

04-1217
Audit
Signed 04/11/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
v.)	Appeal No.	04-1217
)	Account No.	#####
)		
AUDITING DIVISION OF)	Tax Type:	Sales Tax
THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
 PETITIONER REPRESENTATIVE 2

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Assistant Director, Auditing
 RESPONDENT REPRESENTATIVE 3, Tax Audit Manager, Sales and Use Tax

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on March 2, 2005.

Petitioner is appealing the assessment of additional use tax which resulted from a sales and use tax audit for the period of January 1, 2001 through December 31, 2003. At the time of the hearing, the only issue remaining unresolved by the parties was the sales tax on the (X) Digital Printer. The Division has already agreed to remove certain other items from the audit based on additional information and discussion between the parties. These items and amounts were listed on Respondent's Exhibit 5.

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The (X) Digital Printer is a large format printer/photo copier used to reproduce architectural blue prints. Documents may be printed from computer disks or from email sent by the customer. In addition some of the documents are merely photocopied in the traditional sense. The process used by the subject printer is the same dry toner process used by a photocopier or desktop computer printer.

Petitioner argues that this purchase of equipment should be exempt from sales tax pursuant to the exemption for manufacturing equipment as set out at Utah Code Sec. 59-12-104 (14). Petitioner's representatives indicated that they had paid sales tax on other equipment purchases, considering them to be more of photocopying equipment. However, for the subject purchases, the seller had told them that it was a piece of manufacturing equipment and was exempt from sales tax as such.

Petitioner's representatives also argue that although the subject equipment did not use the traditional printing press process, where wet ink and press plates are utilized, the digital printing process used by the (X) Digital Printer was beginning to replace the traditional plate printing process in the industry. It was their position that the definition of manufacturer or manufacturing equipment should be updated to reflect what is currently happening in the industry.

Respondent's representative argues that Petitioner has not met the statutory requirements at Utah Code Sec. 59-12-104(14) to qualify for the manufacturer's exemption from sales tax. He indicated that all eight statutory requirements must be complied with and Petitioner fails to meet several of them. Respondent's representative argues that Petitioner is not a "manufacturer," that the subject printer is not used in "new or expanding operations" and is not used in a "manufacturing facility." Manufacturing facility is specifically defined by statute as an establishment described in SIC Codes 2000-3999. See Utah Code Sec. 59-12-102(15). Traditional printing business that utilized liquid ink and press plates fit within the specified SIC Codes. It is Respondent's position that blue printing and photocopying have their own SIC Code in the Business Services section and are not within the specified manufacturing codes.

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Respondent's representative also points out that exemptions are narrowly construed and the person seeking the exemption has the burden to show that they fall within the scope of the exemption citing Parson Asphalt Products, Inc. v. Utah State Tax Commission, 617 P.2d 397 (Utah 1980).

In order to qualify for the exemption it is not sufficient that the machinery merely be used in a manufacturing process, it must, in addition, be used in "new or expanding operations" in a "manufacturing facility." The Utah Legislature has defined "manufacturing facility" to be a business within the specified SIC Classifications.

From the evidence presented, Petitioner's business is primarily a photocopying and duplicating Service. Petitioner indicates that less than half of its employees produce documents using the (X) Digital Printer. The other employees perform photocopying and other business type services. The business is operated as a single economic unit. In addition, the (X) Digital Printer performs both printing and photocopying functions. The rule is specific that machinery used in both manufacturing activities and non-manufacturing activities would qualify for the exemption only if the non-manufacturing activities were de minimis. See Utah Admin. Rule R865-19S-85(2). It is for these reasons that Petitioner is not entitled to the manufacturing exemption on its purchase of the equipment at issue. In reaching this decision the Commission does not need to consider whether the (X) Digital Printer is a piece of manufacturing equipment.

The information submitted at the hearing also indicated that the (X) Digital Printer was purchased to replace an existing piece of equipment. Although Petitioner represents that the machine did increase output, the information provided by Petitioner was insufficient to show that it was not purchased as a "normal operating replacement" within the meaning of Utah Admin. Rule R865-19S-85.

APPLICABLE LAW

Utah Code Sec. 59-12-104 (14) states in pertinent part:

The following sales and uses are exempt from the taxes imposed by this chapter:

...

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the

state;

...

"Manufacturing facility" is defined at Utah Code Sec. 59-12-102(15) as follows:

an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the Federal Executive Office of the President, Office of Management and Budget:

...

"Normal operating replacements" is defined at Utah Admin. Rule R865-19S-85 (A)(6) and includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purposes as machinery or equipment retired from service due to wear, damage destruction, or any other cause within 12 months before or after the purchase date, even if they improve the efficiency or increase capacity. . .

Where a piece of machinery or equipment performs more than one function, qualification for the manufacture's exemption is discussed at Utah Admin. Rule R865-19S-85(D)(2) as follows:

Machinery and equipment or normal operating replacements used in both manufacturing activities and non-manufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the use in non-manufacturing activities is de minimis.

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DECISION AND ORDER

Based on the foregoing, Respondent is ordered to adjust the audit as previously agreed by the parties; the audit assessment of sales tax and interest pertaining to the (X) Digital Printer is hereby sustained. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2005.

Jane Phan, Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner