

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FDR SERVICES CORPORATION OF FLORIDA,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-3113
)	
STATE OF FLORIDA,)	
DEPARTMENT OF REVENUE,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Notice was provided and on October 3, 1995, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Section 120.57(1), Florida Statutes. The hearing location was the Office of the Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. Charles C. Adams was the hearing officer.

APPEARANCES

For Petitioner: Robert A. Pierce, Esquire
Emily S. Waugh, Esquire
MACFARLANE, AUSLEY, FERGUSON & MCMULLEN
Post Office Box 391
Tallahassee, Florida 32302

For Respondent: James McAuley, Assistant Attorney General
Charles Catanzaro,
Assistant Attorney General
Department of Legal Affairs
The Capitol, Tax Section
Tallahassee, Florida 32399

STATEMENT OF ISSUES

Should the Department of Revenue grant Petitioner's request for a temporary tax exemption permit and request for refund of sales and use tax which has been paid under protest? See Section 212.08(5)(a) and (b)3a, Florida Statutes.

PRELIMINARY STATEMENT

On June 16, 1995, Petitioner filed a petition claiming that it was entitled to a temporary tax exemption permit and a refund of the full amount of the sales and use tax with interest which it had paid Respondent under protest. To resolve the dispute, Respondent transmitted the case to the Division of Administrative Hearings on June 21, 1995, where it was assigned DOAH Case No. 95-3113.

On June 16, 1995, Petitioner, consistent with Section 120.52(8)(c), Florida Statutes, filed a petition for administrative determination of the invalidity of Rule 12A-1.096(1)(b), (1)(d), (4), and (5)(e)1, Florida Administrative Code. In that petition it is alleged that the rule enlarges, modifies or contravenes Section 212.08(5)(b), Florida Statutes, by imposing additional requirements to obtain the tax exemption permit described in Section 212.08(5)(a) and (b)3.a, Florida Statutes. By order dated June 23, 1995, the Assistant Director of the Division of Administrative Hearings assigned the undersigned to consider the rule challenge. The order of assignment established DOAH Case No. 95-3038RX.

Petitioner moved to consolidate DOAH Case No. 95-3038RX and DOAH Case No. 95-3113. The parties also stipulated to extend the 30-day time limit for considering the rule challenge. See Section 120.56(2), Florida Statutes. The motion to consolidate was granted. The cases were consolidated for hearing purposes only. Notice was provided and the cases were heard on the aforementioned date.

At the consolidated hearing the parties presented a "joint prehearing stipulation and statement" which contained stipulated facts. Those fact stipulations were accepted and formed the basis for fact determination, as supplemented with additional facts. The parties submitted the fact stipulations in lieu of the presentation of testimony and tangible evidence. The parties were granted ten days from the hearing date to submit proposed final and recommended orders in the consolidated cases. Respondent requested an extension for filing those proposals. Petitioner did not oppose the extension. The parties were allowed to file their proposals on October 20, 1995. The proposals were timely filed. The requirement to discuss proposed facts by the parties in accordance with Section 120.59, Florida Statutes, has been precluded, because the underlying facts in the cases were agreed to.

FINDINGS OF FACT

FACTS UPON STIPULATION

1. Petitioner opened a new commercial laundry facility in Pompano Beach, Florida, in 1993.

2. Petitioner installed in the new facility machinery and equipment costing approximately \$1,400,000.00 for the purposes of cleaning and processing linens used by hospitals in the south Florida area (the "Laundry Equipment").

3. Petitioner charges a fee to hospitals in the south Florida area for cleaning and processing the hospitals' linens with the Laundry Equipment.

4. The new facilities are additional, not replacement, facilities.

5. The Laundry Equipment:

(a) Qualifies as "industrial machinery and equipment", as defined by Section 212.08(5)(b) and (6)(c), Florida Statutes;

(b) Was purchased by Petitioner for use in a new business;

(c) Processes items of tangible personal property, the hospital's linens, at a fixed location;

(d) Was purchased before Petitioner first began its productive operations and delivery was made within 12 months of that date; and

(e) Has increased productive output at Petitioner's commercial laundry facility.

