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March 7, 1952
Op. No. 52-65

Mr. Robert Morrison
County Attorney
Pima County Courthouse
Tucson, Arizona

Attention: Morris K. Udall
Chief Deputy County Attorney

Gentlemen:

We have your letter of February 26, 1952, wherein you ask our opinion as to the application of Article 9, Section 13, Constitution of Arizona, adopted September 12, 1950, to a Pima County resident "involved in the production of honey from bees owned by him". With your request you enclosed a memorandum on the question prepared by taxpayer's attorney presenting taxpayer's position that he is entitled to the manufacturers' exemption. Article 9, Section 13, supra, reads:

"No tax shall be levied on raw or unfinished materials, unassembled parts, work in process or finished products, constituting the inventory of a manufacturer or manufacturing establishment located within the state and principally engaged in the fabrication, production and manufacture of products, wares and articles for use, from raw or prepared materials, importing there-to new forms, qualities, properties and combinations, which materials, parts, work in process or finished products are not consigned or billed to any other party."

Briefly the facts as set out in the memorandum (and our opinion is necessarily restricted to the facts as described therein) are these: Raw comb honey is taken from the hives owned by the taxpayer and some from hives of other bee keepers and honey producers and through heat extraction by means of centrifugal force and further straining of the comb honey, "strained honey" is obtained and is poured into bottles for ultimate sale. Another component, bees wax, is also thus obtained, it having been an element of comb honey

in the form of flecks of wax in the honey comb. Bees wax is primarily used in stiffening and rendering more durable the type of thread used in the production of shoes. Strained honey, it is alleged, is more suitable for its prime use (as a spread for bread, muffins, rolls, or other bread products) than is raw comb honey and sells for a slightly greater price, although it is admitted that raw comb honey can be and is also used as a spread. It is stated that the process of extraction and straining of raw comb honey gives it an extended life of at least a year under bottled conditions.

Does the foregoing constitute taxpayer a "manufacturer" and his place of business a "manufacturing establishment" within the meaning of Article 8, Section 13 of the Constitution of Arizona? Is taxpayer "principally engaged in the fabrication, production and manufacture of products, wares and articles for use, from raw or prepared materials, imparting thereto new forms, qualities, properties and combinations, * * *"?

We find no controlling Arizona interpretation of the terms in question, either in the statutes or the cases, nor do we find elsewhere a decision dealing with such a fact situation as this. The difficulty is pointed up in 55 C.J.S. "Manufactures", Section 3 (a):

"It has been well stated that it is sometimes difficult to determine with legal exactness what is or what is not manufacturing. The subject not only is a large one, but there is considerable conflict in the decisions having to do with particular phases of it, and there is not a little confusion of thought with respect to it. In determining what constitutes manufacture there is no hard and fast rule which can be applied generally. Each case must be decided under its own facts, having regard for the sense in which the term may be used in the particular instance, and the intent or purpose to be accomplished. The fact that a given thing or industry has been held to be 'manufacture' under one set of circumstances is no assurance that it will be so held under another. What might be a manufacturing industry when defined or construed in connection with an instrument or a statute might not be so held when considered in connection with

another instrument or statute having a different purpose or object. There is, of course, a multitude of cases in which particular industries and products have been held respectively to be or not to be 'manufacture.'

It is clear that the definition of the word 'manufacture' is a question of law for the courts, * * * * The courts must consider that the legislatures in employing the word had in mind not only the lexicographical definitions, but also the popular conception of what constitutes manufacturing. Thus the courts have frequently found it necessary in carrying out the legislative intent in the use of the word to limit materially the scope of the general definitions, and in many cases have found that the legal definition is the more appropriate.

* * * * *

However, 'manufacture' is commonly understood in a limited sense, said to be the strict sense which it is to receive in the law as distinguished from the strict sense in the abstract. * * * * while in statutes conferring special privileges the term is strictly construed."

