

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 88-104

AMERICAN BRASS, INC.
P.O. Box 306
Headland, AL 36345,

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§

FINAL ORDER

The Revenue Department denied two joint petitions for refund of State and Henry County sales tax filed by American Brass, Inc. (Taxpayer) and Slocomb Oil Company for the period January 4, 1984 through December 16, 1986, and by the Taxpayer and Edwin M. Glover for the period January 13, 1986 through September 15, 1981. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on May 22, 1991. Richard H. Ramsey, III, Esq. appeared for the Taxpayer. Assistant counsel J. Wade Hope, Esq. represented the Department. This Final Order is based on a review of the transcript of the record before the Administrative Law Division and the Recommended Order of the Chief Administrative Law Judge, William Thompson. After a review of the foregoing, the Recommended Order is correct and adopted herein as follows:

FINDINGS OF FACT

The issue in dispute is whether certain oven-type devices used by the Taxpayer in its manufacturing operations are "kilns" within the purview of Code of Ala. 1975, §40-23-4(14). That section exempts from sales tax "fuel oil purchased as fuel for kiln use in manufacturing establishments".

The identical issue was raised by the Taxpayer in a previous case before the Administrative Law Division, Docket No. S.86-141. That case involved a joint refund petition filed by the Taxpayer and Slocomb Oil Company for the period March 17, 1983 through March 11, 1986. The Administrative Law Division ruled against the Taxpayer in April, 1987 and the Taxpayer's appeal was subsequently dismissed with prejudice by the Henry County Circuit Court in October, 1987.

The Taxpayer and the Department agree that the facts in this case are identical to the facts in the prior case. The findings of fact in the earlier case are adopted as follows:

The determinative issue in this case is whether an oven-type device used by the Taxpayer in its manufacturing operation is a "kiln" within the purview of Code of Ala. 1975, §40-23-4(14). That section provides an exemption for "fuel oil purchased as fuel for kiln use in manufacturing establishments. The relevant facts surrounding the Taxpayer's operations are not in dispute.

The Taxpayer is in the business of manufacturing and processing brass and bronze ingots. The Taxpayer maintains a large inventory of nonferrous scrap metals, including zinc, which is mixed with copper to make brass, and tin, which is mixed with copper to make bronze. When purchased, the scrap is inspected, categorized, weighed, graded for composition and placed into inventory. Upon receipt of an order, the necessary metals are selected from inventory to meet the specifications of the order.

The materials are melted together in one of three large rotating ovens operated by the Taxpayer. Each device is interlined with

firebrick, cylindrical in shape, stands approximately fifteen feet tall, and has a capacity when full of approximately 90,000 to 100,000 pounds. When in operation, the oven rotates continuously and heat is provided by fuel oil burners located at one end of the cylinder. The fuel oil used in said burners is the subject of this appeal.

A sample is taken during the mixing process and tested by the Taxpayer in its testing laboratory. Specific metals are then added as necessary to conform the product to the requirements of the order. When the correct composition is reached, the product is poured into ingot molds, cooled, cleaned, and shipped to the customer.

The Department's argument is that the ovens are furnaces or blast furnaces, and not kilns.

On the other hand, the Taxpayer takes the position that the devices are kilns, and thus that the fuel oil used in the kiln burners is exempt from sales tax.

CONCLUSIONS OF LAW

The Department contends that the doctrine of res judicata prevents the Taxpayer from raising in this proceeding the same issue that was decided in the prior case. However, while the Taxpayer should be prevented from relitigating that portion of the Slocomb Oil joint petition involved in the prior case, the Taxpayer should be allowed to contest that part of the Slocomb Oil petition not covered by the prior case, and also the joint petition involving Glover that case.

Nonetheless, the petitions in issue should be denied for the same reasons as set out in the prior decision. The conclusions of law in the prior case are hereby adopted in full as follows:

The word "kiln" is not defined in the revenue code. In such cases, a word must be given its plain, ordinary meaning, which is accepted in popular everyday usage. Darks Dairy, Inc. v. Alabama Dairy Commission, 367 So.2d 1378; Guthrie v. Civil Service Board of the City of Jasper, 342 So. 2d 372; Republic Steel Corporation v. Horn, 105 So.2d 446.

Research reveals a number of definitions and uses for a kiln, some of which are set out below:

The American Heritage Dictionary, Second College Edition, provides the following definition:

Kiln, Any of various ovens for hardening, burning or drying substances such as grain, meal, or clay, esp. a brick-lined oven used to bake or fire ceramics.

