

ALABAMA TAX TRIBUNAL

BALDWIN COUNTY SEWER
SERVICE, LLC,

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Taxpayer,

§

v.

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DOCKET NOs. S. 23-654-JP
S. 24-500-JP

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND FINAL ORDER

Baldwin County Sewer Service, LLC (“BCSS”), is a privately-owned entity that provides wastewater collection and treatment services to the public. Specifically, BCSS operates 6 treatment plants within Baldwin County, Alabama, and those plants utilize various pieces of equipment such as pumps, pipes, valves, fittings, and tanks, among other items, the sales of which normally would be subject to Alabama’s sales tax. Previously, though, the Alabama Department of Revenue had granted exemption certificates to BCSS which allowed the company to purchase equipment without paying sales tax, with the only limitation being that the certificate be used for “the purchase of ‘Pollution Control equipment/materials.’”

In March 2023, BCSS applied with the Revenue Department for another sales tax certificate of exemption. However, in May 2023, the Revenue Department granted the application only as “to the purchase of pipe and fittings used for the construction and repair of sewer main lines. Lateral lines and grinder pumps used to transport wastewater from homes, commercial properties, and industrial facilities to the sewer mains are not exempt.” BCSS appealed to the Alabama Tax Tribunal from the

Revenue Department's partial denial of the 2023 exemption certificate request. In June 2024, BCSS applied for a renewal of its exemption certificate, but the Revenue Department limited the scope of that certificate as it had the 2023 certificate. BCSS appealed the partial denial regarding 2024 to the Tax Tribunal, and the appeals were consolidated.

On appeal, the parties submitted the following Joint Stipulations of Selected Facts:

1. The Taxpayer organized its operations on or around January 15, 1998. ...
2. The Taxpayer is a privately-owned wastewater utility service provider located in Baldwin County, Alabama that provides wastewater collection and treatment services to the general public throughout Baldwin County, primarily in rural and unincorporated areas where municipal sewer services are not otherwise available.
3. The Taxpayer also provides sewer service installation and on call repair, as well as grinder pump installation and repair, and septic tank pumping.
4. The Taxpayer's customers can make payments and report service problems to the Taxpayer either by phone or through its website.
5. The Taxpayer does not operate a hazardous waste management or storage site.
6. The Taxpayer does not offer indoor plumbing services.
7. The Taxpayer operates six wastewater treatment plants in Baldwin County, which are located in Lillian, Fort Morgan, Summerdale, Malbis, Wilcox, and Steelwood (collectively, the "Wastewater Treatment Plants").
8. The Taxpayer's operations are regulated by the Alabama Department of Environmental Management ("ADEM").

9. Specifically, ADEM has issued either a National Pollutant Discharge Elimination (NPDES) permit and/or an Underground Injection Control (UIC) permit for each of the Wastewater Treatment Plants. The permits regulate the quality of water that the Taxpayer discharges from the Wastewater Treatment Plants to surface waters and groundwater in Alabama. ...

10. Wastewater from water-using appliances (e.g., toilets, sinks, showers, washing machines, dishwashers, etc.) (“wastewater”) from the Taxpayer’s customers is collected, controlled, reduced, transported, and delivered to the Taxpayer’s Wastewater Treatment Plants through underground piping and pumping systems for treatment in compliance with strict environmental laws regulated by ADEM.

11. Wastewater is a form of water pollution that may cause ground or surface water to be contaminated, unclean, or impure to such an extent to make said waters detrimental to the public and the public interest, as the term “water pollution” is used in Ala. Code § 40-23-4(a)(16) and Ala. Admin. Code r. 810-6-3-.46(5).

12. At the Wastewater Treatment Plants, water pollution is removed, reduced, or eliminated from the wastewater, and the treated water is returned safely to a receiving stream or groundwater in accordance with ADEM permits and requirements.

13. The Taxpayer purchased and/or built the Wastewater Treatment Plants for the sole purpose of treating and disinfecting wastewater before returning treated clean water to a receiving stream or groundwater.

14. The Taxpayer’s “Wastewater Treatment System” is comprised of the Wastewater Treatment Plants, as well as a connected series of pumps (like, grinder pumps), pipes (main lines and lateral lines), valves, fittings, lift stations, tanks, etc. (collectively, the “Wastewater Collection System”), which collect, control, reduce, and transport the wastewater from the customer’s location to the designated Wastewater Treatment Plant.

15. The Wastewater Collection System utilizes two methods of wastewater collection: (1) gravity sewer collection and (2) low-pressure sanitary sewer collection.

16. Both collection methods collect, control, reduce, and transport wastewater from the Taxpayer's customers' homes or buildings to one of the Wastewater Treatment Plants for treatment.

