

OHIO BOARD OF TAX APPEALS

The Iams Company,) CASE NO. 2003-B-1254
)
Appellant,) (USE TAX)
)
vs.) DECISION AND ORDER
)
Thomas M. Zaino,)
Tax Commissioner of Ohio,)
)
Appellee.)

APPEARANCES:

For the Appellant - Bricker & Eckler LLP
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For the Appellee - Jim Petro
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Entered June 30, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on August 27, 2003. This appeal is from a final order of the Tax Commissioner, appellee herein, dated July 7, 2003. Through that order, the commissioner modified a use tax assessment previously levied against appellant.

Appellant, the Iams Company (“Iams”), is a manufacturer of premium pet food with production facilities in Lewisburg and Leipsic, Ohio. The commissioner

conducted an audit of Iams' manufacturing operations for the period of January 1, 1995 through December 31, 1998. The assessment issued as a result of that audit was reviewed through the commissioner's appeal process.

The commissioner's final determination reads as follows in pertinent part:

"This is the final determination of the Tax Commissioner on a petition for reassessment pursuant to R.C. 5739.13 and 5741.14 concerning the following use tax assessment:

	<u>Amount</u>	<u>Penalty</u>	<u>Total</u>
Use Tax	\$432,206.49	\$64,830.97	\$497,037.46
Preassessment			
Interest	120,866.19	0.00	<u>120,866.19</u>
		Total-----	\$617,903.65

"The petitioner is a vendor of pet foods that it markets through independent distributors and retailers throughout the United States and internationally. The audit that resulted in this assessment began as a managed audit. However, the petitioner and the Ohio Department of Taxation disagreed over the tax status of certain items. These items were removed from the managed audit and are included in the present assessment. This assessment covers the period from January 1, 1995 through December 31, 1998. The petitioner objected to the assessment in its entirety and requested remission of the penalty. A hearing was duly held on this matter. The petitioner's objections are addressed below.

"The primary dispute involves the beginning and ending point of the petitioner's manufacturing process. The petitioner contends that its manufacturing process starts at the ceramic magnets. These magnets are located near the beginning of the conveyors below the receiving bins where bulk grains and meals (raw materials) are delivered to its manufacturing facility. The magnets withdraw metallic impurities from the raw materials. An assortment of metal chips removed by the magnets was provided to the tax department as evidence. The petitioner contends that the

manufacturing process commences with the magnets. The petitioner has supplied photographs and videotape of the equipment in question in support of its position. It argues that Ohio Adm. Code 5703-9-21, Example Number 63, supports its position. In the example a clarifier used to remove particle contaminants from raw milk is defined as not taxable. Based upon the evidence presented by the petitioner, the objection is allowed. Deduct \$326,012.55 in use tax.

“Next, the petitioner objects to the examining agent’s determination of where its production process ends. The petitioner contends that ‘[o]nce the bags are sealed, the final production process has been completed.’ The petitioner is essentially arguing an ‘integrated plant’ theory. This argument has been rejected many times by the Ohio Supreme Court, for example see *Southwestern Portland Cement Co. v. Lindley* (1981), 67 Ohio St.2d 417.

“The applicable law is as follows:

“R.C. 5739.011(B)(6) defines the ‘continuous manufacturing process’ as:

“*** the process in which raw materials or components are moved through the steps whereby manufacturing occurs. *Materials handling *** of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.*’ (Emphasis added.)

“Further, R.C. 5739.011(B)(5) defines the ‘completed product’ as:

“*** a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.’

“The evidence indicates that the petitioner produces various animal food products. It mixes together raw

ingredients and then moves the mixture through extruders, coaters, dryers and coolers to arrive at its finished product. The product is finished after the coolers. It is at this point where all processes that change or alter its form have been completed. The equipment at issue in this objection is all used for the handling of the completed product after the product has left the coolers. The equipment is subject to tax because it is used after the product has been completed. The fact that the petitioner subsequently checks to insure that the finished product is in the appropriate size before being packaged is a testing function and not manufacturing. The objection is denied.

“Next, the petitioner contends that its purchase of a coupon inserter is exempt from tax as packaging equipment under R.C. 5739.02(B)(15). This contention is without merit. R.C. 5739.02(B)(15) provides in pertinent part ‘*** that machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale ***’ qualifies for exemption. The evidence indicates that the inserter shoots one coupon at a time into a funnel where it mixes with the animal feed product and then falls into the bag. The coupon is not tangible personal property produced for sale. Accordingly, the equipment in issue does not qualify for exemption. The objection is denied.

