

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
GRAY OIL COMPANY FROM A DECISION ) Docket No. 2014-05  
BY THE DEPARTMENT OF REVENUE )  
(Sales Tax Refund September 1, 2010, through June 30, 2013))

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

---

**APPEARANCES**

John Christian and Mark Weiss, Ryan, LLC, appeared on behalf of Gray Oil Company (Gray Oil or Petitioner).

Cathleen D. Parker, Senior Assistant Attorney General, Wyoming Attorney General's Office, appeared on behalf of the Department of Revenue (Department).

**DIGEST**

Gray Oil asserts the oil and lubricants (lubricants) sold to Holly Frontier (the Refinery) for lubrication of machinery in and around the Refinery qualify for a tax exemption as chemicals used directly in and consumed or destroyed in the Refinery's manufacturing processes. Accordingly, Gray Oil filed a refund claim asserting its lubricant sales were tax-exempt. The Department denied the refund request, concluding the Refinery did not use the lubricants directly in manufacturing or processing, as required by the exemption statute. *See* Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009).<sup>1</sup> Gray Oil appealed the Department's denial of its refund request to the Wyoming State Board of Equalization (State Board).

---

<sup>1</sup> Gray Oil requested a refund for taxes paid from 2010 through 2013. The State Board will refer to the 2009 statute as the language of the exemption remained the same from 2009 through 2013. For references to general statutory authority, the State Board will refer to current statutes, as there is no difference in those statutes from 2009 to the present.

The State Board,<sup>2</sup> consisting of Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, reviewed the State Board Record, the exhibits, and the audio recording of the hearing.

Upon review, the State Board affirms the Department's final administrative decision denying Gray Oil's refund request.

## **ISSUE**

Gray Oil generally identified the issue as whether the Department correctly denied it an ingredient/component exemption for lubricants sold to the Refinery. Gray Oil claims the Refinery used these lubricants directly in its manufacturing processes and that they were consumed or destroyed in those processes, qualifying the lubricant purchases for a sales tax exemption. (Pet'r's Issues of Fact and Law & Ex. Index).

The Department identified the following mixed question of fact and law: "Whether the chemicals at issue are used directly in manufacturing or processing. (Mixed question of fact and law)." (Prelim. Statement of the Dep't of Revenue 2).

The State Board restates the issue as follows: Whether the lubricants Gray Oil sold to the Refinery were "used directly in" the Refinery's manufacturing processes and "consumed or destroyed during that process" as required by Wyoming Statutes section 39-15-105(a)(iii)(A) (2009).

## **JURISDICTION**

The State Board shall "review final decisions of the department upon application of any interested person adversely affected," and "[h]old hearings after due notice in the manner and form provided in the Wyoming Administrative Procedure Act and its own rules and regulations of practice and procedure." Wyo. Stat. Ann. § 39-11-102.1(c), (c)(viii) (2015). A taxpayer must file an appeal with the State Board within thirty (30) days of the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006).

In response to a refund request from Gray Oil dated October 30, 2013, the Department issued a final administrative decision on December 6, 2013, denying the refund. (Exs. 502-503). Gray Oil timely appealed the Department's decision to the State Board on January 2, 2014. The State Board has jurisdiction to consider this appeal.

---

<sup>2</sup> Board members at the hearing in this matter included E. Jayne Mockler, Paul Thomas Glause, and Steven D. Olmstead. Mr. Glause resigned from the State Board, effective January 2, 2015. Mr. Olmstead's term expired March 1, 2015. After the hearing, Governor Matthew H. Mead appointed Martin L. Hardsocg and Robin Sessions Cooley to the State Board.

## **FINDINGS OF FACT**

1. The State Board held a hearing in this matter on August 27, 2014. Two witnesses testified at the hearing. Michael Achacoso testified on behalf of Gray Oil. Mr. Achacoso was a chemical engineer employed by the Refinery as Vice President and Refinery Manager. (Tr. 13-52;<sup>3</sup> Ex. 114). Kim Lovett, Administrator of the Excise Tax Division, testified on behalf of the Department. (Tr. 53-75). The facts in this matter were largely undisputed.

### **A. Gray Oil's lubricant sales and the Refinery's use of the lubricants**

2. From September 1, 2010, through June 30, 2013, Gray Oil sold lubricants to the Refinery, located in Cheyenne, Wyoming. The Refinery is classified as a Petroleum Manufacturer under the North American Industrial Classification System (NAICS). Dep't of Revenue's Updated Summ. of Contentions 1.

3. The Refinery processes crude oil through various processing units that produce gasoline, diesel fuels, and asphalt. (Tr. 18; Ex. 104). Roughly ninety-percent (90%) of the crude oil entering the Refinery is processed into a marketable product; the remaining oil is used internally as fuel. (Tr. 26).

4. Mr. Achacoso explained that the Refinery used the lubricants to lubricate rotating machinery such as pumps, turbines, motors, fans, conveyors, pillow blocks, gear boxes, mixers, and louvers in various Refinery complexes. (Exs. 104-113). Gray Oil specifically sought refunds for lubricants used at nine complexes within the Refinery. Those complexes included:

- Alky Complex/Gas Con Debut (Ex. 105);
- Alky Complex (Ex. 106);
- Coker Complex (Ex. 107);
- Crude Complex (Ex. 108);
- FCCU (Fluid Catalytic Cracking Unit) Complex (Tr. 22; Ex. 109);
- Plant #1 Complex (Ex. 110);
- Plant #2 Complex (Ex. 111);
- Platformer Complex (Ex. 112); and
- WWTP (Waste Water Treatment Plant) Complex (Ex. 113).

