

SC93331

IN THE SUPREME COURT OF MISSOURI

AAA LAUNDRY & LINEN SUPPLY CO.,

Respondent (Petitioner below)

v.

DIRECTOR OF REVENUE

Appellant (Respondent below)

Appeal from the Administrative Hearing Commission of Missouri
The Honorable Sreenivasa Rao Dandamudi, Commissioner

BRIEF OF RESPONDENT

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STATEMENT OF FACTS

Pursuant to Rule 84.04(f), Respondent AAA Laundry & Linen Supply Co. (“AAA Laundry”) provides this additional statement of facts.

AAA Laundry operates a commercial laundry business by which it leases to its customers items of tangible personal property. (LF 59). The customers pay a periodic rental fee for the use of these items in their business operations. (LF 59). These items include the following: cleaned and sanitized uniforms, tablecloths, towels, aprons, sheets, gowns and scrubs. (LF 59). AAA Laundry primarily serves the health care, hospitality, and industrial markets. (LF 59).

AAA Laundry, on a periodic basis, delivers clean, sanitized items to its customers, and picks up soiled and otherwise used items. (LF 59). The items that are picked up are then cleaned, sanitized and delivered back to the customers for further use. (LF 59). As a result of the laundry process performed by AAA Laundry, the state of the items is changed from soiled, unsanitary items which are unsuitable for further use to clean, sanitized items which are suitable for further use. (LF 59-60). The cleaned and sanitized items achieve a market value that they did not have in their prior soiled condition. (LF 70).

The services provided by AAA Laundry include the pickup of soiled and otherwise used items; the cleaning, sanitizing and maintenance of the soiled and otherwise used items; the packaging and delivery of the items to the customer after they

have been cleaned and sanitized; and the replacement of items that are no longer usable due to wear or tear. (LF 60).

Any items that need to be replaced due to normal wear and tear are replaced by AAA Laundry at no additional charge to the customer. (LF 60). The customer is responsible for the return of all items delivered to the customer and is charged for the replacement of items that are lost or not returned by the customer. (LF 60). The customer is also obligated to pay AAA Laundry for any items that are damaged due to abuse, malicious destruction or otherwise. (LF 60).

In its process of cleaning and sanitizing the items, AAA Laundry uses large quantities of soap, detergent and sanitizing chemicals (“Laundering Supplies”). (LF 61). AAA Laundry does not pay sales or use tax on its purchase of the Laundering Supplies. (LF 61). AAA Laundry does, however, collect and remit sales tax on the rental payments that it collects from its customers for use of the cleaned and sanitized items. (LF 60).

AAA Laundry’s cleaning and sanitizing of items produces mass quantities of wastewater. (LF 60). AAA Laundry is required by city ordinance and federal environmental laws to treat this wastewater to a prescribed quality before releasing it into the Kansas City, Missouri, sewer system. (LF 60). To that end, AAA Laundry uses wastewater treatment equipment in order to comply with these treatment obligations, and AAA Laundry purchases treatment chemicals (“Wastewater Treatment Chemicals”) that are used by the wastewater treatment equipment to treat the wastewater before releasing

it into the Kansas City, Missouri, sewer system. (LF 60). The Wastewater Treatment Chemicals are specific to the machines used by AAA Laundry. (LF 66). AAA Laundry has not paid sales or use tax with respect to its purchases of the Wastewater Treatment Chemicals. (LF 60).

On April 18, 2013, the Administrative Hearing Commission (“AHC”) issued a decision in which it held that the Wastewater Treatment Chemicals were exempt from use tax under Section 144.030.2(15) because they are “essential components of AAA Laundry’s wastewater treatment equipment, making them constituent parts of this machinery.” (LF 66). The AHC also held that the Laundering Supplies were exempt from use tax under Section 144.054.2 because they are chemicals used in processing. (LF 71).

SUMMARY OF THE ARGUMENT

In its decision, the Administrative Hearing Commission (“AHC”) determined that AAA Laundry’s out-of-state purchase of the Wastewater Treatment Chemicals was exempt from use tax because these chemicals are essential components of the wastewater treatment machinery, making them constituent parts of this machinery. (LF 66). Because the Wastewater Treatment Chemicals are essential components of the wastewater treatment equipment and machinery, AAA Laundry is entitled to a use tax exemption pursuant to Section 144.030.2(15).¹

With respect to the taxation of the Laundering Supplies purchased by AAA Laundry, the issue of taxation focuses on the question of whether the laundering process conducted by Respondent, which consists of the treatment, cleaning and sanitizing of soiled items in an industrial setting is a “process” within the meaning of Section 144.054.2. In 2007, the General Assembly enacted Section 144.054.2, which authorizes a use tax exemption for chemicals used in the processing of a product. By including the term “processing” and the phrase “any product” (emphasis added) in this statute, the General Assembly intended to ensure that this exemption was given a broad

¹ All references to the Missouri Revised Statutes are to the 2012 Cumulative Supplement unless otherwise specified. Section 144.030.2(15) is now codified at 144.030.2(16). For the purpose of this brief, citation will be made to subdivision (15).

interpretation that is not limited to manufacturing. The Director's argument that the definition of the term "processing" is wholly consumed within the definition of the term "manufacturing" would undermine the principle that every word, clause, sentence and provision of a statute must have effect and would render the General Assembly's inclusion of the term "processing" in Section 144.054.2 useless.

AAA Laundry's laundering process, consisting of the treatment, cleaning and sanitizing of soiled and contaminated items (whether a uniform, tablecloth, bed sheet or other similar item), constitutes processing. AAA Laundry's laundering process transforms the soiled and contaminated items from an unusable state with minimal market value into a usable state with a new market value, making them suitable to be returned into service. Consequently, the out-of-state purchase of Laundering Supplies used by AAA Laundry in its laundering process is exempt from use tax under Section 144.054.2.

The same reasoning applies to the Wastewater Treatment Chemicals. The Wastewater Treatment Chemicals are used by AAA Laundry in its laundering process to treat wastewater that is produced in the laundering process. Therefore, because the Wastewater Treatment Chemicals are also used in AAA Laundry's laundering process, they, like the Laundering Supplies, are exempt from use tax under Section 144.054.2.

ARGUMENT

Standard of Review

The Supreme Court “reviews the decision of the AHC pursuant to section 621.189.” *Street v. Dir. Of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). “Under section 621.193, RSMo. 2000, the decision of the AHC is to be ‘upheld when authorized by law and supported by competent and substantial evidence upon the record as a whole unless it is clearly contrary to the reasonable expectations of the General Assembly.’” *Id.* (quoting *Mackey v. Dir. of Revenue*, 200 S.W.3d 521, 523 (Mo. banc 2006)). “Exemptions are interpreted to give effect to the General Assembly's intent, using the plain and ordinary meaning of the words.” *Brinker Missouri, Inc. v Director of Revenue*, 319 S.W.3d 433, 437 (Mo. banc. 2010). This Court reviews the AHC's interpretations of the state's revenue laws *de novo*. *Street v. Dir. Of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). “This Court can affirm the commission's decision in this case even if it does not agree with all of the commission's reasoning for the decision, as the primary concern is the correctness of the commission's result and not its path to reach that result.” *BASF Corp. v. Dir. of Revenue*, 392 S.W3d 438, 444 (Mo. banc 2012).

I. The Administrative Hearing Commission was correct in determining that AAA Laundry was entitled to a use tax exemption for Wastewater Treatment Chemicals because the statutory language of Section 144.030.2(15) provides AAA Laundry with a tax exemption for equipment and machinery used for the purpose of preventing, abating or monitoring water pollution, and the AHC was correct in determining that the chemicals which are essential and necessary for the operation and function of wastewater treatment machinery are entitled to a use tax exemption because they are equipment and also because they are integrated into the machinery. (Response to Appellant’s point relied on I.)

A. Wastewater Treatment Chemicals are an integral constituent part of the wastewater treatment equipment and machines.

With respect to the Wastewater Treatment Chemicals, Section 144.030.2(15) exempts from Missouri sales and use tax any “machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction, reconstruction of such machinery, equipment, appliances and devices.”

The Wastewater Treatment Chemicals are used to treat the wastewater produced by the laundering process performed by AAA Laundry before the wastewater is released into the Kansas City, Missouri, sewer system. As such, the Wastewater Treatment

Chemicals are such an integral part of the process used by AAA Laundry to abate or prevent water pollution that they are equipment or essential component parts of the machinery used in the process, and as a result, are equipment or machinery used in monitoring, abating or preventing water pollution and are thus exempt from the use tax assessed by the Missouri Department of Revenue under Section 144.030.2(15). As determined by the AHC, Wastewater Treatment Chemicals are essential components of AAA Laundry's wastewater treatment equipment. (LF 66). The equipment would not properly operate without the Wastewater Treatment Chemicals and as a result, the chemicals should be exempt under Section 144.030.2(15).

The Director attempts to complicate the issue by engaging in convoluted statutory construction arguments regarding the use of chemicals in wastewater treatment. The Director claims that because one does not ordinarily think of chemicals as machines, the particular chemicals that are necessary for AAA Laundry's wastewater treatment to function are not an integral part of the machine. The Director, however, fails to acknowledge that the Wastewater Treatment Chemicals are "used by the wastewater treatment equipment." (LF 60). As such, the chemicals are necessary in order for the wastewater equipment to function.

A significant flaw in the Director's argument is that it only focuses on the term "machinery." This interpretation mischaracterizes AAA Laundry's argument. AAA Laundry more accurately argues that the wastewater chemicals are essential components

of the machinery, equipment, appliances or devices used in the process and as a result, are machinery, equipment, appliances or devices used in monitoring, abating or preventing water pollution. The Director only focuses on the term “machinery” and totally disregards the term “equipment.”

The dictionary definition of the term “equipment” shows that the Wastewater Treatment Chemicals qualify for the exemption from Missouri use and sales tax under Section 144.030.2(15). The dictionary definition of the term “equipment” is as follows: “1 a: the set of articles or physical resources serving to equip a person or thing . . . ; 2. a: the equipping of a person or thing; b: the state of being equipped” Merriam-Webster Collegiate Dictionary 392 (10th ed. 1994). The term “equip” is in turn defined as follows: “1: to furnish for service or action by appropriate provisioning” *Id.* Finally, the term “provision” is defined as follows: “1. a: the act or process of providing; b: the fact or state of being prepared beforehand; c: a measure taken beforehand; 2. a: a stock of needed materials or supplies” *Id.* at 940. There is nothing in the definition of the terms “equip” or “provisions” that requires that the equipment be a solid mechanical item, as argued by the Director. The term “provision,” which is used to define the term “equipment,” shows that the term “equipment” is broad enough to include the Wastewater Treatment Chemicals purchased by AAA Laundry because they are needed materials and supplies used by AAA Laundry to prevent, abate or monitor water pollution. Because the Wastewater Treatment Chemicals are a part of the equipment

used by AAA Laundry in its preventing, abating or monitoring water pollution, the purchase of the Wastewater Treatment Chemicals is exempt from sales and use tax. The AHC never addressed the question of whether the Wastewater Treatment Chemicals were equipment because it did not have to because it rejected the Director's argument that they did not constitute machinery.

In addition, the dictionary definition of the term "machine" supports the decision of the AHC and demonstrates that the Wastewater Treatment Chemicals are an essential part of the wastewater treatment machines. As the Director acknowledges, the dictionary defines the term "machine" as follow: "1 : machines as a functioning unit: . . .; b (1): the constituent parts of a machine or instrument." (Appellant's Brief p. 16 (quoting Webster's Third New International Dictionary 1354 (1993) LF 65 (quoting Webster's Third New International Dictionary 1354 (unabr. 1986)).

As the AHC determined, the Wastewater Treatment Chemicals at issue herein are a constituent part or necessary component of the wastewater treatment equipment, making them constituent parts of this machinery. (LF 66). Without the Wastewater Treatment Chemicals, the wastewater treatment machines would be ineffective. Additionally, the Wastewater Treatment Chemicals are used *by* the wastewater treatment equipment. They are not simply another item that is necessary for the machine to operate, such as electrical power or other utility. Because the particular Wastewater Treatment Chemicals that are in issue in this case are equipment and "are specific to the

machines used by AAA Laundry to abate and prevent water pollution” (LF 66), the tax exemption that applies is narrow and does not apply to all chemicals that may be used in the treatment of wastewater. It only applies to those chemicals that are used by AAA Laundry in the operation of its wastewater treatment machinery.

B. Because the plain and ordinary meaning of the words “equipment” and “machinery” includes the particular Wastewater Treatment Chemicals at issue in this case, there is no need to engage in additional statutory construction.

The Director attempts to complicate the matter by engaging in statutory construction using the maxim of *noscitur a sociis* – the idea that a word is known by the company it keeps. Because the definition of equipment includes the Wastewater Treatment Chemicals and the definition of machine includes its constituent parts, it is unnecessary to engage in this statutory construction. Because the term “equipment” is broad enough to include the Wastewater Treatment Chemicals, the Director’s argument is actually undermined by the maxim of *noscitur a sociis*.

Additionally, the Director fails to acknowledge the narrow application of the exemption in this case. The exemption does *not* apply to all chemicals. The application of the exemption as set forth by the AHC only applies to chemicals that are an integral part of the machinery or process that is used to monitor, abate and prevent water pollution. It is only applicable to Wastewater Treatment Chemicals such as those that are

used by AAA Laundry. Therefore, the Director's concerns about the AHC's treatment of chemicals in *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438 (Mo. banc 2012), in which the ACH indicated that the particular chemicals at issue in that case "were 'supplies' for the purposes of section 144.030.2(4)." *Id.* at 442. Contrary to the Director's assertion, the ACH did not determine that the chemicals were supplies *instead of* machinery and equipment; nor did the AHC determine that the terms "supplies," "machinery" and "equipment" are mutually exclusive. In that case, the AHC determined that the particular chemicals at issue "were [not] used solely to operate new or replacement machinery and equipment that would qualify for a section 144.030.2(4) exemption," and that the chemicals "do not share in the operation of the machine." *Id.* Therefore, the AHC determined that the chemicals did not fit within the parameters of the statute in question. Moreover, this Court did not address the chemicals issue because it determined that *BASF* was not entitled to any tax exemption because it was not operating a "material recovery processing plant." *Id.* at 446.

In the present case, the AHC determined that the "wastewater treatment chemicals are essential components of AAA Laundry's wastewater treatment equipment, making them constituent parts of this machinery. As such, they are exempted from use tax under § 144.030.2(15)." Because the specific findings of the AHC here are distinguishable from the findings in the *BASF* case, the Director's concern that the AHC is trying to have it both ways is unfounded.

C. Including the particular Wastewater Treatment Chemicals at issue in this case as machinery will not produce absurd results, because the particular chemicals at issue have a narrow application.

The Director's fear that other items that are necessary for wastewater treatment machinery to function will be subject to a tax exemption is unfounded. Here, the particular chemicals at issue are used in the wastewater treatment machines and are specific to the particular machines used by AAA Laundry. As the AHC acknowledged, "electricity and other utilities are generally used by all people and businesses in every aspect of life, whereas wastewater treatment chemicals are specific to the machines used by AAA Laundry to abate and prevent water pollution." (LF 65-66). Because of this narrow application, the Director's fear of absurd results is unfounded.

