

CHARLES L. DOUGLAS  
d/b/a Ammonia Hold Plus  
1327 Highway 239  
Clayton, AL 36016,

Petitioner,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 01-443

### FINAL ORDER

Charles L. Douglas (APetitioner@), d/b/a Ammonia Hold Plus, applied to the Department for a sales and use tax exemption certificate. The Department denied the certificate, and the Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a). A hearing was conducted on September 20, 2001. The Petitioner and his wife, Evelyn Douglas, attended the hearing. Assistant Counsel Jennifer Hagood represented the Department.

### ISSUE

The issue in this case is whether the sale of Ammonia Hold Plus by the Petitioner is exempt from sales tax pursuant to Code of Ala. 1975, ' 40-23-4(a)(16). That statute exempts from sales tax all devices or facilities, and all identifiable components thereof, or materials for use therein, acquired primarily for the control, reduction, or elimination of air or water pollution.

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### FACTS

The Petitioner and his wife are chicken farmers in Clayton, Alabama. They purchase Ammonia Hold Plus from an Arkansas supplier, and then sell it to other chicken farmers in South Alabama.

Ammonia Hold Plus is a granular product that eliminates or reduces ammonia in chicken houses. Ammonia causes chickens to lose weight, and sometime die. The product also lowers the beetle population and bacterial pollution in chicken houses, and thus prevents various diseases. Using Ammonia Hold Plus is an alternative to ventilation, and thereby greatly reduces a chicken farmer-s fuel costs.

### **ANALYSIS**

The use of Ammonia Hold Plus is clearly an effective product in the growing of chickens, and, in a sense, controls pollution by eliminating ammonia and bacteria in the chicken houses. However, it is not acquired by chicken farmers primarily for the control, reduction, or elimination of air or water pollution within the purview of the sales tax exemption statute.

The sales tax pollution control exemption at ' 40-23-4(a)(16) is intended to ease the financial burden on businesses that are required to purchase non-productive equipment and materials to comply with mandatory pollution control laws. *Chemical Waste Management, Inc. v. State*, 512 So.2d 115 (Ala.Civ.App. 1987). The exemption applies only if the property in question is Acquired primarily@for pollution control purposes.

In *Service Chemical Industries v. State of Alabama*, S. 00-710 (Admin. Law Div. 7/11/01), the Administrative Law Division held that sodium hypochlorite used in the processing of chickens to kill or prevent salmonella and other diseases was not exempt as a material acquired primarily to control or reduce pollution.

Code of Ala. 1975, ' 40-23-4(a)(16) exempts from sales tax the gross proceeds from the sale of all devices or materials acquired primarily for the control, reduction, or elimination of air or water pollution. The exemption applies only if

the device or material is acquired primarily for pollution control. The exemption does not apply if the device or material is acquired primarily as an integral part of the purchaser's profit motivated business activity, even if the device or material serves to control or reduce pollution. *Chemical Waste Management, Inc. v. State*, 512 So.2d 115 (Ala.Civ.App. 1987). See also, *Air Products & Chemicals, Inc. v. State of Alabama*, U. 95-359 (Admin. Law Div. yO.P.O. 12/14/95), and cases cited therein.

The sodium hypochlorite in question was not acquired by the Taxpayer's customers primarily to control water pollution. Rather, the customers used the chemical in the processing of chickens to kill or control salmonella and e-coli bacteria. That is, the chemical was acquired primarily to assist in the processing of chickens for profit, and not to eliminate or control water pollution. Consequently, the pollution control exemption does not apply.

*Service Chemical* at 2, 3.

The above rationale applies in this case. The Petitioner's customers purchase the Ammonia Hold Plus primarily to reduce ammonia and kill beetles and bacteria in their chicken houses. Use of the product allows the customers to grow larger, healthier chickens at less cost. The customers thus purchase the product primarily to benefit their profit-motivated business, not to comply with mandatory pollution control laws. For similar holdings, see, *Air Products & Chemicals, Inc. v. State of Alabama*, U. 95-359 (Admin. Law Div. 12/14/95) (equipment purchased by a contractor to fulfill a contract was not exempt because it was necessary to and used in the contractor's profit-motivated business); *Industrial Safety Products, Inc. v. State of Alabama*, S. 90-257 (Admin. Law Div. 9/17/92) (filters, protective glasses, goggles, boots, etc. used by a taxpayer in its asbestos removal business were not exempt because they were acquired primarily for use in the taxpayer's profit-motivated business); *Waste Away Group, Inc. v. State of Alabama*, U. 88-107 (Admin. Law Div. 2/16/90) (containers and trucks used by a taxpayer in its waste disposal business were not exempt

because the equipment was acquired primarily for and used directly in a profit-motivated activity).

The Petitioner argues that he assumed that the Ammonia Hold Plus was exempt because most other products used in chicken houses, i.e. insecticides, feed, etc., are exempt. Those other items are exempt, however, because they are specifically exempted by statute, see generally, Code of Ala. 1975, ' 40-23-4(a), not because they control pollution.

The exemption certificate was properly denied by the Department.

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

Entered October 11, 2001.