---

<sup>3</sup> Counsel for Gray Oil requested that a Certified Shorthand Reporter transcribe the audio recording of the hearing. The Reporter certified the transcription was correct "to the best of [her] ability to clearly hear and understand the CD. . . ." (Transcript of a CD of an Appeal Before the State Board of Equalization Held on August 27, 2014). The State Board will use the transcript for ease of reference, although it is not an official court transcript. The State Board has ensured all referenced cites accurately reflect what was said on the official audio hearing record.

5. All of the complexes were involved in the manufacturing process except Plant #1, Plant #2, and the WWTP Complex. (Ex. 104). Mr. Achacoso explained that the Plant #1 Complex was a storage area, used to store intermediates between the different operating units. (Tr. 30, 38). Mr. Achacoso did not explain the term “intermediates,” but the context of his testimony indicates intermediates are products moving through the manufacturing process that must be stored before moving into the next process. The Plant #2 Complex contained the tanks that stored finished products for sale. (Tr. 30, 41). The storage complexes used rotating machinery like mixers, motors, gear boxes, and various types of pumps. (Ex. 110, 111). The WWTP Complex treated water used in the Refinery to remove contaminants prior to discharge. (Tr. 30-31, 38-40). The WWTP Complex used rotating machinery such as air compressors, motors, auger drives, vent blowers, mixers, and other similar machinery. (Ex. 113). The Plant #1, Plant #2, and WWTP Complexes were not physically within the Refinery’s manufacturing facility; the remainder of the complexes were within the facility. (Ex. 104).

6. Mr. Achacoso explained that each of these complexes had its own towers, pumps, heaters, and other rotating machinery. Different machinery required different lubricants that were not interchangeable; some machinery operated at very high rotations per minute (“RPM”), requiring different lubricant viscosities to withstand the high RPM and resulting heat. (Tr. 28-29, 31-32).

7. Mr. Achacoso further explained that without appropriate lubrication, metal parts eventually rubbed against metal parts during operation, causing the machinery to heat, and to eventually seize up. Absent lubrication, the machines essentially destroy themselves in a matter of seconds. (Tr. 31, 34, 36). He compared the machinery to a car. “If you don’t have oil in it, it’s not going to run for very long because then you’ll have metal parts rubbing on metal parts. They’ll heat up. They’ll damage the— the sealing surfaces, and they’ll eventually seize up.” (Tr. 31).

8. The Refinery did not use the lubricants identified in Exhibits 105 through 113 for any purpose other than to lubricate rotating machinery. (Tr. 33, 49-50). Nor did the Refinery have the ability to apportion the amount of lubricant used in each complex. (Tr. 42-43).

9. The lubricants broke down over time during these processes and no longer maintained the correct viscosity to provide the required lubrication. The Refinery drained the used lubricants from the machinery and disposed of them. (Tr. 35).

10. The lubricants did not physically enter into any of the Refinery’s manufactured products. Rather, the Refinery used the lubricants only to lubricate the machinery. (Tr. 34, 36, 49-50).

11. The Refinery identified the lubricants as chemicals, not catalysts; the Department agreed the lubricants were chemicals. (Tr. 67); Pet'r's Opening Br. 2.

12. Gray Oil requested a refund of \$43,690.02 under the statutory ingredient/component sales tax exemption, claiming the Refinery used the lubricants directly in its manufacturing processes. Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009). Gray Oil submitted the refund request as the vendor. (Tr. 56). *See* Wyo. Stat. Ann. § 39-15-109(c) (2009); Rules, Wyo. Dep't of Revenue, ch. 2 § 10 (2006); Rules, Wyo. Dep't of Revenue, ch. 2 § 10 (2012).

#### B. The Department's denial of Gray Oil's refund request

13. The Department denied the refund request, concluding the Refinery only used the lubricants indirectly in its manufacturing processes. The Department determined the Refinery used the lubricants on the rotating machinery, but the lubricants did not physically enter into the manufactured products. As a result, the Department found the lubricants did not qualify for the ingredient/component sales tax exemption. (Tr. 57-58, 60-62; Ex. 503).

14. In support of its position, the Department likened the ingredient/component exemption to the wholesale sale exemption, explaining that, "ingredient[s] [or] component[s] that become[] part of the final product [are] really adding value to that product, and in the final stage, it's that final product that is taxed and sales tax collected. So it's basically to eliminate the pyramiding of taxes. So you wouldn't tax the ingredient [or] component, then it becomes part of the final product and it's taxed again." (Tr. 59). The Department determined the lubricants did not "become[] part of the final product" and were not taxed as a part of the final product. The Department contended that it was therefore necessary and appropriate to tax the Refinery's purchase of the products. *Id.*

15. Any portion of the Conclusions of Law set forth below, which includes a finding of fact, may also be considered a Finding of Fact. Those Findings of Fact are incorporated herein by this reference.