II. The Administrative Hearing Commission was Correct in Determining that AAA Laundry Was Entitled to a Use Tax Exemption for Laundering Supplies Because the Statutory Language of Section 144.054.2 Provides AAA Laundry with a Tax Exemption for Chemicals Used in Processing, and the Treating, Cleaning and Sanitizing of Items by AAA Laundry Constitutes Processing. (Response to Appellant's Point relied on II.)

AAA Laundry's laundering process consists of the treatment, cleaning and sanitizing of soiled and contaminated items such as uniforms, linens, scrubs, tablecloths and other items. The treatment, cleaning and sanitizing of the contaminated items

constitutes processing under the plain language of Section 144.054.2, which provides a tax exemption for chemicals used or consumed in processing.

A. The plain statutory definition of “processing” includes AAA Laundry’s treatment, cleaning and sanitizing of soiled and contaminated items.

The plain and ordinary statutory language of Section 144.054.2 provides AAA Laundry with a use tax exemption for the Laundering Supplies that are consumed in its laundering process. Section 144.054.2 provides that in addition to all other exemptions under the sales tax provisions, purchases of machinery, equipment, materials and chemicals used or consumed in sales, manufacturing, processing, compounding, mining or producing any product are exempt from state sales or use tax but not local sales tax (emphasis added). The term “processing” is defined in Section 144.054.1(1) as “any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility.”

For processing to exist, the plain language of Section 144.054.2(1) only requires the existence of a treatment, act or series of acts performed upon materials to transform them to a different state or thing (emphasis added). In this case, the dispute focuses on the definition of the terms “transform,” “different” and “state.”

In its brief, the Director attempts to change the applicable definition of the term “different” to “new.” Contrary to the Director’s contention, the term “different” is

clearly not a synonym for “new.” The dictionary definition of the term “different” is “partly or totally unlike in nature, form, or quality” Merriam-Webster’s Collegiate Dictionary 323 (10th ed. 1994). Thus, to fit within the definition of “processing,” the treatment, act or series of acts performed in the process do not have to create an entirely new product. The definition only requires that the final state of the underlying product be partly unlike the original state of the underlying product in form or quality.

Furthermore, the definition of the term “transform” is as follows: “a: to change in composition or structure; b: to change the outward form or appearance of; c: to change in character or condition” *Id.* at 1253. Therefore, in order to transform a product, it is only necessary to change the outward form, appearance, nature or condition of the product. It does not require the creation of an entirely new product.

The proposition that Section 144.054.2 only requires a change in the nature or condition of an item is further supported by the definition of the term “state,” which is used in the definition of the term “processing” as contained in Section 144.054.2(1). The dictionary definition of the term “state” is as follows: “1. a: a mode or condition of being . . . ; 2. a: a condition or stage in the physical being of something” *Id.* at 1148. The term “state” was included in the definition of the term “processing” in Section 144.054.1(1) to emphasize that the statute only requires a change in the nature or condition of the underlying product, and not the creation of an entirely new product.

Thus, for there to be processing, it is not necessary for an entirely new product to be produced. The essential factor in processing is that there is a treatment, act or series of acts performed on an underlying product to change the nature or condition of the underlying product into something at least partly unlike the nature or condition of the underlying product before the treatment or action was applied to it.

Consequently, the plain language of the statute mandates a finding that AAA Laundry's laundering process (which consists of the treatment, cleaning and sanitizing of items) constitutes processing within the meaning of Section 144.054.2 because it transforms used items from a soiled and unsanitary condition that is unsuitable for further use into a clean and sanitized condition that makes them suitable for use.

In this case, AAA Laundry picks up the contaminated items from its customers, sorts the contaminated items, repairs or replaces damaged or lost items, cleans and sanitizes the soiled items by washing them in large industrial washing machines, dries the cleaned and sanitized items, packages the items and delivers the cleaned and sanitized items to its customers for further use by them. The treatment, cleaning and sanitizing process performed by AAA Laundry serves to transform the soiled and contaminated items from an unusable state into a new or different state consisting of a clean and sanitized item that is suitable for common use by its customers. As the AHC recognized, "the cleaned and sanitized items contain a market value that they did not contain in their prior soiled condition." (LF 70).

Without engaging in its laundering process, the goods leased by AAA Laundry would become unusable and essentially worthless after one use. A uniform that is worn and soiled by one worker cannot be worn by another worker, unless the uniform is thoroughly treated, sanitized and cleaned. Similarly, soiled bed sheets, scrubs and other linens that are used in a health care setting cannot be reused unless they are thoroughly cleaned and sanitized. Such contaminated items have a minimal market value because until they are cleaned and sanitized they cannot be used and have to be stored in such a manner so as not to expose anyone to them.

The Director also tries to minimize the scope and nature of the laundering process performed by AAA Laundry by stating that it is merely the cleaning of clothes and not an industrial-type process. Such an argument totally overlooks the nature and scope of the activities performed by AAA Laundry. AAA Laundry has a large commercial operation that uses sophisticated washing machines and water treatment equipment and employs many workers in the operation of this equipment. Its operation is not like a homeowner simply washing a few clothes on an as-needed basis. The laundering operation conducted by AAA Laundry is a daily ongoing business operation that permits its customers to continue to function by providing them with clean and sanitized products necessary for use by them in their operations. Given the scope and nature of the laundering process performed by AAA Laundry, it is an industrial process that performs a useful service to its customers.

