

MCCAIN ENGINEERING CO., INC. '
2002 McCain Parkway
Pelham, Alabama 35124-2132, '

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, '

DOCKET NO. S. 96-359

v. '

STATE OF ALABAMA '
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed State and local cities sales tax against McCain Engineering Company, Inc. ("Taxpayer") for March 1990 through February 1993. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on January 30, 1997. Daniel Lindsey represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

This is a sales tax pollution control exemption case. The Taxpayer sold medical waste incinerators to hospitals during the audit period. The issue is whether the incinerators were exempt from sales tax as pollution control equipment pursuant to Code of Ala. 1975, ' 40-23-4(16)(a). That section exempts property "acquired primarily for the control, reduction, or elimination" of pollution.

The Alabama Department of Environmental Management ("ADEM") requires hospitals to treat hazardous medical waste before disposing of it. The most common ADEM approved method of treating the waste is to burn it. Consequently, hospitals purchased the medical waste incinerators in issue from the Taxpayer for the purpose

of treating their hazardous waste as required by ADEM regulations. The incinerators also comply with ADEM's minimum air emission regulations. The hospitals then dispose of the treated waste through normal methods.

The Taxpayer custom-engineers each incinerator to fit the customer's needs. The Taxpayer special orders the materials, and then assembles the incinerator on-site at the hospital.

The Taxpayer failed to charge sales tax on the incinerators sold during the subject period. The Department assessed the sales tax in issue based on its position that the hospitals acquired the incinerators primarily for disposal purposes, not pollution control.

The principle purpose for the sales tax pollution control exemption is "to ease the new and sometimes high cost of the addition of pollution control property and equipment to existing businesses, as well as to businesses which will be started after passage of pollution control legislation. The goal of the exemption is to encourage all businesses to control pollution and to assist them in their compliance with mandatory environmental regulations." Chemical Waste Management, Inc. v. State, 512 So.2d 115, 117 (1987). The exemption gives a tax break to businesses that are required by government regulations (or that voluntarily decide) to purchase otherwise non-productive equipment that is used primarily for pollution control.

Property is not exempt if it is used as an integral and necessary part of a taxpayer's profit-motivated business activity, even if it functions to control pollution.

See generally, Chemical Waste, *supra* (Chemical waste disposal facility not exempt because it was part and parcel of taxpayer's business); see also, State v. Industrial Safety Products, Inc., S. 90-257 (Admin. Law Div. 9/17/92, rehearing decided 11/18/92) (Respirators, filters and other protective gear sold to company engaged in asbestos removal business not exempt); State v. Wastewater Disposal Services, Inc., U. 91-144 (Admin. Law Div. 8/23/91) (Facility used by company in business of disposing of toxic wastewater from oil wells not exempt because primary purpose was profit, not pollution control).

In this case, however, the incinerators were not used for or necessary to the hospitals' profit-motivated business of treating patients. Rather, they were acquired solely to treat the hazardous waste as required by ADEM. But for the ADEM regulations, the hospitals could have disposed of the untreated waste at one-tenth the cost through normal methods.

Infectious medical waste is pollution. See generally, Rush v. Dept. of Revenue, 416 So.2d 1023 (The term "pollution" must be broadly defined). See also, Chemical Waste, 512 So.2d at 117. The incinerators in issue were used exclusively to treat medical waste, and clearly constitute the non-productive, government mandated pollution control equipment that the Legislature intended to exempt from sales tax. The final assessments are accordingly dismissed.

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

Entered June 3, 1997.

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BILL THOMPSON  
Chief Administrative Law Judge