

05-1270
Audit
Signed 09/05/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1270
v.)		
	)	Account No.	#####
AUDITING DIVISION	)	Tax Type:	Sales and Use Tax
OF THE UTAH STATE	)	Audit Period:	04/01/02 – 12/31/04
TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

STATEMENT OF THE CASE

The Petitioner is appealing an audit deficiency of additional Utah sales and use tax and interest, which the Auditing Division (“Division”) imposed for the period April 1, 2002 through December 31, 2004 in a Statutory Notice – Sales and Use Tax (“Statutory Notice”) dated July 26, 2005. The Petitioner requested that the Commission issue its initial decision upon a review of the written record and has waived its right to proffer oral arguments at an Initial Hearing. Accordingly, the Commission makes its initial decision based solely on the documents that the Petitioner submitted on March 7, 2006 and that the Division submitted on April 6, 2006.

In its Statutory Notice, the Division assessed \$\$\$\$ in additional sales and use tax, plus interest. No penalties were assessed. Although tax was assessed for several different reasons, the majority of the tax was assessed on purchases of tangible personal property on which the Petitioner did not pay sales tax and with which it makes crowns, bridges and dentures to sell to dentists. From the documents submitted, it appears that this is the only portion of the audit assessment that the Petitioner is contesting.

The Division determined that the Petitioner did not qualify to purchase the items of tangible personal property tax-free under the manufacturer exemption because the Petitioner did not meet **all** of the conditions required to qualify, as set forth in Utah Code Ann. §59-12-104(14). Specifically, the Division

determined that the Petitioner was not a “manufacturing facility,” which is defined in UCA §59-12-102(43) to mean an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual.

The Petitioner does not contest that its establishment is not described in SIC Codes 2000 to 3999, as required by the applicable statutes that govern the manufacturing exemption. However, the Petitioner asks the Commission to classify it as a “manufacturing facility” pursuant to codes set forth in the North American Industry Classification System (the “NAICS Codes”). Even though the Legislature requires the use of the SIC Codes in governing this exemption, the Petitioner argues that it is unreasonable for the Commission to enforce this portion of the statute because the SIC Codes are outdated, obsolete, and “no longer used by any Government Agency.” Furthermore, the Petitioner asserts that it clearly “manufactures” items of tangible personal property for sale in Utah and, thus, should qualify for the exemption. It also argues that it should be considered a “manufacturing facility” for purposes of the exemption because the United States Department of Commerce considers it to be a “manufacturer.” For these reasons, the Petitioner asks the Commission to overturn that portion of the Division’s assessment that relates to its purchases of tangible personal property that it uses to make the dental items described above.

APPLICABLE LAW

Utah Code Ann. §59-12-103(1)(a) provides that a tax is imposed on the purchaser for amount paid or charged for retail sales of tangible personal property made within the state.

For sales that would otherwise be taxable, Utah law provides for a number of exemptions from sales and use tax. UCA §59-12-104(14) exempts from taxation certain sales of tangible personal property that are used in a manufacturing facility. For the years at issue, Section 59-12-104 provided, as follows in pertinent part:

The following sales and used 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;
- (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
 - (A) have an economic life of three or more years;
 - (B) are used in the manufacturing process in a manufacturing facility in the state;
 - (C) are used replace or adapt an existing machine to extend the normal estimated useful life of the machine; and
 - (D) do not include repairs and maintenance[.]

.....

For purposes of the manufacturer exemption in Section 59-12-104(14), “manufacturing facility” is defined in UCA §59-12-102(43)¹ to mean “an establishment described in SIC Codes 2000 to 3999

¹ For purposes of the manufacturer exemption, the definition of “manufacturing facility” remained unchanged during the audit period, but it was renumbered in each of the years. The definition was located at Section 59-12-102(15) in 2002, Section 59-12-102(34) in 2003, and Section 59-12-102(39) in 2004. Although the 2006 Legislature recently amended the definition in Senate Bill 31, the Legislature did not change its requirement that the SIC Codes be used to determine whether an establishment is a “manufacturing facility” for purposes of the exemption.

Appeal No. 05-1270

of the 1987 Standard Industrial Classification Manual of the Federal Executive Office of the President, Office of Management and Budget[.]”

