

**STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF HEARINGS & APPEALS**

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 19-148

**REFUND CLAIM
DISALLOWANCE**

(\$)¹

PERIOD: 09/01/13 - 01/31/16

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated June 12, 2017, signed by [REDACTED], on behalf of [REDACTED], the Taxpayer. The Taxpayer protested the denial of a refund claim resulting from an audit conducted by [REDACTED], Southeast Audit District, for the Department of Finance and Administration ("Department"). The Audit Number is [REDACTED].

An administrative hearing was held on November 8, 2018, at 10:00 a.m., in Jonesboro, Arkansas. The Department was represented by Chris McNeal, Attorney at Law, Office of Revenue Legal Counsel ("Department's Representative"). LaSheena Parris, Tax Auditor, and Michael Carver, Audit Supervisor, appeared for the Department. The Taxpayer was represented by

¹ This amount does not reflect adjustments agreed upon by the parties or any items/issues conceded by either party.

██████████, ██████████ (“Taxpayer’s Representative”). Also present for the Taxpayer was ██████████, Director of Engineering.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Taxpayer operates ██████████ and ██████████ at various locations in Arkansas. During the audit period, the Taxpayer purchased items of tangible personal property and services. As a direct pay permit holder, the Taxpayer accrued and remitted tax on some purchases of tangible personal property and services.

Subject to the applicability of an exemption, a deduction, or a credit, use tax is imposed on sales of tangible personal property or taxable services made by out-of-state vendors/sellers to in-state purchasers for storage, use, or consumption in this state,² and sales tax is imposed on sales of tangible personal property or taxable services made by in-state vendors/sellers to in-state purchasers.³ The Taxpayer requested a refund of the tax paid on certain purchases of certain tangible personal property and services.

Ark. Code Ann. § 26-18-507 (Repl. 2012) provides for a refund of any state tax erroneously paid in excess of the taxes lawfully due. The arguments presented by the Taxpayer, the arguments presented by the Department, and a legal analysis are set forth below.

ISSUE

Whether the Department’s denial of the Taxpayer’s claim for refund should be sustained? Yes, in part.

² See Ark. Code Ann. § 26-53-101 et seq. (Repl. 2014 & Supp. 2017).

³ See Ark. Code Ann. § 26-52-101 et seq. (Repl. 2014 & Supp. 2017).

CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Supp. 2017) provides, in pertinent part, as follows:

The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state in controversies regarding the application of a state tax law shall be by preponderance of the evidence.

A preponderance of the evidence means the greater weight of the evidence.

Chandler v. Baker, 16 Ark. App. 253, 700 S.W.2d 378 (1985). In Edmisten v. Bull Shoals Landing, 2014 Ark. 89, at 12-13, 432 S.W.3d 25, 33, the Arkansas Supreme Court explained:

A preponderance of the evidence is “not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The Department bears the burden of proving that the tax law applies to an item or service sought to be taxed, and a taxpayer bears the burden of proving entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Supp. 2017). Statutes imposing a tax or providing a tax exemption, deduction, or credit must be reasonably and strictly construed in limitation of their application, giving the words their plain and ordinary meaning. Ark. Code Ann. § 26-18-313(a), (b), and (e) (Supp. 2017). If a well-founded doubt exists with respect to the application of a statute imposing a tax or providing a tax exemption, deduction, or credit, the doubt must be resolved against the

application of the tax, exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(f)(2) (Supp. 2017).

A taxpayer bears the burden of proving by a preponderance of the evidence that the claimed refund was erroneously paid and in excess of the taxes lawfully due under Ark. Code Ann. § 26-18-507 (Repl. 2012).

Refund Claim

Repair of Concrete Floor. The Taxpayer's Answers to Information Request provided, in pertinent part, as follows:

[Taxpayer] hired a plumbing contractor to come in and repair a closet and the concrete floor in one of our restrooms. The contractor provided both labor and materials on the aforementioned job. The information provided from [the plumbing contractor], states that flooring repairs were made to the concrete and not to a decorative finished floor (ex. tile). The contractor is responsible for tax on the separately stated materials since they were provided by him in conjunction with non-taxable labor. [Taxpayer] contends that both labor and materials are tax exempt under GR-21(B), repairs of manually operated components affixed to real-estate. [P. 3].

