

BOARD OF TAX APPEALS  
STATE OF OHIO

**FILED**  
APR 07 2016  
BOARD OF TAX APPEALS  
COLUMBUS, OHIO

Beitzel Corporation  
333 Corporate Drive  
Grantsville, MD 21536

Appellant,

vs.

Case No. \_\_\_\_\_

(Sales and Use Tax)

Joseph W. Testa  
Tax Commissioner of Ohio  
30 E. Broad Street  
Columbus, Ohio 43215-3414

Amount in Controversy: \$266.55

Appellee.

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**NOTICE OF APPEAL**

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Pursuant to section 5717.02 of the Ohio Revised Code ("R.C."), Beitzel Corporation ("Beitzel") hereby gives notice of its appeal to the Ohio Board of Tax Appeals from the February 16, 2016, Final Determination by Joseph W. Testa, the Tax Commissioner of the State of Ohio, Refund Claim No. 367170091501 (the "Determination"). A copy of the Determination is attached hereto as Exhibit A and is incorporated herein by this reference.

**STATEMENT OF FACTS**

1. Beitzel provides materials and services to companies for the exploration and production of oil and gas.
2. Beitzel paid Ohio sales and use tax on transactions that were not taxable, and after discovering its overpayments to vendors and to the state, filed an application for refund relating to these transactions (the "Application").
3. The Application identified four transactions occurring between August 1, 2013, and December 31, 2014, as subject to refund, and requested a total refund of \$266.55.
4. Details of the four Transactions are as follows:
  - a. On August 28, 2013, Beitzel purchased concrete to incorporate into an active drilling rig and paid tax to the vendor in the amount of \$60.48 ("Concrete

Transaction," also referred to with the other transactions collectively as the "Transactions").

- b. On November 7, 2013, Beitzel entered two separate transactions for gates that were installed on an active drilling rig and paid tax to the vendor in the amount of \$158.03 for the two purchase ("Gate Transactions," also referred to with the other transactions collectively as the "Transactions").
  - c. On December 4, 2014, Beitzel purchased tarps and tie downs for use on an active drilling rig and paid tax to the vendor in the amount of \$48.04 ("Tarp Transaction," also referred to with the other transactions collectively as the "Transactions").
5. Beitzel resold the Transaction materials to its customers. At the time of resale, the materials were in substantially the same form as when Beitzel purchased the materials from its vendors.

#### **SPECIFICATIONS OF ERROR**

6. Beitzel contends the Commissioner's Determination is erroneous for each of the following reasons:

##### ***Specification One***

7. The Commissioner's Determination is erroneous because the materials purchased were used directly in the production and actual drilling of oil and natural gas and are not taxable pursuant to R.C. 5739.02(B)(42). R.C. 5739.02(B)(2) exempts sales from tax when the purchaser's purpose is any of the following:

incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

8. As the Commissioner noted in the Determination, the Supreme Court of Ohio, in Kilbarger Constr. Inc. v. Limbach (1988), 37 Ohio St. 3d 234, determined that tangible person property is "directly" used in production or exploration of oil and gas if actual drilling has commenced.

9. All Transactions materials constitute tangible personal property used during the actual drilling process.
10. The Concrete Transaction directly contributed to production and the actual drilling of oil and natural gas. Beitzel's customer used the concrete on a rig structure commonly known as a "mouse hole." After the vertical portion of the well is drilled and before drilling the horizontal well path, rig operators build the mouse hole. The mouse hole protects drilling pipe as the horizontal path is drilled. Beitzel acknowledges that in its previous communications with the department it mistakenly stated the concrete was used to fill in completed wells. This statement is incorrect; the Concrete Transaction materials were used to backfill the mouse hole after the horizontal well was drilled and prior to hydraulic fracturing of the well. Production continued as the Concrete Transaction materials were incorporated into the rig.
11. Similarly, the Gate Transactions materials were used during the production and actual drilling and are also exempt. As the vertical well hole nears completion, gates are incorporated around a structure on the rig known as a well cellar. A well cellar is necessary in the drilling process to recess equipment into the earth while drilling the horizontal portion of the well. The gates protect the individuals on-site and permit safe operations. Because the gates were incorporated into the rig structure for and during actual drilling, the Commissioner erroneously found the gates taxable.
12. The Tarp Transactions also directly contributed to the production and actual drilling of oil and gas. Beitzel purchased tarps and tie downs for installation around drilling and fluids transmission equipment at the surface of the well to continue operations in winter. Pressurized water for certain equipment is required to drill the vertical portion of the well bore. The pressurized water is introduced into the bore at the surface of the well. Without tarps and tie downs to insulate the pressurized water, it could freeze in winter months and prevent water flow into the well bore. Drilling could not occur without pressurized water flow and thus, tarps and ties downs are necessary for continued production. Therefore, the Tarp Transaction constituted material used directly in the actual drilling process.
13. Because the materials purchased under the above Transactions were directly used in the production and during the actual drilling of oil and gas, the Commissioner wrongfully determined that the Transactions were not exempt from taxation under R.C. 5739.02(B)(2).

**Specification Two**

14. In the alternative, and without waiving the above specifications, the Commissioner's Determination as to the Transactions is erroneous because the Transactions are exempt as materials for resale. Under each Transaction, Beitzel purchased finished materials from vendors and resold the products in unchanged forms to its customers. The materials Beitzel resold ultimately benefited its customer. Thus, the Commissioner should recognize that Beitzel purchased the materials under each Transaction for resale to its customers.

**REQUEST FOR RELIEF**

15. Beitzel respectfully requests that the Board of Tax appeals reverse, vacate, and set aside the Tax Commissioner's Determination, grant Beitzel's refund Application in its entirety, and grant such other further relief as Beitzel may be entitled.

