

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

vs.

FLOWERS SPECIALTY FOODS  
P.O. Box 205  
Montgomery, AL 36043-0205

Taxpayer.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 92-221

FINAL ORDER

The Revenue Department denied a petition for refund of utility gross receipts tax filed by Flowers Specialty Foods of Montgomery, Inc. (Taxpayer) for the period December 1988 through November 1991.

The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on August 12, 1992. Mike Simmons and George Jones appeared for the Taxpayer. Assistant counsel J. Wade Hope represented the Department.

The issue in this case is whether water purchased and used by the Taxpayer during the period in issue was subject to the utility gross receipts tax levied at Code of Ala. 1975, §40-21-82. The utility gross receipts tax is levied in part on domestic water. "Domestic water" is defined at Code of Ala. 1975, §40-21-80(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, Department Ex. 3. The Department does not require the separate metering of water used for non-taxable industrial purposes. Rather, the Department estimates how the water is used and then taxes either all or none 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 manufacturers bread and related food products at its manufacturing facility in Hope Hull, Alabama. The Taxpayer purchased water from the City of Montgomery for use at its facility during the period in question and paid the utility gross receipts tax in issue of \$3,216.79.

The parties agree that approximately 25% of the water was added to and became a part of the Taxpayer's finished products. The remaining 75% was used to operate two boilers used to cook the Taxpayer's products, to operate two cooling towers that are a part of the Taxpayer's refrigeration system in which raw dough is stored, to clean the plant equipment and facilities, and for use in the bathrooms, for drinking and to water the lawn. The amount of water used for each of the above purposes was not measured and can only be estimated.

The Department agrees that the water that was added to and became a part of the Taxpayer's products was industrial water. However, the Department argues that the remaining 75% was not industrial water because it did not come into contact with or cause

some change in the products being manufactured. The Department concedes that if the water used to clean the plant and equipment is construed as industrial water, then clearly more than 50% of the total water in issue was used for industrial purposes. See, transcript at page 37.

I do not dispute 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). I also agree with the Department's position not to require separate metering because to do so would be very 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.

In this case, the water used in the boilers and cooling towers was used for industrial purposes because the boilers and cooling towers are a necessary and integral part of the Taxpayer's manufacturing process. The water used to clean the plant is a closer question, but that water was also used for industrial purposes because the plant must be cleaned regularly for sanitary

reasons and so the equipment will run efficiently. Keeping the plant clean is necessary and related to the Taxpayer's business.

As between industrial processes and human consumption, the water is clearly used in industrial processes.

The Department concedes that if the water used to clean the plant is industrial water, then more than 50% of the water was used for industrial purposes. The evidence supports that conclusion.

Consequently, the water in issue was used primarily for industrial purposes and the refund in issue should be granted.

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

Entered on November 13, 1992

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BILL THOMPSON  
CHIEF ADMINISTRATIVE LAW JUDGE