

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
WYOMING SUGAR COMPANY, LLC) Docket No. 2015-49
FROM A DECISION BY THE DEPARTMENT)
OF REVENUE (Denial of Sales Tax Exemption))

DECISION AND ORDER

APPEARANCES

Michael D. Greear, Greear Clark King, P.C., appeared on behalf of Wyoming Sugar Company, LLC (Wyoming Sugar).

Karl D. Anderson, Wyoming Attorney General’s Office, appeared on behalf of the Wyoming Department of Revenue (Department).

DIGEST

Wyoming Sugar claims its purchase of a “pile ventilation system” is exempt from sales/use tax under Wyoming’s “manufacturing” exemption. Wyo. Stat. Ann. §§ 39-15-105(a)(viii)(O) & 39-16-105(a)(viii)(D) (2015). The system ventilates and cools piled sugar beets after harvest to prevent spoilage and preserve sugar content and quality. Wyoming Sugar argued to the Department that the pile ventilation system is machinery used “directly and predominantly in manufacturing” sugar, consistent with the exemption language. The Department denied the exemption and assessed excise tax on Wyoming Sugar’s purchase of the system.

The State Board of Equalization (State Board), Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Member Robin Sessions Cooley, hold that, although the pile ventilation system benefits the sugar extraction process, Wyoming Sugar’s purchase of the system does not satisfy the statutory tax exemption criteria. The Department correctly denied Wyoming Sugar the manufacturing exemption.

ISSUE

Wyoming Sugar asks “was the pile ventilation system to be used **directly and predominantly in manufacturing?**” Wyo. Sugar Br. 4 (emphasis in original).

The Department identified the question as “[w]hether the Department correctly interpreted the tax law based upon the information and facts outlined in the taxpayer’s request.” Dep’t’s Issue of Fact & Law & Ex. Index 1.

We restate the issue: Did the purchased pile ventilation system satisfy defined sales/use tax exemption requirements that it: 1) was “machinery;” 2) performed “manufacturing;” and 3) was used “directly and predominantly in manufacturing” in accordance with statutory excise tax exemptions? Wyo. Stat. Ann. §§ 39-15-105(a)(viii)(O), 39-15-101(a)(xix)-(xxi), 39-16-105(a)(xiii)(D), & 39-16-101(a)(xiii-xv) (2015).

JURISDICTION

The State Board shall “review final decisions of the department upon application of any interested person adversely affected,” Wyoming Statutes section 39-11-102.1(c) (2015), 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)(viii) (2015). An aggrieved taxpayer must file any appeal with the State Board within thirty days of the Department’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006).

On October 2, 2015, the Department issued a decision letter stating that Wyoming Sugar’s purchase of equipment was not exempt from excise taxation. Wyoming Sugar appealed October 9, 2015, within thirty days of the Department’s final decision. The State Board has jurisdiction.

FINDINGS OF FACT

1. The parties agree upon the facts but differ on how to characterize Wyoming Sugar’s purchased equipment under the excise tax exemption statutes. Wyo. Stat. Ann. §§ 39-15-105(a)(viii)(O), 39-15-101(a)(xix)-(xxi) (2015), *infra* ¶¶ 22-23.
2. Richard McCamy, a sugar beet grower and Wyoming Sugar’s Chief Executive Officer, explained that Wyoming Sugar is a grower-owned company that operates a sugar beet processing plant in Worland, Wyoming. (Hr’g Recording 1, McCamy testimony).

The facility processes sugar beets into marketable products, including pure granulated sugar, molasses, and pulp for use in animal feed. *Id.*

3. Vince Salzman, Vice President and Manager of Operations at Wyoming Sugar, repeated much of Mr. McCamy's testimony and offered additional technical information concerning the use of forced ventilation and temperature control to reduce sugar loss in the beets after harvest. (Hr'g Recording 1, McCamy & Salzman testimony).