Respectfully Submitted,

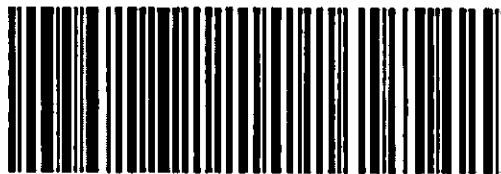
By: 

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**Ohio** | Department of Taxation

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**FINAL  
DETERMINATION**



BEITZEL CORPORATION  
12072 BITTINGER RD  
GRANTSVILLE, MD 21536-3116

February 16, 2016  
Contact ID: 3671700893

RE: Tax Type: Use  
Refund Claim Number(s): 367170056205



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This is the final determination of the Tax Commissioner on an application for refund, in the amount of \$266.55, of Use tax filed pursuant to Ohio Revised Code (R.C.) 5739.07.

Upon initial review, the claim was denied in full. In response to the letter of denial, the claimant submitted additional information pursuant to R.C. 5703.70(A). A hearing was not requested.

Pursuant to R.C. 5703.70(C)(2), "If the applicant does not request a hearing, but provides additional information, within the time prescribed by division (A) of this section, the commissioner shall review the information, make such adjustments to the refund or compensation as the commissioner finds proper, and issue a final determination thereon." This final determination is issued pursuant to this section of the Ohio Revised Code.

The claimant is a "full service, industrial contractor that provides services to exploration and production companies in the oil and gas industry." The claimant seeks refund on purchases claimed to be exempt from taxation pursuant to R.C. 5739.02(B)(42)(a) as used directly in the exploration for, and production of, crude oil and natural gas.

According to R.C. 5739.02(B)(42)(a), tax does not apply to sales where the purpose of the purchaser is to use or consume the thing transferred directly in the "production of crude oil and natural gas." This statute also states, "Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas."

Based upon the language of the statute, only items "used directly" in exploration or production are exempt from taxation. In *Kilbarger Constr. Inc. v. Limbach* (1988), 37 Ohio St.3d 234, the Supreme Court of Ohio had the opportunity determine where "direct use" begins in cases involving both the exploration for, and production of, crude oil and natural gas. The court considered "production" first and held that "actual drilling" is the appropriate place for exemption since actual drilling was determined to be "the commencement of the activity of production" As for exploration, the court went on to say that "exploration" used in conjunction with "production" of oil entails the same kind of search. Both activities involve drilling. "The distinction is that exploration may or may not result in a producing well, while production results from the finding of a producing well." In other words,

"[w]here production occurs, exploration has been successful." As a result, "exploration" does not expand the exemption to site preparation or other similar activities. The line is drawn at the "actual drilling of the well" for both the unsuccessful (exploration) and the successful (production) projects.

The claimant seeks refund for purchases that do not appear to be used directly in "actual drilling." The claimant provided the following descriptions of the transactions at issue: 1) tarps and tie downs used when pumping heat into the well cellars on gas drilling pad; 2) concrete used to fill in wells in the gas fields; 3) corral and gate tubes described as gates used for safety purposes to partition off the well cellars on gas drilling pads. None of these descriptions indicate that the purchases at issue are directly used in actual drilling activities. Therefore, there is no basis for refund.

Therefore, the claim for refund is denied.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY (60) DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.



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A handwritten signature in black ink, appearing to read "Joseph W. Testa", written over a horizontal line.

Joseph W. Testa  
Tax Commissioner



**Department of  
Taxation**

Dear Taxpayer:

Enclosed is the Tax Commissioner's final determination regarding your case. The title is captioned either "Journal Entry" or "Final Determination."

You have the right to appeal this decision to the Board of Tax Appeals. Unlike appeals to the Tax Commissioner, proceedings before the Board of Tax Appeals are very formal, and the Board's procedures must be carefully followed. An appeal to the Board may be done in the following way:

- You have only **sixty (60) days** from the date you received this final determination to appeal.
- If you choose to appeal, you must send the Board of Tax Appeals your original notice of appeal and two copies. A copy of the enclosed final determination should also be attached to each notice of appeal. Your notice of appeal must clearly state why you are appealing and include a request for the relief sought. The law requires you to describe carefully each error which you believe the Tax Commissioner made.
- You must also send the Tax Commissioner a copy of your notice of appeal and a copy of the enclosed final determination. The Tax Commissioner's copies must be mailed or delivered in person. There is no electronic option.
- The Board of Tax Appeals and the Tax Commissioner must each receive the notice of appeal and the copy of the final determination within sixty (60) days of your receipt of this final determination. In order to file your appeal on time, you must send the notices by certified mail, express mail, fax, authorized delivery service or electronic transmission to the board and make sure that the recorded date is within sixty (60) days of your receipt of the enclosed final determination. Ordinary mail delivery is not considered received until each agency actually receives your notice of appeal. If the notice of appeal is filed by fax or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system. Alternatively, you may personally deliver the notices before the sixty (60) days are up to be sure both agencies receive it within the sixty (60) day time limit. Appeals which are received late do not meet the requirements of the law and cannot be considered.

Ohio Revised Code Section 5717.02 is the section of the Code stating the requirements for a proper appeal to the Board of Tax Appeals. You must follow all of these mandatory requirements in order to appeal. If you don't, you may lose your right to appeal.

The mailing address of the Board of Tax Appeals is:

30 East Broad Street  
Columbus, OH 43215-3414

The Tax Commissioner's mailing address is:

30 East Broad Street  
Columbus, OH 43215-3414

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