

Until April of 2005 most attorneys, bankers and tax collectors had a notion of what constituted a component part of an immovable. This notion was important because it determined whether the former piece of movable property was or was not included in the mortgage that covered the building in which it was installed. From a tax perspective, it also was important to determine whether repairs to the thing is or is not subject to State and local sales and use taxation. In April of 2005, the Louisiana State Supreme Court issued its opinion in *Willis-Knighton Medical Center vs. Caddo-Shreveport Sales and Use Tax Commission*, 903 So.2d 1071, 2004-0473 (La. 4/1/05). The Court, recognizing the monumental nature of the opinion actually states:

*As it turns out, [Article 466](#) is at the epicenter of a debate that “raises serious questions about civilian methodology in general and specifically about the role of [pre-revision jurisprudence in interpreting a revised Civil Code.](#)” [Lovett, 48 Loy. L.Rev. at 620.](#) Its proper interpretation, as evidenced in the diametrically opposed federal court decisions of [Equibank v. United States Internal Revenue Service, 749 F.2d 1176 \(5th Cir.1985\)](#) and [Prytania Park Hotel, Ltd. v. General Star Indemnity Co., 179 F.3d 169 \(5th Cir.1999\)](#), has “spawned a civilian cause-celebre,” resulting in extensive academic commentary and debate ^{ENG} that pits some of Louisiana’s **12 most well-respected scholars and academicians (notably Professors A.N. Yiannopoulos and Symeon Symeonides) against Judge Jacques L. Wiener, Jr. and the U.S. Fifth Circuit Court of Appeals.*

Prior to this decision, the Courts from the Equibank decision on forward had interested the provisions of LA Civil Code art. 466 to include an unwritten secondary test for determining when an installed piece of movable property became a component part of the building (immovable property) into which it had been installed. That test was cited as the “societal expectations test.” In Equibank, the issue was whether an IRS lien over the personal property of the tax debtor in a mansion in New Orleans covered several crystal chandeliers that had been hanging in the mansion, which the IRS removed, or were the chandeliers component parts of the mansion and thus covered under the mortgage held by Equibank. The chandeliers in question were worth up to \$75,000 each. The Court in Equibank, in finding for the mortgage holder and holding the chandeliers to be component parts of the building phrased the test as follows:

The ordinary view of society being a relevant consideration, we conclude our consideration by asking the near-rhetorical question: Does the average, ordinary, prudent person buying a home expect the light fixtures to be there when he or she arrives to take possession? Does that person expect the room to become illuminated when the light switch is thrown or should that person reasonably expect no response to the switch and, upon looking up, reasonably expect to see only a hole in the ceiling with the interior house wiring sticking out of the electrical workbox? In our view, the societal expectation is to have the lights go on. We therefore conclude that the Louisiana Legislature intended that the physically attached light fixtures were electrical installations and, as such, were component parts of the residence, thus respecting what “everybody knows” about which items “go with the house.”

Louisiana operated on this law for two decades, until *Willis-Knighton*. The Court in *Willis Knighton* was faced with the question of whether large nuclear cameras were component parts of the hospital so as to make the repairs thereto exempt from sales and use taxation. The Louisiana State Supreme Court held that the cameras were not component parts. This finding would not have been so monumental but for the Court going the extra step in the analysis and stating:

...it is neither proper nor necessary to resort to a societal expectations analysis.

The plain text of Article 466¹ does not reference “societal expectations” in determining whether an item is a component part of a building. Rather, it employs a straightforward, practical, bright-line test: permanent attachment, as defined by the article.

1 LA Civil Code Art. 466 (circa 2005)

Art. 466. Component parts of buildings or other constructions

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.

This strict reading of Louisiana Civil Code Art. 466 threw the Louisiana banking world into a *tizzy*, for lack of a more erudite word. The worry was that scores of installations that were not permanently installed into buildings (i.e., not resulting in substantial damage if removed, such as doors, faucets, light fixtures, shutters, etc.) would no longer be considered *component parts* of the building over which the banks held a mortgage, and thus could be stripped from the property when the debtor was making the decision to default, thereby greatly diminishing the property's value as security for the loan. Bankers envisioned tens of thousands of dollars worth of previously anticipated security being stripped from homes and commercial properties, like the chandeliers in *Equibank*, prior to foreclosure.