4. The parties agreed before the hearing that: 1) Wyoming Sugar is a "manufacturer" under the North American Industry Classification System (NAICS); 2) the purchased pile ventilation system "was used exclusively in the State of Wyoming[;]" and 3) the pile ventilation system "does not include noncapitalized machinery, except to the extent it may have been expensed in accordance with section 179 of the Internal Revenue Code." Stipulated Updated Summ. of Uncontroverted Facts, ¶¶ 2-4; *see also* Wyo. Stat. Ann. § 39-15-105(a)(viii)(O) (2015), *infra* ¶ 22.

5. Both Mr. McCamy and Mr. Salzman explained that sugar beets are "a live vegetable" and may be stored after harvest in Worland, Wyoming, for no more than about 110 days. (Hr'g Recording 1, McCamy & Salzman testimony). Given Worland's climate and growing conditions, Wyoming Sugar risks losing much of the beets' sugar content if not properly and efficiently handled. *Id.*

6. In contrast to beets grown in drier, warmer climates, Wyoming's climate favors a three to four week harvest immediately before the first freeze, generally October 21. (Hr'g Recording 1, McCamy & Salzman testimony). Mr. McCamy and Mr. Salzman described the post-harvest process as an urgent period during which Wyoming Sugar intensively processes the sugar beets, continuously resisting the beets' respiration which consumes their stored energy—sugar. *Id.*

7. Extracting sugar is a continuous 24-hour process (including weekends and holidays). If operations are interrupted for any reason, the processing plant requires an expensive shutdown and cleansing. (Hr'g Recording 1, McCamy & Salzman testimony).

8. Following a difficult year in 2014 during which much of the harvested beets' sugar content was lost, Wyoming Sugar decided to enhance sugar recovery through installation of a pile ventilation system. (Hr'g Recording 1, McCamy & Salzman testimony). Wyoming Sugar purchased and "installed a 40,000 ton capacity fan forced pile ventilation system at the factory which is controlled by a computer program and monitored with temperature probes." Stipulated Updated Summ. of Uncontroverted Facts, ¶ 1. Through constant ventilation and cooling, Wyoming Sugar suppresses the natural "respiration" and

heating of the sugar beets to ensure minimal sugar loss. (Hr’g Recording 1, McCamy & Salzman testimony).

9. The pile ventilation system’s operational purpose, Mr. Salzman explained, is to induce dormancy in the beets by keeping them cool (ideally 35°F) and dry, without freezing. During dormancy, respiration decreases substantially. Controlling the temperature also reduces molds and other wasteful conditions. He added that once the beets freeze, they must be processed frozen and cannot be allowed to thaw. (Hr’g Recording 1, Salzman testimony).

10. Through a series of pictures, Mr. Salzman described piles of beets exhibiting stages of degradation, including regrowth, molds, and vapors emanating from the beets. The skin on the beets that had deteriorated the most changed from light brown, to ashen gray, and finally to black. (Hr’g Recording 1, Salzman testimony; Wyo. Sugar Exs. 102-108).

11. Growers deliver sugar beets to the Worland plant where they are weighed and sampled for quality. (Hr’g Recording 1, McCamy testimony). Prior to Wyoming Sugar’s installation of the pile ventilation system, it stored the beets in piles on the ground and relied on natural ventilation. *Id.*

12. When activating the pile ventilation system, Wyoming Sugar lays the ventilation system in place as beets are piled over the system’s tubes on the ground. (Hr’g Recording 1, Salzman testimony; Wyo. Sugar. Ex. 110). Wyoming Sugar used a “piler” to pile the beets 26 feet high and 80 feet across. (Hr’g Recording 1, McCamy & Salzman testimony; Wyo. Sugar. Exs. 100, 102). The ventilation system consists of “high tech vent tubes” to move air throughout the beet pile. *Id.* Mr. Salzman explained, “We use beet piles to preserve, the, the maximum recovery are part of the manufacturing process at that point. If we don’t pile them well, or do anything like that, we dis-enhance the recovery of sugar.” *Id.* Some of the piles ventilate naturally, while others are actively ventilated. (Hr’g Recording 1, Salzman testimony).