17. For that portion of the Wastewater Collection System that utilizes gravity sewer collection, the system is designed so that wastewater is collected and flows to the Wastewater Treatment Plants by gravity and the use of lift stations.

18. For that portion of the Wastewater Collection System that utilizes low-pressure collection, each home or building within that service territory requires a grinder pump, which grinds and reduces the solids in the wastewater and pumps the wastewater through the Wastewater Treatment System to the Wastewater Treatment Plants.

19. Generally, service areas that require grinder pumps are not suitable for gravity sewer collection lines or septic tanks, unless topography or other circumstances require their use for effective operation.

20. No septic tanks are used in the Wastewater Treatment System. The Taxpayer does not install or replace septic tanks; however, the Taxpayer does offer septic tank pumping services and the effluent from the tanks is treated with the other wastewater at the Wastewater Treatment Facilities.

21. Instead of septic tanks, the Taxpayer installs and maintains grinder pumps at its customers' properties that use the low-pressure collection method.

22. Once wastewater enters the Wastewater Treatment System, the wastewater flows through the Wastewater Collection System via gravity or pressure until the wastewater arrives at a Wastewater Treatment Plant for treatment.

23. Since 1999, the Department has granted ten (10) exemption certificates to the Taxpayer to allow it to purchase certain items without the payment of sales tax pursuant to the pollution control exemption found in Ala. Code § 40-23-4(a)(16). Copies of the eight (8) exemption certificates issued to the Taxpayer effective for periods prior to October 1, 2022, are attached hereto as Exhibit C.

24. Generally, the restrictions associated with the exemption

certificate have been that it could only be used for the purchase of “pollution control equipment/materials.” *See* Exhibit C.

25. The Taxpayer pays the applicable Alabama state and local sales or use tax on items it purchases for use in the Taxpayer’s business, but which were not purchased primarily for the control, reduction, or elimination of water pollution. For example, the Taxpayer does not claim the pollution control exemption for service vehicles, lawnmowers, computers, or office equipment used by administrative staff.

26. In 2017, the Department concluded an audit (the “Audit”) of Taxpayer for the periods May 1, 2013 through January 31, 2017 (the “Audit Period”).

27. During the Audit Period, the Taxpayer purchased materials to repair the Taxpayer’s Wastewater Treatment System, including the Wastewater Treatment Plants and Wastewater Collection System, and built the Wastewater Treatment Plant in Lillian, all without payment of sales or use tax on the grounds that such purchases were exempt under Ala. Code §§ 40-23-4(a)(16) and - 62(3).

28. The only item in the Wastewater Treatment System that the Department ultimately assessed tax on pursuant to the Audit was certain pipe that connects the grinder pumps to the main lines. The Taxpayer contended that the pipe at issue was exempt under Ala. Code § 40-23-4(a)(16). A copy of the Confidential Audit Report is attached as Exhibit D. A copy [of] the Addendum to the Confidential Audit Report is attached as Exhibit E. A copy of a letter from the Department to the Taxpayer confirming the total liability is attached as Exhibit F.

29. In March 2023, the Taxpayer filed Form ST:EXC-A1, Application for Sales and Use Tax Certificate of Exemption (the “2023 Application”), to obtain a new exemption certificate. A copy of the 2023 Application is attached hereto as Exhibit G.

30. In response to the 2023 Application, the Department contacted the Taxpayer in May 2023, and explained that it intended to limit the applicability of the exemption certificate to the “purchase of pipe and fittings used for the construction and repair of sewer main lines.” A copy of the examiner’s remarks in response to the 2023 Application is attached hereto as Exhibit H.

31. The Department issued Form STE-1, State Sales and Use Tax Certificate of Exemption (the “2023 Exemption Certificate”), to the Taxpayer for the periods July 3, 2023 through July 31, 2024. A copy of the 2023 Exemption Certificate is attached hereto as Exhibit I.

32. The 2023 Exemption Certificate contained the following restriction: “Restricted to the Purchase of Pipe and Fittings Used for the Construction & Repair of Sewer Main Lines.”

33. This substantial limitation on the 2023 Exemption Certificate constitutes a partial denial of the 2023 Application for the 2023 Exemption Certificate.

34. The Taxpayer timely filed a notice of appeal to the Alabama Tax Tribunal from the denial of the 2023 Application on August 2, 2023.

35. In June 2024, the Taxpayer filed Form ST:EXC-A1, Application for Sales and Use Tax Certificate of Exemption (the “2024 Application”), to renew its exemption certificate.

36. On or about June 18, 2024, the Department issued Form STE-1, State Sales and Use Tax Certificate of Exemption (the “2024 Exemption Certificate”), to the Taxpayer for the periods June 18, 2024 through July 31, 2025. A copy of the 2024 Exemption Certificate is attached hereto as Exhibit J.