### CONCLUSIONS OF LAW

#### A. Standard of Review

16. The State Board must "[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]" Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015).

17. The role of the State Board is to approve or disapprove the Department determination. "It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues

brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department.” *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 674 (Wyo. 2000).

18. The State Board Rules provide that:

[T]he Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action. **For all cases involving a claim for exemption, the Petitioner shall clearly establish the facts supporting an exemption.** In proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion.

Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006) (emphasis added).

19. “A preponderance of the evidence is ‘proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.’ ” *Mitcheson v. State, ex rel., Wyo. Workers' Safety & Comp. Div.*, 2012 WY 74, ¶ 11, 277 P.3d 725, 730 (Wyo. 2012) (quoting *Kenyon v. State, ex rel., Wyo. Workers' Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo. 2011)).

#### B. Statutory interpretation

20. The State Board is tasked with interpreting the relevant statutory provisions as applied to the above facts. Statutory interpretation starts with consideration of the legislative intent found in the plain language of the statute, and begins by making an “inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection.” *Parker Land & Cattle Co. v. Wyo. Game & Fish Comm'n*, 845 P.2d 1040, 1042 (Wyo. 1993) (quoting *Rasmussen v. Baker*, 7 Wyo. 117, 133, 50 P. 819, 823 (1897)).

21. The Wyoming Supreme Court has established specific guidelines to follow in interpreting statutes:

When interpreting statutes, we follow an established set of guidelines. First, we determine if the statute is ambiguous or unambiguous. A statute is unambiguous if its wording is such that reasonable persons are able to agree as to its meaning with consistency and predictability. Unless another meaning is clearly intended, words and phrases shall be taken in their

ordinary and usual sense. Conversely, a statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations.

*BP America Production Co. v. Department of Revenue*, 2006 WY 27, ¶ 20, 130 P.3d 438, 464 (Wyo. 2006). If a statute is clear and unambiguous, we give effect to the plain language of the statute. *Wyoming Dep't of Transportation v. Haglund*, 982 P.2d 699, 701 (Wyo. 1999); *State ex rel. Wyo. Dep't of Revenue v. Union Pacific R.R. Co.*, 2003 WY 54, ¶ 12, 67 P.3d 1176, 1182 (Wyo. 2003). Only if a statute is ambiguous will we resort to principles of statutory construction to determine the intent of the legislature. *Qwest [Corp. v. State ex rel. Wyo. Dep't of Revenue]*, 2006 WY 35, ¶ 8, 130 P.3d [507] at 511 [Wyo. 2006].

*Sinclair Oil Corp. v. Wyo. Dep't of Revenue*, 2010 WY 122, ¶ 7, 238 P.3d 568, 570-71 (Wyo. 2010). *See also* Wyo. Stat. Ann. § 8-1-103(a)(i) (2011).

22. In addition, the Wyoming Supreme Court summarized a number of useful precepts concerning statutory interpretation:

All statutes must be construed in *pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is *de novo*. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute in *pari materia*. When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions.

*Bd. of Cty. Comm'rs of Teton Cty. v. Crow*, 2003 WY 40, ¶¶ 40-41, 65 P.3d 720, 733-34 (Wyo. 2003) (internal citations omitted) (quoting *Shumway v. Worthey*, 2001 WY 130, ¶ 8, 37 P.3d 361, 365 (Wyo. 2001)).

23. “We must accept statutes as they are written; neither omitting words that are included, nor including words that are omitted.” *Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of Appeals*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo. 2010). See *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005); *Fontaine v. Bd. of Cty. Comm'rs of Park Cty.*, 4 P.3d 890, 895 (Wyo. 2000); *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976).

24. When interpreting a statute, the State Board will give deference to the statutory interpretation of the agency charged with administration of a statute, unless that interpretation is clearly erroneous. *Wilson Advisory Comm. v. Bd. of Cty. Comm'rs*, 2012 WY 163, ¶ 22, 292 P.3d 855, 862 (Wyo. 2012). See *Parker Land & Cattle Co.*, 845 P.2d at 1042.

25. The State Board is also mindful that exemptions from taxation are not favored. “First, exemptions are not favored and generally taxation is held to be the rule and exemption the exception, which means there is a presumption against a grant of exemption and in favor of the taxing power.” *State Bd. of Equalization v. Wyo. Auto. Dealers Ass'n*, 395 P.2d 741, 742 (Wyo. 1964).

### C. Discussion

26. In 2001, the legislature added the chemical and catalyst language to the ingredient/component sales tax exemption, providing:

(iii) For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(A) Sales of tangible personal property to a person engaged in the business of manufacturing, processing or compounding when the tangible personal property purchased becomes an ingredient or component of the tangible personal property manufactured, processed or compounded for sale or use and sales of containers, labels or shipping cases used for the tangible personal property so manufactured, processed or compounded. **This subparagraph shall apply to chemicals and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process[.]**

2001 Wyo. Sess. Laws 233; Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009) (emphasis added). See also, Rules, Wyo. Dep't of Revenue, ch. 2 § 9(h)(ii.) (2006); Rules, Wyo. Dep't of Revenue, ch. 2 § 9(h)(ii) (2012).



