

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. 88-117

THE BUNGE CORPORATION
P.O. Box 1948
Decatur, AL 35602,

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Taxpayer.

§

ORDER

The Revenue Department denied a petition for refund of sales tax filed by the Taxpayer, The Bunge Corporation, concerning the period July 1, 1986 through April 30, 1987. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on October 19, 1988. Robert H. Harris, Esq., appeared on behalf of the Taxpayer. Assistant counsel Sam Clenney represented the Department. Based on the evidence and arguments presented by the parties, the Chief Administrative Law Judge entered the following recommended findings of fact and conclusions of law:

FINDINGS OF FACT

The Taxpayer is engaged in the manufacturing and/or processing of soybeans into soybean products such as soybean meal, soybean hulls and various soybean oil products.

Raw soybeans are delivered in bulk to the Taxpayer's facility in Athens, Alabama. The raw beans are cleaned and subsequently dried in a grain dryer. The grain dryer is a large enclosure in which excess moisture is removed from the beans by a direct, open flame.

The beans are removed from the grain dryer and cracked,

dehulled, and then further dried in a bean conditioner. The conditioner is an enclosed rotary tube vessel which is heated by steam generated from large boilers.

After leaving the conditioner, the beans are processed into flakes and the excess oil is washed out by the addition of the solvent hexyne. The residual hexyne is subsequently removed in a desolventizer toaster. The toaster is a large, enclosed vessel in which the hexyne is vaporized by the application of steam heat.

Finally, the flakes are dried again in a meal dryer. The meal dryer is similar to the bean conditioner and, like the conditioner and toaster, is heated by steam from a large boiler.

Both the direct flame burner used in the grain dryer and the boiler used to provide steam for the conditioner, toaster and meal dryer are fueled by fuel oil. The issue in dispute is whether the fuel oil should be exempt from sales tax under Code of Ala. 1975, §40-23-4(a)(14). That section exempts "fuel oil purchased as fuel for kiln use in establishments".

The Department argues that (1) the Taxpayer's manufacturing facility does not constitute a manufacturing facility, but processing plant, and (2) the devices in question kilns.

CONCLUSIONS OF LAW

The first issue raised by the Department is that the Taxpayer's

facility does not constitute a manufacturing establishment. The Department's argument is based on the fact that the words "compounding, processing and manufacturing" are used together throughout - the sales and use tax law and that each has a separate, distinct definition. Thus, the Department contends that the exemption in question applies only to "manufacturing establishments", and that the Taxpayer is a processor, not a manufacturer.

However, the term "manufacturer" as used in the sales and use tax law should be given a broad meaning. In State v. Ben R. Coltsman and Company, 74 So.2d 414, the Alabama Supreme Court determined that the blending and bottling constituted a manufacturing process. The Court broadly defined "manufacture" as follows:

"The word "manufacture" means the making of anything by hand or artifice. Louisville & N.R. Co. v. Fulgham, 91 Ala. 555, 8 So. 803. Mr. Worcester's Dictionary defines "manufacture" as "the process of making anything by art, or of reducing materials into a form fit for use by the hand or by machinery." The definition that the word is given by the Century Dictionary is as follows: "The production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties, or combinations, whether by hand labor or by machinery." "

The terms "manufacturing" and "processing" can in most cases be used interchangeably to describe the same activity. The American Heritage Dictionary, 2d. College Edition (1982) defines manufacturer as "[T]o make or process (a raw material) into a finished product, esp. by means of a large scale industrial

operation". Further, the Department's own Reg. 810-6-4-.17.05 defines "processing" in part as to "subject, especially a raw material, to a process of manufacturer."

Clearly, the term "manufacturing establishments" as used in 40-23-4(a)(14) is sufficiently broad to include the Taxpayer's facility in which raw soybeans are processed, altered, converted, etc. into finished soybean products.

The second question is whether the devices in issue are kilns. "Kiln" is not defined by the revenue code, and thus must be given its commonly accepted meaning. Darks Dairy, Inc. v. Alabama Dairy Commission, 367 So.2d 1378.

The American Heritage Dictionary, 2d. College Edition (1982) defines "kiln" as "[a]ny 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".

Webster's New Collegiate Dictionary (1980) defines "kiln" as "an oven, furnace or heated enclosure used for processing a substance by burning, firing, or drying".

A more in-depth definition is provided by the McGraw Hill Encyclopedia of Science and Technology, 5th 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 treatment 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)

In summary, a kiln is an oven-type device used in the drying of any number of substances, including grain, meals, etc. Thus, clearly the devices in issue, which are used exclusively to dry or demoiseurize soybeans, are kilns within the context of the above definitions.

Based upon a review of the entire record before the Administrative Law Division and the Recommended Order of the Chief Administrative Law Judge, it is my opinion that the Recommended order is due to be upheld and the Taxpayer's Petition for Refund is due to be approved.

IT IS THEREFORE HEREBY ORDERED that the Petition for Refund of the Bunge Corporation be approved, and the taxes mentioned therein be refunded, together with applicable interest. This Order shall

constitute the final order for purposes of judicial review according to the provisions of §41-22-20, Code of Alabama 1975.

DONE AND ORDERED on this the 16th day of December, 1988.