

05-1408  
SALES TAX  
TAX YEARS: 2002, 2003, 2004  
SIGNED: 06-29-2007  
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
Petitioner,	)	
v.	)	Appeal No.    05-1408
	)	
AUDITING DIVISION	)	Account No:    #####
OF THE UTAH STATE	)	Tax Type:    Sales Tax
TAX COMMISSION,	)	Audit Period:    03/01/02 – 11/30/04
	)	
Respondent.	)	Judge:    Chapman
	)	

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**Presiding:**  
D'Arcy Dixon Pignanelli, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner:    PETITIONER REP. 1, Attorney at Law  
                    PETITIONER REP. 2  
                    PETITIONER REP. 3  
For Respondent:    RESPONDENT REP., Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 4, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is sales and use tax.
2. The audit period at issue is March 1, 2002 through November 30, 2004.
3. PETITIONER ("PETITIONER") operates two businesses under the COMPANY A

franchise name in CITY 1, Utah. One of those businesses is designated as COMPANY A No. ##### and is the place of business that is the subject of this appeal.

4. On August 25, 2005, Auditing Division (the “Division”) issued a Statutory Notice – Sales and Use Tax (“Statutory Notice”) to PETITIONER, in which it assessed \$\$\$\$ in additional tax, plus interest. No penalties were imposed. The assessments imposed in the Statutory Notice are described in four separate Schedules.

5. On September 23, 2005, PETITIONER filed a Petition for Redetermination, seeking a reduction in the sales tax deficiency by approximately \$\$\$\$\$, plus interest.

6. The amounts of the transactions for which the Division assessed additional tax under each of four Schedules included in the Statutory Notice and the amounts contested by the Petitioner are, as follows:

<b>Schedule</b>	<b>Amount of Transactions Assessed</b>	<b>Amount of Transactions Contested</b>
1	\$\$\$\$	\$\$\$\$
2	\$\$\$\$	\$\$\$\$
3	\$\$\$\$	\$\$\$\$
4	<u>\$\$\$\$</u>	<u>\$\$\$\$</u>
<b>TOTAL</b>	\$\$\$\$	\$\$\$\$

7. PETITIONER does not contest its liability for the tax assessed under Schedules 1 and 2. PETITIONER also concedes that it owes the tax assessed for item #6 under Schedule 4, which is identified as the \$\$\$\$ partial purchase price that PETITIONER paid for three laptop computers. PETITIONER disagrees, however, with the assessments imposed under Schedule 3 and the remaining assessments imposed under Schedule 4.

8. The contested transactions identified in Schedule 3 and Schedule 4 concern lease contract payments and purchase payments for tangible personal property, specifically for the lease or purchase

of ( WORDS REMOVED ) equipment.

9. PETITIONER's activities include offset ( WORDS REMOVED ), ( WORDS REMOVED ), ( X ) of the products produced from offset and ( WORDS REMOVED ), design services, and ( X ) services to duplicate a hard copy of an item. On occasion, PETITIONER sublets ( X ) jobs to other ( X ) businesses.

10. The physical setup of PETITIONER's business consists of an area ( WORDS REMOVED ) in which ( WORDS REMOVED ) machines are located. Behind the ( WORDS REMOVED ) are ( WORDS REMOVED ) equipment and the ( WORDS REMOVED ) equipment required for ( WORDS REMOVED ) are located and a "walled" or "partitioned" area in which the ( X ) equipment and the remainder of the ( WORDS REMOVED ) equipment are located.

11. ( WORDS REMOVED ) machines located ( WORDS REMOVED ) are not at issue. In addition, the parties agree that the ( X ) equipment, the ( WORDS REMOVED ) equipment and the ( X ) equipment are eligible for the manufacturing machinery and equipment exemption ("manufacturing exemption"), as provided in UCA §59-12-104(14).<sup>1</sup> The parties disagree, however, on whether PETITIONER's ( WORDS REMOVED ) equipment qualifies for the manufacturing exemption.

