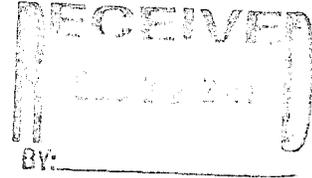


ILLINOIS INDEPENDENT TAX TRIBUNAL

Aleris Recycling, Inc.,)
)
) **Petitioner,**)
)
) **v.**)
)
) **Illinois Department of Revenue,**)
)
) **Respondent.**)

14 TT 247

No.



PETITION

Aleris Recycling, Inc. (“Aleris”) hereby petitions the Illinois Independent Tax Tribunal (“Tribunal”) to review and reverse and/or modify a Notice of Tax Liability for Illinois use tax (“Tax”) issued by the Illinois Department of Revenue (“Department”) to Aleris for the audit period June 1, 2010 through December 31, 2012 (“Audit Period”), in the total amount of \$241,244.85. In support of its Petition, Aleris states as follows:

BACKGROUND FACTS

1. On October 31, 2014, the Department issued a Notice of Tax Liability to Aleris for the Audit Period, assessing \$191,067.00 in Tax, \$38,213.00 in penalties and \$11,964.85 in interest, in the total amount of \$241,244.85. A copy of the Notice of Tax Liability (“Notice”) is attached as Exhibit A to this Petition. Aleris objects to \$160,917 of the amount assessed by the Notice, plus related interest and all penalty charges.

Aleris’ Business Operations

2. Aleris is a Delaware corporation with its principal place of business located in

Cleveland, Ohio.¹ Aleris maintains a production and manufacturing facility located at 400 East Lincoln Highway, Chicago Heights, Illinois 60411 (“Chicago Heights Facility”). The telephone number of Aleris’ Vice President, Legal, Cathryn D. Griffin, is (216) 910-3580, and its Taxpayer Account number is 3998-3031.

3. Aleris is in the business of processing the byproducts derived from melting aluminum metal. These byproducts contain amounts of aluminum that conventional aluminum manufacturers are unable to process. Aleris’ processing of the byproducts yields aluminum metal in a useable form. Aleris sells its aluminum metal to customers in the automotive, manufacturing, and steel industries.

Aleris’ Aluminum Processing Using Salt Flux Performed at the Chicago Heights Facility

4. At its Chicago Heights Facility, Aleris processes aluminum-containing byproducts including heavily contaminated scraps and drosses (collectively, the “Byproducts”). Drosses are a mixture of aluminum metal and aluminum oxide.

5. Aleris operates rotary furnaces to process the Byproducts at the Chicago Heights Facility. In the rotary furnaces, the Byproducts are heated until they become a liquid state. A chemical referred to as salt flux is then added to the liquid mixture. The salt flux is a mixture of two or more salt compounds including sodium chloride and potassium chloride.

6. The salt flux ruptures and absorbs the oxide films that surround the aluminum droplets contained in the Byproducts, effectively removing the oxides from the Byproducts. The removal of oxides allows the droplets to coalesce into aluminum metal that is sold to customers. The facts described in paragraphs 4 and 5 are referred to as the “Treatment Process.”

¹ The principal executive offices of Aleris Corporation are located in Cleveland, Ohio. Aleris Corporation is a holding company that conducts its business through a wholly-owned subsidiary, Aleris International, Inc., and its consolidated subsidiaries. Aleris Recycling, Inc. is a wholly-owned subsidiary of Aleris International, Inc.

7. The salt flux is not consumed during the Treatment Process. Nor is it chemically changed. Rather, the salt flux becomes part of a new byproduct, referred to as salt cake, that results from the Treatment Process. While it is possible to extract the salt flux from the salt cake for reuse, Aleris chooses not to do so because salt flux is relatively inexpensive.

Tax Treatment and Department Audit History of Salt Flux

8. Aleris remits Tax to the Department using the Department’s Form ST-1 (“ST-1 Returns”). During the Audit Period, Aleris filed ST-1 Returns with the Department indicating that no Tax was due on its purchases of salt flux because its use of salt flux during the Treatment Process qualified for the Illinois tax exemption for chemicals used in a manufacturing process (“MM&E exemption”). *See* 35 ILCS 105/3-50(4); 86 Ill. Admin. Code § 130.330(c)(6).

9. By audit notice dated November 2, 2012, the Department initiated an audit (“Audit”) of Aleris’ ST-1 Returns for the Audit Period. On Audit, the Department rejected Aleris’ application of the MM&E exemption to its purchases of salt flux. \$160,917 of the tax assessed by the Notice relates to the salt flux dispute.

Aleris asserts the following errors related to the Notice:

ERROR 1

10. The Department erroneously assessed Tax on Aleris’ purchases of salt flux during the Audit Period. The salt flux used in Aleris’ Treatment Process is not subject to Tax because it qualifies for an MM&E exemption under 35 ILCS 105/3-50(4) and 86 Illinois Administrative Code section 130.330(c)(6). The salt flux qualifies for the exemption because it effects a direct and immediate change upon the Byproducts by rupturing and absorbing the oxide films that surround the aluminum droplets contained in the Byproducts, allowing the aluminum droplets to

coalesce into aluminum metal for sale to customers. Additionally, the salt flux is not consumed during the Treatment Process.

