA, INC.

VERSUS

CYNTHIA BRIDGES, SECRETARY
DEPARTMENT OF REVENUE

Judgment Rendered: DEC 09 2015

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 606,038 Sec. 25

Honorable Wilson Fields, Judge

* * * * * * *

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

WELCH, J.

Hitachi Medical Systems America, Inc. ("Hitachi") appeals a judgment of the district court affirming a decision of the Board of Tax Appeals ("Board"). The decision of the Board upheld the assessment of sales taxes by the Secretary of the Louisiana Department of Revenue ("Secretary") against Hitachi on proceeds from repair services Hitachi performed on magnetic resonance imaging systems ("MRIs") that were installed at various medical facilities. For reasons that follow, we vacate the judgment of the district court for lack of subject matter jurisdiction, and we affirm the decision of the Board.

BACKGROUND

Hitachi sells and leases MRIs to various medical facilities in Louisiana. In addition, Hitachi also enters into contracts to service and repair the MRIs that are installed in the medical facilities. The State of Louisiana levies a sales tax on the "[s]ales of services," which includes "[t]he furnishing of repairs to tangible personal property, including but not restricted to the repair and servicing of ... electrical and mechanical appliances and equipment." La. R.S. 47:301(14)(g)(i)(aa). "Tangible personal property" is synonymous with "corporeal movable property" as set forth in the Louisiana Civil Code. See **South Central Bell Telephone Co. v. Barthelemy**, 94-0499 (La. 10/17/94) 643 So.2d 1240, 1243-1244; see also La. C.C. art. 471. Therefore, the classification of property as either movable or immovable determines whether services and repairs performed to such property are taxable; thus, whether the services and repairs Hitachi performs on MRIs are subject to sales taxes depends on whether the MRIs are classified as movable or immovable property.

All things that the law does not consider as immovable are movables. La. C.C. art. 475. By law, immovables are: (1) tracts of land (La. C.C. art. 462); (2) component parts of tracts of land when they belong to the owner of the ground (La.

C.C. art. 463); (3) buildings and standing timber when they belong to a person other than the owner of the ground (La. C.C. art. 464); (4) things incorporated into an immovable and component parts of a building or other construction (La. C.C. arts. 465 and 466); and (5) machinery, appliances, and equipment placed on an immovable and declared by the owner to be immovable (La. C.C. art. 467). Under these articles, things may become a component part of an immovable in one of three ways: (1) by incorporation (La. C.C. art. 465); (2) by permanent attachment (La. C.C. art. 466); or (3) by declaration of the owner (La. C.C. art. 467). **Willis-Knighton Medical Center v. Caddo Shreveport Sales and Use Tax Com'n**, 2004-0473 (La. 4/1/05), 903 So.2d 1071, 1079 ("**Willis-Knighton (II)**").

Thus, for Hitachi, the issue becomes whether the MRIs that it services and repairs are component parts of the medical facility in which they are installed.

With regard to component parts, La. C.C. art. 466 previously provided:

> Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, 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.[1]

In 1999, in the case of **Willis-Knighton Medical Center v. Louisiana Department of Revenue**, No. 5046 c/w 4984 (La. Bd. Tax App. 9/14/99), 1999 WL 817688 ("**Willis-Knighton (I)**"), the Board of Tax Appeals determined that various systems of equipment in Willis-Knighton Medical Center's physical plant, including MRIs, nuclear cameras, sterilizers, and heart catheter laboratories, were electrical or other installations as contemplated by La. C.C. art. 466 and could not be removed from the physical plant without substantial damage as contemplated by La. C.C. art. 466; thus, those systems were permanently attached to the physical

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[1] As hereinafter discussed, La. C.C. art. 466 has since been amended three times. See 2005 La. Acts, No. 301, § 1, eff. June 29, 2005; 2006 La. Acts, No. 765, § 1, eff. August 15, 2006 (made retroactive to June 29, 2005); and 2008 La. Acts, No. 632, § 1, eff. July 1, 2008.

plant and were component parts of the physical plant pursuant to La. C.C. art. 466. Accordingly, the Board concluded that those systems were immovables and that maintenance services and repairs to those systems were not subject to sales and use taxes.

