

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. S. 91-137

WASTE PROCESSING EQUIPMENT §
INC., d/b/a Max Pax and Tennessee
Valley Recycling §
P.O. Box 1047
Rainsville, AL 35986 §

Taxpayer. §

FINAL ORDER

The Revenue Department assessed sales tax against Waste Processing Equipment, Inc. d/b/a Max Pax and Tennessee Valley Recycling (Taxpayer) for the period July 1, 1987 through June 30, 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on June 20, 1991. Bill Traylor appeared for the Taxpayer. Assistant counsel Beth Acker represented the Department. This Final Order is based on the evidence presented at the hearing.

FINDINGS OF FACT

The Taxpayer manufactures and sells paper baling machines. The balers are sold primarily to retail stores and recycling companies. The primary function of a baler is to compress loose wastepaper and paper products into manageable bales. The evidence is undisputed that wastepaper must be baled before it can be sold commercially to a recycler.

The issue in dispute is whether the balers are "machines used in mining, quarrying, compounding, processing and manufacturing of

tangible- personal property" and therefore taxable at the reduced 1 1/2% machine rate levied at Code of Ala. 1975, §40-23-2(3).

The Taxpayer paid tax at the 1 1/2% rate and the Department subsequently assessed additional tax at the 4% rate. The Department contends that the balers do not qualify for the reduced machine rate because they do not cause any physical or chemical change in the paper, but rather are used only to aid in transportation of the wastepaper.

CONCLUSIONS OF LAW

A tax levying section must be construed liberally in favor of the taxpayer and against the Department. State. v. Community Blood and Plasma Services, 267 So.2d 176. Also, where the language of a statute is clear, that language must be followed in determining the statutory intent. Riley v. State, 534 So.2d 322.

Section 40-23-2(3) levies a reduced 1 1/2% tax on machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property. State v. Try-Me Bottling Company, 57 So.2d 537, at p. 539, "the words manufacturing, processing and compounding are used disjunctively in the statute and are evidently intended to have a broad and all inclusive meaning. There is no attempt in the statute to limit or qualify their meaning." Thus, even though the balers are not used in a manufacturing process, the machine rate would still apply if they are used in compounding or processing the paper.

The word "process" as used in the statute has been held to be

synonymous with "preparation for market" and "to convert into marketable form," see Southern Natural Gas Co. v. State, 73 So.2d 731, at p. 735. See also the dictionary definition set out in State v. Four States Drilling Co., 177 So.2d 828, at p. 831, which includes "[T]o subject (esp. raw material) to a process of manufacture, development, preparation for the market, etc; to convert into marketable form. . . .".

The evidence is undisputed that the balers are used to process wastepaper into bales which are then sold to recyclers. The loose wastepaper cannot be sold commercially unless baled. Thus, the balers process wastepaper into marketable form and should be taxed at the reduced 11/2% machine rate.

This case can be distinguished from the cases cited by the Department in brief:

In Southern Natural Gas Co. v. State, supra, compressors used to move gas along a pipeline were denied the machine rate (exemption before 1959). The gas was already in marketable form before it reached the compressors. In this case the loose wastepaper is not marketable until baled.

In Alabama-Georgia Syrup Co. v. State, 42 So.2d 796, platform trucks used to carry syrup from one point to another within the plant were denied the machine rate. The trucks were used for transportation only, whereas in this case the balers not only make the paper easier to transport but also change the form of the

product.

Finally, in State v. Four States Drilling Co., 177 So.2d 828, the Department argued that underground oil drilling machines (casing, tubing, etc.) used to move oil to the surface merely transported the oil and did not process it. The court acknowledged that the machines moved the oil but also found that and allowed the reduced rate. Likewise, the balers make the paper easier to transport and also process it into marketable form.

The above considered, the Department is directed to reduce and make final the assessment showing no additional tax due.

Entered on July 31, 1991.

BILL THOMPSON
Chief Administrative Law Judge