37. The 2024 Exemption Certificate contained the following substantial restriction: “Restricted to the Purchase of Pipe and Fittings Used for the Construction & Repair of Sewer Main Lines.” This substantial limitation constituted a partial denial of the 2024 Application for the 2024 Exemption Certificate.

38. The Taxpayer timely filed a notice of appeal to the Alabama Tax Tribunal from the denial of the 2024 Application on July 18, 2024.

Positions of the Parties

Not surprisingly, BCSS argues that its purchases of materials that are used in its wastewater treatment system meet the statutory and regulatory

requirements for exemption from sales and use tax. And BCSS notes that the Revenue Department agreed with the company for many years, as evidenced by the issuance to BCSS of broad exemption certificates from 1999 to 2022.

The Revenue Department counters by contending that much of the property in question was acquired by BCSS not for pollution control, but to fulfill contracts with customers as an integral part of the company's profit-motivated business. Thus, the Revenue Department asserts that its limiting of the certificates was correct.

Law and Analysis

Alabama Code § 40-23-4(a)(16) exempts the following from state sales tax:

The gross proceeds from the sale of all devices or facilities, and all identifiable components thereof, or materials for use therein, acquired primarily for the control, reduction, or elimination of air or water pollution and the gross proceeds from the sale of all identifiable components of, or materials used or intended for use in, structures built primarily for the control, reduction, or elimination of air and water pollution.

The same exemption applies concerning state use tax. *See* Ala. Code § 40-23-62(3).

By regulation, the Revenue Department has addressed the pollution-control exemption as follows:

Rule 810-6-3-.46 - Air And Water Pollution Control Exemption

- (1) The term "pollution control facilities" shall mean any system, method, construction, device, or appliance appurtenant thereto acquired for the primary purpose of eliminating, preventing, or reducing air and water pollution, or acquired for the primary

purpose of treating, pretreating, modifying, or disposing of any potential solid, liquid, or gaseous pollutant which, if released without such treatment, pretreatment, modification, or disposal, might be harmful, detrimental, or offensive to the public and the public interest.

...

(5) The term "water pollution" shall mean the discharge or deposit of sewage, industrial wastes, or other wastes of such condition, manner, or quantity as may cause ground or surface water to be contaminated, unclean, or impure to such an extent to make said waters detrimental to the public and the public interest.

(6) Sections 40-23-4(a)(16) and 40-23-62(18), Code of Ala. 1975, exempt from sales and use tax the sale, storage, use, or consumption of

(i) all devices or facilities, including all identifiable components of the devices or facilities and all materials used in the devices or facilities, which are acquired primarily for the control, reduction, or elimination of air or water pollution and

(ii) all identifiable components of or materials used or intended for use in structures built primarily for the control, reduction, or elimination of air or water pollution.

...

(8) To qualify for the pollution control exemption the primary purpose for acquiring tangible personal property purchased, stored, used, or consumed shall be the control, reduction, or elimination of air or water pollution. Property acquired for the primary purpose of controlling, reducing, or eliminating air or water pollution, qualifies for the exemption even though a secondary or incidental purpose may be its use in the production of goods or services. Property which is acquired primarily for the production of goods or services and is integral to a profit-motivated business purpose or activity does not qualify for the pollution control exemption even when the property controls, reduces, or eliminates air or water pollution. (Chemical Waste Management, Inc. v. State, 512 So. 2d 115 (Ala. Civ. App. 1987)). ...

The Taxpayer argues that its purchases meet all requirements of § 4(a)(16); *i.e.*, that its wastewater treatment system is a “facility” and a “structure” that was

“built primarily for the control, reduction, or elimination of air and water pollution;” and that the system actually controls, reduces, or eliminates water pollution. And BCSS states that the Revenue Department stipulated to the second and third requirements.

In Stipulation 11, the parties stated that “[w]astewater is a form of water pollution that may cause ground or surface water to be contaminated, unclean, or impure to such an extent to make said waters detrimental to the public and the public interest, as the term ‘water pollution’ is used in Ala. Code § 40-23-4(a)(16) and Ala. Admin. Code r. 810-6-3-.46(5).” And in Stipulation 13, the parties stated: “The Taxpayer purchased and/or built the Wastewater Treatment Plants for the sole purpose of treating and disinfecting wastewater before returning treated clean water to a receiving stream or groundwater.” There also seems to be no dispute that the Taxpayer’s treatment plants and the equipment used therein constitute “devices or facilities, and ... identifiable components thereof, or materials for use therein ...”

In its brief, the Revenue Department argues that its partial denial of the exemption certificate should be upheld because the items in question “are not acquired primarily for pollution control within Alabama statutory or caselaw. The grinder pumps are acquired to fulfill contracts with customers for services they contract and pay BCSS for, as an integral part of BCSS’s business purpose. In its appeal, BCSS states that it installs the grinder pumps on their customers’ property and services them. The grinder pumps are ... in fact the source from which BCSS profits are derived.”