In 2002, the State of Louisiana, Department of Revenue ("Department") issued Revenue Ruling No. 02-003 ("RR 02-003").[2] Therein, the Department evaluated whether MRIs became component parts of a building or other construction through permanent attachment as described in La. C.C. art. 466. In applying La. C.C. art. 466, the Department determined that MRIs housed in specifically designed imaging rooms that were wired into the hospital electrical system would meet both requirements of paragraphs of La. C.C. art. 466 because they were an electrical or other installation (that also met the "societal expectation" test for such installations) and because they could not be removed from the hospital without substantial damage to both the unit and the hospital. Thus, the Department concluded that the MRIs became component parts of the hospital through permanent attachment. As such, sales tax would not be collectible by the sellers, lessor, and repair dealers on sales and leases of or on repair services rendered to the MRIs.[3]

In 2003, the Department issued Private Letter Ruling 03-005 ("PLR 03-005").[4] Therein, the Department determined that various imaging equipment

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[2] A revenue ruling provides guidance to the public and employees of the Department. It does not have the force and effect of law and is not binding on the public. However, it is a statement of the Department's position and is binding on the Department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision. See LAC 61:III.101(C)(2)(b)(i).

[3] However, the Department noted that sellers, lessors, and repair dealers would owe state sales or use tax on their acquisition prices of the units they sell or lease and on repair parts that they use in making repairs to the units.

[4] A private letter ruling provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement issued to apply principles of law to a specific set of facts or a particular tax situation. A private letter ruling does not have the force and effect of law and is not binding on the person who requested it or on any other taxpayer. However, it is binding on the Department

installed at a medical facility, including MRIs, met the requirements of electrical installations because the installed equipment was hard wired into the medical center's electrical systems and thus, met the requirements of the first paragraph of La. C.C. art. 466. In addition, the equipment was determined to have met the test set forth in the second paragraph of La. C.C. art. 466 because the hospital or equipment would be damaged if the imaging equipment were removed.

Thereafter, in 2005, in **Willis-Knighton (II)**, 903 So.2d at 1090-1091, the Louisiana Supreme Court held that the nuclear cameras, which includes MRIs, installed in Willis-Knighton's medical facility building were not component parts of the building because the cameras were not permanently attached within the meaning of La. C.C. art. 466 and could be removed without substantial damage to either the cameras or the building. Thus, the Court concluded that the cameras were not immovable within the contemplation of the civil code articles governing immovable property. **Willis-Knighton (II)**, 903 So.2d at 1091. In doing so, the Court rejected the societal expectations test as a means of determining component parts of immovable under La. C.C. art. 466, and it also rejected a disjunctive reading of the two paragraphs of La. C.C. art. 466 as creating two independent types of component parts. **Willis-Knighton (II)**, 903 So.2d at 1092. On rehearing, the Court stated that the opinion would be given prospective effect only. **Willis-Knighton (II)**, 903 So.2d at 1107.

Shortly after the **Willis-Knighton (II)** decision, the Louisiana Legislature amended La. C.C. art. 466 to provide as follows:

> 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.

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only as to that taxpayer and only if the facts provided therein were truthful and complete and the transaction was carried out as proposed. It continues as authority for the Department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it. See LAC 61:III.101(C)(2)(a).

> Other things are considered 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.

This amendment to La. C.C. art. 466 became effective June 29, 2005. See 2005 La. Acts, No. 301, § 1. The amendment was intended to clarify and reconfirm the interpretation of La. C.C. art. 466, including the societal expectation test, which prevailed prior to **Willis-Knighton (II)**. 2005 La. Acts, No. 301, § 4. In addition, the amendment was made applicable to existing immovables and was to be used in determining whether a thing was a component part. 2005 La. Acts, No. 301, § 2. Thus, the effect of this amendment to La. C.C. art. 466 was to legislatively overrule **Willis-Knighton (II)** insofar as that case rejected both the societal expectation test and a disjunctive interpretation of La. C.C. art. 466.