The laundering process serves to convert the soiled and contaminated goods from an unusable state to a usable state. By performing its treatment, cleaning and sanitizing process, AAA Laundry transforms the contaminated items from soiled and essentially worthless goods, into clean and sanitized products that are suitable to be leased and placed back into commerce for use by its customer. Accordingly, the treatment, cleaning and sanitizing process performed by AAA Laundry is “processing” within the definition set forth in Section 144.054.1(1).

B. This Court’s interpretation of “processing” in other tax statutes does not require the creation of an entirely new product.

This Court’s prior holdings under Section 144.030.2(12)² do not require the creation of an entirely new product for a taxpayer to be considered to be engaged in processing. That section provides a local sales tax exemption for “[e]lectrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used.”

In the companion cases of *Hudson Foods v. Dir. of Revenue*, 924 S.W.2d 277 (Mo. banc 1996), *Mid-America Dairymen, Inc. v. Dir. of Revenue*, 924 S.W.2d 280 (Mo.

² This section is now codified at Section 144.030(13).

banc 1996), and *HGP Industries, Inc. v. Dir. of Revenue*, 924 S.W.2d 284 (Mo. banc 1996), this Court held that in order to constitute processing under Section 144.030.2(12), the stage of production must transform “the subject matter and result[] in something which has a new identity, use, and market value.” *Hudson*, 924 S.W.2d at 278. This definition does not require the creation of something new, as urged by the Director. It merely requires a new identity, use, and market value.

The *Hudson* case demonstrates that something new need not be created for there to be processing. In *Hudson Foods*, the taxpayer was in the business of processing turkeys and chickens to be sold. As part of the treatment of the birds, the taxpayer chilled the birds for the purpose of preventing spoilage and increasing shelf life. This Court recognized that until the birds were chilled, they “could not be sold for human consumption under the USDA regulations.” *Id.* at 280. Therefore, the birds had little or no market value until they were chilled. This Court held that such treatment was a “processing” because the birds had a new and different market value than they had when they initially came off the evisceration line. *Id.* at 279-80. The taxpayer did not create anything new by chilling the birds. The underlying product was the same bird. The activity, however, was deemed to be a process because it gave the birds a new identity, use and market value, since they could not be sold before they were treated. Therefore, it is evident that processing does not require the production of an entirely new product.

As explained above, the soiled and contaminated items have minimal value until they are cleaned and sanitized, and the Commission found that “the cleaned and sanitized items contain a market value that they did not contain in their prior soiled condition.” (LF 70). Some of the items, especially items that are contaminated in a health care setting, may even require special handling to avoid exposure to the contaminants contained in or on the items. Therefore, just like the birds in *Hudson*, the contaminated items that are processed by AAA Laundry cannot be returned to its customers until they have been treated, cleaned and sanitized. The AHC acknowledged that the contaminated items have only minimal market value when it recognized that “AAA Laundry is unable to simply deliver soiled items to its customers.” (LF 70). Because the contaminated items have only minimal market value until they are cleaned and sanitized, the laundering process performed by AAA Laundry meets the Court’s interpretation of the term “processing” as defined in the cited exemption cases.

C. The term “processing” is not ambiguous. Therefore, the Court should apply its plain statutory meaning.

In order to engage in an inappropriate and unnecessary statutory construction, the Director wants this Court to determine that the meaning of the term “processing” in the context of this case is ambiguous. In support of this argument, the Director cites *Aquila Foreign Qualifications Corp. v Dir. Of Revenue*, 362 S.W.3d 1 (Mo. banc 2010). In *Aquila*, this Court found that Section 144.054.2 is ambiguous because it provides “no

further guidance as to what it means to ‘transform or reduce’ materials.” *Id.* at 4. However, the issue in *Aquila* was whether preparing food for retail consumption at a convenience store was “processing.” The dispute between the taxpayer and the Director was characterized as a question of whether the tax exemption only applied to industrial-type processing (the Director’s position) or to retail food preparation as well (the taxpayer’s position). *Id.* at 3 n. 6.

The Court engaged in statutory construction to determine that the terms surrounding “processing” in the statute were industrial-type terms. The Court concluded that because of the “industrial connotation of [the] terms in Section 144.054.2 . . . the legislature did not intend ‘processing’ to include food preparation for retail consumption.” *Id.* at 5.

In the present case, there is no dispute that AAA Laundry’s operation is industrial in nature. As the AHC found, “[c]ommerical laundering operations are also industrial in nature. While AAA Laundry may also rent the items it launders, the laundering portion of its business is industrial in nature.” (LF 71). As there is no dispute regarding whether AAA Laundry’s laundering operation is industrial, it is inappropriate and unnecessary to employ statutory construction to determine the scope of Section 144.054.2.

The dissent in *Aquila* effectively addressed the question of the ambiguity when it stated, “The term ‘processing’ is broad, but it is not ambiguous. Its application to the activities in which Casey’s engages could not be clearer. ‘[C]ourts have a duty to read

statutes in their plain, ordinary and usual sense Where there is no ambiguity, this Court does not apply any other rule of construction.” *Id.* at 6 (Price, J. dissenting).