12. PETITIONER's ( WORDS REMOVED ) equipment includes: 1) ( WORDS REMOVED ) equipment (photograph in Exhibit P-1, p.1); 2) ( WORDS REMOVED ) equipment (photograph in Exhibit P-1, p.2); and 3) large format ( X ) equipment, which produces ( PRODUCT LIST

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1 On May 27, 2005, the Division issued a Preliminary Notice - Sale and Use Tax to the Petitioner (Exhibit E of Petitioner's Prehearing Brief), in which it also assessed tax on PETITIONER's ( X ) equipment. However, prior to the Division issuing its Statutory Notice, it determined that the ( X ) equipment qualified for the manufacturing exemption and removed these items from its assessment.

REMOVED ) items (photograph in Exhibit P-1, p.3). ( SENTENCE REMOVED ).

13. The ( WORDS REMOVED ) equipment is capable of producing ( X ) products from ( WORDS REMOVED ). ( SENTENCEN REMOVED ).

14. PETITIONER argues that the ( WORDS REMOVED ) equipment is used in a ( X ) establishment that qualifies as a “manufacturing facility,” as defined in UCA §59-12-102(43). As a result, the Petitioner contends that the equipment at issue is eligible to qualify for the manufacturing exemption.

15. The Division contends that PETITIONER’s business is comprised of two separate and distinct establishments: 1) a ( X ) establishment that qualifies as a manufacturing facility and is eligible to receive the manufacturing exemption; and 2) a ( WORDS REMOVED ) services establishment that is not a manufacturing facility and is ineligible to receive the exemption.

16. The Division argues that PETITIONER uses its ( WORDS REMOVED ) equipment in its ( WORDS REMOVED ) services establishment, not its ( X ) establishment. As a result, the Division contends that the equipment at issue is not used in a manufacturing facility and, accordingly, does not qualify for the manufacturing exemption.

17. Based on PETITIONER’s study of its invoices for three months during the audit period (Exhibit P-6, Attachment 3; Exhibit P-7), its revenue is generated from its various services, as follows:

( PARAGRAPH REMOVED )

18. Given the revenues shown in the preceding paragraph, PETITIONER argues that 92.25% of its business comprises ( X ) related services and that the remaining 7.75% comprises ( X ) services. The Division, on the other hand, argues that at least 46.07% of PETITIONER’s business is comprised of ( X ) services, which is the summation of 38.32% for ( WORDS REMOVED ) services and

7.75% for ( WORDS REMOVED ) services.

19. The percentage use of the ( WORDS REMOVED ) equipment to ( X ) products from ( WORDS REMOVED ) is 84% and to duplicate ( WORDS REMOVED ) of items is 16%, based on the revenues shown in paragraph 17.

20. The percentage use of ( WORDS REMOVED ) equipment to ( X ) products from ( WORDS REMOVED ) is 88% and to replicate ( WORDS REMOVED ) of items is 12%, based on the revenues shown in paragraph 17.

21. PETITIONER uses its ( WORDS REMOVED ) equipment interchangeably with its ( WORDS REMOVED ) equipment without a difference in the final cost to the customer. When a customer wants a relatively small number of ( WORDS REMOVED ) product, PETITIONER will often produce the ( X ) on the ( WORDS REMOVED ) equipment because the per unit cost of production is less than the cost on its ( WORDS REMOVED ) equipment, where “set-up” costs are more expensive. On the other hand, when a customer wants a relatively large number of ( WORDS REMOVED ) product, PETITIONER will often produce the ( X ) on its ( WORDS REMOVED ) equipment because of a lower production cost per unit.

22. A partial list of the products that PETITIONER produces with both its ( WORDS REMOVED ) equipment and its ( WORDS REMOVED ) equipment include ( PRODUCT LIST REMOVED ). Regardless of which equipment is used to complete the customer’s order, PETITIONER will ( WORDS REMOVED ) the product for the customer’s approval prior to completing the order.