“Finally, the petitioner objects to the assessment of certain equipment used just prior to the ceramic magnets, discussed above, on the basis of R.C. 5739.01(B)(5). It contends that the equipment was incorporated into realty by a construction contractor pursuant to a construction contract and that the contractor has already paid tax on the purchase of the materials. Since the petitioner has shown no actual proof that the contractor paid tax on the purchase of the materials, this contention is based upon a mere allegation. However, even if the petitioner were to show that the contractor did pay tax upon the purchase of the materials, this payment would have been erroneous and subject to refund. All the items at issue relate to the purchase and installation of a tunnel where incoming raw materials are dumped and moved just prior to passing the ceramic magnets. This equipment primarily benefits the business conducted by the petitioner and accordingly is a ‘business fixture’ as defined by R.C. 5701.03(B). Pursuant

to R.C. 5701.03(A), business fixtures retain the status of tangible personal property after installation. The objection is denied.

“The request for remission of the penalty is allowed, conditionally, as noted below.

“If the total assessment is paid within sixty days after receipt of this final determination, the penalty shall be canceled. In this circumstance, the assessment is adjusted as follows:

	<u>Amount</u>	<u>Penalty</u>	<u>Total</u>
Use Tax	\$106,193.94	0.00	\$106,193.94
Preassessment			
Interest	26,298.10	0.00	<u>26,298.10</u>
		Total-----	\$132,492.04”

S.T. at 1-3.

Appellant’s notice of appeal reads as follows:

“The Iams Company, 7250 Poe Avenue, Dayton, Ohio 45414, Appellant, hereby gives notice of its appeal from a Final Determination of Thomas M. Zaino, Tax Commissioner of Ohio, 30 East Broad Street, 22nd Floor, Columbus, Ohio 43215, Appellee. The appeal relates to a Final Determination dated July 7, 2003, regarding Use Tax Assessment No. 8000406085. The Notice of Assessment imposed tax, penalty, and pre-assessment interest on the storage, use, or other consumption of tangible personal property in Ohio during the period January 1, 1995, through December 31, 1998.

“***

“Appellant states that the Final Determination of the Tax Commissioner is erroneous and unlawful in the following respects:

“1. The Appellee erroneously and unlawfully determined that the process by which Appellant manufactured pet food for sale ended at the coolers. Such determination is contrary to R.C. 5739.01(E)(9), R.C. 5739.011(A)(6), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(A)(6).

“2. The Appellee erroneously and unlawfully determined that the product produced for sale by Appellant was complete after it exited the coolers. This determination is contrary to R.C. 5739.01(E)(9), R.C. 5739.011(A)(5), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(A)(5).

“3. The Appellee erroneously and unlawfully determined that the product produced for sale by Appellant underwent no further change in state or form, nor was enhanced in value, after it exited the coolers, such that the manufacturing process ended at that point. Such determination is contrary to R.C. 5739.01(E)(9), R.C. 5739.01(S), R.C. 5739.011(A)(6), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(A)(6).

“4. The Appellee erroneously and unlawfully failed to determine that the value of the product produced by Appellant for sale was enhanced by the screening operation, such that the product was not yet complete and, therefore, still in the process of a continuous manufacturing operation. Such failure is contrary to R.C. 5739.01(E)(9), R.C. 5739.011(A)(5), R.C. 5739.011(B)(1) through (11), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(A)(5) and (B)(1) through (B)(11).

“5. The Appellee erroneously and unlawfully determined that the screeners and related equipment were not used to produce tangible personal property for sale in a continuous manufacturing operation and were subject to sales and use tax. Such determination is contrary to R.C. 5739.01(E)(9), R.C. 5739.011(B)(1) through (11), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(B)(1) through (11).

“6. The Appellee erroneously and unlawfully failed to determine that bins, conveyors and material handling equipment that temporarily store, handle and transport product between the cooler and the screeners are exempt from the tax. Such determination is contrary to R.C. 5739.01(E)(9), R.C. 5739.011(B)(2) and (4), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(B)(2) and (4).

“7. The Appellee determined the screeners and related equipment were testing, or quality control, equipment, but

erroneously and unlawfully failed to determine that in such case, the equipment is used to produce tangible personal property for sale in a continuous manufacturing operation and that it was exempt from tax. Such determination is contrary to R.C. 5739.01(E)(9), R.C. 5739.011(B)(6), R.C. 5741.02(C)(2), and O.A.C. 5703-9-21(B)(6).”

The matter is considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the Tax Commissioner, the testimony and other evidence presented at hearing, and the legal argument provided by counsel. At hearing, Iams presented the testimony of two witnesses, Mr. David J. Dempe, a fifteen-year employee holding the position of engineering section head for pet and nutrition product supply with the company, and Mr. Donald G. Simpson, director of product development with Iams.

