

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 89-221

BILLY M. COSPER, SR.  
d/b/a Cosper Construction Co.  
Route 1, Box 167  
Cropwell, AL 35054,

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Taxpayer.

FINAL ORDER

The Revenue Department assessed use tax against Billy M. Cosper, Sr., d/b/a Cosper Construction Company (Taxpayer) for the period January 1, 1986 through June 30, 1987. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 9, 1990. Julian M. King, Esq. appeared for the Taxpayer. Assistant counsel Gwendolyn B. Garner represented the Department. This Final Order is entered based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The Taxpayer furnished and installed nine Clivus Multrum waterless composting toilets for the U. S. Army at several remote firing ranges located on Fort McClellan, Alabama. The issue in dispute is whether the toilets are exempt from use tax pursuant to Code of Ala. 1975, §40-23-62(18) as devices acquired primarily for the control, reduction or elimination of water pollution.

The Clivus Multrum disposal system includes a toilet and an attached fiberglass composting tank. Human waste is collected in the tank and decomposes naturally over time to form compost. The

tank is sealed and effectively prevents any of the waste from escaping into the surrounding groundwater.

The composting toilets replaced the old pit privies and vaulted toilets previously used on the firing ranges and were installed as part of an overall firing range renovation project.

The firing ranges are too remote to be included in the system and the composting toilets were base's regular sewage system and the composting toilets were selected in part because they are cleaner and more efficient than the alternative systems available (chemical toilets, vaulted toilets and septic tanks).

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-62(18) exempts from use tax all devices or facilities used or placed in operation primarily for the control, reduction or elimination of air or water pollution. That section and the companion sales tax exemption, Code of Ala. 1975, §40-23-4(a)(16), were both passed in 1973 to help businesses offset the cost of the new equipment required to comply with recently enacted pollution control legislation. As stated in Chemical Waste Management, Inc. v. State, 512 So.2d 115, at page 117:

This emphasizes the principal reason for the legislature's enactment of the tax exemption which is to ease the new and sometimes high cost of the addition of pollution control property and equipment to existing businesses, as well as to businesses which will be started after passage of pollution control legislation.

The goal of the exemption is to encourage all businesses to control pollution and to assist them in their compliance with mandatory environmental regulations. See generally, Reed, Incentives for Pollution Abatement, 12 Ariz. L. Rev. 511 (1970).

The exemption does not apply to all property that in some manner controls or reduces pollution. Rather, the exemption applies only if the property is acquired or placed in operation primarily for the control of pollution. The primary purpose and function of the property must be pollution control.

The toilets were not installed primarily to protect the environment. Rather, their principal function is to provide bathroom facilities for the soldiers and to eliminate the waste and odor so that the ranges can be used by a large number of soldiers each day. The fact that the composting toilets also effectively prevent the waste from seeping into the groundwater is secondary to their primary function.

The Army had used pit privies and vaulted toilets on the ranges for years without any evidence of damage to the surrounding groundwater. The Army was not required to replace the old toilets for environmental reasons, but rather, decided to install new toilets as part of an overall range improvement project. The Army may have considered pollution control when it selected the composting toilets, but pollution control was not the primary reason that new toilets were installed in the first place.

Legislative intent and the practical consequences of choosing one interpretation over another must be considered when interpreting a statute. League of Women Voters v. Renfro, 297 So.2d 167. Also, taxation is the rule and exemption the exception, and where legislative intent is in question, the presumption favors

taxation. Chemical Waste Management, Inc. v. State, 512 So.2d 115.

The legislature did not intend to exempt toilets when it passed the exemption in question. The primary function of a toilet is not pollution control. The fact that the composting toilets efficiently dispose of the waste does not make that particular type of toilet a pollution control device within the purview of the exemption statute. If so, then all toilets would be exempt because all toilets control pollution in varying degrees of efficiency.

The above considered, the composting toilets in issue were not installed primarily for pollution control purposes and are not exempt from tax. The preliminary assessment in issue is correct and should be made final, with applicable interest.

Entered this 31st day of July, 1990.

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BILL THOMPSON  
Chief Administrative Law Judge