13. The beets remain in ventilated or non-ventilated piles until they are moved into the “beet hopper,” which feeds the beets into the plant. (Hr’g Recording 1, Salzman testimony; Wyo. Sugar. Ex. 100). Wyoming Sugar then extracts sugar from the beets. (Hr’g Recording 1, Salzman testimony; Wyo. Sugar. Exs. 100, 101). Through intensive monitoring, Wyoming Sugar strategically removes beets from piles (called “stripping”) to maximize ventilation. This process allows Wyoming Sugar to recover more sugar by first removing the beets that are respiring the most. *Id.*

14. Mr. McCamy opined that once piled and ventilated, the beets “were in the plant.” (Hr’g Recording 1, McCamy testimony). He added that the manufacturing process begins after delivery from the grower. *Id.*

15. On August 28, 2015, Wyoming Sugar requested a written taxability determination from the Department, asserting that its purchase of the pile ventilation system was exempt from excise tax as manufacturing equipment. Wyoming Sugar’s letter included vendor invoices describing the purchased equipment. (Hr’g Recording 2, Lovett testimony; Dep’t Ex. 501).

16. In an October 2, 2015, letter, the Department denied Wyoming Sugar’s exemption claim under Wyoming Statutes section 39-15-105(a)(viii)(O) (2015). (Hr’g Recording 2, Lovett testimony; Dep’t Ex. 500). The Department concluded the ventilation system did not qualify because it performed a storage function and, as required by statute, did not directly and predominantly manufacture tangible personal property. The Department determined Wyoming Sugar’s manufacturing process begins after the ventilation system’s operation when “the beets are fed into the wet hoppers to be washed and sliced.” (Hr’g Recording 2, Lovett testimony; Dep’t Ex. 500).

CONCLUSIONS OF LAW

A. State Board’s review function: applicable presumptions and burdens of proof

17. Wyoming Sugar appealed pursuant to Wyoming Statutes section 39-11-102.1(c) (2015) and Chapter 2 of the State Board’s Rules of Practice and Procedure. The statute provides, in pertinent part, that:

(c) The state board of equalization shall perform the duties specified in article 15, section 10 of the Wyoming constitution and shall hear appeals from county boards of equalization and review final decisions of the department [of revenue] upon application of any interested person adversely affected, including boards of county commissioners for the purposes of this subsection, under the contested case procedures of the Wyoming Administrative Procedure Act.

Wyo. Stat. Ann. § 39-11-102.1(c) (2015); *see also* Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006).

18. Wyoming Sugar has “the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence.” Rules, Wyo.

State Bd. of Equalization, ch. 2 § 20 (2006). Further, “[f]or all cases involving a claim for exemption, the Petitioner shall clearly establish the facts supporting an exemption.” *Id.* If petitioner submits sufficient evidence to “suggest the Department determination is incorrect, the burden shifts to the Department to defend its action.” *Id.* 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.’ ” *Kenyon v. State, ex rel., Wyo. Workers’ Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo. 2011) (quoting *Judd v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2010 WY 85, ¶ 31, 233 P.3d 956, 968 (Wyo. 2010)).

19. The State Board “[d]ecide[s] 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). However, the State Board’s role is strictly adjudicatory: “ ‘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. Dep’t of Revenue*, 2004 WY 89, ¶ 22, 94 P.3d 430, 440 (Wyo. 2004) (quoting *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 674 (Wyo. 2000)).

20. The State Board’s main task in this matter is to interpret various statutory provisions and determine if the Department correctly applied those provisions to the facts. Statutory interpretation is a question of law that is reviewed *de novo*. *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002).

21. In interpreting statutes, the State Board defers to the statutory interpretation of an agency charged with the administration of those statutes, unless that interpretation is clearly erroneous. *Buehner Block Co., Inc. v. Wyo. Dep’t of Revenue*, 2006 WY 90, ¶ 11, 139 P.3d 1150, 1153 (Wyo. 2006).

