

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 99-007

**This document may not be used or cited as precedent. Code of Ala. 1975, §40-2A-5(a)  
(1998 Replacement Volume).**

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: July 27, 2000

RE: The construction of a gypsum plant which converts calcium sulfite slurry into gypsum which is sold for use in the agricultural, cement, filler and wallboard industries is exempt from sales and use tax under the pollution control exemption provisions found at §40-23-4(a)(16) and §40-23-62(18).

**ISSUES AND FACTS**

The facts as represented by Requestor are as follows:

Company A, Inc. owns and operates the a plant in Alabama. COMPANY A wishes to construct a gypsum plant for the purpose of converting calcium sulfite slurry into gypsum. Calcium sulfite slurry is an industrial waste generated as a byproduct of COMPANY A's pollution control efforts to remove sulfur dioxide from its emissions via scrubber modules. Currently, the calcium sulfite slurry is placed into holding or settlement ponds located at the plant site. After converting the calcium sulfite into gypsum, COMPANY A plans to sell the gypsum to consumers for use in the agricultural, cement, filler and wallboard industries.

COMPANY A estimates the proposed plant will produce approximately 100,000 tons of gypsum annually. The plant will consist of three major equipment components: oxidation modules, a hydroclone separator and a vacuum belt filter. The construction of this plant will permit COMPANY A to convert the industrial waste of calcium sulfite slurry, which is currently discharged from the plant in water and stored in several holding ponds as a solid waste, into gypsum. In turn, the gypsum will be available for use in the agricultural, cement, filler and wallboard industries.

It is COMPANY A's view that the gypsum plant is exempted from the 1.5% sales and use tax. COMPANY A believes the proposed gypsum plant is exempt from the 1.5% sales and use tax under Alabama law because the plant is a water pollution control facility in that it converts a solid industrial waste (calcium sulfite slurry) into gypsum. In the absence of the proposed gypsum plant, the solid

industrial waste would continue to be released into holding ponds located on site at the plant in Alabama.

The question presented by COMPANY A is whether the gypsum plant qualifies as structure “built primarily for the control, reduction or elimination of air and water pollution,” within the provisions of §40-23-4(a)(16) and §40-23-62(18). If the gypsum plant qualifies, it would be exempt from all sales and use taxes.

COMPANY A's position is that the gypsum plant, including all identifiable components thereof, to be erected by COMPANY A qualifies for the pollution control exemption offered by Rule 810-6-3-.46(8) above in that the primary purpose for erecting the facility is to control, reduce and eliminate water pollution in the form of calcium sulfate waste slurry, which is generated as a result of removing sulfur dioxide from COMPANY A's emissions at its Lowman Power Production Plant. COMPANY A readily acknowledges that the end product produced by the gypsum plant will ultimately be sold to consumers. However, COMPANY A's intent to sell the gypsum is secondary and, thus, should have no effect on the tax exemption sought. It is undeniable that Rule 810-6-3-.46(8) permits a taxpayer to qualify for the sales and use tax exemption if the profits derived from the goods or services produced are secondary to the primary purpose of pollution control. In the situation at hand, COMPANY A expects to sell the gypsum produced by the facility in question. Even though the product generated by the facility will be sold, COMPANY A does not expect to realize any profits from the same. In fact, COMPANY A projects that the pollution control facility will produce gypsum at a cost of \$13.41 per ton. On the other hand, COMPANY A projects that it will be able to sell the gypsum for approximately \$3.00 per ton. As such, it is evident that COMPANY A's primary purpose for constructing the gypsum plant is not profit driven. COMPANY A's primary purpose for constructing the plant is to realize an enormous benefit from the standpoint of pollution control. Specifically, the addition of the gypsum plant will permit COMPANY A to cease depositing that calcium sulfite waste slurry produced by its Lowman Power Production Plant in holding ponds and landfills. Although the gypsum produced by the gypsum plant will be sold, COMPANY A does not expect to realize any profits from the sell of the gypsum. COMPANY A estimates that the gypsum plant will convert the calcium sulfite to gypsum at a cost of \$13.41 per ton and that the gypsum will be sold for approximately \$3.00 per ton.

COMPANY A takes is the position that the gypsum plant is exempt from the 1.5% sales and use tax under Alabama law because the plant is a pollution control facility which converts a solid industrial waste, i.e. calcium, sulfite slurry, into gypsum. Therefore, it is the position of COMPANY A that the facility would qualify under Rule 810-6-3-46 of the Alabama Department of Revenue's Sales And Use Tax Rules and the exemption from sales tax found at §40-23-4(a)(16), Code of Ala. 1975.

