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ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 93-002

This document may not be used or cited as precedent. Code of Alabama 1975 §40-2A-5(a).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: October 12, 1993

RE: Revenue Ruling 93-002

SUBJECT: Exemption from Sales/Use Tax and Property Tax along with Deductions from Capital Employed for Franchise Tax Purposes and Deductibility of Costs for Income Tax Purposes Relating to Proposed Expenditures which Control, Reduce, or Eliminate Air and Water Pollution.

FACTS

Company A is an Alabama corporation whose corporate office is located in Alabama. Company A is in the business of producing, processing and selling petroleum products and is contemplating purchasing several items which will comply with existing federal and state environmental regulations and, further, take an "extra step" in maintaining a safe environment. The proposed expenditures are as follows:

(1) VAPOR RECOVERY SYSTEMS AT RETAIL AND BULK STORAGE PLANTS.

The purpose and function of these vapor recovery systems is to capture harmful petroleum fumes, which otherwise would be emitted into the surrounding air and water, and return them to the storage facility. The cost of these systems generally range between $500 and $5,000 dollars for retail operations and between $10,000 and $20,000 dollars for bulk storage plants.

(2) IN-LINE LEAK DETECTORS.

The purpose and function of these detectors is to detect, on a more timely basis, the escape of harmful petroleum liquids into the surrounding air and water. The cost of these detectors range between $2,500 dollars and $5,000 dollars.

(3) CATHODIC PROTECTION EQUIPMENT

The purpose and function of this equipment is to provide early warning signals of possible leaks of harmful petroleum products in under and above ground tanks into the surrounding soil and water. The cost of such equipment range between $1,000 and $5,000 dollars.

(4) DOUBLE WALL STORAGE TANKS AND PIPING.

The purpose of these highly fortified tanks and piping is to provide extra protection against the leakage of harmful petroleum into the soil and water. It is not anticipated by the Taxpayer that the full cost of such tanks should qualify for special treatment under the applicable taxing statutes, but, rather that only the excess of the cost of the double wall tanks over the cost of the normal tank would be deducted and/or excluded.

(5) CLEAN-UP EQUIPMENT.

Equipment under this category is numerous, but its function is to clean up any possible leaks of harmful petroleum products into the air, soil, or water. The equipment generally functions similar to a "vacuum cleaner", the cost of which varies greatly depending on the type and number of pieces employed.

ISSUES

(1) Whether the above proposed expenditures, acquisition or self-construction of these items would exempt the same from sales and use tax under Alabama Code §40-23-4(16);

(2) Whether these items or devices would be exempt from property tax under Alabama Code §40-9-1(20);

(3) Whether the cost of these devices can be deducted from capital employed within Alabama for foreign franchise tax purposes under §40-14-41(d)(2)(c); and

(4) Whether the cost of these devices can be deducted from the Taxpayer's current year taxable income under Alabama Code §40-18-35(13).

LAW AND ANALYSIS

Alabama Code §§40-23-4(16), 40-9-1(20), 40-14-41(d)(2)(c) and 40-18-35(13) allow exemptions from sales, use and property tax and deductions from capital employed for foreign franchise tax purposes and income tax purposes on "all devices or facilities and all identifiable components thereof or materials for use therein, acquired or constructed primarily for the control, reduction or elimination of air and water pollution."

Alabama law is quite clear that the term "pollution" is defined as "to make physically impure or unclean." Pollution has thus been defined to include any impurity and is not limited to industrial or man-made waste but includes any impurity. Rush v. Department of Revenue of the State of Alabama, 416 So.2d 1023 (Ala. Civ. App.).

As noted in Chemical Waste Management, Inc. v. State, 512 So.2d 115 (Ala. Civ. App. 1987) the "greatest source of difficulty for courts which have construed statutes similar to the one in question has been in construing the word '"primarily"' in the phrase '"acquired or constructed primarily for the control, reduction, or elimination of air or water pollution."' There the Court noted that if the product is determined to have a substantial function in the production of products or services of that business, the exemption does not apply. If, however, the end use of the product is determined to be primarily for pollution control, which is incidental to the manufacturing process or service which that business is engaged in, the exemption does apply.

Along the same line, apportionment of costs for pollution control has also been allowed in Alabama for income tax deduction purposes. In the situation involving the double lined tanks, the taxpayer would be allowed to deduct the difference in cost between a standard and doubled lined tank. See Ex Parte Kimberly Clark Corp., 503 So.2d 304 (Ala. 1987). The reasoning behind the apportionment is obvious. Company A has to have tanks in order to conduct its business. However, the useage of a double lined tank does not enhance or alter the production process, but rather is for safety and pollution control purposes. The added cost should be allowed under the relevant statutes as its purpose is solely for pollution control.

It is clear that these Code sections would allow for certain exemptions and deductions if the property is used exclusively for pollution control as opposed to providing incidental benefits to the production process. Based on the information provided by Company A, all of the proposed expenditures are intended and relate to pollution control and do not give any benefit, incidental or otherwise, to the production process.

Accordingly, these expenditures would be used to purchase and/or construct items that are used primarily for the control, reduction or elimination of air and water pollution.

RULINGS

Company A contemplates certain expenditures which would be used to purchase and/or construct items that are used primarily for the control, reduction or elimination of air or water pollution. As such, these expenditures would be exempt from sales, use and property tax and allowed as a deduction from the corporate foreign franchise tax base and current years taxable income. Based on this analysis, the Department issues the following rulings:

(1) The acquisition or self-construction of the proposed pollution control devices or structure would be exempt from sales and/or use tax under Code of Alabama §40-23-4(16).

(2) The proposed expenditures for pollution control devices would be exempt from property tax under Code of Alabama §40-9-1(20).

(3) The cost of these pollution control devices would be allowed as deductions from capital employed for franchise tax purposes under Code of Alabama §40-14-41(d)(2)(c). However, Company A is an Alabama corporation and is not subject to this Code provision in computing its franchise tax liability.

(4) The cost of these pollution control devices would be allowed as a current year deduction from taxpayer's taxable income under Code of Alabama §40-18-35(13), to the extent that the cost of the pollution control aspect exceeds the cost of the non-pollution control device or equipment of similar nature i.e. tanks.

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