B. Applicable statutory and regulatory provisions, and other guidelines

22. The Legislature enacted a sales/use tax exemption on the sale or lease of machinery used in the manufacture of tangible personal property (the manufacturing exemption):

(viii) For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt:

...

(O) Until December 31, 2017, the sale or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease:

(I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31-33; and

(II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

(III) Repealed by Laws 2010, ch. 33, § 2, eff March 4, 2010.

Wyo. Stat. Ann. § 39-15-105(a)(viii)(O) (2015).¹

23. To assist application of the manufacturing exemption, the Legislature defined the following terms:

(ix) “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.

...

(xix) “Directly and predominantly in manufacturing” means an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominantly in manufacturing[.]

(xx) “Machinery” means all tangible personal property eligible for a sales tax exemption pursuant to W.S. 39-15-105(a)(viii)(O), used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its

¹ Identical exemption language applies for use tax purposes under Wyoming Statutes section 39-16-105(a)(viii)(D) (2015). While Wyoming Sugar mentioned the use tax statutes in its brief, the parties more generally framed the dispute as a sales tax dispute. Because there is no functional difference between the sales and use tax exemptions, we will address the exemption from only a sales taxation perspective to avoid needlessly duplicative findings and citations.

intended function, the materials for the construction or repair of machinery, and machine tools[.]

(xxi) “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)(ix), (xix)-(xxi) (2015).

24. When construing exemptions, the Wyoming Supreme Court cautions:

[E]xemptions 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. Appeal of Chicago & North Western Ry. Co., 70 Wyo. 84, 246 P.2d 789, 795 [Wyo. 1952], rehearing denied 70 Wyo. 119, 247 P.2d 660; State Tax Commission v. Graybar Electric Company, Inc., 86 Ariz. 253, 344 P.2d 1008, 1012 [Ariz. 1959]; Cornell College v. Board of Review of Tama County, 248 Iowa 388, 81 N.W.2d 25, 26 [Iowa 1957]. See also 84 C.J.S. Taxation § 225, pp. 431-432.

State Bd. of Equalization v. Wyo. Auto. Dealers Ass'n, 395 P.2d 741, 742 (Wyo. 1964).

C. Analysis

25. As a preliminary matter, the parties agreed that Wyoming Sugar’s purchase of the pile ventilation system satisfied two exemption prerequisites: 1) that Wyoming Sugar was a manufacturer under the NAICS code; and 2) that the expense of the pile ventilation system was properly capitalized for federal income tax purposes. Wyo. Stat. Ann. § 39-15-105(a)(viii)(O) (2015), *supra* ¶¶ 4, 22.

26. The parties specifically dispute whether Wyoming Sugar purchased “machinery,” that performs “manufacturing,” that is used “directly and predominantly in manufacturing[.]” See *supra* ¶¶ 22-23; Wyo. Sugar Br. 4; Dep’t’s Issue of Fact & Law & Ex. Index 1. We begin with Wyoming Sugar’s objection to the Department’s statutory application:

The foregoing statutes are clear, and clearly show the intent of the Wyoming legislature to encourage manufacturing by providing a special tax exemption covering the manufacturing process. In these days of economic distress to Wyoming’s mineral industries, this encouragement of manufacturing is especially important. **But then the legislature added some additional language which has served here to muddy the analysis of the application**

of sales tax. The Department has seized upon this language and is attempting to assert it in a way that overrides the basic statutes.

Wyoming Sugar Br. 3 (emphasis added).

27. Arguing the statute is ambiguous, Wyoming Sugar asks the State Board to apply an alternative meaning as follows:

The intent of the Wyoming legislature when enacting § 39-15-105 is clear. The legislature wanted to support Wyoming manufacturing. The Department purports to follow a strict interpretation of the legislation as codified, but here they are employing the language of W. S. 39-15-101(a)(xix) and 39-16-101(a)(xiii) to take away an exemption the Wyoming legislature clearly intended, and they do so by exploiting the unclear, contradictory language of W. S. 39-15-101(a)(x) [sic].²

The first clause of the definition “Directly and predominantly in manufacturing” means *an item manufactured from* inventoried raw or prepared material . . .” [sic] is clearly referring to sugar in this case – not the equipment. To be applicable the definition would have to read, “an item used to manufacture inventoried raw or prepared material.”

