

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. U. 91-144

WASTEWATER DISPOSAL SERVICES, INC.  
P.O. Drawer 649  
Brewton, AL 36427,

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed use tax against Wastewater Disposal services, Inc. (Taxpayer) for the period May 1, 1989 through September 30, 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on August 13, 1991. W. Earl Cooper 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 operates a commercial wastewater disposal site in Escambia County, Alabama. The Taxpayer disposes of toxic wastewater produced by oil and gas wells in the area. The wastewater is hauled to the Taxpayer's facility where it is stored in tanks and then pumped down an abandoned oil and gas well. The Taxpayer is an independent business unrelated to any of the producers that use its services. The Taxpayer charges a set fee for its services.

The Taxpayer's position is that its facility is a pollution control facility and therefore exempt from use tax pursuant to Code

of Alabama 1975, §40-23-62(18).

The Department's position is that the facility is operated primarily for profit and not pollution control and therefore is not exempt under the above statute, citing Chemical Waste Management, Inc. v. State, 512 So.2d 115 (1987).

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-62(18) exempts from use tax all devices or facilities "used or placed in operation primarily for the control, reduction or elimination of air or water pollution, . . ." Property is exempt under the above statute only if the property is acquired and used primarily for pollution control.

The Alabama Supreme Court set out the intended purpose for an identical pollution control exemption involving ad valorem tax in the Chemical Waste case, supra, at p. 117, as follows:

This emphasizes the principal reason for the legislature's enactment of the tax exemption which is to ease the new and sometimes high cost of the addition of pollution control property and equipment to existing businesses, as well as to businesses which will be started after passage of pollution control legislation.

The goal of the exemption is to encourage all businesses to control pollution and to assist them in their compliance with mandatory environmental regulations. See generally, Reed, Incentives for Pollution Abatement, 12 Ariz.L.Rev. 511 (1970).

The Chemical Waste opinion distinguished between a facility with a primary purpose of controlling pollution (exempt) versus a commercial hazardous waste facility constructed and operated primarily for profit (not exempt).

The Taxpayer's facility in this case obviously controls pollution in one sense because it disposes of the toxic wastewater from surrounding oil and gas wells. However, the primary purpose of the facility is not pollution control but rather profit. Consequently, the facility does not come within the scope of the exemption statute and the tangible personal property used at the facility is subject to use tax.

Taxation is the rule and exemption the exception, and an exemption must be strictly construed in favor of the Department and against the taxpayer. Brundidge Milling Company v. State, 228 So.2d 475; Community Action Agency of Huntsville v. State, 406 So.2d 890.

The above considered, the assessment in issue is correct and should be made final, with applicable interest.

Entered on August 23, 1991.

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BILL THOMPSON  
Chief Administrative Law Judge