6. The equipment included a tunnel washer system, conveyers, feeders/folders, ironers, a boiler, and air compressors.

7. By application dated September 3, 1993, Petitioner applied for a temporary tax exemption permit with respect to the Laundry Equipment which it planned to purchase for use in its new business.

8. Section 212.08(5)(b), Florida Statutes, requires that a taxpayer obtain that permit to receive the exemption.

9. The Department denied Petitioner's application.

10. On August 22, 1994, Petitioner paid to the Department, under protest, the sum of \$18,095.36, which represented the tax of \$16,773.98, plus interest of \$1,321.38, on Petitioner's purchase of the Laundry Equipment.

11. Petitioner timely filed its claim for refund, which the Department denied.

12. Respondent denied Petitioner's request for a temporary tax exemption permit, and Respondent denied Petitioner's refund claim based upon Rule 12A-1.096, Florida Administrative Code.

13. Petitioner's request for a tax exemption permit and Petitioner's refund claim are based upon the exemption provided in Section 212.08(5)(b), Florida Statutes, which applies to a new (as opposed to an expanding) business.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding pursuant to Section 120.57(1), Florida Statutes.

15. Petitioner seeks exemption from the tax to be imposed on industrial machinery and equipment purchased for its new business. To obtain that exemption it must receive a tax exemption permit. Petitioner also seeks the refund of sales and use tax paid under protest pending the final decision on its exemption request. Petitioner seeks a refund in the amount of \$18,095.36 constituted of tax in the amount of \$16,773.98 and interest of \$1,328.38. See Section 212.08(5)(b)3.a., Florida Statutes.

16. Petitioner must prove its entitlement to the tax exemption. See *American Nat'l Bank v. Dept. of Revenue*, 593 So.2d 1173 (Fla. 1st DCA 1992).

17. The basis for denying the exemption request is set forth in Rule 12A-1.096, Florida Administrative Code. In pertinent part the rule states:

12A-1.096 Industrial Machinery and Equipment for Use in a New or Expanding Business.

(1) Definitions -- The following terms and phrases when used in this rule shall have the

meaning ascribed to them except where the context clearly indicates a different meaning:

* * *

(b) 'Industrial machinery and equipment' means 'Section 38 Property' as defined in Section 48(a)(1)(A) and (B)(i) of the United States Internal Revenue Code, as amended, and includes parts and accessories, essential to the manufacturing, processing, compounding or producing of tangible personal property for sale, or for exclusive use in spaceport activities as defined in s.212.02, F.S. 'Industrial machinery and equipment' also means pollution control equipment, or sanitizing and sterilizing equipment which is essential to manufacturing, processing, compounding or producing items of tangible personal property. 'Industrial machinery and equipment' also means monitoring machinery and equipment which is essential to manufacturing, processing, compounding or producing items of tangible personal property. In determining what is essential to manufacturing, processing, compounding or producing items of tangible personal property, the examination will not turn on how vertically integrated the taxpayer is but rather on the specific activity that the taxpayer asserts is part of the production process. For example, if the activity is essentially one of transportation or storage, associated equipment and machinery will not qualify for exemption unless specifically exempted in subsection (8) of this rule.

* * *

(d) 'Process' means a series of operations conducing to an end which is an item of tangible personal property for sale or for exclusive use in spaceport activities as defined in s. 212.02, F.S.

* * *

(5) Temporary Tax Exemption Permit -- Refund.

* * *

(e) The right to a refund of sales or use taxes.

1. The right to a refund of sales or use taxes paid on qualifying industrial machinery and equipment, or installation thereof, shall accrue when the new business first places a product in inventory or immediately sells a product.

18. The nature of Petitioner's use of the industrial machinery and equipment which it purchased in starting the new business was one of processing linen, but not for sale. Therefore, Petitioner is not entitled to the exemption from taxation nor is Petitioner entitled to the refund of tax and interest paid under protest.

RECOMMENDATION

In consideration of the facts found and conclusions of law reached, it is,

RECOMMENDED:

That a final order be entered which denies the request for a tax exemption permit and a refund in the amount of \$18,095.36.

DONE and ENTERED this 13th day of November, 1995, in Tallahassee, Florida.

CHARLES C. ADAMS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of November, 1995.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.