As a further issue with this definition, [Wyoming Sugar Growers] notes [its disagreement with] the Department’s interpretation of the clause “beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form.” The word “contiguous” if strictly applied would mean that any time inventoried raw or prepared material were stored anywhere but on a contiguous site that the exemption could not be applied.

This definition is unclear as to its intent, as it would seem to leave the exemption useless, unless the Department is allow [sic] to interpret the meaning. It is better to use the ordinary meaning of the terms “predominantly and directly,” than to embrace the dubious interpretation of the department.

Wyo. Sugar Br. 5 (emphasis in original).

² Here, Wyoming Sugar most likely meant to refer to section 39-15-101(a)(xix) (2015), which it claims is ambiguous. Wyo. Sugar Br. 5. The statute mistakenly cited, section 39-15-101(a)(x) (2015), defines the term “taxpayer” and is not a point of contention.

28. As stated above, Wyoming Sugar complains the Department's application of the exemption is overly narrow. Focusing on the Legislature's general intent to encourage manufacturing, Wyoming Sugar urges that such intent should guide, or even override, the definitions of "manufacturing" and the phrase "directly and predominantly in manufacturing[,]" which it claims are ambiguous.³ See *supra* ¶¶ 22-23. In any event, "the fact that opinions may differ as to a statute's meaning is not conclusive of ambiguity." *Campbell Cty. Sch. Dist. v. Catchpole*, 6 P.3d 1275, 1285 (Wyo. 2000). Resolving this appeal, therefore, requires we discern the manufacturing exemption's intended scope.

29. In applying the rules of statutory interpretation:

[O]ur primary consideration is to determine the legislature's intent. 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.

Only if we determine the language of a statute is ambiguous will we proceed to the next step, which involves applying general principles of statutory construction to the language of the statute in order to construe any ambiguous

³ Wyoming Sugar suggests the Legislature compromised its original intent through subsequent legislation. *Supra* ¶ 26. The Legislature, however, enacted the manufacturing exemption in 2004, along with the definitions of "manufacturing," "machinery," and the phrase "directly and predominantly in manufacturing," as one act. See 2004 Wyo. Sess. Laws 38-40. No similar excise tax manufacturing exemption existed at that time.

language to accurately reflect the intent of the legislature. If this Court determines that the language of the statute is not ambiguous, there is no room for further construction. We will apply the language of the statute using its ordinary and obvious meaning.

Whether a statute is ambiguous is a question of law. A statute is unambiguous if reasonable persons are able to agree as to its meaning with consistency and predictability, while a statute is ambiguous if it is vague or uncertain and subject to varying interpretations.

Travelocity.com LP v. Wyo. Dep't of Revenue, 2014 WY 43, ¶ 20, 329 P.3d 131, 139 (Wyo. 2014) (quoting *Redco Const. v. Profile Props., LLC*, 2012 WY 24, ¶ 26, 271 P.3d 408, 415-16 (Wyo. 2012) (citations and internal quotation marks omitted)).

30. The Legislature clearly sought to limit the manufacturing exemption's reach by defining its operative terms, "machinery," "manufacturing," and the phrase "directly and predominantly in manufacturing[.]" *Supra* ¶ 23. We shall resolve whether the definitions, read together as one integrated law, allow for consistent and predictable application of the exemption.⁴ If so, we refer to the plain and ordinary meaning of the exemption to determine whether the pile ventilation system's operational characteristics satisfied the statutory criteria—that it is "machinery" which performs "manufacturing" and is used "directly and predominantly in manufacturing." Wyo. Stat. Ann. §§ 39-15-105(a)(viii)(O), 39-15-101(a)(xix)-(xxi) (2015), *supra* ¶¶ 22-23. If not, the State Board must apply rules of statutory construction to discern legislative intent. *Travelocity.com LP*, ¶ 20, 329 P.3d at 139, *supra* ¶ 29.

