

HOLMAN IRON AND ORNAMENTAL WORKS
Route 12 Box 294
Montgomery, Alabama 36110,
Taxpayer,
v.
STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 94-257

FINAL ORDER

Holman Iron and Ornamental Works ("Taxpayer") filed a petition for refund of sales tax for the period March 1991 through September 1993. The Department denied a portion of the refund, and the Taxpayer appealed to the Administrative Law Division. A hearing was conducted on October 5, 1994. James McLendon represented the Taxpayer. Assistant counsel Gwen Garner represented the Department.

The issue in this case is whether the Taxpayer is liable for sales tax on the purchase of argon gas that was subsequently used by the Taxpayer in welding. That issue turns on whether the argon became an ingredient or component part of the materials manufactured by the Taxpayer for sale. If so, the purchase of the argon constituted a tax-free wholesale sale pursuant to Code of Ala. 1975, §40-23-1(a)(9)b. The facts are undisputed.

The Taxpayer purchased argon, welding wire, welding rods and brassing rods during the subject period. Those items were subsequently used in welding products for sale. The Taxpayer paid use tax on the above items and then applied for a refund of the tax

previously paid.

The Department granted the refund relating to the welding wire, welding rods and brassing rods, but denied the refund relating to the argon. The Department contends that the argon did not become an ingredient or component part of the items manufactured for sale as required to be tax-free under 40-23-1(a)(9)b. I agree.

To be exempt from tax under the "ingredient or component part" exemption, some parts of the material must actually remain in the finished product. See generally, Boswell v. General Oils, Inc., 368 So.2d 27. The Taxpayer in this case concedes that none of the argon remained in the welded product. Accordingly, the argon did not become an ingredient or component part of the property and thus was not purchased at wholesale pursuant to §40-23-1(a)(9)b.

The Taxpayer argues that the argon serves the same function as flux on a welding rod, which the Department has exempted from tax. The Taxpayer contends that if argon should be taxed, then so should the flux. I disagree.

The distinction between argon and flux is that the argon is purchased as an identifiable separate product, none of which becomes an ingredient or component part of the finished product.

On the other hand, flux is purchased as a part of a welding rod, the steel rod part of which becomes an ingredient or component part of the welded materials. Thus, because a part of the welding rod

becomes a part of the finished product, the sale of the entire welding rod, including the flux, is non-taxable. As state in Boswell v. General Oils, Inc., supra, at page 29, "if any part of a product purchased by a manufacturer is intended to remain and does remain in the manufacturer's finished product, the purchase is at wholesale (as an ingredient or component part), and therefore is tax free". See also, Stauffer Chemical v. State Department of Revenue, 628 So.2d 897.

The above considered, the Taxpayer's petition for refund relating to the tax previously paid on the argon was properly denied by the Department.

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

Entered on October 24, 1994.

BILL THOMPSON
Chief Administrative Law Judge