This authority also states and discusses in detail the main elements generally adopted to determine what constitutes "manufacture" or "manufacturing". The elements as listed are (1) an original substance or material frequently referred to as raw material, (2) a process whereby the original material is changed or transformed, (3) an article or substance which by reason of being subjected to the processing is to some extent different from the original substance or material.

We will not attempt to discuss the innumerable decisions holding particular industries or products to be or not to be "manufacture". In this regard see 55 C.J.S. *ibid.*, and 26 Words and Phrases, *Manufacture*.

In *Standard-Tailoring Co. v. City of Louisville*, 153 S.W. 764, the Kentucky court discusses the problem arising from a tax statute exempting a "manufacturing establishment". The following language is worthy of quotation:

"The words 'manufacturing establishments' have been given a variety of meanings, depending largely on the circumstances surrounding the case in which they have been used. The result of this is that, although the words have been often defined by the courts, few judicial precedents can be found that may be properly applied to any particular state of facts. Webster defines 'manufacture' to be: 'The process or operation of making wares or any material products by hand, by machinery, or by other agency; often such process or operation carried on systematically with division of labor and with the use of machinery. Anything made from raw materials by the hand, by machinery, or by art, as clothes, iron utensils, shoes, machinery, saddlery.' And this definition in different forms of expression embodies the general idea that may be found in all the cases where the word has come up for construction; but, in applying it to the facts of particular cases in which the construction of ordinances or statutes was involved, the courts, especially in license and exemption cases, have found it necessary, in carrying out the legislative intent in the use of the word, to materially limit the scope of this general definition, which is broad enough to embrace almost every concern that is engaged in the business of changing the nature or quality of articles so that they may be used for whatever purpose they were intended. Indeed, we might say that the meaning of the words 'manufacture' and 'manufacturing establishment' has been adapted to meet the varying circumstances arising in the case or class of cases in which it was necessary to define them, so that the intent with which they were used might be accomplished. The purpose of the lawmaking body in using the words has always been allowed to have controlling weight in the decision of the meaning that should be attached to them,

* * * * *

Keeping in mind then the purpose of this ordinance and the thought that the words should be given such meaning as was reasonably intended in their use, it must be at once manifest that, if this broad definition of Webster should be given to the words as used in this ordinance, there are few establishments, whether large or small, that are engaged in the business of converting material from one form into another to make it more convenient or desirable for use that would not be entitled to the benefit of the exemption. The baker, the blacksmith, the carpenter, the shoemaker, the confectioner, the merchant tailor, the milliner, the dressmaker, and scores of others, would escape taxation, although it seems quite obvious that it was not intended by the adoption of this ordinance to exempt from taxation the multitude of concerns that in some way or another are engaged in the business of changing the character of material from one form to another. To give the ordinance the construction contended for would defeat, in place of accomplish, the result intended in its adoption, which was to induce the location in the city of new manufacturing establishments that would bring wealth into the city to increase its revenue when the period of exemption had passed, because the diminution in revenue by the exemption of the large class continually engaged in changing articles or material from one form to another would largely exceed the amount that might be produced as a result of the establishment of new manufacturing enterprises. Aside from this, it would work gross inequality in the system of taxation;

* * * * *

We may also with much propriety observe that it would not be either safe or judicious to attempt any more accurate definition of the words 'manufacturing establishments' than may be necessary to a decision of the precise question we have before us. The

meaning that should be given to these words may come up in other cases presenting entirely different states of facts, in which the meaning here ascribed to them would be both inappropriate and unjust, and therefore what we say upon the subject must be understood as referring directly to the question submitted in this record for our decision.