31. To qualify as "machinery," the pile ventilation system must be tangible personal property "used to produce an article of tangible personal property." Wyo. Stat. Ann. §§ 39-15-105(a)(viii)(O), 39-15-101(a)(xx) (2015), *supra* ¶¶ 22-23. It also qualifies if it is an "adjunct or attachment **necessary for the basic unit to accomplish its intended function[.]**" *Id.* (emphasis added); see e.g. *Sinclair Oil Corp. v. Wyo. Dep't of Revenue*,

⁴ When responding to arguments that statutory language is ambiguous, the Wyoming Supreme Court typically examines a given statute with reference to the circumstances and arguments presented. For example, in *W.A.R.M. v. Bonds*, 866 P.2d 1291 (Wyo. 1994), the Court held that Wyoming's Self-Insurance Act was ambiguous because the statutory language, when applied to the particular circumstances, was contradictory and did not answer whether certain officials' activities were covered. Similarly, the term "producer" within Wyoming's mineral tax statutes was "ambiguous" because, given the mineral industry practices at issue, the term could apply to parties other than the operator of a well for the purpose of determining the price received for mineral production. *Lance Oil & Gas Co. v. Wyo. Dep't of Revenue*, 2004 WY 156, ¶¶ 17-25, 101 P.3d 899, 904-06 (Wyo. 2004).

2010 WY 122, ¶¶ 9-11, 238 P.3d 568, 571-72 (Wyo. 2010) (concrete bases upon which oil processing equipment was bolted were attachments necessary to facilities' function and would otherwise qualify as "machinery," if tangible personal property).

32. The definition of "machinery" unambiguously prescribes that equipment must be "necessary" for the unit, in this case the sugar beet processing plant, to accomplish its function. Wyo. Stat. Ann. §§ 39-15-105(a)(viii)(O), 39-15-101(a)(xx) (2015), *supra* ¶¶ 22-23, 31. While the ventilation system enhances sugar extraction by maintaining the beets at an optimal temperature prior to extraction of sugar, *supra* ¶¶ 5-14, the evidence did not demonstrate that the system itself produced an article, or that the ventilator was necessary for the manufacturing facility to accomplish its intended function. Indeed, the evidence suggested otherwise because the manufacturing plant operated successfully for years, albeit less effectively when the beets were piled without ventilation. Wyoming Sugar only recently purchased the pile ventilation system to enhance sugar recovery. *Id.*

33. Under Wyoming Sugar's proffered application of the exemption, "machinery" would include not only the plant which transforms beets into sugar, but separate equipment that indirectly improves a manufacturing outcome. *Supra* ¶¶ 5-14. The State Board may not expand or extend the application of clear statutory language to matters that do not fall within its express provisions. *Travelocity.com LP*, ¶ 20, 329 P.3d at 139, *supra* ¶ 29.

34. Further, the pile ventilation system must perform "manufacturing"; it must produce "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), 39-15-105(a)(viii)(O) (2015), *supra* ¶¶ 22-23. The pile ventilation system assists the extraction of higher sugar quantities by reducing the temperature of piled beets—the ventilation essentially inhibits spoilage. *Supra* ¶¶ 5-14. While ventilation unquestionably promotes the extraction of more sugar by resisting spoilage, the pile ventilator does not itself transform the beets into a new product, article, or substance. *Id.*

35. Finally, the parties focused on whether Wyoming Sugar uses the pile ventilator "directly and predominantly in manufacturing[.]" Wyo. Stat. Ann. § 39-15-101(a)(xix) (2015), *supra* ¶ 23. Through this definition, the Legislature delineated the beginning and end of any manufacturing process so that taxpayers and the Department could identify those equipment sales for which the exemption applies. *Supra* ¶¶ 22-23.