27. “ ‘Manufacturing’ means the operation of producing a new product, article, substance or commodity different from and having a distinctive nature, character or use from the raw or prepared material[.]” Wyo. Stat. Ann. § 39-15-101(a)(xxi) (2009).

28. The Department’s Rule further clarified the manufacturing definition:

“Manufacturing” means a transformation or conversion of material or things into a different state or form from that in which they originally existed, and the actual operation incident to changing them into marketable products. The change in form, composition, or character must be a substantial change and it must result in a transformation of the property into a different product having a distinctive name, nature and use.

Rules, Wyo. Dep’t of Revenue, ch. 2 § 3(bb.) (2006); Rules, Wyo. Dep’t of Revenue, ch. 2 § 3(x) (2012).

29. “ ‘Tangible personal property’ means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. ‘Tangible personal property’ includes electricity, water, gas, steam and prewritten computer software[.]” Wyo. Stat. Ann. § 39-15-101(a)(ix) (2009).

30. Under the chemical/catalyst sentence in the above ingredient/component exemption, *supra* ¶ 26, Gray Oil alleged the Refinery used the rotating machinery lubricants directly in its manufacturing process because the machinery would quickly seize up without appropriate lubrication. Because the lubricants were necessary for the rotating machinery to work properly, Gray Oil argued they were, therefore, “used directly in” the manufacturing process. Pet’r’s Opening Br. 1; *supra* ¶ 7. Gray Oil further argued the lubricants were “consumed or destroyed during that process” as the viscosity of the lubricants was eventually degraded to a point they were no longer usable and were discarded. *Id.*

31. Answering Gray Oil’s refund request, the Department interpreted the ingredient/component exemption to apply only if the purchased lubricants physically entered into the manufactured product. The Department argued that, although lubrication of the rotating machinery was necessary, it was one step removed from, or indirectly used in the Refinery’s manufacturing processes. (Tr. 60-61).

32. At hearing, the Department explained:

[The chemicals and catalysts are] really the same thing as an ingredient or component. They enter into the product.

The difference is when you get to the end of the product, the ingredients and components are easier to identify . . . .

...  
The problem with catalysts or chemicals is they lose their identity. They break up and they create reactions, they create different molecules . . . .

So these chemicals and catalysts the companies were using that were necessary to actually create the product . . . weren't getting any ingredient component exemption because they weren't identifiable in the final product.

The legislature recognized that chemicals, catalysts are similar, and that they're still ingredients or component when they start. They just don't have an identity at the end.

(Tr. 86-87).

33. Our analysis begins with the plain language of the statute. *Supra* ¶¶ 20-23. The ingredient/component exemption statute contains two sentences, each identifying a separate basis for an ingredient/component exemption. The first sentence of Wyoming Statutes section 39-15-105(a)(iii)(A) (2009) unambiguously requires: 1) the sale of tangible personal property to a person engaged in the business of manufacturing, processing or compounding; and 2) the purchased property becomes an ingredient or component of the tangible personal property manufactured, processed, or compounded for sale or use. *Supra* ¶ 26.

34. The second sentence of the ingredient/component exemption clarifies that “[t]his subparagraph shall apply to chemicals and catalysts” which are used directly in the manufacturing, processing or compounding processes, and which are also “consumed or destroyed” during the manufacturing, processing or compounding processes. Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009); *supra* ¶ 26.

35. The parties agreed, and the State Board finds, that the Refinery was engaged in manufacturing during this time frame and met this first statutory requirement that tangible personal property, the lubricants, be sold to a person engaged in the business of manufacturing, in this case the Refinery. (Tr. 67); Pet'r's Opening Br. 2; Dep't of Revenue Prehearing Br. 2; *supra* ¶ 33. See Wyo. Stat. Ann. §§ 39-15-105(a)(iii)(A) (2009); 39-15-101(a)(xxi) (2009); *supra* ¶¶ 26-28.

36. Further, the parties agreed, and the State Board finds, that the lubricants used in the rotating machinery, although tangible personal property, were neither ingredients nor did they become components of the Refinery's manufactured products, as they did not physically enter into the manufacturing process. *Supra* ¶¶ 10, 29. Thus, the Refinery did not meet the second exemption requirement. *Supra* ¶ 33.

37. Instead, Gray Oil's refund request relied on the second sentence of the ingredient/component exemption, for chemicals used directly in and consumed or

destroyed during the manufacturing process. *Supra* ¶ 11, 12, 30-31. Gray Oil argued the lubricants met the requirements of the second sentence because they were chemicals necessary to the continued operation of the rotating machinery, and thus were used directly in the manufacturing process. It further argued that the lubricants eventually broke down and were no longer sufficient to lubricate the machines and, thus, were destroyed or consumed in the process. *Supra* ¶¶ 7, 9.

38. To resolve this matter, the State Board must first interpret the chemical/catalyst sentence “in harmony” with the remainder of the exemption statute. *Supra* ¶ 22. In doing so, the State Board must give effect to the intent of the legislature, looking first to the plain meaning of the language chosen by the legislature, and employ well-accepted rules of statutory construction if that language is ambiguous or capable of varying interpretations. *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002); *supra* ¶¶ 20-23.

