

HLH CONSTRUCTORS, INC.
610 Railroad Street
Bay Minette, AL 36507,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 00-678

FINAL ORDER

HLH Constructors, Inc. (ATaxpayer@) petitioned the Revenue Department for refunds of State and Baldwin County sales tax for January 1997 through December 1999. The Department denied the petitions. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on May 18, 2001 in Mobile, Alabama. George Whitfield represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

ISSUES

This case involves the sales tax pollution control exemption at Code of Ala. 1975, ' 40-23-4(a)(16). That statute exempts all equipment or materials acquired primarily for the control, reduction, or elimination of air or water pollution. The primary issue is whether sewage pipe installed by the Taxpayer in various commercial buildings was exempt from sales tax pursuant to the above statute. If the pipe was exempt, a second issue is whether a part of the claimed refunds are barred by the three year statute of limitations at Code of Ala. 1975, ' 40-2A-7(c)(2)a.

FACTS

The Taxpayer is a plumbing contractor. During the period in issue, the Taxpayer

contracted with various customers to install plumbing systems in condominiums and other large buildings in Baldwin County. The Taxpayer used PVC-DWV (drain, waste, and ventilation) pipe, copper pipe and fittings, and cast iron pipe to complete the contracts. The pipe carries sewage and wastewater from toilets, washing machines, etc. inside the buildings to municipal or public sewage systems outside of the buildings.

The Taxpayer paid State and Baldwin County sales tax when it purchased the pipe used on the contracts. The Taxpayer subsequently petitioned for a refund of the tax in July and August 2000. The Department denied the refunds. The Taxpayer appealed.

ANALYSIS

The sales tax pollution control exemption at ' 40-23-4(a)(16) is intended to ease the financial burden on businesses that are required to purchase non-productive equipment and materials to comply with mandatory pollution control laws. *Chemical Waste Management, Inc. v. State*, 512 So.2d 115 (Ala.Civ.App. 1987). The exemption applies only if the property in question is Acquired primarily@for pollution control purposes.

The exemption does not apply if the property is acquired and used primarily in a profit-motivated business activity, even if the property incidentally serves to control pollution. Consequently, the Alabama Court of Civil Appeals determined that the chemical waste treatment facility in issue in *Chemical Waste Management* did not qualify as an exempt pollution control facility because the facility itself was the taxpayer-s profit-motivated business activity. For similar holdings, see, *Air Products & Chemicals, Inc. v. State of Alabama*, U. 95-359 (Admin. Law Div. 12/14/95) (equipment purchased by a contractor to fulfill a contract was

not exempt because it was necessary to and used in the contractor's profit-motivated business); *Industrial Safety Products, Inc. v. State of Alabama*, S. 90-257 (Admin. Law Div. 9/17/92) (filters, protective glasses, goggles, boots, etc. used by a taxpayer in its asbestos removal business were not exempt because they were acquired primarily for use in the taxpayer's profit-motivated business); *Waste Away Group, Inc. v. State of Alabama*, U. 88-107 (Admin. Law Div. 2/16/90) (containers and trucks used by a taxpayer in its waste disposal business were not exempt because the equipment was acquired primarily for and used directly in a profit-motivated activity).

The narrow issue in this case is whether the pipe used by the Taxpayer to complete its contracts was acquired primarily for pollution control purposes. In my opinion, it was not. The Taxpayer is a contractor. It purchased the pipe to fulfill its contracts with its customers, and thereby make a profit, not for pollution control purposes. The fact that the pipe functioned to eliminate or control sewage and other wastewater is irrelevant.

A contractor owes sales tax when it purchases materials from a vendor for subsequent use on a contract. Code of Ala. 1975, ' 40-23-1(a)(10) (Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold.®). The Taxpayer thus properly paid sales tax when it purchased the pipe from its vendors.

Even if the Taxpayer's customers had purchased the pipe directly, and then contracted for the Taxpayer to install the pipe, the pipe would not qualify for the pollution control exemption. As indicated, the intent of the pollution control exemption is to ease the financial burden of complying with mandatory pollution control guidelines. The exemption must be

narrowly construed to comply with that purpose. *Fleming Foods of Alabama, Inc. v. Dept. of Revenue*, 648 So.2d 580 (Ala.Civ.App. 1994), cert. denied 115 S.Ct. 1690 (1995) (tax exemptions must be narrowly construed for the Department and against the exemption).

The Taxpayer also contracts to install sinks, toilets, faucets, etc. for its customers. It concedes that those items are not exempt as pollution control equipment. But the pipe, sinks, toilets, faucets, etc. are part of a single sanitary sewage system. If the pipe is exempt, then the sinks, toilets, and other component parts of the system would also be exempt. Clearly, that was not intended by the Legislature. Otherwise, common bathroom fixtures and pipe sold in hardware stores would be exempt.

In *State of Alabama v. Billy M. Cospers, Sr.*, S. 89-221 (Admin. Law Div. 7/31/90), the issue was whether composting toilets were exempt from use tax as pollution control devices.¹

The Administrative Law Division denied the exemption, as follows:

The legislature did not intend to exempt toilets when it passed the exemption in question. The primary function of a toilet is not pollution control. The fact that the composting toilets efficiently dispose of the waste does not make that particular type of toilet a pollution control device within the purview of the exemption statute. If so, then all toilets would be exempt because all toilets control pollution in varying degrees of efficiency.

¹The use tax pollution control exemption at Code of Ala. 1975, ' 40-23-62(18) is in substance identical to the sales tax exemption at ' 40-23-4(a)(16).

Cosper at 3, 4.

Bathroom and kitchen disposal systems control pollution in a sense by removing human waste, dishwater, etc. from the structures in which they are installed. Such facilities are installed, however, primarily for the convenience of the occupant and to make the structure sanitary and usable. The facilities are not installed primarily for pollution control purposes within the intent of the pollution control exemption in issue.

The second issue concerning the statute of limitations is pretermitted by the above holding.

The refunds were properly denied. Judgment is entered accordingly.

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

Entered August 15, 2001.