In October 2005, the Department published in its quarterly newsletter, *Tax Topics*, Vol. 25, No. 4 ("*Tax Topics*"), that 2005 La. Acts, No. 301 "amends [La. C.C. art.] 466 to clarify and re-confirm the interpretation of this Article, including the 'societal expectations' analysis that prevailed prior to [**Willis-Knighton (II)**]."

The next year, in 2006 La. Acts, No. 765, § 1, the Louisiana Legislature again amended La. C.C. art. 466 to provide as follows:

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

The provisions of this amendment were made retroactive to June 29, 2005. See 2006 La. Acts, No. 765, § 2. While the 2005 amendment to La. C.C. art. 466

applied to an "immovable," the 2006 amendment limited the application of La. C.C. art. 466 to a "building or other construction." See La. C.C. art. 466, Revision Comments—2008, Editor's Note I.

The Department then issued Private Letter Ruling 06-010 ("PLR 06-010") in July 2006. Therein, the Department noted that although the imaging equipment (in PLR 06-010) was the type of imaging equipment at issue in RR 02-003 and PLR 03-005, the equipment attachment and contract terms were different. The Department also noted the sales and use tax treatment of imaging equipment in **Willis-Knighton (II)** and the legislative amendment to La. C.C. art. 466 by 2005 La. Acts, No. 301. The Department ultimately determined that, under the facts, the imaging equipment was tangible personal property because there would be no substantial damage to either the underlying immovable if the MRI was removed or the MRI equipment itself (because there was a secondary market for used MRI equipment). In doing so, the Department relied on the "substantial damage" analysis of **Willis-Knighton (II)** (as opposed to the "societal expectation" analysis therein). Notably, however, the Department stated that in determining whether or not attached property has become a component part, the test provided in La. C.C. art. 466 had to be used, and further implied that the question of whether something constituted a component part was a facts-and-circumstances test.

In 2008, the Louisiana Legislature again amended La. C.C. art. 466. The new and current version of La. C.C. art. 466 provides:

> 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.

See 2008 La. Acts, No. 632, § 1, eff. July 1, 2008. According to the Revision Comments—2008(a), the new version of La. C.C. art. 466 "represents a fresh start in an area of law that has been the focus of extensive academic jurisprudential debate."

However, in 2009 La. Acts No. 442, § 2, eff July 1, 2009, the Louisiana Legislature enacted, among other things, La. R.S. 47:301(16)(q), which provides that "[f]or purposes of sales and use taxes ... the term 'tangible personal property' shall not include any property that would have been considered immovable property prior to [2008 La. Acts, No. 632.]" The stated purpose of this act was to "restore the prior definition of a component part for sales tax purposes consistent with [2005 La. Acts, No. 301] and [2006 La. Acts, No. 594]." See 2009 La. Acts No. 442, § 3. In addition, the act was declared to be "remedial, curative, and procedural and therefore [to] be applied retroactively as well as prospectively, and shall [be applied] to all transactions occurring on or after the enactment of [2008 La. Acts, No. 632]." 2009 La. Acts, No. 442, § 5. Thus, for purposes of sales taxes, the prior version of La. C.C. art. 466 (rather than the current version of La. C.C. art. 466) is applicable to the determination of whether a thing becomes a component part.

According to the record, prior to 2004, Hitachi collected sales taxes from its customers on repairs it made to MRIs. In October 2004, Hitachi ceased collecting sales taxes on repair services it performed for its customers because a customer, who had a contention with paying the taxes, provided Hitachi with RR 02-003 and PLR 03-005, in which the Department indicated that repairs and services to MRIs were not taxable.