23. Occasionally, PETITIONER will produce a product from components ( X ) on both the ( WORDS REMOVED ) equipment. For example ( WORDS REMOVED ).

24. Most of PETITIONER’s customers do not specify a preference for which equipment PETITIONER uses to produce their ( X ) products.

25. PRODUCT B can be produced on the ( WORDS REMOVED ) equipment, but not on the ( WORDS REMOVED ) equipment. Also, if a product is to be ( X ), the results are better if the product is produced on the ( WORDS REMOVED ) equipment instead of the ( WORDS REMOVED ) equipment.

26. PETITIONER's ( WORDS REMOVED ) equipment operates at faster speeds and accommodates ( WORDS REMOVED ).

27. PARAGRAPH REMOVED.

28. PETITIONER's ( WORDS REMOVED ) equipment (photograph found at Exhibit P-1, p.1) costs approximately \$\$\$\$\$, while its ( WORDS REMOVED ) equipment (photograph found at Exhibit P-1, p.2) costs approximately \$\$\$\$\$ to \$\$\$\$\$. The large format ( X ) equipment (photograph found at Exhibit P-1, p.3) costs approximately \$\$\$\$\$. In contrast, ( WORDS REMOVED ) costs approximately \$\$\$\$\$.

29. A PRODUCT C produced on the ( WORDS REMOVED ) equipment and a the same PRODUCT C produced on the ( WORDS REMOVED ) equipment appear similar, though not identical, in appearance (Exhibits P-2 and P-3).

30. ( WORDS REMOVED ) equipment is marketed as ( WORDS REMOVED ). In brochures, the equipment is described as ( WORDS REMOVED ). ( SENTENCE REMOVED ). (Exhibit P-4.)

31. The maintenance costs for ( WORDS REMOVED ) equipment are much higher than the maintenance costs for ( WORDS REMOVED ) equipment. PETITIONER purchases a maintenance contract when it leases or purchases ( WORDS REMOVED ) equipment. However, it does not purchase a maintenance contract for its ( WORDS REMOVED ) equipment, as the ( X ) manufacturer,

MANUFACTURER, does not sell such contracts.

32. PETITIONER's employees require different training to operate its ( WORDS REMOVED ) equipment than required to operate its ( WORDS REMOVED ) equipment. In the place of business at issue, one employee is trained to operate the ( WORDS REMOVED ) equipment and two or three employees are trained to operate the ( WORDS REMOVED ) equipment. However, no employee is "cross-trained" to operate both types of equipment. All employees are able to assist customers ( WORDS REMOVED ).

33. PETITIONER REP. 2, the owner of PETITIONER, testified that he holds himself out as a ( X ) and competes primarily with large ( COMPANIES ), cutting "into the bottom end of their businesses."

34. PETITIONER REP. 3 is employed by COMPANY B ("COMPANY B") to sell ( WORDS REMOVED ) equipment to clients in Utah. PETITIONER REP. 3 testified that COMPANY B made a decision to compete with ( WORDS REMOVED ) manufacturers by producing and selling ( WORDS REMOVED ) equipment. He also testified that the "( WORDS REMOVED )" process previously used in ( X ) machines has been replaced with the ( X ) process.

APPLICABLE LAW

**A. Utah Statutes and Administrative Rules.**

1. UCA §59-12-104(14) exempts certain sales of tangible personal property used in a manufacturing facility from sales tax. For the years at issue, Section 59-12-104 provided, as follows 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;
  - (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;
- ....
- (c) for purposes of Subsection (14), the commission shall by rule define the [term] “establishment”:
- ....

2. For purposes of Section 59-12-104(14), “manufacturing facility” is defined in UCA §59-12-102(43)<sup>2</sup> to mean “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[.]”