The Director of Engineering testified that: (1) the plumbing contractor was replacing a toilet and mounted a fixture on the floor; and (2) the plumbing contractor had to repair the area where the hole goes through the concrete floor.

The Tax Auditor testified that: (1) the original auditor in this case no longer works for the Department; (2) she has reviewed the case file; (3) Exhibit 2A is an invoice from a plumbing contractor to the Taxpayer for repairing a floor around a closet; (4) repairing flooring is a taxable service; and (5) she cannot say what type of flooring was repaired.

The Department's Representative contended that the term "flooring" as used in Arkansas Gross Receipts Tax Rule GR-9 is broader than the definition of

“flooring” in Arkansas Gross Receipts Tax Rule GR-9.17(B)(3).⁴ The Department’s Answers to Information provided, in part:

Exhibit 2A is an invoice from [a plumbing contractor] in which is described the following service: "Repair floor around Closet." The service of repair of flooring is subject to gross receipts tax. Ark. Code Ann. 26-52-301(3)(B)(i)(j); Arkansas Gross Receipts Rules GR-9(A)(1).

The taxpayer argues that repairs were made to a concrete floor and that, because the definition of "flooring" in GR-9.17(B)(3) does not include concrete floors, the service of repairing a concrete floor is not taxable. Importantly, neither the Arkansas General Assembly nor G- 9.17(B)(3) sets forth an exclusive definition of "flooring." GR-9(A)(1) instructs to "[s]ee also GR-9.17," which indicates that GR-9.17 is in addition to GR-9. [P. 2].

As reflected in GR-9, the sales tax levy is imposed on the “service of **initial installation**, alteration, addition, cleaning, refinishing, replacement **and repair** of . . . **flooring** . . . [Emphasis added].” The service of initial installation of flooring is expounded upon in GR-9.17 by and through provision of a definition for the term “flooring.” GR-9.17 provides that “[f]looring’ shall mean tile, hardwood, vinyl, carpet, a finished surface applied to concrete or other subfloor, or any other floor covering that overlays the subfloor of a structure to provide a finished surface for the floor, including decorative finishes.” The Department’s argument, that the term “flooring” as used in GR-9 is broader than the definition of “flooring” in GR-9.17, is not persuasive.

The Arkansas Supreme Court has explained, when interpreting Arkansas law, specific provisions control over general provisions. See Streight v. Ragland, 280 Ark. 206, 218, 655 S.W.2d 459, 466 n.7 (1983). In McCourt Mfg. Corp. v.

⁴ The Department’s Representative stipulated that concrete floors are not encompassed by this definition.

Rycroft, 2009 Ark. 332, 322 S.W. 3d 491, the Arkansas Supreme Court discussed a rule of statutory construction which provides that courts should strive to reconcile statutory provisions relating to the same subject to make them sensible, consistent, and harmonious. The Department's position regarding the definition of flooring would create a conflict between GR-9 and GR-9.17, therefore, the Department's assertion must be rejected in light of the above described rules of construction.

Applying the law to the facts of this case, the Taxpayer's concrete slab is not flooring as defined by GR-9.17 and the repair of the Taxpayer's concrete slab by a plumbing contractor was not a taxable service under GR-9. Consequently, the Department incorrectly denied the Taxpayer's refund claim regarding the invoice introduced as Department Exhibit 2A.

Invoices for Repairs of Capacitor Banks.⁵ The Taxpayer's Representative contended that invoices relating to repairs of capacitor banks were charges for nontaxable repairs of "passive components affixed to real estate" und GR-21(B).⁶ The Director of Engineering testified that: (1) capacitors store an electrical charge; (2) capacitors condition the power coming from the utility provider (the capacitor banks are in-line with supply-side electricity) to control power factor; and (3) capacitor banks are located outside of the Taxpayer's plants and are installed to level off usage of wattage and amperage.

The Tax Auditor testified that: (1) a capacitor is a device that stores electricity; and (2) a capacitor band is a group of capacitors that are aligned with

⁵ See Department Exhibits 2B and 2E.

⁶ See Taxpayer Answers to Information Request – P. 3.

each other. The Department's Representative contended that the invoices were subject to tax under Arkansas Gross Receipts Tax Rule GR-9.

