

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 88-140

JIM WALTER RESOURCES, INC.  
P.O. Box 133  
Brookwood, AL 35444,

§

§

Taxpayer.

§

ORDER

The Revenue Department entered a preliminary assessment of sales tax against Jim Walter Resources, Inc. ("Taxpayer") for the period October 1, 1981 through December 31, 1984. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on December 7, 1988. Steven A. Rowe, Esq. appeared for the Taxpayer. Assistant counsel Duncan Crow, Esq. represented the Department. Based on the evidence presented by the parties, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The relevant facts are undisputed.

The Taxpayer is in the manufacturing business and purchases coke oven gas for use in the manufacturing of tangible personal property for sale. The issue in dispute is whether the coke oven gas constitutes "coal or coke" so as to be exempt from sales tax pursuant to Code of Ala. 1975, §40-23-4(a)(9).

Coke oven gas is processed as follows: Raw coal is washed and crushed and then placed in a large coke oven. The coke oven is heated, which causes the release of various volatile gases from the

coal. The escaping volatile gases are captured and processed into coke oven gas. The coal (mostly carbon) remaining in the coke oven hardens and becomes coke. Both parties agree that both coke and coke oven gas are derived from coal.

#### CONCLUSIONS OF LAW

The Taxpayer argues that coke oven gas should be exempt because it is a component of coal and is used for the same purpose or purposes as coal, i.e., the production of heat or energy. Conversely, the Department contends that the exemption should be strictly construed and thus limited to only the items listed in the exemption, i.e. coal and coke.

Generic rules of construction can be cited in support of both arguments. An exemption from taxation must be strictly construed against the taxpayer. Brundidge Milling Company v. State, 228 So.2d 475. A statute must be construed to give effect to the intent of the Legislature, but legislative intent can only be gleaned from the actual words used in the statute. Deerman v. State, 448 So.2d 492. If a statute is unambiguous and clear, there is no room for judicial construction and the statutory wording must be afforded its plain meaning. East Montgomery Water Works v. Water Works and Sanitary Sewer Board of the City of Montgomery, 474 So.2d 1088.

The Taxpayer argues that it is illogical to exempt coal from taxation and not a derivative of coal such as coke oven gas (Taxpayer's brief at page 3). The Taxpayer's argument is reasonable, especially given that coke oven gas is used for the

same purpose as coal.

However, the clear wording of a statute cannot be expanded by judicial fiat. The Legislature has seen fit to exempt coal and only one of its derivatives, i.e. coke. It would have been logical and simple to include coal and all its chemical derivatives as part of the exemption, but the Legislature did not. By listing only coke along with coal, it must be assumed that the Legislature intended to include only coke in the exemption. Where a statute includes certain items upon which it is to operate, said statute must be construed to exclude all items not expressly mentioned. Ex Parte Holladay, 466 So.2d 956; Bd. of Dental Examiners v. King, 364 So. 2d 311.

The Taxpayer cites State v. Alabama Metallurgical Corp 446 So.2d 41, in support of its argument. There the Court of Civil Appeals held that carbon electrodes were exempt from the use tax under Code of Ala. 1975, §40-18-62(11). Section 40-18-62(11) is the use tax counterpart to §40-23-4(a)(9). However, the holding was based on the fact that the electrodes were comprised of at least 80% coal and coke in its primary (although crushed) form. The Court concluded, at page 43, "that the carbon electrodes are basically coke and not significantly different chemically from the raw materials used to form the electrodes". The Court did not hold that any product derived from coal should be exempt.

The Taxpayer also cites State v. Lawson and Sessions Company,

114 So.2d 893 for the following definition of "coke":

"The solid left when a coking coal is deprived of its volatile constituents by heating in a retort or oven. It consists mainly of carbon, and is hard, porous, and gray with submetallic luster. It is much used in metallurgy, and also as a domestic fuel, etc." Webster's New International Dictionary, 1925, page 435.

Coke oven gas is one of the "volatile constituents" that is removed from the coal in the coking process. The gas thus is no longer a part of the coal and clearly is not a part of the coke.

The above considered, the assessment in issue should be made final as entered by the Department, with interest as required by statute.

Entered this 6th day of January, 1989.

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BILL THOMPSON  
Chief Administrative Law Judge