Iams manufactures premium pet food for dogs and cats at its Lewisburg and Leipsic, Ohio production facilities.

The production processes at the two plants are similar. H.R. at 19. Ingredients are received at the plants by bulk rail and bulk truck delivery, via “super sacks” which are about one- to two-ton bags and liquid receiving for some additives. H.R. at 24.

Bulk receiving for whole grains may take in raw materials such as corn, rice, beef pulp, sorghum, and barley, and store them in silos located outside the plant. H.R. at 26. But they are first dumped into a pit, taken through a magnet, and then transported to storage bins. H.R. at 27.

Animal proteins go through a similar process but utilize separate storage bins because of their special storage needs. H.R. at 28.

Liquid fat/digest, which is used to coat the subject product, is brought in through bulk tankers and transported to storage vessels and filtered onto the systems. H.R. at 28.

After the raw materials are received and stored, they move on to the “milling/batching” process. H.R. at 28, 29. There, the whole grains are pulverized into a powder form and transported to another storage bin. H.R. at 29.

The “batching” process is the next step. Animal proteins and the ground grain proteins are combined, weighed and blended in a dry batch. H.R. at 29, 30.

As this batch moves to the ration storage bins, it passes through screeners which separate out improperly sized material. This material drops to the block below the screeners and will be reground and sent to the ration storage bins to await the extrusion process. H.R. at 30, 31.

The dry batch is moved from the ration storage bin to a circular bin where the material is “fluidized” to make it flow easier. H.R. at 32.

The mix is metered into the conditioning cylinder with a meat addition, steam, water, and possibly fat. The materials form what is called “extrudate.” This is where 20-30 percent of the cooking process occurs via steam energy. H.R. at 33, 34.

The mix then moves to the extruder where the cooking process is completed and formed into its final individual piece of dog or cat food called a “kibble.” H.R. at 34, 35. This process is described by Mr. Dempe as follows:

“A: The cooking is done through both mechanical and thermal energy at that point. The mechanical input is through a 250-horsepower motor and it is just the action of the extruder screw turning against the liner. There is

different shear locks and pieces of the extruder that basically creates a cooking mechanical shear and that creates the energy that is required to finish the cooking along with additional thermal input from the steam.

“Q: All right. And I think you also said the shape is imparted?”

“A: Yes. At the end of the extruder we have a die that is somewhat of the shape of a final kibble. As the extrudate is forced through that die, it will expand - it’s under high pressure - it will expand and then there is a knife that cuts it off at a high speed. It is conveyed in an airstream. So as you are pushing it through, it expands, cuts, and it is taken away with an airstream.

“Q: Would this be similar to the old Play-Doh toys that you would push the clay through and create shapes?”

“A: Yes, but much faster and much more expensive.

“Q: Now, can the shape at the end of the extruder, can that be varied by product?”

“A: Yes. We change the die heads. The die at the end of the extruder is changed for each product. As the dies wear, you have to replace them to maintain the correct kibble size.” H.R. at 34, 35.

After the kibble is cut off, it is taken via air conveyor which dries the kibble to a moisture content of approximately 24-30 percent. Hot air, in the temperature range of 250-350 degrees Fahrenheit, moves through a metal conveyor which has perforations on it. H.R. at 36, 37.

The kibbles are then transported to a “surge” which acts as a buffer in the process.¹ In the surge bin, the kibbles are spray coated with fats and liquid digest.

¹ For all systems except 1 and 2 at the Lewisburg plant - there, the coating is completed after cooling. H.R. at 38, 39.

They are next transported to the cooler where the temperature of the product is lowered and additional moisture is removed. H.R. at 38, 39.

After cooling, the kibbles move to another surge bin or hopper where they will wait for screening. Air is circulated through to lower moisture “a little bit more.”² H.R. at 40.

The screener is a stainless steel rectangular box approximately 13-14 feet long with the top two layers having different size perforations and the bottom layer as a solid plate. H.R. at 45. The screening process is described as follows:

“When it first comes into the screener, it comes in at one point location. The vibratory action spreads it out to a thin layer so it’s only one kibble high and then it will start moving it down towards the discharge, the left side of the screener. The vibrating action - The perforations on the top are designed to be slightly bigger than the kibble size. Therefore, the correct size kibbles will fall through that opening, that perforation, down to the next screen which is designed to be slightly under the kibble size, and that vibrating action on both the top and the bottom will knock off any rough edges to the kibble as it is conveyed down. The pieces that are undersize will fall through the bottom screen because they are - Again, the correct size kibble will stay on top, uh, but they try to drop through, and then it will convey it to the discharge at the left side of the screen.” H.R. at 52.