By letter dated May 28, 2009, the Department notified Hitachi that it was being audited for the time period of January 2006 through April 2009 and that the sales and repairs Hitachi made to MRIs were taxable under La. C.C. art. 466 and PLR 06-010. Following the audit, on July 28, 2009, the Department issued a notice of proposed tax due. Therein, the Department proposed that taxes and interest were due in the amount of $204,887.24 from Hitachi, apparently for the sales taxes it failed to collect from its customers. See La. R.S. 47:304; **Southland Oil Co. v Jenkins Bros. Asphalt Co., Inc.**, 563 So.2d 1238, 1239, writ denied, 568 So.2d 1054 (La. 1990) (a dealer who fails to collect taxes from the customer is liable for the tax himself).

Hitachi protested the proposed assessment by filing a petition with the Board. During the proceedings before the Board, Hitachi asserted it did not owe the taxes because the MRIs were immovable, and thus, any repairs to them were not taxable. Hitachi further asserted that the Department had accepted a payment of $103,692.88 made as part of a proposed settlement, and therefore, the Department should be estopped from contesting the remainder of the assessment. Last, Hitachi argued that it should not be penalized for its failure to collect the taxes since its failure to do so was the result of its reliance on certain pronouncements of the Department, *i.e.*, RR 02-003 and PLR 03-005 which stated that no taxes were due on repair services to MRIs.

On September 14, 2011, the Board rendered judgment upholding the tax assessment by the Secretary. The Board specifically determined that: (1) the MRIs at issue were "basically the same as the nuclear cameras in" **Willis-Knighton (II)**; (2) the MRIs were not component parts of the hospital under the applicable provisions of La. C.C. art. 466 (as amended by 2005 La. Acts, No. 301) because (a) the MRIs were not permanently attached to the building; were not plumbing, heating, cooling, electrical or other installations; and were not permanently

attached so as to cause substantial damage to either the MRIs or building if removed; and (b) there was no evidence that the prevailing notions in society would consider the MRIs to be component parts of the hospitals in which they were located;[5] and (3) RR 02-003 was superseded by **Willis-Knighton (II)** and the subsequent legislative amendments to La. C.C. art. 466 (see LAC 61:III.101(C)(2)(b)(i)). Based on these findings, the Board concluded that the MRIs were movable and that the maintenance and repair services to the MRIs were taxable. The Board also determined that the Secretary's/Department's acceptance of the payment made with the proposed settlement did not prevent the Department from litigating the remainder of the assessment. The Board did not address Hitachi's detrimental reliance argument.[6]

Pursuant to the provisions of former La. R.S. 47:1434, on October 14, 2011, Hitachi appealed the decision of the Board to the 19th Judicial District Court.[7] After a hearing in January 2015, the district court affirmed the decision of the Board. A judgment in accordance with the district court's ruling was signed on March 4, 2015. From this judgment, Hitachi appeals.

On appeal, Hitachi contends that the district court erred in finding that Hitachi was liable for the taxes on the services and repairs it made to the MRIs because the Department should be prohibited from penalizing Hitachi for its failure to collect

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[5] The underlying factual findings made by the Board in support of its determination in this regard were that the MRIs under consideration weighed between 11,000 and 92,000 pounds; that the testimony established that the MRIs could be removed without substantial damage to the building in which they were housed or to the MRIs themselves; that there was a market for used MRIs; that the MRIs were not permanently attached to the building housing them; and that often, there was a skylight through which the magnets of the MRIs could be removed by the use of an overhead crane.

[6] Silence in a judgment as to any claim or demand at issue is generally considered a rejection of the claim. **Sun Finance Co., Inc. v Jackson**, 525 So.2d 532, 533 (La. 1988).

[7] As hereinafter discussed, La. R.S. 47:1434 was subsequently amended to provide for judicial review of the decision of the board by the appellate court, rather than the district court. In addition, La. R.S. 47:1435 was amended to provide the court of appeal with exclusive jurisdiction over the review of decisions of the Board. See 2014 La. Acts, No. 198, §1, eff. July 1, 2014.

taxes since the Department was responsible for that failure. Essentially, Hitachi argues that the doctrine of detrimental reliance should be applied because "but for" the Department's pronouncements, on which Hitachi reasonably relied, it would have collected the taxes from its customers, and further, it should not be penalized or punished for its reliance on the Department's pronouncements.