In the 1987 Standard Industrial Classification Manual, SIC Code 3843, Dental Equipment and Supplies, is described to include the following establishments:

Establishments primarily engaged in manufacturing artificial teeth, dental metals, alloys, and amalgams, and a wide variety of equipment, instruments, and supplies used by dentists, dental laboratories, and dental colleges. Dental laboratories constructing artificial dentures, bridges, inlays, and other dental restorations on specifications from dentists are classified in Services, Industry 8072.

In addition, SIC Code 8072, Dental Laboratories, is described to include the following establishments:

Establishments primarily engaged in making dentures, artificial teeth, and orthodontic appliances to order for the dental profession. Establishments, primarily engaged in manufacturing artificial teeth, except to order, are classified in Manufacturing, Industry 3843, and those providing dental X-ray laboratory services are classified in Industry 8071.

DISCUSSION

The only issue before the Commission, as raised in the written documents submitted by the parties, is whether or not the Petitioner qualifies as a “manufacturing facility” for purposes of the manufacturer exemption from sales and use tax. If the Commission determines that the Petitioner is not a “manufacturing facility,” then the Petitioner does not meet all the requirements necessary to qualify for the exemption, and its appeal will be denied. If the Commission determines that the Petitioner is a “manufacturing facility,” it will then determine whether there is sufficient evidence to show that the Petitioner meets all other requirements in order to qualify for the exemption.

The list of requirements that must be met to qualify for the manufacturer exemption is found in Section 59-12-104(14). To qualify, the tangible personal property must first qualify as a normal operating replacement; or machinery or equipment used in new or expanding operations. If it qualifies as either of these,

the property must also: 1) be used in the manufacturing process; 2) have an economic life of three or more years; and 3) be used in a manufacturing facility in Utah. If the tangible personal property at issue does not meet all of these requirements (i.e., even if it meets all requirements but one), then the purchase or lease of that property does not qualify for the exemption and, thus, is a taxable transaction.

The Division asserts that the Petitioner does not qualify for the manufacturer exemption on the purchases at issue because it does not meet the definition of “manufacturing facility,” one of the requirements to qualify for the exemption. Specifically, the Division argues that Petitioner is not a “manufacturing facility,” as defined in Section 59-12-104(43). Pursuant to the definition, a business is not a “manufacturing facility” and cannot qualify for the exemption unless it is “an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual.”

As described in the parties’ written documents, the Petitioner’s business appears to be a dental lab that makes crowns, bridges, and dentures for sale to dentists. The items that the Petitioner manufactures and sells to dentists all appear to be types of artificial teeth. An establishment that makes artificial teeth, but not to a dentist’s specifications, is described in SIC Code 3843 and, pursuant to Section 59-12-102(43), would be a “manufacturing facility” whose purchases may qualify for the manufacturer exemption. On the other hand, an establishment that makes artificial teeth, including crowns, bridges, and dentures, to a dentist’s specifications, is described in SIC Code 8072 as a dental laboratory, and, pursuant to Section 59-12-102(43), is not a “manufacturing facility” whose purchases may qualify for the manufacturing exemption.

From the limited information available, it would appear that the Petitioner makes crowns, bridges, and dentures pursuant to dentists’ specifications and not artificial teeth that are made without specifications. In addition, the name of the Petitioner’s business, PETITONER, would suggest that it is a dental laboratory, which the SIC Manual classifies under SIC Code 8072, not under a SIC Code that qualifies

Appeal No. 05-1270

as a “manufacturing facility.” For these reasons, the Commission finds that the SIC Code that most closely describes the Petitioner’s establishment is SIC Code 8072. Accordingly, the Commission finds that the Petitioner does not qualify as a “manufacturing facility,” as defined in Section 59-12-102(43) and, as a result, that its purchases do not qualify for the manufacture exemption provided in Section 59-12-104(14).

Although the Petitioner argues that the SIC Codes prescribed in Section 59-12-102(43) are obsolete and that the Commission should substitute the NAICS Codes in its analysis, the Commission does not have the authority to rewrite state law or to ignore the statutes the Legislature has prescribed. For these reasons, the Commission finds that the Petitioner has not shown that it is entitled to the exemption at issue and sustains the Division’s assessment.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Petitioner is not a “manufacturing facility” for purposes of the manufacturer exemption and that, as a result, its purchases do not qualify for the exemption. Accordingly, the Commission denies the Petitioner’s appeal and sustains the Division’s audit assessment. 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 _____, 2006.

Appeal No. 05-1270

Kerry R. Chapman
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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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