The screening process removes “clumps,” two or more pieces stuck together, and “fines,” small pieces of the product that drop off the kibble in the vibration screening process. Mr. Dempe also testified that the kibble is “polished” at this stage, the rough edges knocked off to make it smoother. H.R. at 41, 42.

² Except for Lewisburg systems 3 and 4 which have no air pulled through them. H.R. at 40.

The uniform kibbles are transported to a surge bin above packaging awaiting weighing. After the proper amount is packaged, the bag is sealed and moved through a metal detector.³

Before moving to the merits of the case, several preliminary matters must be addressed. In its brief, the commissioner contends that the Board of Tax Appeals does not have jurisdiction to consider all the exemption possibilities listed in R.C. 5739.011(B)(1) through (11) as they were not all raised in appellant's petition for reassessment. *Id.* at 15. Upon review of the statutory transcript, we agree. Only those matters raised in both the petition for reassessment and the notice of appeal shall be considered by this board.⁴ *CNG Dev. Co. v. Limbach* (1992), 63 Ohio St.3d 28.

Further, in its brief, the commissioner concedes that invoices #A1596 and #28099 (Exhibits 10 and 11 respectively) should be removed from the subject Use Tax Assessment. *Id.* at 16. Therefore, the commissioner's final determination regarding these invoices is hereby reversed.

Finally, the commissioner contends that Iams never raised the "polishing" issue regarding the screeners at the commissioner's hearing below and is therefore precluded from doing so at the board's hearing. We disagree. In its petition for reassessment, appellant states that "(t)he screeners shake product back and forth to dislodge and separate irregular product from sellable product." S.T. at 28. This description is consistent with Iams' polishing argument. This objection is overruled.

³ At the Leipsic facility, the detector is located after the screener.

⁴ The O.R.C. sections raised in the petition and the supplement to the Petition for Reassessment are: 5739.01(E)(9); 5739.01(S); 5739.01(Q); 5739.01(A)(5); and 5739.02(B)(15).

Moving to the merits of the case, R.C. 5741.02(B) relates to the use tax assessment imposed by the commissioner in this case. Therein, it states as follows:

“Each consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and such liability shall not be extinguished until the tax has been paid to this state.”

However, R.C. 5741.02 states as follows:

“(C) The tax does not apply to the storage, use, or consumption in this state of the following described tangible personal property or services, nor to the storage, use, or consumption or benefit in this state of tangible personal property or services purchased under the following described circumstances:

“***

“(2) Except as provided in division (D) of this section, tangible personal property or services, the acquisition of which, if made in Ohio, would be a sale not subject to the tax imposed by sections 5739.01 to 5739.31 of the Revised Code; ***”

During the period in question, R.C. 5739.01(E)(9)⁵ stated as follows:

“(E) ‘Retail sale’ and ‘sales at retail’ include all sales except those in which the purpose of the consumer is:

“***

“(9) To use the thing transferred, as described in section 5739.011 [5739.01.1] of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale.”

R.C. 5739.011 provides in relevant part:

“(A) As used in this section:

⁵ Previously found in R.C. 5739.01(E)(9) and moved to R.C. 5739.02(B)(43)(g) effective July 1, 2003.

“***

“(5) ‘Completed product’ means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.

“(6) ‘Continuous manufacturing operation’ means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or preproduction storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

“(B) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the ‘thing transferred’ includes, but is not limited to, any of the following:

“(1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation:

“(2) Materials handling equipment that moves the product through a continuous manufacturing operation; equipment that temporarily stores the product during the manufacturing operation ***.”

Ohio Adm. Code 5703-9-21(B)(9) states in pertinent part:

“‘Continuous manufacturing operation’ means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or pre-production storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

“The continuous manufacturing operation begins at the point where the raw materials or parts are committed and ends at the point where the product is completed.

“There may be several continuous manufacturing operations at the same manufacturing facility, each producing a different product.

“The things used in the continuous manufacturing operation include all production machinery, the materials handling equipment that moves the product between the production machines, and any equipment, such as tanks, shelves, or racks, that temporarily store or hold the product in between production machines. Even though testing equipment used to test in-process product is not taxable under this rule, no testing procedure is part of the continuous manufacturing operation unless it is physically and functionally integrated between steps on the production line.”

Thus, the primary question before us is: At what point does the manufacturing operation of the kibble end?⁶

We first acknowledge the standards by which we review the commissioner’s determinations. The Tax Commissioner is accorded a presumption that his findings are correct. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138.

⁶ To find a manufacturing exemption herein, it first must be determined that Iams was engaged in manufacturing. This fact is not disputed by the parties.