11. The Department has issued several private letter rulings recognizing the application of the MM&E exemption in fact circumstances similar to the present situation. In ST 08-0004-PLR (5/8/08), the Department concluded that a chemical “pickling” process, which used sulfuric acid to remove rust from steel, qualified for the exemption (ST 08-0004-PLR (5/8/08)). Similarly, in ST-14-0001-PLR (1/2/2014), the Department concluded that the use of liquid nitrogen to freeze dry concentrated liquid products qualified for the exemption (ST 14-0001-PLR (1/2/2014)). In addition, in ST 11-0010-PLR (08/18/11), the Department concluded that chemicals used in a blasting process during quarrying qualified for the exemption (ST 11-0010-PLR (08/18/11)). Copies of these private letter rulings are attached as Exhibit B to this Petition.

12. The Circuit Court of Cook County also recently issued a ruling recognizing the application of the MM&E exemption in a similar fact circumstance. In *PPG Indus., Inc. v. Ill. Dep’t of Revenue*, No. 13 L 050140 (Cir. Ct. of Cook County, Ill. Sept. 9, 2014), the Circuit Court held that the chemicals used by the taxpayer in a glass manufacturing process qualified for the exemption. A copy of the Circuit Court’s ruling is attached as Exhibit C to this Petition.

13. Because Aleris’ purchases of salt flux qualifies for the MM&E Exemption, the Tribunal should overturn the Department’s assessment of all Tax, interest and penalty charges in the Notice related to Aleris’ purchases of salt flux.

ERROR 2

14. The Tribunal also should reverse all penalty assessments imposed by the Notice because Aleris had reasonable cause for its filing positions for the Audit Period. 35 ILCS 735/3-

8; 86 Ill. Admin. Code § 700.400(c). Although the Department denied Aleris' claim for refund related to the taxation of salt flux in an earlier audit cycle,² Aleris disagreed with the Department's conclusion, and had reasonable cause for its claim of tax exemption during the Audit Period based on the plain language of the governing statute and regulation, as well as the authority cited in paragraphs 11 and 12 above.

15. In addition, all penalty charges should be waived because Aleris is a compliant taxpayer that has a history of timely filing its Illinois returns and timely paying the amounts shown due on its returns.

CONCLUSION AND RELIEF REQUESTED

WHEREAS, Aleris requests that the Notice be canceled and/or modified for the reasons contained herein.

Aleris Recycling, Inc.

By: Mary Kay M. Martire
One of the Petitioner's Attorneys

Mary Kay M. Martire
Lauren A. Ferrante
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606
312-984-2096
mmartire@mwe.com
lferrante@mwe.com

DM_US 57133722-2.062665.0010

² Aleris requested Informal Conference Board ("ICB") review of the Department's denial of its refund claim for Tax related to its purchase of salt flux during the prior audit cycle. Due to the press of other business obligations (including an ongoing bankruptcy proceeding) and the fact that the refund claim was relatively small, when the ICB affirmed the Department's denial of the refund claim, Aleris did not initiate an administrative proceeding to challenge the Department's conclusion.

EXHIBIT A

Notice of Tax Liability
for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX X213 4594 X163#
ALERIS RECYCLING INC
25825 SCIENCE PARK DR STE 400
BEACHWOOD OH 44122-7392

October 31, 2014



Letter ID: CNXXX2134594X163

Account ID: 3998-3031



We have audited your account for the reporting periods June 01, 2010, through December 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	191,067.00	0.00	191,067.00
Late Payment Penalty Increase	38,213.00	0.00	38,213.00
Interest	11,964.85	0.00	11,964.85
Assessment Total	\$241,244.85	\$0.00	\$241,244.85

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is December 30, 2014. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

EXHIBIT B

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

Illinois

Official Material

Illinois Private Letter Ruling

2008

Illinois Private Letter Ruling, No. ST 08-0004-PLR, 05/08/2008

Illinois Private Letter Ruling No. ST 08-0004-PLR, 05/08/2008

Date Issued: 05/08/2008

Tax Type(s): Sales and Use Tax

MANUFACTURING MACHINERY & EQUIPMENT

The manufacturing machinery and equipment exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). (This is a PLR).