JURISDICTION OF THE DISTRICT COURT

It is the duty of the court to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. **Whittenberg v. Whittenberg**, 97-1424 (La. App. 1st Cir. 4/8/98), 710 So.2d 1157, 1158. Therefore, prior to addressing the merits of Hitachi's appeal, we will examine the subject matter jurisdiction of the district court to render the judgment appealed herein.

Subject matter jurisdiction is the legal power and authority of a tribunal to adjudicate a particular matter involving the legal relations of the parties and to grant the relief to which the parties are entitled. La. C.C.P. arts. 1 and 2. Jurisdiction over the subject matter cannot be conferred by consent of the parties. La. C.C.P. art. 3. A judgment rendered by a court without subject matter jurisdiction is void. *Id.* The Louisiana Constitution vests the district courts with original jurisdiction over all civil and criminal matters, except as otherwise authorized by the constitution, and with appellate jurisdiction as provided by law. La. Const. art. V, § 16(A) and (B).

As noted above, on October 14, 2011, Hitachi appealed the decision of the Board to the district court. At that time, La. R.S. 47:1434 and 47:1435 provided that judicial review of decisions of the Board was vested with the district court. However, pursuant to 2014 La. Acts, No. 198, § 1, eff. July 1, 2014, (as well as 2015 La. Acts, No. 210), jurisdiction for judicial review of decisions of the Board is now vested solely with the appellate courts. Herein, the district court did not hear this matter until January 2015, and did not render and sign a judgment until

March 2015. Therefore, between the time that the appeal was properly and timely filed with the district court and the time that the district court heard the matter and rendered judgment, the district court lost its jurisdiction over such appeals.[8] Accordingly, the judgment of the district court must be vacated. See La. C.C.P. art. 3.

Under La. R.S. 47:1434 (both the former and current provisions), Hitachi clearly has a vested right to seek judicial review of the decision of the Board. While Hitachi timely and properly exercised that right in accordance with the law in effect at the time, the forum in which Hitachi was entitled to exercise that right changed during the pendency of the proceeding for judicial review. Therefore, in accordance with the change in jurisdiction from the district court to this court, this matter is properly before us for judicial review of the decision of the Board, and we deem Hitachi's order of appeal as having transferred the matter to this court. See La. C.C.P. arts. 2162 and 2164; **Matter of Angus Chemical Co.**, 94-1148 (La. App. 1st Cir. 6/26/96), 679 So.2d 454, 458-459; see generally **Tillison v. Tillison**, 129 So.2d 522, 523 (La. App. 1st Cir. 1961); **Farina v. Pravata**, 131 So.2d 909, 910 (La. App. 1st Cir. 1961); **Kemra v. Louisiana Power & Light Company**, 132 So.2d 688, 689 (La. App. 1st Cir. 1961) (wherein appeals were transferred to this Court because of the change in jurisdiction that went into effect after appeal was taken). Therefore, we now turn to the merits of Hitachi's appeal of the decision of the Board.

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[8] Because this court has previously stated that laws which determine jurisdiction are procedural, we find the amendments to La. R.S. 47:1434 and 47:1435 are procedural in nature and must be afforded retroactive application. See **Ransome v. Ransome**, 99-1291 (La. App. 1st Cir. 1/21/00), 791 So.2d 120, 122 n.2. Additionally, jurisdictional provisions apply from the date of their promulgation, to all lawsuits, even those which bear upon facts of a prior date and to pending lawsuits. *Id.*; **American Waste and Pollution Control Company v. State, Department of Environmental Quality**, 597 So.2d 1125, 1128 (La. App. 1st Cir.), writs denied, 604 So.2d 1309, 1318 (1992). The amended statutes herein vest exclusive subject matter jurisdiction for judicial review of decisions of the Board with this court and divests the district court of such jurisdiction. Applied retroactively, these amended statutes do not divest either party of a vested right. Both parties may still appeal any decision of the Board; the amended statues merely change the forum in which the party may exercise its existing right of judicial review.