39. The State Board must initially point out that the exemption only applies to the “sales of services and tangible personal property **consumed in production[.]**” Wyo. Stat. Ann. § 39-15-105(iii) (2009) (emphasis added); *supra* ¶ 26. From there, the relevant sentence continues, “[t]his **subparagraph** shall apply to chemicals and catalysts . . . .” Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009) (emphasis added). “This subparagraph” refers to the ingredient/component exemption subparagraph as a whole. “Subparagraphs (divisions of paragraphs) shall be identified by upper case letters in parentheses, as: (A), (B), (C), etc[.]” Wyo. Stat. Ann. § 8-1-105(b)(v) (2015). In other words, subparagraph (A) includes specific requirements for chemicals and catalysts to meet the requirements for an ingredient/component exemption. Construing the sentence in isolation, as Gray Oil proposes, elevates the chemical/catalyst sentence to the status of a separate, stand-alone exemption. The State Board cannot expand or extend the statute in such a manner. *Supra* ¶ 22.

40. The first sentence in subparagraph (A) requires that ingredients/components must physically enter into the manufactured, compounded, or processed product to qualify for the exemption, as ingredients/components are manufactured into the final product. *Supra* ¶ 10. Reading the second sentence in conjunction with the first, the State Board finds that, as a part of the ingredient/component exemption, chemicals and catalysts must also physically and directly enter into the manufactured product, and also be destroyed as part of that process. Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009); *supra* ¶¶ 21-22, 26.

41. The plain and ordinary meaning of the terms used in the second sentence further support this interpretation. Although neither the statute nor Department Rules define “used directly in” or “consumed or destroyed,” their dictionary definitions provide some assistance. “In the absence of a statutory definition, this Court infers that the legislature intended no special meaning for the word but, instead, intended that it be given its ordinary meaning—its common dictionary definition.” *Craft v. State*, 2012 WY 166, ¶ 14, 291 P.3d

306, 310 (Wyo. 2012). A common meaning of “directly” includes “in immediate physical contact[.]” *Merriam-Webster’s Collegiate Dictionary*, 354 (11<sup>th</sup> ed. 2014), and “without anything coming in between[.]” *Cambridge Dictionaries Online*. <http://www.Dictionary.cambridge.org/us/dictionary/English/directly> (last visited April 7, 2016). “Consume” or “consumed” is defined as “to do away with completely[.]” *Merriam-Webster’s Collegiate Dictionary*, 268 (11<sup>th</sup> ed. 2014). “Destroy” is defined as “to ruin the structure, organic existence, or condition of.” *Merriam-Webster’s Collegiate Dictionary*, 339 (11<sup>th</sup> ed. 2014).

42. Applying the common definitions of “directly,” the State Board concludes that because items, including the machinery itself, come between the lubricants and the manufactured products, the lubricants are not “used directly in” the manufacturing process that transforms a raw material into a different product, state or form. *Supra* ¶¶ 28-29.

43. Nor are the lubricants consumed or destroyed during the manufacturing process. Considering the common meaning of “destroy,” *supra* ¶ 41, the lubricants are destroyed for the Refinery’s purposes because their viscosity is lessened over a period of time, but their destruction does not result from the actual manufacturing process. Instead, the lubricants gradually degrade as a result of the heat, high RPMs, and the accumulation of contaminants from their use in the machinery. *Supra* ¶¶ 6, 9. The lubricants are not actually destroyed during the manufacturing process, but rather deemed unusable by the Refinery for the purposes of lessening the friction between moving parts in the rotating machinery. Consequently, the State Board finds that although these lubricants are destroyed for the Refinery’s purposes, they are not destroyed “during that [manufacturing] process.” *Supra* ¶ 26.

44. Additional support for the State Board’s conclusion is found in the history of the ingredient/component exemption and case law interpreting the various amendments to the statute. Although the State Board finds the language in the statute is plain and unambiguous, it will also refer to legislative history to confirm this plain meaning. *See Parker Land & Cattle Co.*, 845 P.2d at 1043 (Wyo. 1993) (“On occasion, however, despite the court’s having found a statute in question to be plain and unambiguous, the court has departed from the general rule and has resorted to extrinsic aids of interpretation to confirm the plain meaning.”).

45. The legislature enacted the Emergency Sales Tax Act of 1935, including the first ingredient/component exemption as a general wholesale sale tax exemption, as follows:

Section 2. When used in this Act:

...

(f) Each purchase of tangible personal property or service made by a person engaged in the business of producing, furnishing, manufacturing, or compounding for sale, profit or use, any article, substance, service or

commodity which is actually used in the production of, or enters into the processing of, or becomes an ingredient or component part of the article, substance, service, or commodity which he manufactures or compounds, produces or furnishes, or the container, label, or the shipping case thereof, shall be deemed a wholesale sale and shall be exempt from taxation under this act.