36. Challenging the definition of "directly and predominantly in manufacturing," which means an "item manufactured from inventoried raw or prepared material," Wyoming Sugar suggests that the Legislature's use of the word "item" is nonsensical and cannot apply as written. Wyo. Stat. Ann. § 39-15-105(a)(xix); *supra* ¶¶ 23, 26. As Wyoming Sugar

observes, the word “item” in that definition refers to the sugar finally extracted from the raw or prepared sugar beets. Wyo. Stat. Ann. § 39-15-101(a)(xix) (2015), *supra* ¶ 23. Accordingly, the plain language required the Department to identify the manufactured “item,” in this case the sugar, and then trace it back to its premanufactured form—the piles of inventoried sugar beets. *Id.* Wyoming Sugar argues the more logical interpretation is that the word “item” refers to the equipment used “directly and predominantly in manufacturing[.]” *Supra* ¶ 26.

37. The State Board disagrees. While the Legislature could have applied “item” to refer to equipment, it chose to track the manufacturing process through movement of the manufactured item—the sugar. When read in conjunction with the separately defined terms, “machinery” and “manufacturing,” the Legislature’s approach was logical and made reference to “machinery” as the “item,” redundant. Regardless, because the statute is sufficiently clear and definitive, we give effect to the plain and ordinary meaning of the words selected. *Supra* ¶ 29; *see Allied-Signal, Inc. v. Wyo. State Bd. of Equalization*, 813 P.2d 214, 219 (Wyo. 1991) (When “the language selected by the legislature is sufficiently definitive, that language establishes the rule of law.”).

38. Applying the exemption language as written, the Legislature specified that manufacturing begins upon an item’s removal from inventory located **contiguous** to the manufacturing site. Wyo. Stat. Ann. § 39-15-101(a)(xix) (2015), *supra* ¶ 23. The term “contiguous,” means “[t]ouching at a point or along a boundary; ADJOINING, <Texas and Oklahoma are Contiguous>.” *Contiguous*. Black’s Law Dictionary (10th ed. 2014); *see also BJ Hough, LLC v. City of Cheyenne*, 2012 WY 140, ¶ 25, 287 P.3d 761, 770 (Wyo. 2012) (citing nearly identical dictionary definitions of term “contiguous”); *Bd. of Cty. Comm’rs of Cty. of Laramie v. City of Cheyenne*, 2004 WY 16, ¶ 20, 85 P.3d 999, 1005 (Wyo. 2004). In context, the word “contiguous” implicitly recognizes that manufacturers may store and move inventoried materials several times before the beginning of the manufacturing process and at locations distant from the facility. Wyo. Stat. Ann. § 39-15-105(a)(viii)(O) (2015).

39. Wyoming Sugar notes it would be illogical to apply the term “contiguous” such that no exemption applies when inventoried materials are moved from **noncontiguous** locations to a manufacturing site. *See supra* ¶ 26, citing Wyo. Stat. Ann. § 39-15-101(a)(xix) (2015). Wyoming Sugar raises an interesting question, but not one the State Board must resolve to adjudicate this appeal. The Department’s denial of the manufacturing exemption did not turn on whether the beets were inventoried and removed from a location noncontiguous to the manufacturing facility. *Supra* ¶¶ 11-16.

40. The Legislature’s reference to “inventoried . . . prepared material” in the definition of “directly or predominantly in manufacturing” further corroborates its intent that manufacturing begins with the prepared material’s actual entry into a plant, factory, unit, or similar setting. Wyo. Stat. Ann. § 39-15-101(a)(xix) (2015), *supra* ¶ 23. As used in the definition, the term “prepared material” necessarily excludes from manufacturing any prior activities to prepare the material for manufacturing.

41. After careful examination, the State Board finds the manufacturing exemption is unambiguous. *Supra* ¶¶ 28-29. The Legislature enacted a limited manufacturing exemption, clearly and succinctly defining the range of activities which qualify as “manufacturing,” along with the equipment that qualifies as “machinery” used “directly and predominantly in manufacturing.” *Supra* ¶¶ 22-23, 30-40.