LAW AND DISCUSSION

Standard of Review

With regard to the appropriate standard of review for the decisions issued by the Board, La. R.S. 47:1435 is instructive and provides that reviewing courts may reverse or modify decisions of the Board, with or without remanding the case, if those decisions are not in accordance with law. See **R & B Falcon Drilling USA, Inc. v. Secretary, Department of Revenue**, 2009-0256 (La. App. 1st Cir. 1/11/10), 31 So.3d 1083, 1085. Judicial review of a decision of the Board is rendered on the record as made up before the Board and is limited to facts on the record and questions of law. *Id.*; see La. R.S. 47:1434 and 47:1435(C). The Board's findings of fact should be accepted where there is substantial evidence in the record to support them and should not be set aside unless they are manifestly erroneous in view of the evidence on the entire record. **R & B Falcon Drilling USA, Inc.**, 31 So.3d at 1085; see La. R.S. 47:1435(C). Furthermore, if the Board has correctly applied the law and adhered to correct procedural standards, its judgment should be affirmed. **R & B Falcon Drilling USA, Inc.**, 31 So.3d at 1085.

Detrimental Reliance

The doctrine of detrimental reliance is codified in La. C.C. art. 1967, which provides, in part that:

> A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable.

The doctrine of detrimental reliance is designed to prevent injustice by barring a party from taking a position contrary to his prior acts, admissions,

representations, or silence. **Luther v. IOM Co., L.L.C.**, 2013-0353 (La. 10/15/13), 130 So.3d 817, 825. To establish detrimental reliance, a party must prove three elements by a preponderance of the evidence: (1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one's detriment because of the reliance. *Id.* Estoppels are not favored in our law; therefore, a party cannot avail himself of that doctrine if he fails to prove all of the essential elements of the plea. *Id.*

Additionally, "Louisiana jurisprudence applying estoppel to tax matters has been described as running a spectrum. **Showboat Star Partnership v. Slaughter**, 2000-1227 (La. 4/3/01), 789 So.2d 554, 561 n. 12. At one extreme, when the tax statutes are clear and unambiguous, estoppel has not been applied. *Id.* At the other end of the spectrum, where a statute is not clear or where the Department has adopted regulations or administrative policies regarding the scope and application of a tax statute, yet the Department abruptly departs from established precedent, estoppel has been applied because the taxpayer is entitled to rely on such an interpretive position, and the Department must be bound to act with administrative consistency. See *Id.* As such, proving detrimental reliance against a governmental agency, as in this case,[9] is generally more burdensome and requires: (1) unequivocal advice from an unusually authoritative source, (2) reasonable reliance on that advice by an individual, (3) extreme harm resulting from that reliance, and (4) gross injustice to the individual in the absence of judicial estoppel. *Id.* at 562; **Luther**, 130 So.3d at 825.

Hitachi contends that estoppel/detrimental reliance should be applied in this case because the law with regard to component parts, particularly during the audit period (January 1, 2006 through March 31, 2009), was ambiguous given the decision in **Willis-Knighton (II)** and the legislative response to that decision.

[9] The Department is a governmental agency. See La. R.S. 49:951(2).

Hitachi further contends that its evidence established all four prongs necessary for the application of estoppel against the Department. Hitachi argues: (1) that there was unequivocal advice from an unusually authoritative source, *i.e.* RR 02-003, PLR 03-005, *Tax Topics*, and PLR 06-010; (2) that it reasonably relied on that advice from the Department, particularly since no court, governmental agency, or other source had stated in writing that **Willis-Knighton (II)** superseded RR 02-003; (3) that it will suffer extreme harm from reliance on that advice because it will have to pay taxes that could have been collected from the customer/true taxpayer; and (4) that a gross injustice will result in the absence of estoppel because it followed the rules of the Department and is being penalized by the Department for relying upon the statements made by the Department.

