

The Supreme Court of the State of Louisiana

**CALCASIEU PARISH SCHOOL BOARD
SALES & USE DEPARTMENT, ET AL.**

No.2020-C-00724

VS.

NELSON INDUSTRIAL STEAM COMPANY

IN RE: Calcasieu Parish School Board Sales and Use Tax Department - Applicant Plaintiff; Kimberly Tyree, in her capacity as Administrator of the Calasieu Parish School Board Sales and Use Tax Department - Applicant Plaintiff; Applying For Writ Of Certiorari, Parish of Calcasieu, 14th Judicial District Court Number(s) 2017-1373, Court of Appeal, Third Circuit, Number(s) 19-315;

October 20, 2020

Writ application granted. See per curiam.

WJC

BJJ

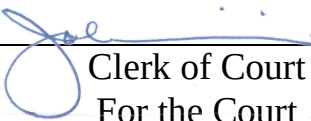
JLW

JDH

SJC

Genovese, J., would deny.
Boddie, J., would deny.

Supreme Court of Louisiana
October 20, 2020



Clerk of Court
For the Court

10/20/20

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On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Calcasieu

PER CURIAM*

Writ granted. Ash is an incidental byproduct under the statutory definition set forth by Louisiana Revised Statutes 47:301(c)(i)(aa)(III)(aaa), as recently amended by the legislature. The court of appeal too narrowly construed the meaning of “incidental,” limiting the amendment’s application only to those products that were unintentional or unplanned. However, within the broader context of the statute, it is clear the legislature included within the scope of the term “byproduct” *any* product that is secondary to a primary product when it is sold for a price less than the cost of its materials. The ash at issue is plainly secondary to the electricity, and the sales price of the ash is less than the cost of the limestone. As such, the purchase of limestone, which is a material further processed into ash, “shall not be deemed to be sales for further processing and shall be taxable.” *Id.* We remand to the court of appeal for consideration of remaining assignments of error, which were pretermitted, including an analysis of whether the amendment is a new tax or an increase in a tax because the court of appeal’s holding thereon was based on an erroneous interpretation of Act 3.

* Retired Judge James Boddie, Jr. appointed as Justice *pro tempore*, sitting for the vacancy in Louisiana Supreme Court District 4.