1935 Wyo. Sess. Laws 88-89 (emphasis added).

46. In 1937, the Wyoming Supreme Court had the opportunity to consider subsection (f) and its application in two separate cases, one as applied to transportation services and one applied to oil production machinery. See *State Bd. of Equalization of Wyo. v. Oil Wells Supply Co.*, 65 P.2d 1093 (Wyo. 1937); *State Bd. of Equalization of Wyo. v. Stanolind Oil & Gas Co.*, 65 P.2d 1095 (Wyo. 1937). The State claimed in both cases that subsection (f) did not apply unless the purchased services or products became a physical part of the commodity manufactured or produced by the purchaser. *Stanolind*, 65 P.2d at 1096-97; *Oil Wells Supply*, 65 P.2d at 1095. The Court agreed with the taxpayers in both cases, however, concluding that the legislature intended the exemption to apply to services and products “actually used in the production” of the article, but that were not necessarily consumed in that process. *Oil Wells Supply*, 65 P.2d at 1095; *Stanolind*, 65 P.2d at 1097. In doing so, the Court considered the legislature’s inclusion of the word “or” between the phrases “actually used in the production of, or enters into the processing of[.]” *Oil Wells Supply*, 65 P.2d at 1094-95; *Stanolind*, 65 P.2d at 1096-97 (emphasis added). The Court further found that the services and machinery were in “an economic sense” resold, and thus were entitled to an exemption. *Oil Wells Supply*, 65 P.2d at 1093; *Stanolind*, 65 P.2d at 1097.

47. The Emergency Sales Tax Act of 1935 expired on March 31, 1937, and was replaced by the Selective Sales Tax Act of 1937, effective on April 1, 1937. The Selective Sales Tax Act included a similar provision but added the “directly enters into” language, as follows:

Section 2. When used in this Act:

...

(f) Each purchase of tangible personal property or product made by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity which **directly enters into and becomes an ingredient or component part of the tangible personal property or product which he manufactures or compounds**, or the furnished container, label, or the shipping case thereof, shall be deemed a wholesale sale and shall be exempt from taxation under this Act.

1937 Wyo. Sess. Laws 161 (emphasis added).

48. The legislature enacted an almost identical use tax provision, but instead of drafting the revised language to read “directly enters into **and** becomes an ingredient or component part,” it read “directly enters into **or** becomes an ingredient or component part.” 1937 Wyo. Sess. Laws 220 (emphasis added).

49. Thereafter, in *State Board of Equalization v. Cheyenne Newspapers, Inc.*, 611 P.2d 805 (Wyo. 1980), the Court interpreted a slightly modified 1957 use tax exemption which maintained the 1937 phrase “which directly enters into **or** becomes an ingredient or component part.”<sup>4</sup> The Court considered whether pre-printing supplies used in the process of printing newspapers were subject to use tax. It found:

The construction of the language “enters into” when separated from “becomes an ingredient or component part of any manufactured article” by the word “or” does not mean that the purchased property must in a physical sense enter into the purchaser's product. Rather, it means it must enter in an economic sense. We might even say that in an artistic sense the images created by the various processes do actually appear on the published newsprint in the case before us.

*Id.* at 809. The Court found the pre-printing supplies were exempt from use tax even though they only “directly entered into” the newspapers in an economic or artistic sense. *Id.* at 812. The Court revealed its decision rested, in part, on the fact that “[n]o express language, such as ‘consumed or destroyed or loses its identity in the manufacture’ or ‘in the process of manufacture,’ appears in the Wyoming statute.” *Id.* at 810-11.

50. The legislature subsequently deleted the words “directly enters into” from the sales and use tax exemptions, requiring only that tangible personal property “becomes an ingredient or component of the tangible personal property manufactured, processed or

---

<sup>4</sup> The 1957 use tax at Wyoming Statutes § 39-312 provided:

The storage, use or consumption in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this act (§§ 39-309 to 39-335):

....  
“(e) Tangible personal property or product which directly enters into **or** becomes an ingredient or component part of any manufactured article or substance or commodity including any printed publication, and the furnished container, label or the shipping case thereof.”

*Cheyenne Newspapers, Inc.*, 611 P.2d at 807 (emphasis in original omitted) (emphasis added). Again, the 1957 sales tax statute contained similar, but slightly different, language. See Wyo. Stat. § 39-287(f) (1957) (“any article, substance or commodity which directly enters into **and** becomes an ingredient or component part of the tangible personal property or product which he manufactures or compounds. . . .” (emphasis added)).

compounded[.]” 1977 Wyo. Sess. Laws 120; Wyo. Stat. Ann. § 39-6-405(a)(i) (1977); 1981 Wyo. Sess. Laws 76; Wyo. Stat. Ann. § 39-6-405(a)(i) (1981).

51. In 2001, the legislature added the chemical/catalyst sentence with specific reference to the ingredient/component exemption, stating “This subparagraph shall apply to chemicals and catalysts used directly in manufacturing, processing or compounding which **are consumed or destroyed during that process[.]**” 2001 Wyo. Sess. Laws 233; Wyo. Stat. Ann. § 39-15-105(a)(iii)(A) (2009) (emphasis added). The phrase “consumed or destroyed during that process” is critical. The Court noted in *Cheyenne Newspapers, Inc.*, *supra* ¶ 49, that this language was missing from the earlier statute, and thus it held the item only needed to “directly enter into” the manufactured product in an artistic or economic sense, and not physically in the product. *Cheyenne Newspapers, Inc.*, 611 P.2d at 810-11.