Furthermore, even if Section 144.054.2 is ambiguous, statutory construction in this case demonstrates that AAA Laundry’s treatment, cleaning and sanitizing of the contaminated items is “processing.” In *Aquila*, the Court resorted to the doctrine of *noscitur a sociis* to determine whether “processing” applied to retail food preparation or only to industrial-type operations. *Id.* at 5. In the present case, the laundering operation of AAA Laundry is industrial, so there is no need to employ the doctrine of *noscitur a sociis*. If the Court chooses to engage in statutory construction, Respondent respectfully requests that the Court examine the dictionary definitions of the terms in question before resorting to other methods of statutory construction, as the Court directed when it wrote, “A dictionary will provide the plain meaning of words used in a statute. If some ambiguity persists in the statute after consulting a dictionary, courts derive meaning from the intent of the legislature. Courts cannot add words to a statute under the auspice of statutory construction.” *Southwestern Bell Yellow Pages v. Dir. of Revenue*, 94 S.W.3d 388, 390 (Mo. banc 2002). Therefore, precedent requires that the Court apply the dictionary definitions of the terms employed in Section 144.054.1(1) when establishing the definition of the term “processing” before resorting to the doctrine of *noscitur a sociis*. As explained above, the dictionary definitions of the terms contained in the statutory definition of processing clearly lead to the conclusion that AAA Laundry’s

treatment, cleaning and sanitizing of the contaminated items constitutes processing. Therefore, AAA Laundry is entitled to a tax exemption under Section 144.054.2 for its Laundering Supplies.

D. The Director's reliance on cases interpreting the definition of manufacturing in other statutory sections is misplaced.

In support of its statutory construction argument that AAA Laundry's treatment, cleaning and sanitizing of the contaminated items is not processing, the Director relies exclusively on cases that addressed the definition of manufacturing. As those cases only dealt with the definition of the term "manufacturing" and not the term "processing," the Director's reliance on them is misplaced. Nevertheless, even if this Court were to engage in the statutory construction analysis urged by the Director, the result would still be a finding that AAA Laundry is entitled to a tax exemption for the Laundering Supplies.

The Director places undue emphasis on *Unitog Rental Servs., Inc. v. Dir. Of Revenue*, 779 S.W.2d 568 (Mo. banc 1989), presumably because the taxpayer in *Unitog* was involved in essentially the same type of business as AAA Laundry. The taxpayer in *Unitog*, however, was seeking a tax exemption under Section 144.030.2 for equipment "used in manufacturing" and not under Section 144.054.2 for chemicals used in processing. In *Unitog*, the issue was whether equipment purchased by the taxpayer for use in its commercial laundering business was "used directly in manufacturing." *Id.* at

569. The *Unitog* case interpreted Sections 144.030.2(4) and (5) RSMo. 1986, and as the Court recognized:

Section 144.030.2 exempts the following from the use tax:

“(4) Machinery and equipment . . . used for the same purpose as the machinery and equipment replaced by reason of design or product changes, which is purchased for and used directly for *manufacturing* or fabricating a product which is intended to be sold ultimately for final use or consumption;

(5) Machinery and equipment . . . purchased and used to establish new or to expand existing manufacturing, mining, or fabricating plants in the state if such machinery and equipment is used directly in *manufacturing*, mining or fabricating a product which is intended to be sold ultimately for final use or consumption.” (Emphasis added by Supreme Court.)

Id. at 569 (quoting Sections 144.030.2(4) and (5) RSMo. 1986).³

Because the statute at issue in *Unitog* did not contain an exemption for processing, it is of no relevance to the present case. If AAA Laundry were attempting to claim a tax exemption for equipment used in manufacturing, *Unitog* might be applicable. AAA Laundry, however, is only seeking a tax exemption for the Laundering Supplies that it uses in its laundering *process*, which was not at issue in *Unitog*.

³ These sections are now codified at section 144.030.2(5) & (6).

The Director's reliance on *L & R Egg Co., Inc. v. Dir. of Revenue*, 796 S.W.2d 624 (Mo. banc 1990), is similarly misguided. In *L & R Egg*, as in *Unitog*, the Court was addressing the tax exemption set forth in Section 144.030.2(5), RSMo. 1986, which provided a tax exemption for the following:

Machinery and equipment . . . purchased and used . . . to expand existing manufacturing . . . plants in the State if such machinery and equipment is used directly in manufacturing . . . a product which is intended to be sold ultimately for final use or consumption. (Emphasis added by Supreme Court.)

Id. at 626 (quoting Section 144.030.2(5) RSMo. 1986).

In determining that the process of cleaning eggs was not manufacturing, the Court held that “the processing through which appellant puts the eggs which it obtains from the farmers cannot be called ‘manufacturing’ in any ordinary sense of the word.” *Id.* at 626. In its decision, the Court referred to the taxpayer's cleaning of the eggs as a process, but determined that the activities were not manufacturing.

Similarly, in *State ex rel. AMF, Inc. v. Spradling*, 518 S.W.2d 58 (Mo. 1974), the Court was only addressing the definition of the term “manufacturing.” Even though the Court determined that the process of retreading tires was not manufacturing, it continued to make reference to the “process” of retreading tires throughout the opinion. Thus, once

again, it appears that the Court acknowledged that the retreading activities of the taxpayer were a process but not manufacturing.