### **LAW AND ANALYSIS**

Section 40-23-4(a)(16) provides an exemption from sales tax as follows:

(16) The gross proceeds from the sales of devices or facilities, and all identifiable components thereof, or materials use therein, acquired primarily for the control, reduction, for elimination of air or water pollution and the gross proceeds from sales 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.

A similar exemption from use tax is found at §40-23-62(18).

The Alabama Department of Revenue has issued Sales and Use Tax Rules to aid in the identification of those items that constitute pollution control facilities and devices pursuant to §40-23-4(a)(16) of the Ala. Code 1975. Rule 810-6-3-.46, Alabama Department of Revenue - Sales and Use Tax Rules, provides in pertinent part as follows:

(1) The term "pollution control facilities" shall mean any system, method, construction, device, or appliance appurtenant thereto sold, used, or intended to be used for the primary purpose of eliminating, preventing, or reducing air and water pollution, or 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 after 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), Ala. Code 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, used, or placed in operation 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 of the tangible personal property purchased, stored, used, or consumed shall be the control, reduction, or elimination of air or water pollution. Property, the primary purpose of which is the control, reduction, or elimination of 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)) (Adopted March 9, 1970, amended August 16, 1974, readopted through APA effective October 1, 1982, amended July 30, 1998).

Under the facts presented in the request for a Revenue Ruling, the calcium sulfite slurry is placed in a settlement or holding pond. Currently, the calcium sulfite either remains in the holding

pond under a permit from the Alabama Department of Environmental Management (ADEM) or is removed as a solid waste and disposed of at a permitted landfill. The key question to be answered is whether the calcium sulfite slurry is being treated in order to avoid polluting the environment.

Calcium sulfite slurry is not a hazardous waste under the regulations promulgated by ADEM. During the time that the calcium sulfite remains in the settlement pond, it is not polluting the air or the ground water. However, as an industrial waste, the calcium sulfite can be disposed of at any permitted landfill. It is possible to drain the water from the settlement pond under regulations promulgated by ADEM and close the pond. However, a new settlement pond would be required to handle the calcium sulfite generated as a byproduct of COMPANY A's pollution control efforts to remove sulfur dioxide from its emissions via scrubber modules.

In the present situation, it is undisputed that COMPANY A seeks to construct a gypsum addition to its plant for the primary purpose of converting calcium sulfite slurry (industrial waste), generated during the process of extracting sulfur dioxide from the plant's emissions, into a usable product that would not have to be stored as solid waste in holding ponds located on the grounds of the plant's facilities. As such, COMPANY A's purpose is entirely consistent with Rush v. Department of Revenue, 416 So. 2d 1023 (Ala. Civ. App. 1982). In the facts before the Commissioner, the gypsum facility undeniably removes industrial waste from water that is discharged back into the environment by contaminating the groundwater. Since the calcium sulfite does have the potential to pollute the environment, the construction of the gypsum plant to convert the calcium sulfite into gypsum is a continuation of COMPANY A's efforts to abate air or water pollution started when COMPANY A began removing sulfur dioxide from its emissions.

In Chemical Waste Management, 512 So. 2d 115 (Ala. Civ. App. 1987), property which was acquired primarily for the production of goods or services integral to a profit motivated business purpose or activity did not qualify for the pollution control exemption of Ala. Code 1975, § 40-23-4(a)(16). However, the gypsum plant which is the subject of this request is not integral to a profit motivated business purpose or activity of COMPANY A. In fact, COMPANY A does not expect to recognize any profits from the operation of the gypsum plant or the sale of the product it generates. In fact, COMPANY A's projections establish that it can expect annual sales of approximately \$300,000.00 associated with the production of gypsum from this plant. However, the annual gypsum production cost will be approximately \$1,341,094.00. Thus, the decision to construct the gypsum facility should in no way be classified as primary or integral to a profit motivated business purpose or activity. Instead, any financial gain or loss derived from the gypsum facility would be purely incidental or secondary to the value of the facility as a pollution control facility. As such, the gypsum plant, and all identifiable components thereof, should qualify for tax-exempt status pursuant to Rule 810-6-3-.46, Air and Water Pollution Control Exemption, and Ala. Code 1975, § 40-23-4(a)(16).

**HOLDING**

The construction of a plant to convert a solid industrial waste, i.e. calcium sulfite slurry, into gypsum qualifies the facility for the pollution control exemption from sales tax found at §40-23-4(a)(16) and the exemption from use tax found at §40.23-62(18). The construction of the gypsum plant to convert the calcium sulfite into gypsum is a continuation of COMPANY A's efforts to abate air or water pollution, since the calcium sulfite is a byproduct created when sulfur dioxide is removed from its emissions via scrubber modules.

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MICHAEL PATTERSON  
Commissioner, Alabama  
Department of Revenue

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