



This Week in State Tax (TWIST)

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Texas: Chemical containers qualify for manufacturing exemption

The Texas Fifteenth Court of Appeals recently issued a ruling regarding the taxation of reusable containers used to transport chemicals. The taxpayer, a chemical manufacturer, shipped its finished product in returnable portafed containers, which were retrieved from the customer and cleaned by a third party before being returned to the taxpayer for reuse. The taxpayer initially paid sales and use tax on both the containers and cleaning services, but later sought refunds, claiming the containers and associated services were exempt under Texas law. The Comptroller of Public Accounts denied the refund requests, but a trial court found in favor of the taxpayer, holding that the taxpayer's containers qualified as being used in the manufacturing process. The state (Comptroller and Attorney General) appealed and raised three arguments.

First, the state argued the taxpayer did not qualify for a specific exemption in Texas law related to containers used in distributing products and that the specific container exemption controlled over the manufacturing exemption. Consequently, the taxpayer was precluded from claiming a refund based on the manufacturing exemption. The appeals court disagreed, finding that the container exemption and the manufacturing exemption are not mutually exclusive. Although the container exemption is more specific, the two exemptions are not irreconcilable, and the manufacturing exemption is not overridden by the container exemption.

Second, the state asserted that the taxpayer's containers did not qualify as being used in the manufacturing process. The appeals court noted that the specific exemption subsection cited by the state was not one of the three manufacturing exemption subsections on which the taxpayer relied for claiming the exemption. As such, the appeals court was unable to reverse the summary judgment granted by the trial court when the taxpayer's independent grounds for exemption remained unchallenged by the state.

Third, the state contended that the taxpayer's purchases of cleaning, delivery and pickup services performed on the containers did not qualify as services performed on exempt property. The state argued that once the containers were delivered and emptied for the taxpayer's customer, the manufacturing process was complete, making the containers ineligible for the exemption. The appeals court disagreed, stating that the exemption statute does not indicate that property loses or regains its exempt status depending on whether it is being used in manufacturing at a particular moment. Even if the containers were empty at the time of service, they would still be exempt manufacturing equipment, and any services performed on them would also qualify for exemption. For any questions regarding [Hancock v. ChampionX, LLC](#), please contact [Karey Barton](#) or [Sarah Vergel de Dios](#).

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