This panic led to a rush to the Legislature in order to enact the societal expectations test into the text of LA Civil Code art. 466. None of the bills passed. Back they came in the 2006 regular Session where Act 765 was enacted. However, the new law only changed the term "immovable" to the phrase "building or other construction", but otherwise retained prior law. This did not seem to change much, if anything about how the Courts would view the issue into the future. The next iteration of the law came with the enactment of Act 632 in the 2008 Regular Session, which re-wrote Art. 466 to read 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.

Act 632 contained a somewhat unique "Section 2" which is a statement of Legislative intent outside of the text of the Civil Code, which read as follows:

Section 2. For purposes of the sales and use tax, the amendments to Civil Code Articles 466 and 508 by this Act are not intended and shall not be interpreted as changing the characterization of movables as tangible personal property prior to the attachment and/or incorporation of them into the structure of a building or other construction.

This still did not resolve the debate, although it seems to have mollified the banking industry. The next fight has brewed in the application of sale and use tax law, specifically when it comes to the repair of equipment that is in some way affixed to a building or other construction. Some in the business community see the language of Act 632 as creating the potential that transactions that were previously not subject to sales and use taxes may now be interpreted as being taxable.

That brings us to the 2009 Regular Session. Negotiations between tax collectors and the business lobby broke down over two competing bills, HB 819 and HB 882, which were both authored by Rep. Hunter Greene, Chairman of the House Ways and Means Committee. HB 819 attempted to define an exemption from State and local sales and use taxes for repairs to machinery and equipment that were *permanently attached* to a building or other structure but defined *permanently attached* such as to **not** require that the removal of the installation would do substantial damage to either the installation or the building or other structure. HB 882 proposed to place the following language into the law of sales and use tax exemptions:

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.

At the end of the 2009 Regular Session, with negotiations at a standstill, an amendment was added to SB 9, which became Act 442, which added the proposed HB 882 language (above) and created the Act 442 Commission:

There is hereby established the following collaborative working group of state and local tax administrators and industry representatives for the purpose of assisting in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

The commission has 14 members and includes representatives from various business interests, the LA State Bar Association, the LATA, the various local governments associations (including the PJAL) and the LA Department of Revenue. The Commission is a public entity, thus holds its meetings in accordance with the Open Meetings Law. The strictures of the Open Meetings Law have proven to be a new experience for the business representatives, who are much more accustomed to handling such discussions in a more private setting. The meetings are currently being held monthly with a mandate of making a recommendation to the Legislature by January 31, 2011.

The early progress of the commission is to try to agree on the current state of the law, in light of the past several years of decisions and legislative action and inaction. One consensus goal appears to be to recommend to the Legislature a definition or test for *component parts of an immovable* that is tailored for sales and use tax application and not intended to impact mortgages or other security interest laws. This will hopefully avoid *tizzying up*, again for lack of a more erudite term, the banking community. To that end, there is a general consensus to placing the new language, if and when it can be agreed upon, in Title 47, the Uniform Sales and Use Tax Code.

The meetings are open to the public and the PJAL has a seat at the table. Therefore, should any police juror, parish council person, parish attorney or local collector be interested in tracking the actions of the commission or in pitching in an idea to clarify the waters, feel free to contact the PJAL offices and yours truly.



Calendar of Events

February 25-27, 2010

PJAL 86th Annual Convention
Lake Charles, LA

March 6-10, 2010

NACo Legislative Conference
Washington, D.C.

July 16-20, 2010

NACo Annual Conference
Reno, NV

March 5-9, 2011

NACo Legislative Conference
Washington, D.C.

July 15-19, 2011

NACo Annual Conference
Portland, OR

March 3-7, 2012

NACo Legislative Conference
Washington, D.C.

July 13-17, 2012

NACo Annual Conference
Pittsburgh, PA