Arkansas Gross Receipts Tax Rule GR-9 provides that the services of initial installation, alteration, replacement, and repair of electrical devices or machinery are subject to tax.⁷ With respect to a taxable service, the entire gross receipts derived from the performance of the taxable service, including the sale or transfer of title or possession of any materials or supplies used or consumed in performing the taxable service, are subject to tax. See Ark. Code Ann. § 26-52-103(13)(A) (Repl. 2014).

The evidence presented in this matter established that capacitors act upon electricity by conditioning power and capacitors also store power (similar to batteries). Based upon the same rationale previously employed by the Commissioner of Revenues, holding that transformers were electrical devices, a preponderance of the evidence supports a finding that the relevant capacitors are electrical devices. The invoices related to the services of repair of capacitors were subject to tax under Arkansas Gross Receipts Tax Rule GR-9.⁸ Consequently, the Department correctly denied the Taxpayer's refund claim related to services for capacitors or capacitor banks.

Repair of Broken Conduit.⁹ The Taxpayer's Answers to Information Request provided, in pertinent part, as follows:

⁷ The services remain taxable even if the electrical devices or machinery are affixed to real property. See Arkansas Department of Finance & Administration v. Otis Elevator, 271 Ark. 442, 609 S.W.2d 41 (1980).

⁸ Including the arrestors reflected on Department Exhibit 2B. See Ark. Code Ann. § 26-52-103(13)(A) (Repl. 2014).

⁹ See Department Exhibit 2G.

[Taxpayer] hired an electrical contractor to come in and repair broken conduit affixed to the building. The contractor provided all labor and materials associated with this non-mechanical/electrical repair. [Taxpayer] contends that this repair is tax exempt under GR-21(B), repairs to non-mechanical components affixed to real estate. [P. 3].

The Taxpayer's Representative introduced a picture of the "actual conduit" as Taxpayer Exhibit 1 and contended that the electrical contractor was responsible for paying taxes on the material used in performance of the job. The Director of Engineering testified that conduit is used for the protection of electrical wiring.

With respect to Department Exhibit 2G, the Department's Answers to Information provided as follows:

[The exhibit] is an invoice from [an electrical contractor], in which is described the following service: "LABOR AND MATERIALS FOR REPAIRS OF BROKEN CONDUIT AT MEAL WAREHOUSE." While repairs to non-mechanical material that become part of a structure are not a taxable service, see GR-21(E)(3), the invoice does not break down the purchase price by taxable and nontaxable items. Therefore, the transaction is a bundled transaction. [P. 3].

The Tax Auditor testified that: (1) the invoice reflects "labor and materials" and materials are tangible personal property; (2) the sale of tangible personal property is subject to tax unless an exemption applies; (3) the pertinent invoice does not set forth an exemption or separately state a charge for materials; and (4) the entire amount of a bundled transaction is taxable.

The Department's Representative stated that: (1) it looks like conduit is depicted on Taxpayer Exhibit 1; (2) conduit is passive and non-mechanical; (3) Exhibit 2G represents a bundled transaction; and (4) the Department does not know if the electrical contractor paid taxes on the material as required by GR-21.

Some services furnished by an electrical contractor are not subject to tax under Ark. Code Ann. § 26-52-301(3)(B)(viii)(a) (Supp. 2017), which states, in part:

(viii)(a) Additionally, the gross receipts tax levied in this section shall not apply to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate, including, but not limited to, the following:

(1) Walls;

...

(9) Wiring;

(10) Breakers;

(11) Breaker boxes;

(12) Electrical switches

and receptacles;

(13) Light fixtures;

(14) Pipes;

...; and

(23) Similar components

which become a part of real estate after installation, except flooring.

In the instant case, the conduit being repaired was a nonmechanical and passive component of a building. As illustrated on Taxpayer Exhibit 1, the conduit was used as a piping system for the protection and routing of electrical wiring on the Taxpayer's building. The repair of the conduit was a nontaxable service under Ark. Code Ann. § 26-52-301(3)(B)(viii)(a) (Supp. 2017). With respect to the taxation of materials used in the performance of nontaxable services under Ark. Code Ann. § 26-52-301(3)(B)(viii)(a) (Supp. 2017), GR-21 provides, in pertinent part, as follows:

[A.]1. "Consumer" or "user" means the person to whom the taxable sale is made or to whom the taxable services are furnished. **All contractors are deemed to be consumers or users of all tangible personal property including materials, supplies, and equipment used or consumed by them in performing any contract, and the sales of all such property to**

contractors are taxable sales. The contractor must pay tax at the time of purchase or pay tax at the time the materials are withdrawn from stock for use in the performance of the contract. A contractor cannot rely on the direct pay permit of the other party to the contract for payment of the tax on the construction materials.