Based on our review of the facts and law, we disagree with Hitachi's contention that there was unequivocal advice from an unusually authoritative source upon which Hitachi could have reasonably relied. "Unequivocal" means "leaving no doubt" or "clear." Webster's Ninth New Collegiate Dictionary (1991), pg. 1288. As noted above, the audit period herein was January 1, 2006 through March 31, 2009. Between the time of RR 02-003 and PLR 03-005 and January 1, 2006 (the earliest audit period), the Louisiana Supreme Court issued its opinion in **Willis-Knighton (II)**, the legislature amended La. C.C. art. 466 by 2005 La. Acts, No. 301, and the Department issued *Tax Topics*. During the audit period, the legislature amended La. C.C. art. 466 two more times. Although the applicable law may have been uncertain; during the time period of the audit, neither RR 02-003 nor PLR 03-005 can be considered "unequivocal" advice from the Department. Both RR 02-003 and PLR 03-005 state that they are "binding on the Department until superseded by a subsequent change in statute, regulation, declaratory ruling, or court decision." See LAC 61:III.101(C)(2)(a) and (b)(i). Herein, prior to the audit period, there was both subsequent legislation changing

the statute (*i.e.*, La. C.C. art. 466) as well as a court decision—**Willis-Knighton (II)**, which superseded RR 02-003 and PLR 03-005. **Willis-Knighton (II)** clearly held that MRIs were not component parts of the hospital in which they were installed. Although the legislature subsequently reinstated the "societal expectations" test, and the disjunctive reading of La. C.C. art. 466 was rejected by **Willis-Knighton (II)**, whether RR 02-003 and PLR 03-005 were still in effect was certainly not clear; thus, it cannot be said that there was unequivocal or clear advice from the Department that repairs made to MRIs were not taxable.

Additionally, RR 02-003 very clearly stated that "[d]etermining if an MRI is a component part through permanent attachment to an immovable can only be answered through an anlaysis of all facts surrounding the attachment. Thus, one universal rule on the classification of MRI scanners is not possible." Furthermore, neither PLR 03-005 nor PLR 06-010 can be considered unequivocal advice from the Department because they were private letter rulings, which only provide guidance to a specific taxpayer at the taxpayer's request and is binding on the Department only as to that taxpayer. See LAC 61:III.101(C)(2)(a). Hitachi was not the taxpayer that requested either PLR 03-005 or PLR 06-010. As such, the guidance contained in PLR 03-005 and PLR 06-010 is not applicable to Hitachi and cannot be considered unequivocal advice from the Department. Moreover, in PLR 06-010, the Department determined that the MRIs at issue were tangible personal property, and therefore, subject to taxation.

Lastly, we cannot say that the Department's publication in *Tax Topics* can be considered unequivocal advice from the Department. In our view, that publication contained summaries of select tax laws amended or enacted during the 2005 Regular Session of the Louisiana Legislature. Because La. C.C. art. 466 was amended in that session (2005 La. Acts, No. 301), the publication included a

summary of the Act. This summary does not contain any clear guidance or advice from the Department.

Accordingly, because we find no evidence of unequivocal advice from an unusually authoritative source that MRIs are not subject to taxation, we find no error in the Board's implicit decision to reject Hitachi's argument that detrimental reliance was applicable herein to estop the Department from collecting sales tax. Likewise, we find no manifest error in the Board's determination that the MRIs herein were not component parts of the medical facilities in which they were installed, and thus, were movable property/tangible personal property.

CONCLUSION

For all of the above and foregoing reasons, the March 4, 2015 judgment of the district court is vacated for lack of subject matter jurisdiction, and the September 14, 2011 decision of the Board of Tax Appeals is affirmed.

All costs of this appeal are assessed to the appellant, Hitachi Medical Systems America, Inc.

JUDGMENT OF DISTRICT COURT VACATED; JUDGMENT OF THE BOARD OF TAX APPEALS AFFIRMED.