3. For purposes of the manufacturing exemption and during the periods at issue, Utah Admin. Rule R865-19S-85 (“Rule 85”) provided, as follows in pertinent part:

A. Definitions:

- 1. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.
- 2. "Machinery and equipment" means:
  - a) electronic or mechanical devices incorporated into a

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2 The definition of “manufacturing facility” remained unchanged during the audit period, but the subsection was renumbered in each of the years at issue. The definition is now located at Section 59-12-102(43).



manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; . . .

. . . .

C. Machinery and equipment . . . used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment . . . are primarily used in manufacturing activities.<sup>3</sup> Examples of nonmanufacturing activities include:

1. research and development;
2. refrigerated or other storage of raw materials, component parts, or finished product; or
3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment . . . purchased for use in the manufacturing operation are eligible for the sales and use tax exemption . . . if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:
  - a) no single SIC code includes those activities combined; or
  - b) each activity comprises a separate legal entity.

2. Machinery and equipment . . . used in both manufacturing activities and nonmanufacturing activities qualify for the exemption . . . only if the machinery and equipment . . . are primarily used in manufacturing activities.

. . . .

**B. 1987 Standard Industrial Classification Manual (“SIC Manual”).**

4. The basis of SIC code assignments is explained on page 15 of the SIC Manual, as

follows in pertinent part:

Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should be determined by its relative share of value added at the establishment. . . .

5. For purposes of the SIC classifications, “establishment” is defined on page 12 of the

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<sup>3</sup> Prior to July 4, 2001, Section (3) of Rule 85 provided that equipment used in both a qualifying manufacturing activity and a nonqualifying activity would be subject to taxation unless use in the nonqualifying activity was de minimis.

SIC Manual. The definition addresses the treatment of separate establishments at a single location, as follows:

Where distinct and separate economic activities are performed at a single physical location (such as construction activities operated out of the same physical location as a lumber yard), each activity should be treated as a separate establishment where: (1) no one industry description in the classification includes such combined activities; (2) the employment in each such economic activity is significant; and (3) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, and other types of establishment data.

6. In the SIC Manual, the description for Major Group 27 (Printing, Publishing, and Allied Industries) provides that “[t]his major group includes establishments engaged in printing by one or more common processes, such as letterpress; lithography (including offset), gravure, or screen; and those establishments which perform services for the printing trade, such as book binding and platemaking. . . .”

7. The SIC Manual describes establishments included in SIC Code 2732, PRODUCT A Publishing, as “[e]stablishments primarily engaged in printing, or in printing and binding, books and pamphlets, but not engaged in publishing. . . .”

8. The SIC Manual describes establishments included in SIC Code 2752, Commercial Printing, Lithographic, as follows in pertinent part:

Establishments primarily engaged in printing by the lithographic process. The greater part of the work in this industry is performed on a job or custom basis; but in some cases lithographed calendars, maps, posters, decalcomanias, or other products are made for sale. Offset printing, photo-offset printing, and photolithographing are also included in this industry. . . . Establishments primarily engaged in providing photo copying services are classified in Services, Industry 7334.

Some of the items produced by this type of establishment and listed in the SIC Code description are advertising posters, business forms, cards, circulars, coupons, posters, and tickets.

9. The SIC Manual describes establishments included in SIC Code 2759, Commercial Printing, Not Elsewhere Classified, to include as follows:

Establishments primarily engaged in commercial or job printing, not elsewhere classified. This industry includes general printing shops, not elsewhere classified, as well as shops specializing in printing newspapers and periodicals for others.

Some of the items produced by this type of establishment and listed in the SIC Code description are announcements, business forms, cards, catalogs, circulars, coupons, envelopes, invitations, labels, periodicals, posters, and tickets.

10. The SIC Manual describes Major Group 73 (Business Services), as follows in pertinent part:

[t]his major group includes establishments primarily engaged in rendering services, not elsewhere classified, to business establishments on a contract or fee basis, such as advertising, credit reporting, collection of claims, mailing, reproduction, stenographic, news syndicates, computer programming, photocopying, duplicating, data processing, services to buildings, and help supply services. . . .”