Although there is a dearth of controlling precedents, there are a few general principles that it might not be amiss to notice. One of these is found in Victor Cotton Oil Co. v. City of Louisville, 149 Ky. 149, 148 S. W. 10, where it is said: 'Exemptions from taxations are strictly construed. They are never construed as including things not fairly within the meaning of the words read as they are written.' Another is, as stated in Jones Brothers v. City of Louisville, 142 Ky. 759, 135 S.W. 301: 'The right of taxation is never presumed to be relinquished, and, before any party can rightfully claim an exemption from the common burden, it is incumbent upon the party to show affirmatively that the exemption claimed is authorized by law. If there be a doubt upon the subject, that doubt must be resolved in favor of the state, and it is only where the exemption is shown to be granted in terms clear and unequivocal that the right of exemption can be maintained.' Another is thus stated in City of Middlesboro v. New South Brewing & Ice Co., 108 Ky. 351, 56 S.W. 427, 21 Ky. Law Rep. 1782: 'It is well settled that exemptions from taxation are regarded in derogation of common right, and therefore are not to be extended beyond the exact and express requirements of the language used.'

The Pennsylvania Supreme Court in Rieck-McJunkin Dairy Co., v. School District of Pittsburgh, 362 Pa. 13, 66 Atl. 2d 295, recognizing that the word "manufacture" as used in an exemption provision of a taxing statute is to be taken as used by the Legislature in its ordinary and general sense, held that a milk

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company which pasteurized and homogenized milk was not engaged in manufacturing, although it was manufacturing insofar as it used milk for making ice cream, cottage cheese or butter. The following quotation seems particularly analogous:

" * * * Pasteurization involves heating milk to a certain temperature and holding it at that temperature for a specified length of time for the purpose of destroying disease producing organisms. The process results in changes in its protein and mineral content. The mere fact that plaintiffs do this on a large scale with expensive machinery does not make it any the less processing milk. In *City of Louisville v. Ewing Von-Allman Dairy Co.*, 1937, 268 Ky. 652, 105 S.W. 801, and in *People ex rel. Empire State Dairy Co. v. Sohmer*, 1916, 218 N.Y. 199, 112 N.E. 755, L.R.A. 1917A, 48, in construing statutes exempting machinery used in manufacturing, the courts held that pasteurization of milk was mere processing and not manufacturing. Homogenization breaks up globules of fat to prevent separation of cream from milk and results in uniform distribution of the fat content of the milk. Milk is homogenized by forcing it through small openings at pressures from 2500 to 4000 pounds per square inch. While some of the attributes of milk are changed by the process it is not manufacturing into a new and different article. It also continues to be sold as milk. Pasteurized and homogenized vitamin D milk and pasteurized chocolate milk is milk with the addition, in one instance, of vitamin D concentrate and, in the other, of chocolate and sugar. Condensed, evaporated and powdered milks are produced by boiling off under controlled conditions a portion of the water content of the milk; this is a variation of the process of reducing a raw material to its constituent parts for purposes of distribution. Buttermilk and sour cream are produced by inoculating milk or cream with a pure culture

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of lactic organisms which at proper temperatures and for a controlled incubation period will grow and propagate. These products are sold as milk; the changes are essentially in the milk flavor, they are still used as beverages and are not new and different products in the sense of the definition of manufacture. * * * " (Emphasis supplied)

In 55 C.J.S., supra, Section 3 (d) 1, it is stated:

" * * * If there is merely a superficial change in the original materials or substances and no substantial and well-signalized transformation in form, qualities, and adaptability, quite different from the originals, it cannot properly and with reason be held that a new article has emerged, a new production been created."

It is the law of this jurisdiction, as it is everywhere, that where a statute purports to grant an exemption from taxation the rule of construction is that the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. See State v. Yuma Irrigation District, 155 Ariz. 178, 99 P. 2d 704; Weller v. City of Phoenix, 39 Ariz. 148, 2 P. 2d 665, and 51 Am. Jur., Taxation, Sections 524 et seq. Whenever any doubt arises it is to be resolved against the exemption.

We believe that although the instant fact situation presents a rather close question, the Arizona courts in a proper case would hold that the operation here involved is not that of a "manufacturer" or a "manufacturing establishment", under the quoted constitutional exemption, and that therefore taxpayer cannot claim the benefit of the exemption.

We trust the foregoing sufficiently answers your question.

Very truly yours,

FRED C. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General

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