2. "Contract" means any agreement or undertaking to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts. The term contract shall not include a contract to produce tangible personal property.

3. "Contractor" means any person who contracts or undertakes to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts.

...

[E.]3. Electrical Contractors.

a. **The installation, repair or replacement of non-mechanical materials which become a part of a structure, such as wiring, breakers, and light fixtures, is not a taxable service. The contractor must either pay tax to the supplier on the materials used in the work, or self-assess tax as a withdrawal from inventory (stock) on the purchase price of the materials used.**

b. The initial installation in new or substantially modified construction, and the repair or replacement of mechanical or electrical components, such as a ceiling fan, is a taxable service. Any parts used in the service are also taxable to the customer. [Emphasis added].

Under the facts and circumstances of this case, the electrical contractor was responsible for paying the sales tax owed on the materials used to repair the conduit as required by GR-21. Department Exhibit 2G did not encompass a retail sale of conduit to the Taxpayer so GR-93 (Bundled Transactions) is not applicable. Consequently, the Department incorrectly denied the Taxpayer's refund claim regarding the invoice introduced as Department Exhibit 2G.

Labor for Replacement of [REDACTED] on [REDACTED].¹⁰ The Taxpayer's Answers to Information Request provided, in pertinent part, as follows:

[Taxpayer] purchased and installed [REDACTED] that were added to our existing [REDACTED]. The [REDACTED] increased the efficiency of the [REDACTED] by allowing better control of [REDACTED] and therefore, producing a more consistent product. [Taxpayer] contends that the [REDACTED] are tax exempt under GR-55 (26-52-402) as they are an add-on piece of equipment that increases efficiency. [P. 3].

The Director of Engineering testified that: (1) the Taxpayer uses [REDACTED] in a stage of the processing of [REDACTED]; (2) the Taxpayer replaced [REDACTED] on [REDACTED]; (3) [REDACTED] keep [REDACTED] stirred up;¹¹ (4) the Taxpayer's manufacturing process would not perform correctly without the [REDACTED] and would eventually shut down; (5) when the Taxpayer first purchased [REDACTED], they were tax exempt; (6) the new [REDACTED] increased the efficiency of the Taxpayer's manufacturing process; (7) the [REDACTED] are integral to the [REDACTED]; and (8) the other parts of the [REDACTED] are [REDACTED].

The Taxpayer contended that the labor charges for installation of the [REDACTED] was exempt from tax under Ark. Code Ann. § 26-52-402 (Supp. 2017). The Department contended that the Taxpayer failed to prove entitlement to an exemption under Ark. Code Ann. § 26-52-402(a) (Supp. 2017) which provides in relevant part, as follows:

[a](2)(A) Machinery purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of

¹⁰ See Department Exhibit 2H. The Department's Representative stated that only the labor charge on the invoice was at issue, not the material.

¹¹ The [REDACTED] are heated with steam.

articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this subdivision (a)(2).

(B)(i) As used in subdivision (a)(2)(A) of this section, “machinery purchased to replace existing machinery” means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, **“substantially” is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine**, but it is not intended to mean that foundations and minor components that can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation or minor components. [Emphasis added].

With respect to labor associated with the replacement of existing machinery and equipment, Arkansas Gross Receipts Tax Rule GR-9.18(C) provides that:

Labor performed in connection with the replacement of exempt manufacturing machinery is exempt from tax **only if** the machinery being replaced meets all of the requirements for exemption required by Ark. Code Ann. §§ 26-52-402 and 26-53-114, **including the requirement that substantially all of the machinery required to perform an essential function is replaced**. [Emphasis added].

The Taxpayer’s argument, that partial replacements are substantial if they improve efficiency or extend the useful life of the entire machinery, is not persuasive. The relevant language, highlighted above in Ark. Code Ann. § 26-52-402(a)(2)(B)(ii) (Supp. 2017), serves as a limitation on partial replacements that qualify for exemption rather than a grant of exemption for partial replacements that improve efficiency or extend the useful life of a machine. In all circumstances, a partial replacement of existing machinery must satisfy the requirement that “substantially all of the machinery and equipment required to

perform an essential function is physically replaced with new machinery.” See Ark. Code Ann. § 26-52-402(a)(2)(B)(i) (Supp. 2017).