May 8, 2008

Dear Xxxxx:

This letter is in response to your letter dated June 20, 2007 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1

200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1 200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

ABC, Division of COMPANY would like to request a binding private letter ruling regarding a sales tax exemption for its use of sulfuric acid in the manufacturing industry. I understand that we need to follow items 1-8 of Section 1 200.110 (b). They read as follows:

1. ABC purchases concentrated sulfuric acid in bulk form to remove oxides (rust) from the surface of steel rod prior to wiredrawing and again prior to hot dip galvanizing of nails.
 - i. The primary raw material in the nail making process is hot-drawn steel rod which is delivered in approx. # lb. banded bundles. These bundles are stored outdoors at the steel mill prior to delivery and again outdoors at our plant.
 - ii. Steel rusts when in contact with air and moisture. While it is not intuitive, controlled oxidation (rusting) is an intentional step in the rod-rolling process at the steel mill to insure the correct chemical form of surface scale is allowed to form. By 'correct', we mean the right ratio of iron/oxygen which makes up the scale compound. Certain scales are extremely adherent to the steel rod and are extremely difficult to remove in the pickling process. Recognizing this, it is wise to include in the rod order a note that it will be sulfuric acid pickled.
 - iii. The removal of all scale...whatever the form...is critical to the subsequent wire-drawing process, as its presence will explode or rapidly wear out the tungsten-carbide drawing die and destroy the surface quality of the wire. Pickling chemically converts the iron oxide to iron sulfate in solution form...leaving behind a scale-free steel surface.
 - iv. Immediately after the pickling step is complete (approx. # minutes in the heated bath) the bundle is removed, rinsed, rinsed again and dipped in a solution. The bath acts as a buffer to neutralize any residual acid and seals the surface from further corrosion for short-term storage. It also acts to pick up dry lubricant used in the wire-drawing process.
 - v. I have enclosed pictures for your review.
2. ABC has no contracts relating to the request.
3. ABC is not currently under an audit or litigation with the Department, nor is one pending. The tax period in question would be 2007 and any previous years the law allows eligibility.
4. ABC, to the best of my knowledge, has not previously submitted a request for a private ruling.
5. According to Illinois Administrative Code, CH. 1, Sec. 130.330; Paragraph 6 dictates 'If the sulfuric acid is acting as a chemical or a catalyst and it effects a direct or immediate change, then it will be tax exempt.' The acid we use causes a 'direct and immediate change' upon the steel.
6. To the best of my knowledge, there are no authorities contrary to this request.

7. ABC would prefer our process and information and photographs regarding the process not be publicly disseminated.

8. INDIVIDUAL is Controller and Vice President, Finance of COMPANY.

We would like to take this opportunity for your assistance in assigning COMPANY a private ruling on sales tax exemption for the purchase of acid used in our process. Please feel free to contact me if any questions arise or if I may be of any service.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330(a). The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling of a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. The changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

The exemption includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(b)(6).

After review of the materials submitted with your request, it is the Department's position, providing all other requirements for the exemption set out in Section 130.330 are met, that the sulfuric acid used in COMPANY's manufacturing process qualifies for the Manufacturing Machinery and Equipment Exemption based upon the acid effecting a direct and immediate change upon the steel rods by removing rust and scale from them.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton

Chairman, Private Letter Ruling Committee

TDC:msk

© 2014 Thomson Reuters/Tax & Accounting. All Rights Reserved.

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

Illinois

Official Material

Illinois Private Letter Ruling

2014

Illinois Private Letter Ruling, No. ST 14-0001-PLR, 01/02/2014

Illinois Private Letter Ruling No. ST 14-0001-PLR, 01/02/2014

Date Issued: 01/02/2014

Tax Type(s): Sales and Use Tax

MANUFACTURING MACHINERY & EQUIPMENT

The manufacturing machinery and equipment exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). (This is a PLR.)

January 2, 2014

Dear Xxxxx:

This letter is in response to your letter dated April 29, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1

200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to XYZ COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1 200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither XYZ COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

ABC COMPANY dba XYZ COMPANY would like to request a binding Private Letter Ruling regarding its Sales Tax exemption for its chemical use in the manufacturing industry. I understand that we need to follow items 1-8 of Section 1 200.110(b). They are as follows:

1. A complete statement of all material facts:

XYZ COMPANY manufactures food ingredients for use in all types of dried and wet applications. One of the processes is freeze-drying, which requires the raw material to be completely frozen before processing. Certain concentrated liquid products require cryogenic freezing due to their high levels of sugars, or other hard-to-freeze substances.

Bulk liquid nitrogen is purchased for the sole purpose of freezing these materials. The process involves [] thereby changing the state from a liquid to a solid which can subsequently be freeze-dried.

2. A copy of our contract with OTHER COMPANY is attached.
3. The years in question start with YEAR and forward. We would be filing amended use tax returns if the opportunity exists. XYZ COMPANY is not currently under an audit nor is any litigation pending with the Illinois Department of Revenue.
4. To the best of my knowledge XYZ COMPANY has not previously submitted a request for a private letter ruling.
5. According to 86 Illinois Administrative Code 130.330(c)(6):

'The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease.' The nitrogen used in our process effects a direct and immediate change upon the concentrated liquids by freezing the liquid to a solid state.

6. We are unable to locate any statements of authority contrary to our view since the passage of Public Act 92-0484.
7. Trade secret has been bracketed off in item #1 and should be deleted from the public version.
8. I, NAME, am a stockholder in XYZ COMPANY and I am also the President of the company.

