

ALABAMA TAX TRIBUNAL

KOCH FOODS OF ALABAMA, LLC,	§	
Taxpayer,	§	
v.	§	DOCKET NO. S. 21-1112-JP
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

KOCH FOODS OF ALABAMA, LLC,	§	
Taxpayer,	§	
v.	§	DOCKET NO. CITY 21-103-JP
CITY OF MONTGOMERY, ALABAMA.	§	

KOCH FOODS OF ALABAMA, LLC,	§	
Taxpayer,	§	
v.	§	DOCKET NO. COUNTY 21-105-JP
COUNTY OF MONTGOMERY,	§	
ALABAMA.		

POST-TRIAL OPINION AND PRELIMINARY ORDER

Docket No. S. 21-1112-JP involves denied refunds of Alabama direct pay sales tax and Alabama consumer's use tax for periods 2016 through 2018; Docket No. CITY 21-103-JP involves a denial by the City of Montgomery of the Taxpayer's request for a refund of sales and use tax for periods 2016 through 2018; and Docket No. COUNTY 21-105-JP involves a denial by Montgomery County of the Taxpayer's request for a

refund of sales and use tax for periods 2016 through 2018.¹ The consolidated cases came before the Tax Tribunal for trial on February 23, 2023. Chris Grimes represented the Taxpayer. Hilary Parks and Sarah Harwell represented the Alabama Department of Revenue. Karen Rodgers represented the City of Montgomery. Constance Walker represented the County of Montgomery. Rob Baker, a microbiologist who is the director of the Taxpayer's technical services group, appeared and testified. Shanell Rhodes, a Revenue Department auditor, and Terea Smith, a Montgomery County auditor, also appeared and testified.

In its Notice of Appeal, the Taxpayer, which operates a poultry processing plant in Montgomery, argued that the sales by vendors to the Taxpayer of certain antimicrobial agents (such as Chemsan, Peracetic Acid, Cetylpyridinium Chloride (Cecure), and Sodium Hypochlorite) qualified as wholesale sales and, thus, were not subject to sales tax because the antimicrobials became ingredient or component parts of the finished product which was sold at retail. Alternatively, the Taxpayer argued that antimicrobials qualified for the reduced machine tax rate. At the commencement of the trial, the tax agencies conceded that the reduced machine rate applied concerning the Taxpayer's purchases of antimicrobials. Therefore, the sole issue concerns the Taxpayer's wholesale-sale argument.

Section 40-23-1(a)(9), Ala. Code 1975, defines "wholesale sale or sale at wholesale" as follows:

"A sale of tangible personal property or products, including iron ore, and including the furnished container and label of such property or

¹ The Revenue Department, City of Montgomery, and Montgomery County are sometimes referred to collectively as "the tax agencies."

products, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which the manufacturer or compounder manufactures or compounds for sale, whether or not such tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it becomes a component of the finished product; **provided, however, that it is the intent of this section that no sale of capital equipment, machinery, tools, or product shall be included in the term ‘wholesale sale.’ The term ‘capital equipment, machinery, tools, or product’ shall mean property that is subject to depreciation allowances for Alabama income tax purposes.**”

(emphasis added).

At trial, the Taxpayer presented testimony and argument concerning its claim that the antimicrobials “enter into and become an ingredient or component part of the tangible personal property or products which the manufacturer or compounder manufactures or compounds for sale.” *Id.* However, the Taxpayer presented no evidence concerning whether the antimicrobials were or were not “subject to depreciation allowances for Alabama income tax purposes.” *Id.*

It is undisputed that a Taxpayer bears the burden of proving its entitlement to a refund. *See Jennifer S. Vogel v. State of Alabama Department of Revenue & H. Gregory Vogel*, Docket No. INC. 18-1171-JP (Final Order, February 24, 2020). Here, the Taxpayer offered no evidence to prove one of the elements of the definition of “wholesale sale.” Therefore, the Taxpayer did not prove that its purchases of the antimicrobials were nontaxable.

Judgment in favor of the tax agencies on the wholesale-sale issue is entered accordingly. This decision negates the need for a discussion of whether the antimicrobials became an ingredient or component part of the products offered for

sale. *See, e.g., Johnson v. Ellis*, 308 So. 3d 1, 3 n. 3 (Ala. 2020) (pretermitted discussion of remaining issues where the issue discussed in the opinion was dispositive).

Because the tax agencies have conceded that the Taxpayer's purchases of antimicrobials were subject to the reduced machine rate, those agencies are directed to inform the Tax Tribunal of the refund amounts due to the Taxpayer. The agencies' responses are due to the Tax Tribunal no later than **March 31, 2023**.

Entered February 27, 2023.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:ac

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