Moreover, the taxpayer is assigned the burden of showing in which manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. In addition, every sale or use is presumed to be taxable and exemptions or exceptions from taxation are to be strictly construed. *National Tube Co. v. Glander* (1952), 157 Ohio St. 407.

The commissioner determined that the manufacturing process ended when the kibbles left the coolers and were ready for temporary storage awaiting the packaging screener, whereas Iams contends that the screeners are production machinery used in a continuous manufacturing operation and are exempt from taxation pursuant to R.C. 5739.01(E)(9).

We agree with Iams. The evidence before us indicates that the screening process is intended to knock off rough edges on the kibble to make the kibble smoother. H.R. at 42. A description of this polishing process is as follows:

“Q: Physically what happens to the kibbles as they are polished?”

“A: Small pieces that jet out from the standard kibble shape that were created during the extrusion process are knocked off. The extrusion and the cutting of the extrudate, you are going to create bits and pieces that jet out from those standard kibble shape. If they have not been knocked off by the transport, they will - you know, the purpose of the screener is to basically remove those pieces.

“Q: Okay. Through the polishing operation you indicated pieces are knocked off the kibble. Does that change the shape of the kibble in any way?”

“A: It will smooth it.

“***

“Q: Is it removing some portion of the kibble?

“A: Yes.” H.R. at 122.

The importance of the polishing is brought out by the following testimony of Mr. Simpson:

“Q: Is it important that those burs get knocked off?

“A: I think it’s very important that the burs get knocked off. There are probably two reasons for that. I think it’s an appearance thing. I don’t think they particularly look good on the product. If they got all the way to the package, then as the package went through distribution, uh, they would get rubbed off and end up in the bottom of the bag. Really from our standpoint, well, from the R&D standpoint, that’s probably the worst thing that could happen. You don’t want to have a lot of fines in that bag - fines being the real little pieces - because that’s going to impact your feeding guidelines the most.

“Q. How does that impact the feeding guidelines?

“A: You want the uniformity of the top of the bag and the bottom of the bag to be as uniform as it possibly can be.

“Q: All right.

“A: As the person is scooping out the product from the bag, if they, you know, in the last few cups, if that cup now is full of fines or the amount, uh, the weight they are going to be feeding is generally going to be higher than it was at the top of the bag.

“Q: Okay.

“A: And, in the case - Well, that’s bad from a nutritional standpoint. Again, you don’t want to over-feed your dog. Generally dogs will eat about anything. But in the case of cats, if you get a lot of fines in a cat food bag, the cat will

probably not even eat it. Of course, that's a big problem too.

“Q: With respect to the cats, do the fines have anything different in terms of formulation or anything? Are they more or less likely to maybe have a slight deviation from the rest of the kibble?”

“A: Well, just by definition, a fine is a little piece that has broken off from the kibble. So, yes, they are not going to be as uniform as the whole kibble itself. So, yeah, the nutritional value of that is it has a much more variable than it would be of a uniform kibble.” H.R. at 155, 156.

The kibble's form and condition are changed by the screening process.

The screeners' vibratory motion removes small burrs to change the form, albeit ever so slightly, and the action smooths the rough edges, thereby changing the condition of the kibble. H.R. at 122. It is in this final state that the kibble is sold.

The commissioner argues that Mr. Simpson acknowledged that the polishing action does not “appreciably” make the kibble smaller and cites to the testimony that less than 1-2 percent of the kibble is removed through the vibratory process; therefore, the kibbles were in a completed state before the screening process. H.R. at 157, 171. He contends that Iams is simply using the screeners to separate the small particles called “fines” and the oversized pieces from the good finished salable kibbles in a sorting process which does not qualify as manufacturing.

If the only function of the screener operation was to sort and filter, we might be persuaded by the commissioner's argument that the manufacturing process ended before the screeners. However, such is not the case. Although it is clear that sorting is undoubtedly an important part of the screening process, Iams has shown

through the testimony of its two witnesses that the polishing process is also important to the company. We agree that the changes produced by polishing are small in amount and nature; however, “an item is completed when *all* processes that change or alter its state or form or enhance its value are finished.” (Emphasis added.) R.C. 5739.011(A)(5). Herein, the company has shown the importance of changing the form and state of the kibble to a smoother condition at this stage and the testimony is consistent in showing that this is an *intended* function of the screener operation.

For the reasons stated above, we determine that the continuous manufacturing process does not end until after the vibratory screens and that all the machinery and equipment that handles, stores, and operates on the subject product prior to that point is exempt from taxation. The final determination of the Tax Commissioner is reversed consistent with this order.

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