Thank you for your attention to this private letter ruling request for a manufacturing equipment exemption for the chemical nitrogen used in our manufacturing process.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330(a). The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling of a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. The changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

The exemption includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). As described in your letter, the liquid nitrogen used to prepare certain of your concentrated liquid products to be freeze-dried for subsequent sale is a chemical that effects a direct and immediate change upon the concentrated liquid products. When used in this manner, the purchase of the liquid nitrogen qualifies for the manufacturing machinery and equipment exemption. This letter is binding with respect to the purchase of liquid nitrogen only and does not address other items listed on the Bulk Product Agreement submitted.

You indicated that you would be filing amended Use Tax returns if the opportunity exists. Please note that only the taxpayer who filed the original return on which the tax was paid may file a claim for credit. In addition, the claim for credit must be filed within the statute of limitations for filing claims. The general rules regarding claims for credit are as discussed in the following paragraphs.

If taxpayers pay amounts of taxes under the Retailers' Occupation Tax Act that are not due, either as a result of a mistake of fact or an error of law, the taxpayers may file claims for credit with the Department. No credit shall be given the taxpayers unless they show that they have borne the burden of the tax or have unconditionally repaid the amount of the tax to their customers from whom it was collected. See 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b). Taxpayers should not make adjustments on their next return or amend the return for the period in which the overpayment occurred.

Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid to them by their customers and file claims for credit with the Department is a private matter between sellers and purchasers. The statute of limitations for filing claims for credit is described in Section 130.1501(a)(4). The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 1/2

years and expires in 6 month blocks. For example, on July 1, 2013, the statute of limitations expired for claims to recover taxes that were erroneously paid in the first 6 months of 2010.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters

Chairman of PLR Committee

Sales and Excise Taxes

RSW:lkm

ST 11-0010-PLR 08/18/2011 MANUFACTURING MACHINERY AND EQUIPMENT

This letter explains the applicability of the manufacturing machinery and equipment exemption to various aspects of the blasting process used in quarrying. See 86 Ill. Adm. Code 130.330. (This is a PLR.)

August 18, 2011

Dear Xxxxx:

This letter is in response to your letter dated March 22, 2011, in which you requested a Private Letter Ruling. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to BUSINESS for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither BUSINESS, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

FIRM has been engaged by BUSINESS to assist it with obtaining a Private Letter Ruling. A Declaration of Tax Representative authorizing FIRM to act on behalf of BUSINESS as Taxpayer's Representative is enclosed as Exhibit A.

On behalf of our client, BUSINESS, we respectfully request that the Illinois Department of Revenue ('Department') issue a Private Letter Ruling pursuant to Ill. Adm. Code 2 § 1200.110 with respect to the following factual situation.

GENERAL INFORMATION:

1. This Private Letter Ruling ('PLR') is not being requested with regard to a hypothetical or alternative proposed transactions [sic].

2. This PLR is being requested to determine the Retailers' Occupation Tax ('ROT'), Use Tax ('UT'), Service Occupation Tax ('SOT'), and Service Use Tax ('SUT') consequences of the actual business practices of BUSINESS.
3. BUSINESS is not currently engaged in litigation or an audit with the Department concerning this or any other tax matter.
4. To the best of the knowledge of BUSINESS's personnel and FIRM's personnel, the Department has not previously ruled regarding this matter for BUSINESS, nor has BUSINESS submitted a request for a ruling on the same or similar issues to the Department.
5. BUSINESS requests that its name and address be deleted from the PLR prior to publication or dissemination to others.

STATEMENT OF FACTS:

BUSINESS operates numerous quarrying sites throughout the State of Illinois. At the quarry sites, BUSINESS primarily extracts and produces items such as stone, sand and gravel. These materials are extracted, crushed, washed, sized and blended into a final product, based on customer specifications. The following is a series of facts, issues, findings and analysis, based on BUSINESS' Illinois quarry operations with respect to explosive devices.

Explosive Devices

1. Explosives are used in the mining process to fragment the rock mass into a size that can be handled by equipment. This fragmentation is called blasting. This first step in the manufacturing process facilitates additional processing of the rock mass into a manufactured product based on specifications from the customer.
2. The largest component of the blasting process is a blasting agent. Blasting agents (ammonium nitrate and fuel oil or ANFO) are loaded into the rock mass. Each type of blasting agent is incorporated into the process via a bulk delivery system, a truck, or in a package. Some explosive products are delivered to the quarry as an oxidizer and are sensitized into a blasting agent at the time of loading the borehole. Blasting agents are not sensitive to detonation by means of a detonator or blasting cap.
3. Due to the extreme stability of the blasting agent, high explosives are used to initialize the detonation process. High explosives are set off with the use of a detonator. These are commonly referred to as boosters. Boosters come in a variety of sizes and shapes based upon the configuration. Other high explosives are used in a blast, based upon various geologic conditions.
4. Detonators come in a variety of delivery systems. These include electric, shock tube, electronic, fuse and detonating cord. A detonator is designed to provide the detonation of the booster. Some blasting utilizes very short split second periods and some use longer periods, which separate the individual charges by second intervals.