With respect to the relationship between the [REDACTED] and [REDACTED], in Southern Steel & Wire Co. v. Wooten, 276 Ark. 37, 631 S.W.2d 835 (1982), the Arkansas Supreme Court stated, as follows:

The control panels are designed from scratch and plugged into a welding machine to control the welding process. Appellant urges that each is a separate piece of machinery and that since these control panels can be utilized with different welding machine and are physically plugged into a welder to achieve the desired results, they are distinguishable from the component parts of a drilling rig which we considered in S. H. & J. Drilling Corp. v. Qualls, *supra*. There we held that where the appellant purchased certain items to replace existing items of a drilling rig, even if the individual item was considered a machine within the definition of Heath v. Research-Cottrell, Inc., 258 Ark. 813, 529 S.W.2d 336 (1975), once they were assembled into a rig and are designed to accomplish a single purpose, they become a single unit and are not exempt from taxation. We find that reasoning controlling here. It appears undisputed that the control panels, air cylinders and transformers are physically combined with other existing components in order to construct a welding machine which has a single purpose and function. The control panels and welding machines are interconnected or component parts of welding machines and designed to accomplish a single purpose - welding wire to form shelves. They must function simultaneously as a single unit.

Id. at 40-41, 631 S.W.2d at 837.

The holding in Southern Steel & Wire Co. v. Wooten, *Supra*, is expounded upon by GR-55(D)(3) which states:

When individual machines or machinery are interconnected in order to accomplish a single function and the function of each such individual machine is not complete before the adjacent machines begin to function, the result is a new single identifiable machine. The machinery purchased to replace this resulting existing machine must satisfy the requirements of GR-55(D)(2) above and the exemption is not available for the replacement of only some of the individual machines that now form component parts of the aforementioned machine. An individual machine that performs a

separate distinct function in the manufacturing operation as part of a production line, constitutes a single machine for purposes of this exemption and may be replaced tax exempt.

The [REDACTED] (See Department Exhibit 2H) replaced existing [REDACTED] on the [REDACTED] used in the Taxpayer's manufacturing process. Based on the holding in Southern Steel & Wire Co. v. Wooten, Supra, and the provisions of GR-55(D)(3), the [REDACTED] are component parts of the [REDACTED]. The other component parts of the [REDACTED] include [REDACTED]. In light of the number of component parts of the [REDACTED] that were not replaced, the evidence presented at the hearing was insufficient to preponderate in favor of a finding that replacement of the [REDACTED] amounted to a substantial replacement of the [REDACTED]. Non-substantial replacements of component parts of manufacturing machinery and equipment do not qualify for the manufacturing machinery and equipment exemption. See Ark. Code Ann. § 26-52-402(a)(2) (Supp. 2017) and GR-55(D). The [REDACTED] were partial replacements or repair parts. Consequently, the Department correctly denied the Taxpayer's refund claim related to charges for labor to replace [REDACTED] on [REDACTED] under GR-9.18(C).

Steam Flow Meter. The Taxpayer's Answers to Information Request provided, in pertinent part, as follows:

[Taxpayer] purchased a steam/pressure flow meter that is used to measure the flow rate of steam at the extraction/degumming area. This is tied in through [Taxpayer's] PLC equipment and monitored by an operator. [Taxpayer] contends that this sensor is tax exempt per GR-55(J), replacement of computers and peripheral equipment. [P. 3].

The Director of Engineering testified that: (1) the Taxpayer's definition of maintenance is replacing something that existed; (2) the Taxpayer completely replaced a steam flow meter from a control standpoint and it was capitalized; and (3) the steam flow meter performs an essential function which is to measure the steam going into the plant so the Taxpayer can control and set its process by the steam-heating needs.¹²

The Tax Auditor testified that: (1) Department Exhibit 3B encompasses a maintenance item; (2) the Statement of Justification¹³ describes a steam flow meter and the "category" reflects "maintenance items"; and (3) she cannot dispute the Taxpayer's contention regarding the functionality of the steam flow meter.