11. The SIC Manual describes establishments included in SIC Code 7334, Photocopying and Duplicating Services, as follows:

Establishments primarily engaged in reproducing text, drawings, plans, maps, or other copy, by blueprinting, photocopying, mimeographing, or other methods of duplication other than printing or microfilming. Establishments primarily engaged in printing are classified in Manufacturing, Industry Group 275, and those engaged in providing microfilming services are classified in Industry 7389.

Some of the services provided by this type of establishment and listed in the SIC Code description are blue( X ) services, duplicating services (except printing) and photocopying services.

#### DISCUSSION AND CONCLUSIONS OF LAW

During the years at issue, Section 59-12-104(14) provides that machinery or equipment is eligible for the manufacturing exemption if it meets the following requirements: 1) it is used in new or expanding operations or as normal operating replacements; 2) it is used in a manufacturing process in a manufacturing facility in Utah; 3) it has an economic life of three or more years; and 4) it is used to manufacture an item sold as tangible personal property. The only requirement at issue for PETITIONER’s (

WORDS REMOVED ) equipment to be exempt is whether the equipment is used primarily in a manufacturing process in a manufacturing facility.

**I. Manufacturing Facility.** Pursuant to Section 59-12-102(43), “manufacturing facility” is defined to mean “an establishment described in SIC Codes 2000 to 3999 of the [SIC Manual].” PETITIONER argues that it operates as a single establishment that is classified in Major Group 27 ( WORDS REMOVED ) of the SIC Codes and, accordingly, is a manufacturing facility for purposes of the exemption. The Division does not dispute that a portion of PETITIONER’s activities is classified under Major Group 27. However, the Division asserts that PETITIONER operates two separate and distinct establishments and that the ( WORDS REMOVED ) equipment at issue is used in a ( X ) and duplication services establishment that is classified under Major Group 73 (Business Services). For these reasons, the Division argues that the ( WORDS REMOVED ) equipment is not used in a manufacturing facility and, accordingly, is not eligible for the exemption.

In *Atlas Steel, Inc. v. Utah State Tax Comm’n*, 2002 UT 112, 61 P.3d 1053 (Utah 2002), the Utah Supreme Court gave no deference to the Commission’s interpretation of “manufacturing facility,” even though the Commission had been given statutory authority to define “establishment,” a term used in the definition of “manufacturing facility.” The Court also found that the Commission must make certain factual determinations when finding whether an entity’s activities are classified as an establishment described in SIC Codes 2000 to 3999, stating:

In determining if an establishment is described in SIC Codes 2000 to 3999, the Commission must make factual determinations as to the activities in which the establishment is engaged, the extent to which an establishment is engaged in those activities, what processes are used in those activities, and what products result from those activities. From those factual determinations, the Commission must then make a legal conclusion as to whether the products created and processes utilized conform to those specified in SIC Codes 2000 to 3999 and whether the establishment is "primarily engaged in manufacturing" those specific products through those specific

means.

Activities. PETITIONER's activities include ( ACTIVITY LISTED ). In addition, PETITIONER sublets jobs to other ( BUSINESSES ) on occasion. These various activities are described in both Major Group 27, which includes commercial ( X ) services, and Major Group 73, which includes services to ( WORDS REMOVED ).

Processes Used in Activities. PETITIONER uses three processes in its business, specifically: 1) a ( WORDS REMOVED ) process; 2) an ( WORDS REMOVED ) process; and 3) an ( WORDS REMOVED ) process. The lithographic ( WORDS REMOVED ) process is described in SIC Code 2752. However, the SIC Codes do not specifically address the ( WORDS REMOVED ) process or the ink-jet ( WORDS REMOVED ) process. Based on the evidence and arguments submitted by the parties and a review of the SIC Codes, the Commission concludes that the processes employed by the ( WORDS REMOVED ) equipment at issue did not exist or were not utilized by businesses when the SIC Manual was published in 1987.