5. The entire blast is connected to a lead-in line, which sends a signal to the individual charges. This lead-in line is connected to a blasting machine, which programs the predetermined timing of the explosive charges.

REQUEST FOR RULING

Based on the material facts discussed in the prior section, we respectfully request a response to the following questions:

1. Are blasting agents, high explosives, detonators, lead-in lines and blasting machine component parts of an integrated manufacturing process exempt from sales and use tax?
2. Since this equipment produces a direct and immediate change on the quarry rock, does this equipment qualify under the manufacturing exemption?
- 2.[sic] Although these items are separate from machinery, are they considered to be equipment that is essential to an integrated manufacturing process exempt from sales and use tax?

STATEMENT OF SUPPORTING AUTHORITIES

Explosives and related equipment used for quarry blasting should be exempt from sales and use tax under the manufacturing exemption set forth in the Illinois Revenue Code. First, the blasting agent chemicals used for quarry blasting should be exempt as manufacturing equipment. Pursuant to 35 Ill. Comp. Stat. Ann. 105/3-50(4) and 120/2-45(4):

Equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease.

Blasting agents are chemicals that act as catalysts to make the first direct and immediate physical change to the aggregate being manufactured. The manufacturing of crushed stone, cannot occur without the use of these chemicals. Second, the equipment used to ignite these blasting agents (high explosives, detonators, lead-in lines and blasting machines) should also be exempt as essential, necessary and integrated manufacturing equipment. The statute above further states the following:

Equipment includes an independent device or tool separate from machinery, but essential to an integrated manufacturing or assembly process; including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns, and molds; and any parts that require periodic replacement in the course of normal operation; but does not include hand tools.

Each independent piece of equipment or subunit used to ignite the blasting agent is essential to quarry blasting. The blasting agent chemicals will not ignite and fracture the

stone without the use of high explosives, detonators, lead-in lines and blasting machines, which are all considered to be related equipment and are used in an integrated manufacturing process.

The catalyst chemicals make direct and immediate changes to the aggregate material being manufactured and the other items are used to ignite the catalyst chemicals, which are necessary for the process to occur. This direct and immediate change is both substantial and significant. Although these explosives, detonators, lead lines and blasting machines are independent devices, they are also essential for the manufacturing process to continue.

As further support of our position, we referred to General Information Release [sic] ST-09-0149 issued on November 9, 2009. In this letter, the Department ruled that explosive devices used by members of the ORGANIZATION in their quarry operations were exempt from sales and use tax, since the items produced a direct and immediate change on the quarry rock, which makes the equipment essential to an integrated manufacturing process.

STATEMENT OF CONTRARY AUTHORITIES

While we believe that the aforementioned authorities and explanations allows [sic] for an exemption for explosive devices, there is a contrary statement found in the statutes, which is the reason behind this private letter ruling request. As such, pursuant to Ill. Adm. Code 130.330.b.4:

Manufacturing does not include extractive industrial activities. Mining, logging, and drilling for oil, gas, and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use or name of the materials or resources upon which they operate. The extractive process of quarrying does not constitute manufacturing. However, the activities subsequent to quarrying such as crushing, washing, sizing and blending will constitute manufacturing, and machinery and equipment used primarily therefore will qualify for the exemption, if the process results in the assembling of an article of tangible personal property with a different form, use or name than the material extracted.

Although this regulation seemingly contradicts the General Information Release [sic] ST-09-0149 issued on November 9, 2009 we believe that explosive devices are not listed as being part of the extraction process, since extraction involves removing top layers of rock and overburden. The extraction process is in a sense a preliminary activity and does not cause a direct an [sic] immediate change upon the actual product that will be manufactured through the next series of states [sic].

Explosive devices cause the first direct and immediate change upon the product that is being manufactured for sale. These independent devices are essential and directly linked to the beginning of the manufacturing process.

SUMMARY

If the Department cannot conclude the proper tax treatment for the above services, we request that the Department contact us to determine what additional information is required. If you have any questions, please contact the undersigned.

DEPARTMENT'S RULING:

The Retailers' Occupation Tax ("Act") does not apply to sales of machinery and equipment used primarily (over 50%) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. When determining whether a piece of equipment qualifies for the manufacturing machinery and equipment exemption, all of the requirements of the Department's rules regarding the manufacturing machinery and equipment exemption (86 Ill. Adm. Code 130.330) must be met.

"Manufacturing," as defined in Section 130.330, is the production of articles of tangible personal property, whether such articles are finished products or articles for use in the process of manufacturing or assembling different articles of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

Manufacturing equipment, as noted in Section 2-45 of the Act and in Section 130.330(c)(3) of the Department's rules, includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process, including any subunit or assembly comprising a component of any machinery and auxiliary, adjunct, or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns, and molds, and any parts that require periodic replacement in the course of normal operation, but not including hand tools. As Section 2-45 of the Act notes, the exemption also includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease.

