

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

V.

CHAMPION INTERNATIONAL CORP. §
P. O. Box 1879 §
Courtland, AL 35618 §

DOCKET NO. S. 87-109

Taxpayer. §

ORDER

Champion International Corp. ("Taxpayer") filed two petitions for refund of State sales tax and Lawrence County sales and use tax, both for the period January 1, 1984 through December 31, 1985.

The Department denied the petitions and the Taxpayer appealed to the Administrative Law Division. A hearing was conducted on January 27, 1988. The Taxpayer was represented by Mr. Fred Virga.

Department assistant counsel J. Wade Hope appeared for the Department. Based on the evidence presented by both parties, a recommended order dated March 15, 1988, was submitted to the Commissioner of Revenue by the Chief Administrative Law Judge. The Recommended Order of the Chief Administrative Law Judge with certain modification is adopted as follows:

FINDINGS OF FACT

The Taxpayer operates a pulp and paper mill in Courtland, Alabama. The mill was constructed between 1968 and 1970, with production from a single pulp mill and a single paper machine beginning in January and February, 1971. From 1973 through 1983, the Taxpayer added a second pulp mill and three more paper machines.

After the second pulp mill was completed in 1979, but before the fourth paper machine was installed in 1983, the plant consistently violated both federal and Alabama environmental guidelines relating to Total Reduced Sulphur ("TRS") emissions. TRS emissions involve four compounds, hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, and are limited by government regulations to five parts per million ("ppm"). Test results indicated that in 1982 the plant complied with the five ppm limit approximately 60% of the time. The percentage of compliance was further reduced when the fourth paper machine was added in 1983 .

Various alternatives were studied for bringing the plant into compliance with the mandated environmental guidelines. The solution selected was a molecular or liquid oxygen injection system. The liquid oxygen used in the system is the subject of this appeal.

The function of the oxygen injection system is to oxidize the black liquor used in the pulp process, which converts the dangerous TRS emissions into non-polluting compounds. Mr. Marvin Gregory, the plant's environmental control supervisor, explained the effect of injecting the liquid oxygen into the black liquor as follows:

Q. How do we control the TRS gases in this type of boiler?

A. To control the TRS emissions from this type of boiler, you oxidize the black liquor. when you oxidize the black liquor -- when we talk about TRS we're talking about hydrogen sulfide. In the black liquor we're talking about sodium sulfide. And what happens is when the flue gases -- the flue gases are acidic

in nature, and when they come into contact with the black liquor they will react with the sodium sulfide in the black liquor to form hydrogen sulfide. So that's how we get hydrogen sulfide as one of the TRS compounds that we're concerned about is because of the reaction with that sodium sulfide. So in oxidizing the black liquor you oxidize the sodium sulfide to sodium thiosulfate, oxidize the methyl mercaptan to dimethyl disulfide and then the dimethyl sulfide and the dimethyl disulfide is stripped out of the black liquor. And when you -- the sodium thiosulfate is a stable form of sulfur that will not decompose in the furnace or in the direct contact evaporator and form hydrogen sulfide, so it will go through the incineration process without forming any of the TRS compounds. And this is how we control our TRS emissions to meet this five part per million standard is through the oxidation of our black liquor.

After extensive testing, the system was installed in July, 1984 at an initial capital cost of \$230,000.00. A small profit was projected based on the anticipated heat (energy) recovery value versus the cost of the liquid oxygen and other operating expenses.

However, a subsequent decrease in fuel costs has caused the system to operate at a net loss.

The system contains three injection stations. Each station contains various liquid reactors, oxygen piping, oxygen tanks and vaporizers, controls and instrumentations. TRS emissions are mechanically monitored, and liquid oxygen is manually injected into the black liquor as needed to reduce the TRS emissions to government standards.

Further, according to Mr. Gregory, the system was installed for the sole purpose of reducing TRS emissions. A post-installation study indicated a 90% plus compliance rate with federal and State

standards, as opposed to the pre-installation rate of approximately 63%. The liquid oxygen does not assist in any manner in the pulp production process.

CONCLUSIONS OF LAW

Code of Ala. 1975, §§40-23-4(16) and 40-23-62(18) exempt from the sales and use tax, respectively, "all devices or facilities, and all identifiable components thereof or materials for use therein," acquired or used primarily for pollution control purposes.

The Alabama Supreme Court has determined that fuel oil used to generate steam necessary to operate pollution control devices was exempt from sales and use tax as a "material" acquired for pollution control purposes. Eagerton v. Courtaulds North America, Inc., 421 So.2d 104 (1982). As stated by the Court, at 107-108:

Close analysis of §§40-23-4(16) and 40-23-62(18) evidences the qualifications for the stated exemptions. First, it must be a device or facility acquired primarily for pollution control purposes.

Or second, it must be an identifiable component of a device or facility acquired primarily for pollution control purposes. Or third, it must be a material for use in a device or facility acquired primarily for pollution control purposes.

Code 1975, §11-54-88(c)(2), defines "pollution control facility" as follows:

Any land, building, structure, machinery or equipment having to do with or designed for or the end purpose of which is the control, reduction, abatement or prevention of air, noise, water or general environmental pollution, including,

but not limited to, any air pollution control facility, noise abatement or reduction facility, water management facility, water purification facility, waste water collecting system, waste water treatment works or solid waste disposal facility.

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We are unable to adopt the assertion of the commissioner that the fuel oil consumed by boilers No. 7 and 8 was nothing more than an "aid" to their function. Rather, we agree with the trial court's determination that the fuel oil was a "material" for use in a device or facility acquired primarily for pollution control purposes.

In the present case, the molecular oxygen system is clearly a facility or device used primarily for pollution control purposes.

The molecular oxygen used in the system directly causes the reduction in TRS emissions. The evidence is undisputed that the liquid oxygen, as well as the oxygen piping and tanks, vaporizers, controls, nozzles, etc. used to carry and inject the oxygen into the black liquor, is primarily for the reduction or elimination of air pollution. Although there is a secondary purpose resulting in a cost savings, the primary function entitling the taxpayer to the exemption is pollution control.

The above considered, the refunds claimed by the Taxpayer are due to be granted. The Sales and Use Tax Division is hereby directed to process the application for refund in accordance with this order.

Done this 25th day of March, 1988.