

BOARD OF TAX APPEALS

STATE OF LOUISIANA

AMPACET CORPORATION
Petitioner

B.T.A. DOCKET NO. 4975

VERSUS

CYNTHIA BRIDGES, SECRETARY,
DEPARTMENT OF REVENUE
AND TAXATION,
Respondent

WRITTEN REASONS FOR JUDGMENT

Ampacet Corporation (Ampacet) is a New York Corporation, authorized to and doing business in Louisiana. Ampacet, during the audit period, was a manufacturer of powder and chemicals color concentrates and had a manufacturing facility in DeRidder, Louisiana. Ampacet also does business in states other than Louisiana. The parish of Beauregard, presumably at the request of Ampacet, issued Industrial Revenue Bonds, the proceeds of which were loaned to Ampacet and were used to build or expand Ampacet's manufacturing facility in DeRidder. The issue before the Board is the proper tax treatment of the interest expense that Ampacet paid the bond holder of the Industrial Revenue Bonds.

The Secretary of the Department of Revenue and Taxation (Secretary) disagreed with the treatment of the interest expense and other matters and, on September 22, 1998, assessed Ampacet additional corporate income tax for the taxable years ending December 31, 1991, December 31, 1992 and December 31, 1993. The total amount of the tax for the three years was \$114,153.00. After an audit review the Secretary reduced the taxes by \$35,923.00. The remaining portion of the assessment is \$78,230.00 plus interest. Ampacet agrees with the remaining amount of the assessment with the exception of \$22,558.00 which pertains to the treatment of the interest expense of the interest paid on the industrial revenue bonds. For reasons not explained to the Board, Ampacet has not paid the tax that it admits that it owes.

The matter was heard by the Board on June 15, 2004 and after the presentation of evidence and argument of counsel the case was taken under advisement. The facts are not in dispute. The sole issue is the method of interest expense attribution.

Ampacet argues that the interest expense at issue should be directly attributed to its apportionable income associated with its DeRidder facility. Ampacet relies on LSA- R.S. 47:287.94 A (1). That subsection states in part: "**Total net apportionable income.** Total net apportionable income...is computed by subtracting the following from gross apportionable income: (1) All expenses...defined in R.S. 47:287.63 as allowable deductions which are directly attributable to gross apportionable income....".

The Secretary acknowledges the above statute but argues that in the matter under consideration the statute, when dealing with the treatment of interest expense, must be interpreted under the provisions of LAC 61:I 1130 B.2. That regulation requires that interest expense must ordinarily be allocated to all of the taxpayer's income producing activities regardless of the specific purpose for which the borrowing was incurred and does not directly require allocation of interest deductions to income. The regulation assumes that: (1) money is fungible; (2) management can borrow where it wants and use the borrowed funds as it wants; (3) the creditors of the borrowing company look to the general credit of the company for the repayment of its debts, and (4) the use of the borrowed money frees the corporation's money for other purposes.

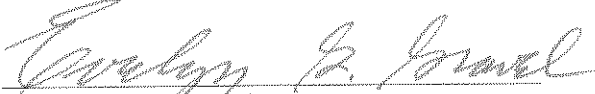
In the case under consideration the assumptions of the rule do not apply. Money is fungible in that a borrower may borrow a particular dollar and repay it with a different one, as one who borrows a cup of sugar replaces it with another cup of different sugar but of the same quality. The money under consideration was borrowed for one specified purpose. That is to build or improve facilities in DeRidder to manufacture the products that Ampacet produces. The source of the money was from bond holders who loaned at a reduced rate to Ampacet because the interest was tax exempt to the bondholders. Though not brought out in the evidence presented, the Board will take judicial notice that money that is loaned on industrial revenue bonds is burdened with many restrictions. It must be used for the improvements of Ampacet's facilities as stated in the bond indenture. To use the funds for another purpose is a violation of the indenture and is often a crime. The bond holders do not look to the general assets of Ampacet for repayment. They have a security interest in the facilities that were created with the borrowed money. There was no evidence that the borrowed money was used for any purpose other than Ampacet's facilities. In fact the evidence was to the contrary.

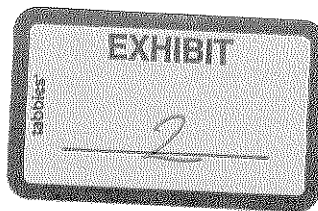
LSA- R.S. 47:287.94 A (1). Provides for the treatment of the interest expense to be directly attributable to gross apportionable income as sought by Ampacet. The Secretary has not shown that the rule, in this case, should limit the provisions of that statute. There may be other situations that the rule is applicable, but not in this case.

Ampacet argues that it has taken a long time for the case to be heard by the Board since filing its appeal from the assessment in December of 1998 and interest is running. The Board would have heard the case at any time that Ampacet asked for a hearing. Only \$22,558 was at issue in the hearings before the Board. And since the Board has found that no tax is due, there will be no interest on that part of the assessment. Ampacet could have stopped the running of interest on the amount of the assessment that was not at issue by paying the amount that it acknowledged was due.

A judgment in accordance with these written reasons shall be submitted by Ampacet in 20 days from date hereof.

Baton Rouge, Louisiana, this 21 day of September, 2004.


Evelyn G. Gravel, Chairman



December 2, 1997

Via Federal Express

Ms. Terri DuCote
Audit Review Division
State of Louisiana, Department of Revenue and Taxation
PO Box 201
Baton Rouge, LA 70821-0201

Re: **Ampacet Corporation**
Louisiana Corporation Income Tax
Audit Period: 1991, 1992, 1993

Louisiana Corporation Franchise Tax
Audit Period: 1992, 1993, 1994

Dear Ms. DuCote:

This letter is in regard to our protest to Louisiana's proposed assessment dated June 11, 1997, and to our telephone conversation on August 29, 1997. During our conversation, additional information regarding the interest expense deducted on the Louisiana income tax returns for the years ended December 31, 1991, 1992, and 1993 was requested. We are enclosing information which establishes which loans were directly traceable to assets of Ampacet Corporation ("Ampacet") and are not related to its subsidiaries. In addition we are including our previous correspondences between your office and our's.

The taxpayer can directly trace the property used to collateralize the loans producing the interest expense on its tax returns for the years ended December 31, 1991, 1992, and 1993. The following table shows which loans are collateralized by property of Ampacet:

<u>Lending Institution</u>	<u>Amount Originally Borrowed</u>	<u>1991 Interest Exp. Deducted</u>	<u>1992 Interest Exp. Deducted</u>	<u>1993 Interest Exp. Deducted</u>	<u>Collateral</u>
1. Manufacturer's Hanover Trust Co. Chemical Bank	\$21,000,00	\$1,903,815	\$1,675,942	\$1,919,833	"First Lien"- Land, Bldg., & Equip. comprising the Terre Haute Facility
2. Chase Manhattan Bank	3,000,000	124,761	72,426	50,046	Mach. & Equip. from DeRidder Facility
3. Manufacturer's Hanover Trust Co.	80,000	2,153	-	-	Mach. & Equip. from DeRidder Facility
4. Economic Development Admin.	1,500,000	35,131	24,344	12,646	2nd Mortgage: Land, Bldg., Mach. & Equip. from DeRidder