Products Produced. A partial list of the products that PETITIONER produces with both its ( WORDS REMOVED ) equipment and its ( WORDS REMOVED ) equipment include ( PRODUCT LIST REMOVED ). These items are all products that establishments described in SIC Codes 2732, 2752, and 2759 produce. With its ( WORDS REMOVED ) equipment and traditional ( X ) machines, PETITIONER also provides services to ( WORDS REMOVED ), which is a service provided by an establishment described in SIC Code 7334.

Extent Engaged in Activities. PETITIONER argues that 92.25% of its business is generated from its ( X ) services and that the remaining 7.75% is generated from its ( X ) services. The Division counters that at least 46.07% of PETITIONER's business is generated from ( X ) services, as it considers any

service provided by the ( WORDS REMOVED ) equipment to be a duplicating or ( X ) service described in SIC Code 7334.

The Commission notes that the processes employed by PETITIONER's ( WORDS REMOVED ) equipment are not described in the SIC Manual, which is not unexpected if ( WORDS REMOVED ) and the ( WORDS REMOVED ) processes were not in use when the manual was published. Regardless, more than 80% of the revenue generated by the ( WORDS REMOVED ) equipment is associated with its production of products described in Major Group 27.

In addition, the Commission notes that ( WORDS REMOVED ) equipment, ( WORDS REMOVED ) equipment, and traditional ( X ) machines are all similar in that they produce ( WORDS REMOVED ).<sup>4</sup> The SIC Codes, however, appear to segregate entities that produce "multiple ( WORDS REMOVED )" into manufacturing establishments ( WORDS REMOVED ) and nonmanufacturing establishments (duplication service providers), at least in part, by the type of products they produce. Accordingly, the Commission does not find persuasive the Division's argument that equipment that produces multiple ( X ) of an image is not manufacturing equipment.

For this reason, the Commission finds the Petitioner's argument that its ( WORDS REMOVED ) equipment is used primarily to produce products described in Major Group 27 to be reasonable and, as a result, finds that more than 92% of PETITIONER's activities are described in Major Group 27. Accordingly, the Commission rejects the Division's arguments that PETITIONER's uses its ( WORDS REMOVED ) equipment exclusively to provide services described under Major Group 73.

Legal Conclusion Based on *Atlas* Criteria. The Court in *Atlas* directs the Commission to make

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<sup>4</sup> In fact, Utah Admin. Rule R865-19S-80, which provides sales tax guidance to ( WORDS REMOVED ), defines "( WORDS REMOVED )."

“a legal conclusion as to whether the products created and processes utilized conform to those specified in SIC Codes 2000 to 3999 and whether the establishment is ‘primarily engaged in manufacturing’ those specific products through those specific means.”

The production of products described in Major Group 27 is PETITIONER’s primary activity, accounting for more than 92% of the revenues generated by the business. Furthermore, PETITIONER’s ( WORDS REMOVED ) equipment employs a process specifically described in SIC Code 2752. Although the ( WORDS REMOVED ) equipment at issue, which uses ( WORDS REMOVED ) processes, are not described in SIC Codes, the Commission believes that the evidence shows that this equipment is used in a manner that is more similar to PETITIONER’s use of its ( WORDS REMOVED ) equipment than not. First, it is unrefuted that PETITIONER’s ( WORDS REMOVED ) equipment is used interchangeably with and produces products similar to those produced with its ( WORDS REMOVED ) equipment. Second, the evidence submitted at the hearing suggests that the ( X ) industry considers ( WORDS REMOVED ) to serve as a substitute for “traditional” ( X ) equipment, such as ( WORDS REMOVED ) presses. Third, the description for SIC Code 2752 ( WORDS REMOVED ) specifically provides that the “greater part of the work in this industry is performed on a job or custom basis[.]” Not only are most, if not all, of the orders produced with the ( WORDS REMOVED ) equipment invoiced, but customers approve ( WORDS REMOVED ) an item produced on the equipment before the entire order is completed. Furthermore, most of the products produced on the ( WORDS REMOVED ) equipment are performed “on a job or custom basis.”

