

LESAFFRE YEAST CORPORATION §  
433 East Michigan Street §  
Milwaukee, WI 53202, §

Petitioner, §

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-1130

### FINAL ORDER

Lessafre Yeast Corporation (“Petitioner”) applied to the Department for a sales tax exemption certificate. The Department denied the application. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on June 14, 2004. The Petitioner’s representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether certain tangible personal property the Taxpayer intends to use in Alabama would be exempt from Alabama use tax as pollution control equipment pursuant to Code of Ala. 1975, §40-23-62(18).

The Petitioner operates a yeast manufacturing facility in Dothan, Alabama. The yeast manufacturing process produces wastewater. The Petitioner holds the wastewater in irrigation ponds. The wastewater is not treated while in the ponds. The Petitioner subsequently uses the water to irrigate agricultural products in surrounding fields. The agricultural products are then harvested and sold by the Petitioner.

The Petitioner’s position is explained in its appeal letter to the Administrative Law Division, as follows:

Lesaffre Yeast Corporation has applied for an exemption from Alabama use tax for the purchase of items to construct irrigation ponds and piping used in an irrigation expansion project based on Exemption 40-23-62(18). The equipment which is being purchased for the project include devices and facilities used for the control and reduction of water pollution. Lesaffre Yeast Corporation uses an agricultural means to deal with wastewater.

Lesaffre Yeast Corporation utilizes holding ponds for the treatment of wastewater. Water used in the manufacturing process is collected in holding ponds. The water is used on a controlled release basis to irrigate crops, which are then harvested. The impurities in the wastewater are used to nourish the crops, and are not released into the water table.

The Department investigated the Petitioner's application and determined that the pollution control exemption did not apply. The Department's position is set out in a memorandum from Department Examiner Debra Lee, as follows:

A large volume of waste water is created in the process of manufacturing bakers' yeast. The waste water contains molasses, ammonia, chlorine, and phosphorous added during the process. The waste water is pumped into a lagoon (lined holding pond). In order to keep the smell down, as soon as possible the waste water is pumped from the lagoons to irrigate agricultural fields where hay is grown for sale as feed for livestock. According to Mr. Quasba, the rate of ground saturation in the fields is monitored by EPA to prevent over saturation and run-off into surrounding streams. Because of the limitation on the volume of waste water that can be applied to a give area, in conjunction with recent wet weather conditions, Lesaffre has purchased additional agricultural land to provide more area for release of the waste water. The current project for which exemption is requested is for installation of piping, pumps, and irrigation system for the newly acquired property.

This project does not qualify for pollution control exemption since, from the time the waste water leaves the manufacturing process to the point it is sprayed on the fields, no water treatment process takes place. No chemicals are added. No impurities are removed from the waste water.

Section 40-23-62(18) provides a use tax exemption for "all devices or facilities . . . used or place in operation primarily for the control, reduction, or elimination of air or water pollution . . ." In *Chemical Waste Management, Inc. v. State*, 512 So.2d 115 (Ala. Civ. App.

1987), the Alabama Court of Civil Appeals held that the pollution control exemption did not apply if the subject property was acquired primarily as an integral and necessary part of a profit- motivated business activity.

The property in issue in this case is piping and pumps that the Petitioner intends to use to irrigate crops in agricultural fields. The crops will then be harvested and sold by the Petitioner. The piping and pumps will be used as an integral part of the Petitioner's profit-motivated agricultural business. The pollution control exemption thus does not apply under the rationale of *Chemical Waste Management*.

There is also no evidence that the wastewater contains pollutants, or that the Petitioner is required by the EPA to either hold the wastewater in the holding ponds or disburse the wastewater over its fields through an irrigation system. The burden was on the Petitioner to prove that it was entitled to the pollution control exemption. *Crim v. Phipps*, 601 So.2d 474 (Ala. 1992). It failed to carry that burden in this case.

The Department's denial of the sales tax exemption is affirmed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered June 16, 2004.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.  
Lisa Reed  
Mike Emfinger