

BF&R Docket No. 2334167
Petition Filed: 3/29/2024
License No. [REDACTED]
IN RE: AERO AGGREGATES OF NORTH AMERICA LLC
PETITION FOR Review of Refund for Sales/Use Tax
PERIOD(S) 10/15/2020 TO 10/16/2023

AND NOW, August 22, 2024, pursuant to the Fiscal Code, the Act of 1929, April 9, P.L. 343, as amended, (72 P.S. § 1 et seq), the Board of Finance and Revenue of the Commonwealth of Pennsylvania, based upon the reasons set forth herein, hereby ORDERS the following:

Jurisdiction

This petition comes before the Board of Finance and Revenue pursuant to Section 2704 of the Tax Reform Code of 1971, *as amended*, 72 P.S. § 9704.

Issue

Whether Petitioner has established it is entitled to a refund of tax paid on natural gas used to power equipment directly used in its manufacturing operations.

Statement of the Case

Petitioner, Aero Aggregates of North America LLC, is engaged in the manufacture of ultra-lightweight foamed glass aggregate from recycled glass containers. Petitioner asserts the aggregates are used for lightweight fill for highways, bridge abutments, retaining walls, foundations and green roofs and can also be used as aggregate in lightweight concrete. Petitioner requests a refund of tax because it contends [REDACTED] of its purchased natural gas is directly used in manufacturing operations.

Petitioner filed a petition for refund with the Board of Appeals (“BOA”), providing an appeal schedule, invoices, a manufacturing statement, and a utility survey showing 88.21% exempt use. Petitioner’s manufacturing statement read, in part:

Mailed: FRANCIS CATANIA
COMMERCIAL UTILITY CONSULTANTS
20 WEST SECOND STREET
PO BOX 2029
MEDIA, PA 19063

on August 29, 2024

The manufacturing process takes 100% curbside recycled glass powder and mixes it with a foaming agent. The mixed powder is sent through kilns and softened. During this process, the foaming agent creates bubbles within the softened glass, and this creates foamed glass aggregates.

In its Decision and Order, the BOA determined that certain equipment was not directly used in exempt manufacturing activities. The BOA denied relief on feeders that introduce raw, unprocessed glass gullet into a cleaning system, conveyors that transport materials to a screener and from the screener to a silo. The BOA also denied relief on equipment that pulls metals out of glass feed and a rotary gate that discharges heavies out of an air separator. In addition, the BOA denied relief on valves used to transport materials to silos and lighting over manufacturing equipment. The BOA also determined that machines that bore holes into metal parts for the manufacturing process and equipment used to cut metal stock, drill holes in metal parts and weld components together were not directly used in the manufacturing process. The BOA concluded Petitioner was entitled to an exemption percentage of [REDACTED]

Petitioner appealed the BOA's decision to this Board. Petitioner asserts separating objects, paper/plastic, metal, and moisture (dryer) are a part of its manufacturing process. Petitioner also asserts the transport of powder to and from the glass powder silos is an integral part of the manufacturing process. Petitioner next claims that production lighting is essential as it is a 24/7 operation. Petitioner also claims that maintenance equipment for onsite repairs minimizes down time of operations qualifies for the exemption. Finally, Petitioner contends forklifts are needed to move raw materials into position.

Conclusion

The Board concludes that Petitioner is entitled to partial relief. The Board finds that removing some of the glass powder from the production line to a silo and then reintroducing the powder to the line where it is mixed and then sent to the kilns is a part of the production process. The exemption percentage shall be adjusted to [REDACTED]

The Board finds that several items are used in taxable preproduction operations, such as moving raw materials. The Board also concludes that lighting for general illumination is subject to tax pursuant to 61 Pa. Code § 32.32(a)(3)(iii)(F). In addition, the Board finds that maintenance, service, and repair work is subject to tax pursuant to 61 Pa. Code § 32.32(a)(3)(ii).

A decision schedule is attached to this Order in support of the conclusion. Items marked "E" deemed directly used by the BOA. Items marked "EX" are additional items deemed directly used by this Board.

Accordingly, the Board enters the following:

ORDER

The Department of Revenue shall issue a refund to Petitioner in the amount of \$ [REDACTED] plus appropriate interest, subject to any other outstanding tax obligations owed by Petitioner.

By Order Of The Board Of Finance And Revenue

Jacqueline A. Cook, Chair
Designee for Stacy Garrity, State Treasurer

David R. Kraus, Board Member

Paul J. Gitnik, Board Member