Based on the totality of the evidence, the Commission finds that PETITIONER is primarily engaged in manufacturing the products described in Major Group 27, not only with its ( WORDS REMOVED ) equipment but also with the ( WORDS REMOVED ) equipment at issue.

Separate Establishment Argument. The Commission notes that the Division argues that the PETITIONER operates two separate and distinct establishments at its place of business. However, even were the Commission to find that PETITIONER operates both a ( X ) establishment and a ( WORDS REMOVED ) services establishment, the Commission has already found earlier that the ( WORDS REMOVED ) equipment at issue is used in a ( X ) establishment, not exclusively in the nonmanufacturing establishment as the Division contends.

**II. Primary Use of the ( WORDS REMOVED ) Equipment.** Sections (C) and (D)(2) of Rule 85 provide that equipment used in both manufacturing activities and nonmanufacturing activities only qualifies for the exemption if it is primarily used in manufacturing activities. As discussed above, the Commission has found that PETITIONER's use of its ( WORDS REMOVED ) equipment in its manufacturing (( X )) activities is more than 80% and in its nonmanufacturing ( ( WORDS REMOVED ) services) activities is less than 20%. Given this specific division of use, the Commission finds that PETITIONER's ( WORDS REMOVED ) equipment is primarily used in a manufacturing activity and, accordingly, may qualify for the exemption.

**III. Summary.** Based on the foregoing, the Commission has found that the ( WORDS REMOVED ) equipment at issue is used in a manufacturing facility and that its primary use is in manufacturing activities. As these requirements to qualify for the manufacturing exemption were the only ones at issue, the Commission finds that the ( WORDS REMOVED ) equipment at issue qualifies for the manufacturing exemption. Accordingly, the Petitioner's appeal is granted.<sup>5</sup>

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<sup>5</sup> See *xxxxxxx v. Auditing Division*, USTC Appeal No. 89-1793, in which the Commission determined that a business whose predominant activity was ( X ) could purchase exempt from taxation a high-speed, high-volume ( X ) machine that was used as a substitute for its ( X ); *xxxxxxx v. Auditing Division*, USTC Appeal No. 04-1217, in which the Commission denied the exemption for an ( WORDS REMOVED ) , in part, because the taxpayer, unlike PETITIONER, was not a manufacturing facility.



CONCLUSIONS OF LAW

1. After reviewing PETITIONER's activities, the extent to which PETITIONER is engaged in these activities, and the processes used by and the products produced by PETITIONER, the Commission finds that the primary activity of PETITIONER is that of a ( X ) establishment as described in Major Group 27 of the SIC Manual.

2. Because PETITIONER's primary activities are classified in Major Group 27 of the SIC Codes, PETITIONER is a manufacturing facility, as defined in Section 59-12-102(43).

3. The ( WORDS REMOVED ) equipment at issue is used in manufacturing activities described in Major Group 27, regardless of whether PETITIONER's operations consist of two separate and distinct establishments.

4. The primary use of PETITIONER's ( WORDS REMOVED ) equipment is in a manufacturing activity.

5. Under the circumstances in this matter, the ( WORDS REMOVED ) equipment at issue qualifies for the manufacturing exemption from sales tax.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission grants the Petitioner's appeal and abates those assessments that the Division imposed under Schedule 3 and Schedule 4 of its Statutory Notice, with the exception of item #6 as identified in Schedule 4. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Kerry R. Chapman  
Administrative Law Judge

Appeal No. 05-1408

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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63-46b-13 et seq.

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