52. The legislature’s addition, in 2001, of the phrases “directly enters into” and “consumed or destroyed during that process” reveals an intent that the product must physically enter into the manufacturing process to fall within the tax exemption. *Supra* ¶¶ 26, 51. “[W]hen a particular interpretation has been placed on a statute by the courts, it is presumed that the legislature has acquiesced in that interpretation where it has left the statute materially unchanged at its subsequent meetings.” 82 C.J.S. *Statutes* § 310, at 397 (1999); and *see Terex Corp. v. Hough*, 2002 WY 112, ¶ 13, 50 P.3d 317, 322 (dissenting opinion) (Wyo. 2002); *Bridle Bit Ranch Co., v. Basin Elec. Power Coop.*, 2005 WY 108, ¶ 22, 118 P.3d 996, 1008 (Wyo. 2005). The legislature did not acquiesce to the Court’s interpretation of this exemption in *Cheyenne Newspapers, Inc.* Instead, the legislature amended the language to reflect its intent that the product physically enter into the manufacturing process to qualify for the exemption.

53. This interpretation— that the requirement chemicals must physically enter into the manufacturing process to qualify for the exemption— is further strengthened when considering the purpose behind ingredient/component exemptions. Ingredient/component exemptions are found in forty-six states and the District of Columbia. R. Bruce Johnson & David J. Crapo, *States Vary in Determining What is an Ingredient for Sales Tax Exemptions*, 4 J. Multistate Tax’n & Incentives 154 (Sept.-Oct. 1994). The language of these statutes varies by state, but the purpose of the exemption is fairly universal. “All of these jurisdictions allow an exemption for tangible personal property that is purchased for resale as an ingredient or component part of a manufactured product. Thus, they all recognize that the ingredient will be incorporated into the product and sales tax ultimately will be collected as part of the sales price of the product.” *Id.* at 154.

54. Reviewing a dispute under an earlier version of the ingredient/component exemption statute, the Wyoming Supreme Court recognized this same purpose:

We have considered exemptions under this act in several cases, and have held that the legislature evidently intended to prevent a piling up of

sales taxes. *State v. Capital Coal Co.*, 54 Wyo. 176, 88 P.2d 481; *State Board of Equalization v. Oil Wells Supply Co.*, 51 Wyo. 226, 65 P.2d 1093; *State Board of Equalization v. Stanolind Oil & Gas Co.*, 51 Wyo. 237, 65 P.2d 1095.

*Morrison-Knudson Co. v. State Bd. of Equalization*, 135 P.2d 927, 932-33 (Wyo. 1943).

55. Consistent with the Department's interpretation, *supra* ¶ 14, the ingredient/component exemption's purpose is the same as that underlying the wholesale sale exemption. Like wholesale sales, the ingredients or components are not purchased for consumption, but for resale in the form of the final manufactured product. *See* 2 Jerome R. Hellerstein, Walter Hellerstein, John A. Swain, *State Taxation* 14-65 to 86 § 14.03 (2014). The ingredients or components are, therefore, not taxed because they ultimately become part of the final product for sale, and are taxed at that time, preventing a "pyramiding" or "piling up" of taxes. *Supra* ¶¶ 14, 54.

56. In this case, the end user of these lubricants was the Refinery. The Refinery purchased the lubricants for its consumption and not for resale in the final manufactured product. *Supra* ¶ 55. As such, allowing an exemption for the lubricants in this case does not fulfill the purpose of the ingredient/exemption statute.

57. The State Board further finds that because Plant #1, Plant #2, and the WWTP complexes were not part of the manufacturing processes in the Refinery, *supra* ¶ 5, the lubricants used in those complexes were not used in manufacturing. The storage and treatment functions were not manufacturing operations that produced a new product, nor did those functions change raw material into a final product. *Supra* ¶¶ 28-29. *See also PacifiCorp*, Docket Nos. 2012-51 & 2013-03 (Wyo. State Bd. of Equalization, January 8, 2016) ("Nor are the emissions control chemicals directly used or destroyed to generate electricity; they are used in another entirely separate system in the scrubber. . . PacifiCorp admits emissions treatment is not a necessary process to create electricity, stating 'it would be possible to burn coal to heat water to create steam to rotate turbine blades, without treating the waste.'"). The separation of these functions may be purely academic, however, because the Refinery had no way of apportioning the lubricants according to their uses in the various complexes. *Supra* ¶ 8.

58. As the State Board concluded recently in answering a similar question in *PacifiCorp*, *supra* ¶ 57, the ingredient/component exemption requires that chemicals or catalysts physically enter into the manufacturing process that produces the final product. *Supra* ¶ 22; *PacifiCorp* at ¶¶ 82-86. This interpretation prevents an unintended expansion of the exemption to include chemicals or catalysts used anywhere and in any process in a manufacturing, compounding, or processing facility. The legislature has carefully expressed its intent that the exemption apply more narrowly, and the Department is bound by that intent.