Websters New International Dictionary, Second Unabridged Edition, defines the word as follows:

Kiln- A large stove or oven; a furnace of brick or stone, or a heated chamber, for the purpose of hardening, burning, or drying anything; often specif., a brickkiln, a lime kiln or a cement kiln.

The New Columbia Encyclopedia, Fourth Edition, states as follows:

Kiln, furnace for firing pottery and enamels, for making brick, charcoal, lime, and cement, for roasting ores, and for drying various substances (e.g. lumber, chemicals). Kilns may be updraft or downdraft; round, conical, angular, or rectangular; arranged for intermittent or continuous firing and of the multiple (double-wall) or direct contact type, as required. Rotary kilns are much used in continuous

processing, including cement manufacturing and the drying of granular materials. They consist of long tubes lying almost horizontally that are rotated slowly as heat is applied to the material being treated inside the tube. Fuel used may be electricity, oil, gas, or coal. The temperature of firing and the length of time required depend on the design of the kiln and the type of material being fired.

The most in depth and helpful description of a kiln is provided by the McGraw-Hill Encyclopedia of Science and Technology, Fifth Edition, as follows:

A device or enclosure to provide thermal processing of an article or substance in a controlled temperature environment or atmosphere, often by direct firing, but occasionally by convection or radiation heat transfer. Kilns are used in many different industries, and the type of device called a kiln varies with the industry.

"Kiln" usually refers to an oven or furnace- which operates at sufficiently high temperature to require that its walls be constructed of refractory materials. The distinction between a kiln and a furnace is often based more on the industry than on the design of the device. For instance, an electrically heated refractory tunnel oven equipped with a stainless mesh conveyor belt to carry the work through is referred to as a tunnel kiln if it is used for sintering small ceramic electronic parts such as ferrite transformer cores. The same device used to sinter small metal parts from powdered aluminum alloys is called a sintering furnace.

Generally the word "kiln" is used when referring to high-temperature of nonmetallic materials such as in the ceramic, the cement, and the lime industries. When melting is involved as in steel manufacture, the term "furnace" is used as in blast furnace and basic oxygen furnace. In glass manufacture, the melting furnace is often called a glass tank when the process is continuous. (emphasis supplied).

From the above authorities, it can be said that rotary kilns are used for calcining various materials such as rock, clays, granular materials, etc. Calcining is the heating of a substance below the melting or fusing point, causing a loss of moisture reduction or oxidation. In other words, a kiln is generally used to dry or bake various materials, but is not used to melt or fuse metal. As set out above, a device used for the melting of metal is commonly known as a furnace. Further, in Casting Brass, by C. W. Amman, the author discusses the melting of various brass items, and describes the various types of furnaces that are generally used for such purposes. None are described as kilns.

The only Alabama case on point is Republic Steel Corporation v. Horn, supra, in which the Alabama Supreme Court in 1958 determined that an open hearth furnace used in the making of steel did not qualify as a kiln under the exemption statute in question. The Court reached its conclusion through application of the commonly accepted definition for kiln, as is necessary in the present case. The Court also applied the well-recognized principle that an exemption from taxation must be construed against the taxpayer and for the taxing authority. Brundidge Milling Co. v. State, 228 So.2d 479; Bean Dredging Corp. V. State, 454 So.2d 1009, appeal dismissed 105 S.Ct. 1156, rehearing denied 105 S.Ct. 2350.

While in some instances the words "kiln" and "furnace" can be used interchangeably, a

kiln is generally used with reference to the high temperature treatment of non-metallic materials such as ceramic and cement, whereas any oven used in the melting and manufacture of metal constitutes a furnace. Accordingly, it must be determined that the ovens or devices used by the Taxpayer in its manufacturing process are not kilns within the purview of §40-23-4(14), and thus, the fuel oil used in said devices is not exempt from sales tax.

Upon review, the above conclusions are correct and should be upheld. The devices in issue are furnaces and not kilns. Special emphasis should be given to the fact that an exemption from taxation must be construed against the taxpayer and for the Department. See, Eagerton v. Terra Resources, Inc., 426 So.2d 807 (1982). The above rule of construction is still applicable in Alabama.

The above considered, the petitions in issue were properly denied by the Department. This is a Final Order of the Commissioner of Revenue for the purpose of appeal by the Taxpayer pursuant to Code of Ala. 1975, §41-22-20.

Entered on July 15, 1991.