**Final Written Determination**

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| **Docket Number:** | **WFD-P-2001-1** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Machinery & Equipment** |
| **Keywords:** |  |
| **Approval Date:** | **01/29/2001** |

**Body:**

**Office of Administrative Appeals**

January 29, 2001

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XXXXXXXX

RE: Written Final Determination in the Request for Informal Conference for Reconsideration of Agency Action, (Taxpayer), Docket No. 00-344

Dear XXXXX:

On May 5, 2000, the Taxpayer, timely filed a written request for an Informal Conference with the Kansas Secretary of Revenue (Secretary). The Taxpayer’s request was in response to the Kansas Department of Revenue’s (Department) April 15, 2000, denial of a refund claim for Kansas Retailers’ Sales Tax paid to various vendors and Kansas Compensating Use Tax accrued on the purchase of machinery and equipment that consisted of poles, lines, transformers and other sub-station equipment used to transport electricity from the Taxpayer’s generation plant to its customers.

The Taxpayer and the Department provided brief outlines of the issues and the respective positions of the parties. The Taxpayer presented two issues: “(w)hether the equipment in question constitutes ‘machinery and equipment used directly and primarily for the purposes of manufacturing or processing articles of tangible personal property in this state’ pursuant to K.S.A. 79-3606(kk)” or, in the alternative, “whether some of the equipment in question is used ‘directly and primarily for the purposes of distributing articles of tangible personal property in this state’ pursuant to K.S.A. 79-3606(kk)?” Both issues do not state the complete issue because there is an additional location requirement that relates to the Taxpayer’s transportation machinery and equipment.

Issue

The determinative issue in this matter is:

Does machinery and equipment used to transport electricity from the generation plant to the customer qualify for exemption under K.S.A. 79-3606(kk) when it is not located “at the plant?”

Discussion

The legislature has made it clear that the actual location of the machinery and equipment is material to determine if it qualifies for an exemption. K.S.A. 79-3606(kk), as it existed during the refund period in question, provides that “on and after January 1, 1989, all sales of machinery and equipment used directly and primarily for the purposes of manufacturing, assembling, processing, finishing, storing, warehousing or distributing articles of tangible personal property in this state intended for resale by a manufacturing or processing plant or facility” shall be exempt from the sales tax. Furthermore, the legislature reinforced the plant location requirement for the exemption when it also provided in K.S.A.79-3606(kk)(1) that “machinery and equipment shall be deemed to be used directly and primarily in the manufacture . . . of tangible personal property where such machinery and equipment is used during a manufacturing . . . operation . . . (D) to transport, convey or handle such property during the manufacturing . . . operation at the plant or facility.” The exemption does not follow the equipment to a location not “at the plant,” even if the equipment usage outside the plant is identical to the usage “at the plant.”

The Taxpayer, as suggested guidance for the Department, cited a Minnesota Department of Revenue Notice No. 98-15, that states: “The manufacturing process begins at the generation plant and ends with the line transformer.” Minnesota’s notice clearly goes far beyond what the Kansas legislature exempted. Minnesota may exempt all qualifying equipment located “at the generation plant,” in addition to all equipment extending to, and including, the end of the line transformer; however, this is not Kansas’ law. The Kansas legislature strictly limited the exemption to apply to only the qualifying transportation equipment located “at the plant.” The use of the words “at the plant” by the Kansas legislature indicate a legislative intent that a plant must have a fixed location, the same as in Minnesota where reference is made to “at the generation plant”. Minnesota chose to define the manufacturing process and its exemption to continue beyond the plant. Kansas chose not to. Consequently, if the equipment for which the Taxpayer seeks a refund is not located “at the plant,” then the equipment can not qualify for an exemption, even if it could qualify for an exemption if it were used “at the plant.”

The Kansas legislature further solidified the “at the plant” location requirement when it specifically listed those items that do not qualify for the exemption. K.S.A. 79-3606(kk)(3) provides that ‘”(m)achinery and equipment used directly and primarily” shall not include . . . (C) transportation equipment not used in the manufacturing . . . process at the plant or facility.’ Legislative intent could not be more clearly stated: qualified equipment used to transport electricity located “at the plant” is exempt; the same equipment located outside the plant is not exempt. The transportation machinery and equipment for which the Taxpayer seeks a refund is not located “at the plant;” consequently, it does not qualify for an exemption.

The issues as they were presented by the Taxpayer do not need to be addressed at this time because the equipment subject to the refund request is not located “at the plant.” Even if that equipment met every other test required in order to qualify for an exemption pursuant to K.S.A. 79-3606(kk), it could not overcome the location requirement of this statute. Since the equipment fails the location test, then it is not necessary to address other issues.

Conclusion

Upon reconsideration of all of the facts and issues underlying the Department’s denial of the Taxpayer’s refund request, it is the final determination of the Secretary’s Designee that the Department’s denial be sustained.

Sincerely,

DAVID J. HEINEMANN
Secretary’s Designee
cc: Shirley Sicilian
Richard Cram

**Date Composed: 03/09/2001 Date Modified: 10/09/2001**