

PITTS ENTERPRISES, INC.	§	STATE OF ALABAMA
P.O. BOX 127		DEPARTMENT OF REVENUE
PITTSVIEW, AL 36871-0127,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 05-949
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed Pitts Enterprises, Inc. (“Taxpayer”) for use tax for January 2002 through December 2004. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 6, 2005. Jeff Pitts represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer manufactures and sells flatbed trailers in Alabama. It purchased various gases tax-free from out-of-state sellers during the period in issue that it used to weld the various parts of the trailers. The Department audited the Taxpayer and assessed it for Alabama use tax on the gas, plus penalties and interest. The Taxpayer appealed.

The Taxpayer argues that the Department has never taxed its welding gas in prior audits. It also contends in its appeal letter that “to arbitrarily tax the welding gases and not the welding wire is inconceivable since one will not work without the other”

Welding gas is not per se exempt from Alabama sales or use tax. Dept. Reg. 810-6-1-.72(1). Such gas would, however, be nontaxable if it became an ingredient or component part of the manufactured final product. See, Code of Ala. 1975, §§40-23-1(a)(9)b. and 40-23-60(4)b. concerning sales tax and use tax, respectively. The taxability of welding gas was previously addressed in *Holman Iron and Ornamental Works v. State of Alabama*, S.

94-257 (Admin. Law Div. 10/24/94). The Administrative Law Division held that the argon gas in issue in *Holman Iron* was taxable.

The issue in this case is whether the Taxpayer is liable for sales tax on the purchase of argon gas that was subsequently used by the Taxpayer in welding. That issue turns on whether the argon became an ingredient or component part of the materials manufactured by the Taxpayer for sale. If so, the purchase of the argon constituted a tax-free wholesale sale pursuant to Code of Ala. 1975, §40-23-1(a)(9)b. The facts are undisputed.

The Taxpayer purchased argon, welding wire, welding rods and brassing rods during the subject period. Those items were subsequently used in welding products for sale. The Taxpayer paid use tax on the above items and then applied for a refund of the tax previously paid.

The Department granted the refund relating to the welding wire, welding rods and brassing rods, but denied the refund relating to the argon. The Department contends that the argon did not become an ingredient or component part of the items manufactured for sale as required to be tax-free under 40-23-1(a)(9)b. I agree.

To be exempt from tax under the "ingredient or component part" exemption, some parts of the material must actually remain in the finished product. See generally, *Boswell v. General Oils, Inc.*, 368 So.2d 27. The Taxpayer in this case concedes that none of the argon remained in the welded product. Accordingly, the argon did not become an ingredient or component part of the property and thus was not purchased at wholesale pursuant to §40-23-1(a)(9)b.

The Taxpayer argues that the argon serves the same function as flux on a welding rod, which the Department has exempted from tax. The Taxpayer contends that if argon should be taxed, then so should the flux. I disagree. The distinction between argon and flux is that the argon is purchased as an identifiable separate product, none of which becomes an ingredient or component part of the finished product. On the other hand, flux is purchased as a part of a welding rod, the steel rod part of which becomes an ingredient or component part of the welded materials. Thus, because a part of the welding rod becomes a part of the finished product, the sale of the entire welding rod, including the flux, is non-taxable. As stated in *Boswell v. General Oils, Inc.*, supra, at page 29, "if any part of a product purchased by a manufacturer is intended to remain and does remain in the manufacturer's finished product, the purchase is at wholesale (as an ingredient or component part), and therefore is tax free". See also, *Stauffer Chemical v. State Department of Revenue*, 628 So.2d 897.

Holman Iron at 1 – 3.

The rationale of *Holman Iron* also applies in this case. The welding wire used by the Taxpayer can be purchased tax-free at wholesale because a part of the wire remains in the final product. There is no evidence, however, that the welding gases become an ingredient or component part of the trailers manufactured by the Taxpayer. Consequently, the Taxpayer is liable for Alabama use tax on the gas it used during the audit period.¹

The Department also assessed the Taxpayer for a \$909.49 penalty. Under the circumstances, the penalty is waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h).

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for use tax and interest of \$7,142.13. Additional interest is also due from the date the final assessment was entered, July 26, 2005.

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

Entered December 15, 2005.

BILL THOMPSON
Chief Administrative Law Judge

¹ If the Taxpayer had purchased the gas in Alabama, it would have owed Alabama sales tax when it purchased the gas. If the Taxpayer had failed to pay Alabama sales tax when it purchased the gas, Alabama use tax would have been due when it subsequently used the gas in Alabama.