Your letter explains how various explosive devices are used at quarries in the process of fragmenting rock. This process, commonly called blasting, begins with the use of a blasting agent (i.e., ammonium nitrate and fuel oil or ANFO) that is loaded into the rock mass. Because of the extreme stability of blasting agents, their detonation must be initialized by the use of high explosives, also known as boosters. Detonators are designed to detonate the boosters and come in a variety of delivery systems, including electric, shock tube, electronic, fuse and detonating cord. These detonators are utilized to activate blasts at specific intervals. Lead-in lines, connected to blasting machines, are used to send a signal to the individual charges. The blasting machine programs the predetermined timing of the explosive charges.

Provided that all the other requirements of Section 130.330 are met, we believe that the purchase by BUSINESS of the blasting agents, high explosives, detonators, lead-in line and blasting machine described in your letter would qualify for the manufacturing machinery and equipment exemption.

As you note, Section 130.330 provides that the "extractive process" of quarrying does not constitute manufacturing. It is our opinion, however, that the blasting process that you have described constitutes a process that is properly characterized as manufacturing, rather than

extraction. As Section 130.330(b)(3) explains, a manufacturing process occurs when an existing material is changed into a material with a different form, use or name by a process commonly regarded as manufacturing. The blasting process described in your letter constitutes the first step in the manufacturing process. It is purposefully engineered to change embedded quarry rock into smaller aggregate, in order to meet specific customer requirements. The rock is either initially blasted to achieve specific customer requirements, or is blasted and further finished by crushing or sizing, to meet specific customer requirements. This conclusion is reinforced by the holding in Nokomis Quarry v. Department of Revenue, 295 Ill. App.3d 264 (Fifth District, 1998)(explosives systematically placed in holes and detonated to produce shot rock which could be immediately marketed was considered the first step in the manufacturing process).

We believe that the blasting agents, high explosives, detonators, lead-in line and blasting machine are component parts of an integrated manufacturing process, the effect of which is to produce a direct and immediate change on the quarry rock. Although these items are separate from machinery, we consider them to be equipment that is essential to an integrated manufacturing process, and therefore, may be exempt. See, Section 130.330(c)(3).

We must stress that the manufacturing machinery and equipment exemption is a use-based exemption. As a result, items do not qualify in and of themselves, but only if they are used in a manner that meets all the requirements of the exemption. One of the central requirements of the exemption is that the items be used primarily (over 50%) to manufacture or assemble tangible personal property for wholesale or retail sale or lease. As a result, if the items you have described were primarily used to produce aggregate that the quarry itself consumed, e.g., in fulfilling construction contracts with customers, the items would not qualify for the exemption.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code: 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC/JTG:mks

EXHIBIT C

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX & MISCELLANEOUS REMEDIES SECTION**

PPG INDUSTRIES, INC.,)
)
 Plaintiff,)
)
 v.) **No. 13 L 050140**
)
 ILLINOIS DEPARTMENT OF REVENUE, and)
 BRIAN A. HAMER, as Director of the Illinois)
 Department of Revenue,)
)
 Defendants.)

ORDER and OPINION

I. ORDER

PPG Industries, Inc. (“PPG”) appeals a December 4, 2012 decision of the Director of Revenue (the “Decision”), which accepted the Administrative Law Judge’s Recommendation (the “Recommendation”) that PPG’s refund claim be denied. PPG seeks a refund of use tax paid in tax years 2004 through 2006 on purchases of nitrogen and hydrogen that PPG used to manufacture glass at its plant in Mount Zion, Illinois. For the reasons stated below, the Decision is REVERSED. The Illinois Department of Revenue (“Department”) shall issue a refund to PPG of \$329,761 in tax, plus applicable interest.

Statutory and Regulatory Framework

Illinois’ Use Tax Act (“UTA”) is set out at 35 ILCS 105/3 (2013). During the tax periods at issue (2004-2006), Section 3-5 of the UTA provided an exemption for manufacturing machinery and equipment. The UTS includes certain chemicals as “equipment,” and provides as follows:

Sec. 3-5. Exemptions. Use of the following tangible property is exempt from the tax imposed by this Act.

(18) Manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail or lease . . .

Section 3-50 of the UTA further provides:

Sec. 3-50. Manufacturing and assembly exemption For the purposes of this exemption, terms have the following meanings:

- (1) "Manufacturing process" means the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by a procedure commonly regarded as manufacturing . . .

- (4) "Equipment" includes . . . chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease.

ILL. ADMIN. CODE tit. 86, § 130.330 (2013) similarly provides:

Section 130.330 Manufacturing Machinery and Equipment

- c) Machinery and Equipment

6) *The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease (Section 2-45 of the Act). The following examples are illustrative:*

- A) Example 1. A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.
- B) Example 2. An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.