Reliance on *Brinker Missouri, Inc. v Dir. of Revenue*, 319 S.W.3d 433 (Mo. banc 2010), is also inappropriate because *Brinker* was also only concerned with the definition of the term “manufacturing.” In that case, the issue under consideration was whether or not a restaurant’s kitchen equipment, tables, chairs and dishes were exempt from Missouri use and sales taxes under Section 144.030.2(4) & (5) because they constituted machinery and equipment used directly in manufacturing, mining or fabricating a product that was intended to be sold ultimately for final use or consumption. In that case, the Court found that restaurants are not “plants” and that restaurant equipment does not constitute equipment used in manufacturing. Accordingly, the decision in that case has no application here because the only issue for consideration in this case is an interpretation of the term “processing,” which does not appear in Section 144.030.2(4) & (5) and was not before the Court in *Brinker*.

Another case involving an interpretation of the term “manufacturing” is *Jackson Excavating Company v. Administrative Hearing Commission*, 646 S.W.2d 48 (Mo. 1983). In that case, unlike the other cited cases, this Court held that the machinery and equipment used to process “raw” water into potable water constituted “machinery used in manufacturing” and as such was exempt from sales and use tax. While *Jackson Excavating* dealt with the availability of an exemption under Section 144.030.2(4), the

importance of this decision is that it recognized that even though the underlying product involved in the process (i.e., water) was the same before and after the purification procedure, the procedure was a process that falls within the definition of manufacturing because there was a transformation of the nature or condition of the underlying product from one that was unusable and of no commercial value into one that was usable with commercial value. The most direct application of this decision to the subject case is that even in a manufacturing situation, it is not always necessary for a new product to be created. In the present case, the AHC determined that “the cleaned and sanitized items contain a market value that they did not contain in their prior soiled condition.” (LF 70).

E. Processing is broader in scope than manufacturing.

The Director argues that the term “processing” has the same meaning as the term “manufacturing.” Such an interpretation of the term “processing” would subvert the purpose and intent of Section 144.054 as enacted by the General Assembly. Although this Court has held that “there is little to no difference between the terms ‘processing’ and manufacturing,’ as a practical matter,” *Hudson Foods*, 924 S.W.2d at 278 n. 1., and “the meaning of the term ‘processing’ is ordinarily included within the meaning of the more general and inclusive term ‘manufacturing,’” the General Assembly’s inclusion of both the term “processing” and the term “manufacturing” in Section 144.054.2 demonstrates that the intent of the General Assembly was that the terms “processing” and “manufacturing” should not be interpreted to be one and the same.

“It is a well established presumption that the General Assembly did not intend for any part of a statute to be without meaning or effect. It is not presumed to have intended a useless act.” *Sheldon v. Board of Trustees of the Police Retirement System*, 779 S.W.2d 553, 556 (Mo. banc 1989). Each word, clause, sentence and section of a statute is to be given meaning. *Utility Service Co., Inc. v. The Department of Labor and Industrial Relations*, 331 S.W.3d 654 (Mo. banc 2011). If, as asserted by the Director, the term “processing” is interpreted to have the same meaning as the term “manufacturing,” there would have been no reason to include the term “processing” in Section 144.054. Although there may be some overlap between the terms “processing” and “manufacturing,” the General Assembly’s inclusion of both terms in the statute demonstrates that the General Assembly understood that they are different and should include different activities. While some activities may be both processing and manufacturing, there is no requirement that all of the activities covered by this statute have to be both. If the term “processing” is interpreted to limit its scope to manufacturing as asserted by the Director, the purpose and intent of the legislature in enacting Section 144.054 would be significantly undermined.

The broad application to be given to Section 144.054 is demonstrated by this Court’s decision in *E & B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314 (Mo. banc 2011). In *E & B Granite*, this Court found that granite slabs used by E & B in the manufacture of countertops that are eventually installed on a customer’s property qualify

for a state and local use tax exemption and also a state sales tax exemption. In reaching this decision, this Court relied upon *International Bus. Mach. Corp. v. Director of Revenue*, 958 S.W.2d 554 (Mo. banc 1997), for the proposition that the use of the term “any product” in Section 144.054.2 is broad enough to include any output with a market value, whether it is tangible personal property or a service. The Court then went on to acknowledge that while Section 144.054.2 and Section 144.030.2 both relate to sales and use tax exemptions, they each deal with very different scenarios and types of products. While Section 144.030.2 is specifically directed to “personal property . . . sold ultimately for final consumption,” Section 144.054.2 does not include this same terminology. *E & B Granite*, 331 S.W.3d at 317. The latter section applies to any product that is either tangible personal property or a service. *Id.* at 316. This Court further noted in its opinion that it is clear from the language used in Section 144.054.2 that the section is broader than Section 144.030.2, and that the legislature in enacting this section intended to provide additional exemptions that are not allowed by Section 144.030. In its holding, this Court dispelled the notion that in order for materials to qualify for the exemption authorized by Section 144.054.2, they must be entirely consumed. In rejecting the Director of Revenue’s argument to this effect, the Court noted that Section 144.054.2 is not limited to materials that are consumed, but rather uses the phrase “materials used or consumed,” and as a result, was intended to have a broader scope. *Id.* at 318. Finally, the

Court rejected the notion that the exemption authorized by Section 144.054.2 is limited to apparatus. *Id.*

Section 144.054.2 was intended to provide an exemption from sales and use tax to a broader class of activities. For example, it specifically covers not only machinery and equipment, but also materials and chemicals. In addition, it is not limited to manufacturing, mining, fabricating and producing a product that is intended to be sold ultimately for final use or consumption.

