STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. U. 88-139
STAUFFER CHEMICAL COMPANY P.O. Box 0852 Westport, CT 06881, Taxpayer.	§	

FINAL ORDER

The Revenue Department assessed State use tax against Stauffer Chemical Corporation (Taxpayer) for the period July 1, 1984 through June 30, 1987. The Taxpayer appealed to the Administrative Law Division and the matter was submitted for decision based on a joint stipulation of facts. Charles R. Moses, III, Esq. represented the Taxpayer. Assistant counsel Dan Schmaeling represented the Department. This Final Order is entered based on the stipulated facts and arguments presented by the parties.

FINDINGS OF FACT

The Taxpayer manufactures for sale the chemical compound thiophenol at its Cold Creek Organics Plant in Bucks, Alabama. Iodine is used as a catalyst and chlorine is used as an injectant in the manufacture of thiaphenal. The issue in dispute is whether the iodine and chlorine becomes an "ingredient or component part" of thiophenol so that its purchase constitutes a nontaxable wholesale sale pursuant to Code of Ala. 1975, 540-23-60(4)b.

The parties agree that both iodine and chlorine is necessary and essential for the reaction process in the manufacture of

thiophenol. The parties further agree that the iodine and chlorine is not intended to remain and does not remain in discernible amounts in the finished product.

CONCLUSIONS OF LAW

Prior to 1981, the sales tax law and the use tax law both contained identical "ingredient or component part" provisions which defined a wholesale sale as a sale of property "to a manufacturer or compounder which enter(s) into and become(s) an ingredient or component part of the tangible personal property" manufactured for sale. See §40-23-1(a)(9)b. (sales tax) and 540-23-60(4)b. (use tax).

The pre-1981 "ingredient or component part" test for both sales and use tax purposes was whether "any part of a product is intended to remain and does remain in the manufacturer's finished product". Boswell v. General Oils, Inc., 368 So.2d 27, at page 29, see also Robertson and Associates, Inc. v. Boswell, 361 So.2d 1070.

In 1981, the Alabama Legislature passed Act No. 81-596 which amended §40-23-1(a)(9)b. to read as follows:

> b. A sale of tangible personal property or products, including iron ore, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which such manufacturer or compounder manufactures or compounds for sale, whether or not any 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 capital

> equipment, machinery, tools, or product, except for those materials essential for the reaction process and in direct contact with the intermediate and finished product used for the production of the finished product shall be exempt and the furnished container and label thereof; (new portion underlined)

The Taxpayer argues that the 1981 amendment eliminated both the "intent" and the "discernible amount" tests and that the iodine and chlorine in issue should be exempt from use tax as materials used in the reaction process. However, the 1981 amendment changed the sales tax provision only. The use tax provision §40-23-60(4)b. was not amended. Consequently, for use tax purposes the General Oils test still applies and property is exempt as an ingredient or component part only if it is intended to remain and does in fact remain as part of the finished product.

The only post-1981 Appellate Court decision involving the "ingredient or component part" provisions is a 1984 use tax case, State v. Alabama Metallurgical Corp., 446 So.2d 41. In that case the Court of Civil Appeals, citing the unamended §40-23-60(4)b. and the Robertson and General Oils cases, reaffirmed that a material qualifies as an ingredient or component part for use tax purposes only if the product is intended to remain and does remain in the manufacturer's finished product. Neither §40-23-1(a)(9)b. nor the 1981 amendment to that section was cited by the Court.

The parties agree that the iodine and chlorine in issue is not intended and does not remain as part of the Taxpayer's finished

product. Consequently, those materials are not exempt from use tax as an ingredient or component part under §40-23-60(4)b.

Also, the iodine and chlorine in issue would not qualify as an ingredient or component part even if the 1981 amendment applied. The amendment did not create an additional exemption for materials used in the reaction process. Rather, the second phrase added by the amendment merely clarified and limited the scope of the ingredient or component part exemption to insure that "no capital equipment, machinery, tools, or product" used in the production process should be exempt except for materials used in the reaction process. However, to be exempt those materials used in the reaction process must still meet the threshold test by becoming an ingredient or component part of the finished product. See also Department Reg. 810-6-1-.80(2). The iodine and chlorine in issue does not remain in the thiophenol and thus cannot be exempt as an ingredient or component part.

The above considered, the iodine and chlorine in issue are not exempt from use tax pursuant to §40-23-60(4)b., but rather should be taxed at the reduced "machine" rate levied at §40-23-61(b). The assessment in issue is therefore correct and should be made final as entered, with application interest running to the date of entry of final assessment.

Entered this the 18th day of September, 1990.

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BILL THOMPSON
Chief Administrative Law Judge