42. For the same reason the pile ventilation system is not “machinery” and does not perform “manufacturing,” *supra* ¶¶ 32-35, neither is it used “directly and predominantly in manufacturing.” *Supra* ¶¶ 22-23. The transformative “manufacturing” process (physically converting or processing the beets into granular sugar) begins upon the beets’ entry into the plant or, as the Department concluded, upon movement of the beets from the piles located contiguous to the plant into the wet hopper. *Supra* ¶¶ 13, 16. For all intents and purposes, the pile ventilation system, by maintaining the beets at a cooler temperature in advance of manufacturing, stores and resists spoilage of the beets to enhance the sugar extraction process. While unquestionably beneficial to manufacturing, the statutory manufacturing exemption language does not qualify the pile ventilation system as machinery that operates directly and predominantly in manufacturing.

CONCLUSION

43. In sum, Wyoming Sugar offered insufficient evidence to support its claim that the Department’s October 2, 2015, tax exemption ruling was incorrect. *Supra* ¶ 18. Applying the exemption’s statutory definitions, the pile ventilation system is not “machinery,” its operation does not constitute “manufacturing,” nor does it occur “directly and predominantly in manufacturing.” *Supra* ¶¶ 22-23, 30-42.

44. Although Wyoming Sugar correctly argues the Legislature sought to encourage manufacturing (Wyoming Sugar Br. 3-5), Wyoming Sugar’s argument extends the manufacturing exemption beyond what is statutorily authorized.

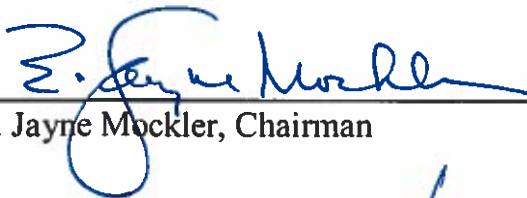
ORDER

IT IS, THEREFORE, ORDERED the Wyoming Department of Revenue's October 2, 2015, letter determination, in which it concluded Wyoming Sugar's purchase of a "pile ventilation system" was not exempt from sales or use taxation pursuant to Wyoming Statutes sections 39-15-105(a)(viii)(O) and 39-16-105(a)(viii)(D) (2015), is **affirmed**.

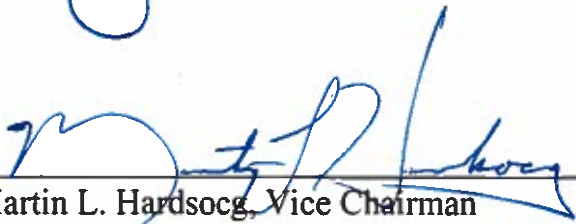
Pursuant to Wyo. Stat. Ann. §16-3-114 (2015) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 14th day of December, 2016.

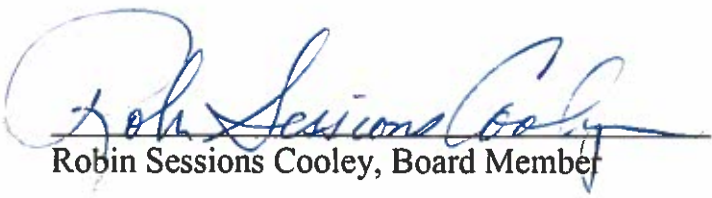
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

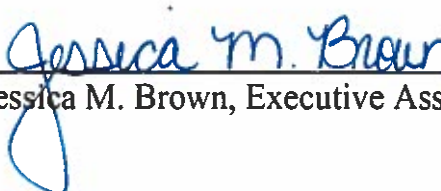


Martin L. Hardsocg, Vice Chairman



Robin Sessions Cooley, Board Member

ATTEST:



Jessica M. Brown, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day December, 2016, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Michael D. Greear
Attorney for Wyoming Sugar Company, LLC
P.O. Box 552
Worland, WY 82401

Karl D. Anderson
Senior Assistant Attorney General
Lisa Jerde Spillman
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: Dan Noble, Director, Department of Revenue
Kim Lovett, Administrator, Excise Tax Division, Department of Revenue
CCH
ABA State and Local Tax Reporter
Tax Analysts
State Library
File