F. Determining that the treatment, cleaning and sanitizing of the contaminated items is the “processing” of a “product” will not lead to absurd results.

The Director further argues that a finding that the treating, cleaning and sanitizing process performed by AAA Laundry qualifies as a process under Section 144.054.2 would “lead to unreasonable and absurd results” and would further “lead to an influx of litigation casting mundane activities involving mere cleaning, such as car washing or housekeeping service, as ‘processing.’” The Director’s argument is without merit. Clearly a car can still be used if it is not washed. Likewise, a house can be lived in without the use of a housekeeper. Conversely, if AAA Laundry did not clean and sanitize its soiled items after use, the soiled items would become unusable and functionally worthless after a single use. The cleaning and sanitizing process serves to

convert the soiled items from an unusable state to a usable state and should therefore be exempt from use tax under Section 144.054.2.

Furthermore, in *Aquila*, this Court limited the exemption in 144.054.2 to industrial-type operations. As the AHC determined, “the laundry portion of [AAA Laundry’s] business is industrial in nature.” (LF 71). The exemption being claimed by AAA Laundry could only be claimed by those engaged in the same industrial-type business conducted by AAA Laundry. Therefore, the Director’s concern that millions of people engage in laundering is unfounded.

G. The Wastewater Treatment Chemicals are used in a treatment process; therefore, AAA Laundry is entitled to a use tax exemption for the out-of-state purchase of these chemicals.

Although the Commission relied upon Section 144.030.2(15) in granting AAA Laundry a use tax exemption for the Wastewater Treatment Chemicals, the Wastewater Treatment Chemicals are also subject to a tax exemption as chemicals used in processing pursuant to Section 144.054.2. *See BASF Corp. v. Dir. of Revenue*, 392 S.W3d 438, 444 (Mo. banc 2012) (“This Court can affirm the commission's decision in this case even if it does not agree with all of the commission's reasoning for the decision, as the primary concern is the correctness of the commission's result and not its path to reach that result.”).

AAA Laundry's laundering operation produces mass quantities of wastewater. AAA Laundry is required by city ordinance and federal environmental laws to treat this wastewater to a prescribed quality before releasing it into the city's sewer system. To that end, AAA Laundry purchased and uses wastewater treatment equipment to comply with its water treatment obligations. AAA Laundry purchases certain Wastewater Treatment Chemicals that are used by the wastewater treatment equipment to treat the wastewater before it is released. The Wastewater Treatment Chemicals are specific to the machines used by AAA Laundry.

Because AAA Laundry is required to treat the wastewater that is produced in the cleaning and sanitizing process, the "processing" is not complete until the wastewater is treated. Therefore, the Wastewater Treatment Chemicals are used in the process of treating a contaminated product. As with the Laundering Supplies, the Wastewater Treatment Chemicals are used in a process that transforms a product from a contaminated state into a clean state within the meaning of Section 144.054.2. Consequently, AAA Laundry is entitled to a use tax exemption for its out-of-state purchase of the Wastewater Treatment Chemicals, pursuant to Section 144.054.2.

CONCLUSION

The Wastewater Treatment Chemicals are equipment used in preventing, abating or monitoring water pollution or an integral part and necessary component of AAA Laundry's wastewater treatment machinery used in that process. The Wastewater Treatment Chemicals are used in the machinery, and the machinery will not function without the chemicals. Consequently, the chemicals are a constituent part of the machinery. As such, AAA Laundry is entitled to a use tax exemption on its out-of-state purchase of the chemicals, pursuant to Section 144.030.2(15).

In addition, AAA Laundry engages in "processing" when it treats, cleans and sanitizes soiled and contaminated items. This process transforms the soiled and contaminated items from an unusable state with minimal market value into clean and sanitized items that are usable and have a new, independent market value. Because of this laundering process, the clean and sanitized items are suitable to be placed back into service. Because the laundering process constitutes "processing," AAA Laundry is entitled to a use tax exemption for the Laundry Supplies pursuant to Section 144.054.2. Additionally, as a part of its laundering process, AAA Laundry is required to treat the wastewater that is produced in its laundering operation. Because this treatment of the wastewater is a necessary component of the laundering process under Section 144.054.2, AAA Laundry is also entitled to a use tax exemption pursuant to Section 144.054.2 for its out-of-state purchase of the Wastewater Treatment Chemicals.

Because AAA Laundry is entitled to a use tax exemption for the Wastewater Treatment Chemicals and the Laundry Supplies, this Court should uphold the decision of the Administrative Hearing Commission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the foregoing Respondent's Brief complies with the limitations of Rule 84.06(b), and that it contains 8,776 words; and that it was served electronically via Missouri CaseNet on November 18, 2013, to:

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