

TESTIMONY

Date: March 18, 2013

Before: The Senate Committee on Assessment and Taxation

By: Neil Horton, Vice-President
Bayer Construction Co., Inc.

Regarding: SB 234 – Sales tax exemption for sales of certain machinery and equipment used for surface mining activities

Good morning Mr. Chairman and Members of the Committee.

My name is Neil Horton, Vice-President and Chief Executive Officer of Bayer Construction Company, Inc. located in Manhattan, Kansas.

Bayer Construction Company, Inc. operates six limestone quarries in North East and North Central Kansas and also provides heavy-highway grading, civil site preparation, water and sewer line construction services.

Bayer Construction was audited by the Kansas Department of Revenue (KDOR) in 2010. KDOR's opinion of the audit results indicate that sales tax was due on the purchase of machinery and equipment, repair and wear parts, and repair services for equipment that is clearly used in an *Integrated Production Operation*. Bayer Construction has been audited four times in the last twenty years by the KDOR. Most notable was an audit in the early 1990's which resulted in an Administrative Law Ruling in 1993 from the Board of Tax Appeals (BOTA), commonly referred to as the Bayer decision. Essentially, the KDOR had the opinion that diesel fuel consumed in certain segments of our quarry operations was taxable. We disagreed and began an appeal process which successfully demonstrated to BOTA that all of the work activities at a quarry operation are essential, dependent on one another to complete the manufacture of crushed stone, and collectively, properly defined as an *Integrated Production Operation*. While every aggregate producer, due to the unique geological conditions of their area, does not use the exact same production techniques the process's they do employ are essential to their own *Integrated Production Operation*.

I want to focus my testimony today on Section 1(kk) of the bill which address's the *sales of machinery and equipment used as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility*. I think it is important to focus on some of the definitions and terminology used in the italicized sentence above and so I ask that you bear with me as I call your attention to them. To keep my testimony brief, sentences with an ellipsis (...) have language eliminated because it is not germane to the issue at hand.

Page 11, Para.2 (C) defines a "manufacturing or processing plant or facility" as *a single fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail*. The aggregate industry, by its very nature consists of outdoor manufacturing facilities spread over large acreages of land. The definition given above is somewhat ambiguous as it relates to an aggregate production operation.

Page 11, Para.2 (D) (i) defines a “manufacturing or processing business” as a processing operation.... Shall include... mine or other excavation site where ... stone, sand, or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated ... before any other wholesale or retail distribution. This language describes an aggregate production business.

Page 10, Para.2 (A) defines the “Integrated production operation” as an integrated series of operations engaged in at a... processing plant to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include; (ii) pre-production operations to handle, store and treat raw materials and (iv) waste, pollution, and environmental control operations, if any. This language does not specifically mention the removal of soil overburden as a “pre-production operation” required to expose the raw aggregate or replacement of soil overburden and final vegetation of the disturbed area for reclamation operations required as “waste and environmental control operations”. I point out the language is rightfully general in nature due to the impossible task of specifically listing every process that exists now or might be developed in the future for every manufacturing industry that may reside in Kansas. The inability of the KDOR to properly recognize legislative intent is the crux of the issue.

As an aggregate producer, I support SB 234 and the changes noted as Paragraph 4(F) because it clarifies the vague and ambiguous language that is being mis-used to apply the law to aggregate production operations.

I thank you for your time. I would be glad to respond to any questions at the appropriate time.

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