Factual Background

The Court, upon hearing of this matter on August 20, 2014, adopted the findings of fact made by the administrative judge as listed in the Recommendation.

Conclusions of Law

Tax exemption statutes must be read reasonably to give fair effect to the General Assembly's intent. *Swank v. Dep't of Revenue*, 336 Ill. App. 3d 861, 857, 785 N.E. 204, 209 (Ill. Ct. App. 2003). Where ambiguity or doubt exists, exemption statutes are construed in favor of taxation. *See id.* at 855, 207; *Provena Convenat Medical Center v. Dep't of Revenue*, 236 Ill. Ed 368, 388, 925 N.E.2d 1131, 1143-44 (2010).

The Recommendation's application of the "direct and immediate requirement" to the undisputed facts is a mixed question of law and fact and is subject to the clearly erroneous standard. *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 273, 917 N.E.2d 899, 904 (2009). A decision is clearly erroneous where, as here, the decision yields a definite and firm conviction that a mistake has been committed. *Id.*

PPG is entitled to the claimed refund because the nitrogen and hydrogen used in its float bath glass manufacturing process qualifies for the exemption for machine and equipment set out at section 3-5 of the UTA and ILL. ADMIN. CODE tit. 86, § 130.330 and printed above. It is clear that the glass underwent an observable direct and immediate physical change as a result of the nitrogen and hydrogen added to the float bath. This naturally leads to the conclusion that the nitrogen and hydrogen were catalysts. Basic physics instructs us that a change from a solid to liquid, or liquid to solid, is an immediate change upon a substance. Nothing in the statute at issue requires that the direct and immediate change relate to the chemical composition of a material and not a physical change.

The manufacturing machinery and equipment exemption applies to machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. 35 ILCS 105/3-5(18). The exemption includes chemicals that "effect a direct and immediate change upon a product being manufactured." *Id.* 3-50(4).

The Recommendation denied PPG's refund claim on the stated grounds that the nitrogen and hydrogen do not cause a "direct and immediate" change on the glass produced in the float bath.

The Recommendation did not provide a specific definition of the word "direct," as that term is used in the statute, case law, and everyday discourse. Instead, the Recommendation concluded that nitrogen and hydrogen do not effect direct changes on the glass because they do not chemically react with the glass. Both parties agree that the Recommendation's conclusion that nitrogen and hydrogen must chemically react with the glass is the "crux" of the Recommendation and the basis on which PPG's exemption was denied.

The Recommendation's conclusion that nitrogen and hydrogen must chemically react with the glass to effect a direct and immediate change to the glass is incorrect as a matter of law. The statute and regulation do not require—although they could have required—exempt chemicals to react with the final product. Rather, the question posed by Section 3-50 of the UTA and by ILL. ADMIN. CODE tit. 86, § 130.330(c) is whether nitrogen and hydrogen effect direct and immediate “changes” on the final product. This is what the nitrogen and hydrogen at issue here do. Infusion of the bath atmosphere with nitrogen and hydrogen effects direct and immediate changes on the glass.

Significantly, the Section 3-50 UTA and ILL. ADMIN. CODE tit. 86, § 130.330(c) expressly exempt chemicals—namely “catalysts”—that do not react with the final product. A catalyst is commonly understood as “a substance that enables a chemical reaction to proceed at a usually faster rate or under different conditions (as at a lower temperature) than otherwise possible,” but is *not* consumed or part of the final reaction. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 193 (11th ed. 2012) (definitions of “catalyst” and “catalysis”). Here, too, nitrogen and hydrogen do not react chemically with glass, but there is no question that the direct and immediate effect of their addition to the float bath changes the glass' temperature, physical composition, and texture. This is all the exemption requires.

Although not binding on this Court, the Director has issued at least one letter ruling which confirms that chemicals may effect “direct and immediate” changes on a product without chemically reacting with the product itself. In General Information Letter No. ST-02-0223-GIL, the taxpayer used liquid nitrogen to flash-freeze frozen dinners. Ill. Dep't of Rev., Letter No. ST-02-0223 (Oct. 22, 2002). The nitrogen in Letter No. 02-0223 did not react with the food product (and, presumably, would have destroyed the product if it did). *See Id.* Rather, the nitrogen was used to cool the food so that it would remain edible and could be sold later. *Id.* The Department ruled that the cooling effect brought about by the nitrogen was a “direct and immediate change” to the food and, accordingly, the nitrogen qualified for the manufacturing exemption. *Id.* (“As a general proposition, liquid nitrogen that makes a direct and immediate change upon a product being manufactured, such as freezing the product, can qualify for the exemption.”)

Because the term “direct” is not defined in the controlling statute or regulation, it must be construed consistently with its plain, everyday meaning. *Hennings v. Chandler*, 229 Ill. 2d 18, 24, 890 N.E.2d 920, 923 (2008).

