W. E. RICHARDSON MACHINE COMPANY, INC. 634 Woodland Avenue, S.W. Birmingham, AL 35211-1038,	'	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	'	DOCKET NO. S. 96-480
v.	'	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	'	

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed sales tax against W. E. Richardson Machine Company, Inc. (ATaxpayer@) for February 1993 through September 1995. 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 13, 1998 in Birmingham, Alabama. Wood Herren represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The issue in this case is whether certain overhead cranes sold by the Taxpayer were subject to the reduced 1**2** percent sales tax levied on machines used in manufacturing or processing tangible personal property. Code of Ala. 1975, '40-23-2(3).

The Taxpayer manufactures and sells overhead bridge cranes and related equipment at retail. The cranes are generally installed inside a building, and are attached to ceiling tracks on which they can be moved within the building.

The Taxpayer failed to pay sales tax on several cranes sold at retail during the audit period. The Department audited the Taxpayer, and assessed the sales in issue at

the general 4 percent rate levied at Code of Ala. 1975, '40-23-2(1).

The Taxpayer concedes that sales tax is owed on the sales in question. It argues, however, that the sales should be taxed at the reduced 1 **2** percent AmanufacturingA rate levied at '40-23-2(3).

Four transactions are in issue:

(1) In May 1993, the Taxpayer sold two cranes to Redstone Arsenal.

(2) In February 1995, the Taxpayer sold a crane to the City of Cullman.

(3) In May 1995, the Taxpayer sold a crane to Brown International Corporation.

(4) In September 1995, the Taxpayer sold a crane to Fite Building Company. The ultimate user of that crane is unknown. The Taxpayer also received a payment in September 1995 concerning the crane purchased by the City of Cullman in February 1995.

The Taxpayer=s excellent brief, at page 4, correctly states the legal standard by which the sales tax Amanufacturing@ rate should be applied:

> ASection 40-23-2(3), Code of Alabama, 1975, does not require that a machine actually perform a processing or manufacturing function, to qualify for the lower rate, only that it be >used in= the processing or manufacturing of such property. Consequently, a machine that is used to transport, secure and/or position an item being processed or manufactured from one stage of the processing or manufacturing activity to another is >used in= the processing or manufacturing of such item. The sale of such a machine would therefore be subject to tax at the 1.5 percent rate rather than the 4.0 percent rate. On the other hand, the sale of a machine used solely to transport tangible personal property prior to the commencement of the processing or manufacture of such property or after the processing or manufacture of such property is complete, are not >used in= the processing or manufacture of such property and would be subject to tax at the 4.0 percent general rate. This distinction, although a narrow one, is central to the determination of whether a machine is being >used in= processing or manufacturing of tangible personal property or is instead being used only to transport such property before, after, or between the

> time or times it is being processed or manufactured. Compare State v. Mine & Contractors Supply Company, Inc. 83 So.2d 425 (Ala. 1955) (holding that >crawler type cranes= were used in a production line for manufacturing purposes and not only for transporting finished products) with Alabama Georgia Syrup Co. v. State, 42 So.2d 796 (Ala. 1949) (holding that platform trucks used in transporting products from one part of the plant to another are not used in processing or manufacturing).@

A final assessment on appeal is *prima facie* correct, and the burden is on a taxpayer to prove that the final assessment is incorrect. Code of Ala. 1975, '40-2A-7(b)(5)c. Consequently, the burden is on the Taxpayer to prove that the reduced 1**2** percent rate applies to the cranes in issue.

The Taxpayer presented evidence that the crane sold to Brown International Corporation is used as part of a manufacturing process. That crane should be taxed at the reduced 1**2** percent rate. Likewise, the Taxpayer also presented sufficient evidence that the crane sold to the City of Cullman is used in a manufacturing or rebuilding process. The gross proceeds derived from that sale, including the payment received on the sale in September 1995, should be taxed at the reduced 1**2** percent rate.

Unfortunately for the Taxpayer, there is insufficient evidence to establish that the cranes sold to Redstone Arsenal and to Fite Building Company are used in manufacturing or processing tangible personal property.

The Taxpayer concedes that it has no knowledge how the Redstone Arsenal cranes are being used. An October 2, 1996 letter from the Army states that the cranes Aare used only for loading/unloading and arranging heavy equipment/supplies located@ on the Arsenal. There is no evidence that the loading, unloading, and arranging involves the

manufacturing or processing of tangible personal property. Consequently, both cranes must be taxed at the general 4 percent rate.

The Taxpayer also concedes that it has no information as to how the crane sold to Fite Building Company is being used. That crane must also be taxed at the 4 percent general rate.

The Department is directed to recompute the Taxpayer=s liability as indicated above. A Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, '40-2A-9(g).

Entered July 16, 1998.

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BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Margaret Johnson McNeill, Esq.
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Earl Hilyer