The Revenue Department then states that Ala. Admin. Code r. 810-6-3-.46(8) “discusses that purchases are not acquired primarily for pollution control where they are purchased primarily for the production of goods and services integral to a profit-motivated business – as in the instant matter.” Further, the Revenue Department cites *HLH Constructors, Inc. v. Department of Revenue*, 902 So.2d 680 (Ala. Civ. App. 2004), and *Chemical Waste Mgmt, Inc. v. State of Alabama*, 512 So.2d 115 (Ala. Civ. App. 1987) in support of its position.

In *HLH*, a plumbing contractor sought a refund of sales tax paid on pipe that was used in the installation of plumbing systems in condominiums and commercial buildings. The pipes carried sewage and wastewater from toilets and washing machines inside the buildings to public sewage systems outside the buildings. The Revenue Department’s denial of the refund request was upheld on appeal because, according to the court, “the primary purpose of HLH’s purchase of the DWV pipe was not pollution control; rather, the primary purpose of HLH’s purchase of the DWV pipe was to use it to complete its contracts with its customers – *i.e.*, it was ‘part and parcel of the taxpayer’s business purpose.’” *HLH* at 689 (quoting *Chemical Waste Mgmt*, 512 So.2d at 118).

In *Chemical Waste Mgmt*, the taxpayer appealed a circuit court’s summary judgment that the company was not entitled to an exemption from ad valorem tax for its hazardous waste management business in Emelle. Such an exemption applies to “[a]ll devices, facilities, or structures, and all identifiable components thereof or materials for use therein, acquired or constructed primarily for the control, reduction,

or elimination of air or water pollution.” *Id.* at 116.

In upholding summary judgment in favor of the state, the appellate court wrote:

Accordingly, the primary purpose of the property is not pollution control within the intended meaning of the statute; rather, it is part and parcel of the taxpayer’s business purpose. Far from being constructed primarily for the protection of the public and in the public interest, the taxpayer’s hazardous waste facility at Emelle could represent a potential threat to the public interest.

...

We do not in this case hold that hazardous waste is not in and of itself “air and water pollution.” We do hold, however, that the taxpayer’s hazardous waste facility at Emelle was not constructed primarily for the purpose of air and water pollution control within the intended meaning of the statute.

Chemical Waste Mgmt, 512 So.2d at 118-19.

BCSS counters by noting that *HLH* involved a plumbing business, not a pollution control business, and that the pipes in issue that were installed inside condominiums “merely transport[] the sewage and wastewater from privately owned property to the municipal sewer lines ...” *HLH* at 690. Concerning *Chemical Waste Management*, BCSS emphasizes the appellate court’s statement that the primary purpose of Chemical Waste’s property was not pollution control. On the contrary, the court stated that the company’s hazardous waste facility potentially could pose a threat to the public. *Id.* at 118.

Conclusion

Here, the facts show that BCSS acquired the equipment in question primarily for pollution control purposes, and the stipulations of the parties strongly support

that conclusion. As noted, the parties agreed that wastewater is a form of water pollution that may cause the contamination of ground or surface water, “as the term ‘water pollution’ is used in Ala. Code § 40-23-4(a)(16) and Ala. Admin Code r. 810-6-3-.46(5).” (Stipulation 11) And the parties stipulated that BCSS “purchased and/or built the Wastewater Treatment Plants for the sole purpose of treating and disinfecting wastewater before returning treated clean water to a receiving stream or groundwater.” (Stipulation 13)

This conclusion is contemplated by the Revenue Department’s rule in that such property “qualifies for the exemption even though a secondary or incidental purpose may be its use in the production of goods or services.” Rule 810-6-3-.46(8). The rule’s following sentence – that property acquired primarily for the production of goods and services and integral to a profit-motivated business purpose does not qualify for exemption – is based on *Chemical Waste Management*. However, that case is not supportive of the Revenue Department’s position here because, as noted, the taxpayer in *Chemical Waste Management* received hazardous waste into this state for treatment and disposal. Thus, that taxpayer’s business potentially posed a threat to the public interest instead of protecting the public.

BCSS is entitled to a sales and use tax exemption, as requested and as granted by the Revenue Department previously. Therefore, the Revenue Department’s partial denials of BCSS’s requests for exemption certificates for 2023 and 2024 are reversed. The Revenue Department is directed to issue full exemption certificates to BCSS accordingly.

It is so ordered.

This Opinion and Final Order may be appealed to circuit court within 30 days,
pursuant to Ala. Code § 40-2B-2(m).

Entered October 21, 2025.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:ml

cc: William T. Thistle II, Esq.
Hilary Y. Parks, Esq.