

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NO. S. 94-235

SAMSON PLASTIC PIPE, INC.
100 Industrial Drive
Post Office Box 325
Samson, Alabama 36477-0325,

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Taxpayer.

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed State sales tax and Geneva County and City of Samson use tax against Samson Plastic Pipe, Inc. ("Taxpayer") for the period October 1990 - October 1993. The Taxpayer paid the tax under protest and then petitioned for a refund. The Department denied the refund and the Taxpayer appealed to the Administrative Law Division. A hearing was conducted on July 18, 1994. Howard Anderson and Robert Anderson represented the Taxpayer. Assistant counsel Antoinette Jones represented the Department.

The Taxpayer manufactures pipe at its facility in Samson, Alabama. This case involves two issues:

(1) Should various items such as paint, sealants, grout, plastic steel and duct tape purchased by the Taxpayer for use in its manufacturing facility be taxed at the reduced "machine rate" pursuant to Code of Ala. 1975, §§40-23-2(3) (sales tax) and 40-23-61(b) (use tax); and

(2) Should a pulverizer machine and also coveralls and respirator masks used by the Taxpayer's employees be exempt from

sales and use tax as equipment acquired primarily for the control, reduction or elimination of pollution pursuant to Code of Ala. 1975, §§40-23-4(16) (sales tax) and 40-23-62(18) (use tax).

Issue (1) -- The "Machine" Rate Items.

The Taxpayer purchased sealants, grout, plastic steel, duct tape and corrosive resistant paint for use in its manufacturing facility during the period in question. The sealants were used as replacement gaskets on machines used in the manufacturing process.

The grout was used to level the flooring at the Taxpayer's facility so that certain equipment would be sufficiently level to operate efficiently. The plastic steel was used to repair or fill cracks in some of the machines used in the manufacturing process.

The acid resistant paint was used to prevent the machines from corroding. Finally, the duct tape was used to connect or prevent leaks in the Taxpayer's pneumatic conveying system. Code of Ala. 1975, §40-23-2(3) provides that "machines" used in the manufacturing of tangible personal property should be taxed at a reduced 1½% rate. A corresponding use tax "machine" rate is set out at Code of Ala. 1975, §40-23-61(b). Section 40-23-2(3) levies the reduced rate as follows:

- (3) Upon every person, firm or corporation engaged or continuing within this state in the business of selling at retail machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property an amount equal to one and one-half percent of the gross proceeds of the sale of such machines; provided, that the term "machines," as herein used, shall include machinery which is used for mining,

quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

The machines used by the Taxpayer in its manufacturing process obviously qualify for the reduced "machine" rate. In my opinion, the sealants, plastic steel and duct tape also qualify for the reduced rate. Those items are attached to and become a part of the machines and are necessary for the operation of the machines.

The Department argues that the above items are generic supply items that can be used for many purposes, and thus should not be taxed at the special rate. However, the evidence shows that the items were used exclusively as repair or replacement parts on the machines, in which case the "machine" rate should apply. The items were necessary for the proper operation of the machines. Department Reg. 810-6-2-.57 also provides that the "machine" rate should apply "whether or not such materials at the time of purchase were recognizable as parts and attachments for machines".

The remaining two items, the grout and paint, should not be taxed at the reduced rate.

The grout is not attached to and does not become a part of the machines. Rather, it becomes a part of the building in which the machines are housed. Department Reg. 810-6-2-.57 correctly states that "the special rate does not, however, extend to the materials used in erecting buildings or other structures even though such

buildings or structures may house or support machinery used in manufacturing, compounding, processing, mining, or quarrying".

The paint is not entitled to the reduced "machine" rate because it is not necessary to the operation of the machines. The paint prevents corrosion and allows the machinery to last longer, but it does not serve an independent function in the manufacturing process.

Issue (2) -- The "Pollution Control" Items.

The Taxpayer uses a purge compound to clean or purge some of its machines used in the manufacturing process. Prior to the period in issue, the Taxpayer disposed of the used compound at a landfill. However, to avoid the risk of liability if the purge compound is later determined to be a dangerous contaminant and leaks from the landfill, the Taxpayer decided to dispose of the compound by using it as a filler in the middle layer of sewer pipe manufactured at its facility. Toward that end, the Taxpayer purchased a pulverizer machine that reduces the purge compound into useable form as a filler.

The Taxpayer argues that the pulverizer should be exempt from sales and use tax as a device acquired primarily for the control, reduction or elimination of pollution pursuant to §§40-23-4(16) and 40-23-62(18). The Department counters that the Taxpayer has failed to prove that the pulverizer was acquired primarily for pollution control purposes. Rather, the Department argues that the

pulverizer was purchased primarily to avoid the risk of future liability, and also to convert the purge compound into a useable product in the manufacturing process.

This is a close question.

The burden is on the Taxpayer to prove that the pulverizer was acquired primarily for pollution control and thus exempt from tax. Brundidge Milling Co. v. State, 228 So.2d 475 (Ala. 1969). The Taxpayer has failed to carry that burden in this case.

The Taxpayer was adequately disposing of the compound at a regulated landfill prior to purchasing the pulverizer. While the pulverizer is used to dispose of the compound, the Taxpayer's representative testified that the pulverizer was purchased primarily to avoid the risk of liability if the compound later leaked from the landfill. Importantly, the pulverizer also allows the Taxpayer to reuse the compound in its manufacturing process.

Under the circumstances, I cannot hold that the pulverizer was acquired primarily for pollution control purposes. Consequently, the exemption cannot be allowed.

The coveralls and masks also are not exempt as pollution control equipment. Those items are required by OSHA to protect the Taxpayer's employees from dust and dirt. The items were purchased primarily for safety purposes to protect the employees from a work place hazard inherent in the Taxpayer's manufacturing process. The pollution control exemption was not intended to apply to safety equipment used by a business in its everyday activities. Safety

equipment and clothing would be exempt if used in conjunction with a qualifying pollution control device or facility operated by a taxpayer. However, ordinary safety equipment used to protect employees from normal workplace hazards is not exempt.

The Department is directed to recompute the Taxpayer's liability as set out above. The Department should inform the Administrative Law Division of the Taxpayer's adjusted liability, and a Final Order will be entered accordingly. The Final Order when entered may be appealed to circuit court pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on February 23, 1995.

BILL THOMPSON
Chief Administrative Law Judge