A “direct” cause of an event is commonly understood as “marked by absence of an intervening agency, instrumentality, or influence”;¹ “lineal”;² “having no intervening persons, conditions, or agencies; immediate”;³ “without intervening factors or intermediaries.”⁴

¹ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 353 (2012 11th ed.).

² *Id.*

³ THE AMERICAN HERITAGE DICTIONARY 511 (2011 5th ed.).

⁴ NEW OXFORD AMERICAN DICTIONARY 491 (2010 3rd ed.).

Legal dictionaries and case law equate a “direct” cause of an event with its “proximate cause.” The decisions that support this proposition are legion.⁵ The direct, or proximate, cause of a physical event on an object is, “a cause that directly produces an effect; that which in natural and continuous sequence, unbroken by any new independent cause, produces an event, and without which the [event] would not occur.” BRYAN A. GARNER, *DICTIONARY OF MODERN LEGAL USAGE* 104 (1987).⁶

The effects of hydrogen and nitrogen on the glass are “direct” (and immediate) by any sensible definition. After infusing the float bath atmosphere with nitrogen and hydrogen, no additional steps or agencies in the manufacturing process intervene or are required to effect vital changes on the glass. The changes occur naturally and continuously, and they occur as a direct result of the addition of nitrogen and hydrogen to the bath atmosphere.

The direct and immediate changes that nitrogen effects on the glass are easy to see. As the Recommendation notes, there is “no doubt” that “gradually cooling the glass within the bath effects a direct and immediate change on the physical structure of the glass.” However, the Recommendation ignores how, when, and why this “direct and immediate change” occurs. The clear and undisputed evidence established that it is the addition of nitrogen to the float bath atmosphere – with no other human or mechanical intervention – that effects what the Recommendation itself characterizes as a “direct and immediate change on the physical structure of the glass.” Once nitrogen enters the bath atmosphere, the glass naturally and immediately cools in a regulated manner. The Recommendation’s contrary finding is clearly erroneous and is hereby reversed.

Hydrogen, too, effects a “direct and immediate” change on the glass. As the Recommendation found, the “direct and immediate” effect of adding hydrogen to the float bath is to react with and remove oxygen from the bath atmosphere. The Recommendation also found that adding hydrogen to the bath limits the amount of “defects in the glass that are created as a result of the chemical reactions between oxygen and the other elements present in the bath atmosphere and in the bath.” *Id.* However, the Recommendation found that these changes to the glass are an “indirect” effect of adding hydrogen to the bath. This finding is clearly erroneous.

⁵ See e.g. *Babbitt v. Sweet Home Chapter of Cmty. for a Great Oregon*, 515 U.S. 687, 733 (1995) (Scalia, J., dissenting) (“In fact ‘proximate’ causation simply means ‘direct’ causation”) (emphasis in original) (citing BLACK’S LAW DICTIONARY 1103 (5th ed. 1979); *Minn-Chem, Inc. v. Agrium, Inc.*, 683 F.3d 845, 857 (7th Cir. 2012), *cert. dismissed*, 134 S. Ct. 23 (U.S. 2013) (“directness is a synonym for proximate cause”); *Guillermo v. Brennan*, 691 F. Supp. 1151, 1555 n.9 (N.D. Ill. 1988); *Rooney v. Morton Salt Building, Inc.*, 19 Ill.App.3d 962, 967, 829 (Ill. App. Ct. 1974); *Southern Railway Co. v. Drake*, 107 Ill. App. 12, 23 (Ill. Ct. App. 1903) (“proximate” means “direct and immediate,” and vice versa).

⁶ Other sources define a proximate, or direct, cause, as “[t]he primary moving cause, or the predominating cause, from which the injury follows as a natural, direct, and immediate consequence, and without which it would not have occurred ... not necessarily the last cause or the act nearest to the injury, but such act as actually aided in producing the injury as a direct and efficient cause.” JONATHAN S. LYNTON, *BALLENTINE’S LAW DICTIONARY* (1994).

The abundant and uncontradicted evidence demonstrates that the addition of hydrogen to the bath atmosphere directly and immediately limits the deposition of tin oxides on the surface of the glass and the migration of tin into the interior of the glass. As the undisputed expert evidence confirms, these changes to the glass occur immediately, without any additional mechanical or human intervention, and in a natural and continuous sequence.

After infusing the float bath atmosphere with nitrogen and hydrogen, no further steps or agencies in the manufacturing process intervene or are required to effect a range of vital changes on the glass. The changes occur naturally and continuously, and they occur as a direct result of the addition of nitrogen and hydrogen to the bath atmosphere. The Recommendation's findings to the contrary, all of which were adopted in the Decision, were clearly erroneous and are hereby reversed.

AWARD

For the reasons stated above, the Decision is REVERSED. The Department of Revenue shall issue a refund to PPG in the amount of \$329,761 plus applicable statutory interest.

ENTERED: _____

Judge Robert Lopez Cepero

Judge Robert Lopez Cepero

SEP 09 2014

Circuit Court - 1627