

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

UNION FOUNDRY COMPANY, INC.
1501 West 17th Street
Anniston, AL 36202,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NOS. S92-153
S92-154

FINAL ORDER

Union Foundry Company, Inc. (Taxpayer) filed a petition for refund of utility gross receipts tax for the period July 1988 through June 1991, and a separate petition for refund of sales tax for the period August 1988 through July 1991. The Department denied both petitions and the Taxpayer appealed to the Administrative Law Division. The cases were consolidated and a hearing was conducted on August 4, 1992. Thomas H. Brinkley appeared for the Taxpayer. Assistant counsel J. Wade Hope represented the Department.

The sales tax issue in dispute is whether oxygen purchased and used by the Taxpayer in the production of ductile iron pipe fittings became an ingredient or component part of the pipe fittings. If so, the oxygen was purchased at wholesale pursuant to Code of Ala. 1975, §40-23-1(a)(9), and no sales tax would be due.

Based on information provided by the Taxpayer after the August 4 hearing, the Department now concedes that the oxygen in issue became an ingredient or component part of the manufactured iron

fittings. Consequently, the sales tax refund in issue should be granted.

The utility tax refund remains in dispute and concerns whether water purchased by the Taxpayer from the City of Anniston during the period in question was subject to the utility gross receipts tax levied at Code of Ala. 1975, §40-21-82. The utility gross receipt tax is levied in part on domestic water. "Domestic water", is defined at Code of Ala. 1975, §40-21-80(a)(1) as all water except water used "in industrial processes and not primarily for human consumption".

The Department's position is that water is used "in industrial processes" only if it comes into contact with and causes some change in the product being manufactured. See, July 30, 1989 memorandum, State's Exhibit 3. The Department does not require the separate metering of water used for nontaxable industrial purposes.

Rather, the Department estimates how the water is used and then taxes either all or none of the water depending on whether more or less than 50% is used for industrial purposes. See Department Reg. 810-6-5-.26. The relevant facts are set out below.

The Taxpayer manufactures ductile iron pipe fittings at its manufacturing facility in Anniston, Alabama. The Taxpayer uses water from an on-site well, and also purchases additional water from the City of Anniston Water Board. The Taxpayer purchased 25,787,580 gallons (3,306,100 cubic feet) of city water during the

subject period on which it paid the utility gross receipts tax in issue of \$912.75. See, State's Exhibit 4.

The city water in issue entered the Taxpayer's facility through a single main line and was then diverted for a number of different uses throughout the facility. The water was metered as it entered the facility, but the various uses were not separately metered. The Taxpayer argues that at least 90% of the water was used at the plant in eight industrial related activities. See, State's Exhibit 1. Those eight uses include (1) water used to cool the outside of the cupola in which the iron is melted, (2) water used to cool compressors, (3) water used to cool heat exchangers, (4) water added to molding sand to control the moisture level for bond activation, (5) water used in the plant's pollution control system, (6) water used to activate cement in the treatment of cupola baghouse dust, (7) water used to cool conveyor beams, and (8) water used to cool sand in the diastematic system's asco rotary drum.

The Department in this case determined that only the water used in (4), (7), and (8) above was used for industrial purposes.

Based thereon, the Department taxed all of the water because the Taxpayer could not prove that more than 50% was used for nontaxable industrial purposes.

I accept the Department's method of taxing all or none of the water depending on whether more or less than 50% is used for

industrial purposes. That interpretation is supported by use of the word "primarily" in the definition of "domestic water" at §40-21-80(1). Also, I do not dispute the Department's decision not to require separate metering because to do so would be burdensome on the individual utility customers.

However, the Department's definition of industrial water is too narrow. It is not necessary that the water come into contact with and cause some change in the product being manufactured. Rather, water is used in an industrial process if it is used at a manufacturing facility for any purpose related to or assisting in the manufacturing process. The water described in Department's Exhibit 1 above was used in processes relating to and necessary for the production of iron fittings. The water was thus used for industrial purposes, and consequently, was not subject to the utility gross receipts tax.

Because the Department does not require separate metering of industrial water, whether more or less than 50% of the water used by a utility customer is used for industrial purposes can only be estimated on a case by case basis. In this case, clearly more than 50% of the water used by the Taxpayer was used for industrial purposes. Consequently, the refund in issue should be granted.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on November 13, 1992.

BILL THOMPSON
Chief Administrative Law Judge