59. The State Board reviewed the authorities cited by the parties from other jurisdictions in support of their respective arguments. Pet'r's Opening Br. 4-5; Dep't of Revenue's Prehearing Br. 7-9. As the parties point out, there is a split of authorities in other states with similar types of exemptions as to whether a product must physically touch or enter the manufacturing process and final product, or whether it is sufficient that it is necessary or important to the manufacturing process as a whole. *See Sharp v. Tyler Pipe Indus., Inc.*, 919 S.W.2d 157, 160-61 (Tx. App. 1996) (*superseded by statute* as stated in *Sabine Mining Co. v. Strayhorn*, 2007 WL 2390686 (Tx. App.2007)) (citing John S. Herbrand, Annotation, *What Constitutes Direct Use Within Meaning of Statute Exempting from Sales and Use Taxes Equipment Directly Used in Production of Tangible Personal Property*, 3 A.L.R.4<sup>th</sup> 1129 (1981)); W.E. Shipley, Annotation, *Items or Materials Exempt from Use Tax as Used in Manufacturing, Processing, or the Like*, 30 A.L.R.2d 1439 (1953).

60. However, neither party directed the State Board to jurisdictions using language similar to that in Wyoming Statutes section 39-15-105(a)(iii)(A), nor does the State Board's research reveal similar statutes in other states. Statutes in other jurisdictions may require that machinery or materials are used directly in the manufacturing process, and the phrase "used directly in" is discussed in many of these cases, but none of these statutes further require the machinery or materials— or chemicals or catalysts— be consumed or destroyed in the manufacturing process. Consequently, these cases are not of assistance in the State Board's analysis.

61. The plain and unambiguous language in Wyoming's exemption statute is paramount in the State Board's finding that the ingredient/component exemption requires that chemicals or catalysts must be "used directly in" **and be** "consumed or destroyed" in the actual manufacturing process that produces the final product. A chemical's or catalyst's indirect use in the machinery or elsewhere in the facility is not sufficient to meet the exemption requirements. A chemical's or catalyst's continued existence apart from the final manufactured product disqualifies it from a sales tax exemption. This interpretation is consistent with the plain and ordinary meaning of the phrases "used directly in," and "consumed or destroyed during that process," as well as the legislative history and purpose of the statute.

62. Finally, the State Board must defer to the Department's interpretation of a statute if that interpretation is not clearly erroneous. *Supra* ¶¶ 13-14, 24. The Department's interpretation of the ingredient/component exemption maintained the internal consistency of the two sentences in the exemption, while keeping within the purpose of the ingredient/component exemption as a whole. The State Board finds the Department's interpretation was not clearly erroneous.

### **Conclusion**

63. For the above reasons, the State Board finds that the Department's decision to deny Gray Oil's exemption request was supported by the facts and the applicable law. The State Board further concludes that Gray Oil failed to meet its ultimate burden of persuasion to show by a preponderance of evidence it was entitled to an ingredient/component exemption.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

**ORDER**

**IT IS, THEREFORE, ORDERED** that the Wyoming Department of Revenue's final administrative decision denying Gray Oil's refund request under the ingredient/component exemption is **affirmed**.

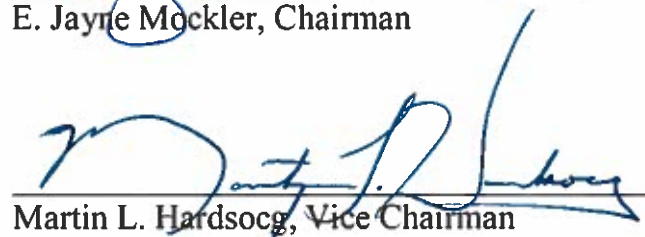
**Pursuant to Wyoming Statutes section § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.**

Dated this 20<sup>th</sup> day of April, 2016.

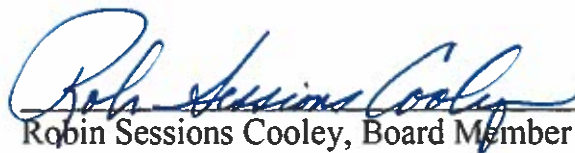
**STATE BOARD OF EQUALIZATION**



E. Jayne Mockler, Chairman

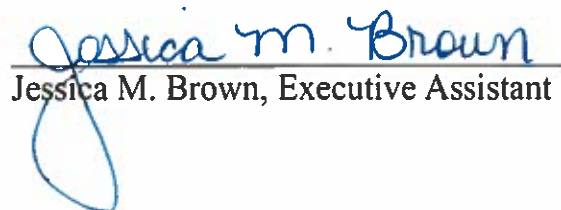


Martin L. Hardsocg, Vice Chairman



Robin Sessions Cooley, Board Member

**ATTEST:**



Jessica M. Brown, Executive Assistant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of April, 2016, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Mark Weiss  
John Christian  
Ryan, LLC  
100 Congress Avenue  
Suite 1900  
Austin, TX 78701

Karl D. Anderson  
Senior Assistant Attorney General  
Kendrick Building  
2320 Capitol Avenue  
Cheyenne, WY 82002



Jessica M. Brown  
Executive Assistant  
State Board of Equalization  
P.O. Box 448  
Cheyenne, WY 82003  
Phone: (307) 777-6989  
Fax: (307) 777-6363

cc: State Board of Equalization  
Kim Lovett, Administrator, Excise Tax Division, Department of Revenue  
CCH  
ABA State and Local Tax Reporter  
Tax Analysts  
State Library  
File