Arkansas Gross Receipts Tax Rule GR-55(J) provides that computers and related peripheral equipment will qualify for the manufacturing machinery and equipment exemption only if the computers and related peripheral equipment: (i) directly control, measure, or record an aspect of the manufacturing process itself; or (ii) directly control, measure, or record the operation of other items of exempt manufacturing machinery and equipment used in the manufacturing process. The resolution of this issue turns on the applicable burden of proof. At this stage of the administrative review, the Taxpayer has failed to prove by a preponderance of the evidence that: (1) the steam flow meter directly controlled, measured, or recorded an aspect of the Taxpayer's manufacturing process; or (2) the steam flow meter directly controlled, measured, or recorded the operation of

¹² The Taxpayer knows what is coming and can adjust the process based on what steam is being fed to the plant.

¹³ See Department Exhibit 3B – P. 5.

other items of exempt manufacturing machinery and equipment used in the Taxpayer's manufacturing process. Consequently, the Department correctly denied the Taxpayer's refund claim related the purchase of the steam flow meter.

Replacement of [REDACTED] on [REDACTED].¹⁴ The Taxpayer's Answers to Information Request provided, in pertinent part, as follows:

[Taxpayer] purchased and installed [REDACTED] on [REDACTED] in both [REDACTED] and [REDACTED] locations. The replacement of the [REDACTED] represents a substantial repair to those [REDACTED] and therefore, [Taxpayer] contends that the repair is tax exempt under GR-55, 26-52-402 (Substantial Repair). [P. 3].

The Director of Engineering testified that: (1) the replacement of a [REDACTED] on a [REDACTED] is not routine maintenance; (2) the replacement of a [REDACTED] on a [REDACTED] is a substantial rebuild of a [REDACTED]; (3) a [REDACTED] replacement project would be capitalized; (4) the entire [REDACTED] were not replaced; (5) the [REDACTED] and necessary components for the [REDACTED] to [REDACTED] were replaced; (6) the [REDACTED] are [REDACTED] and also include [REDACTED]; and (7) the [REDACTED] are a part of the [REDACTED].

The Tax Auditor testified that: (1) the Taxpayer replaced [REDACTED] on different [REDACTED] machines at different locations; (2) the Taxpayer's [REDACTED] [REDACTED] by the [REDACTED]; (3) the [REDACTED] is a component of the [REDACTED]; (4) the replacement of a [REDACTED] is not a substantial replacement of a [REDACTED]; and (5) the [REDACTED] are not the only part of the [REDACTED] that cause the [REDACTED].

Based on the holding in Southern Steel & Wire Co. v. Wooten, Supra, and the provisions of GR-55(D)(3), the [REDACTED] are component parts of the [REDACTED]. The other component parts of the [REDACTED] include [REDACTED]

¹⁴ See Department Exhibits 3C, 3D, and 3F.

██████████. In light of the number of component parts of the ██████ that were not replaced, the evidence presented at the hearing was insufficient to preponderate in favor of a finding that replacement of the ██████ amounted to a substantial replacement of the ██████. Non-substantial replacements of component parts of manufacturing machinery and equipment do not qualify for the manufacturing machinery and equipment exemption. See Ark. Code Ann. § 26-52-402(a)(2) (Supp. 2017) and GR-55(D). The ██████ were partial replacements or repair parts. Consequently, the Department correctly denied the Taxpayer's refund claim related to the purchases related to the replacement of ██████ on the Taxpayer's ██████.¹⁵

DECISION AND ORDER

The refund claim denial is sustained, in part. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this Administrative Decision and applicable law.

Pursuant to Ark. Code Ann. § 26-18-405 (Supp. 2017), unless the Taxpayer requests in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the Administrative Law Judge, this Administrative Decision shall be effective and become the action of the agency.


The revision request may be mailed to the Assistant Commissioner of Revenues, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. A revision request may also be faxed to the Assistant Commissioner of Revenues at (501)

¹⁵ To the extent that other matters or items of purchased tangible personal property or services (which were not conceded by either party) are not specifically addressed by this Administrative Decision, the Taxpayer failed to establish entitlement to a refund by a preponderance of the evidence.

683-1161 or emailed to revision@dfa.arkansas.gov. The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayer has requested a revision.

Ark. Code Ann. § 26-18-406 (Supp. 2017) provides for the judicial appeal of a final decision of an Administrative Law Judge or the Commissioner of Revenues on a final assessment or refund claim denial; however, the constitutionality of that code section is uncertain.¹⁶

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 5, 2019

¹⁶ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.