

TAXATION: Mining corporation not a "manufacturer" within meaning of Section 150.300, RSMo 1949. Stock-piled ore owned by mining corporation subject to tax as personal property in county where situated as provided in Sections 137.095 and 137.140, RSMo 1949.

JOHN M. DALTON  
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April 22, 1953

John C. Johnsen  
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Honorable J. B. Schnapp  
Prosecuting Attorney  
Madison County  
Fredericktown, Missouri

Dear Mr. Schnapp:

This is in response to your request for opinion dated March 30, 1953, as supplemented by your letter of April 7, 1953. Your request reads, in part, as follows:

"The question is, is a lead mining company, engaged in the extraction of ore from the ground and then separating the lead ore from the various rocks at a mill to get the raw lead, which is not manufactured or refined or processed in this county a manufacturer as set out in chapter 150 of the Mo. R.S. 1949 and thus subject to the manufacturer's assessment. If they are not subject to the manufacturer's tax, could the corporation be taxed on the property as the personal property of the corporation?"

"One of the companies which the Assessor has in mind has a stock-pile of a large amount of copper and other ores, extracted from the various mines in this county."

Upon inquiry your request was supplemented as follows:

"The Mining Company is not licensed in my County. The Mining Company takes the ores from the ground, crushes and separates the lead from the copper and other rock. After the lead is separated from the rock and copper, it is then shipped out of the county

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for further processing and refining. This first goes to the smelter and then from the smelter to the various manufacturers.

"Actually there are no refined ores stored in this county. The process merely being the separation of the various ores and the separated ores are shipped to some other county. I have been informed, the Mines have stock-piled a considerable amount of copper; this copper being in its natural state with the exception that it has been separated."

The first portion of your request is whether the mining corporation in question is subject to a manufacturer's license and tax as provided in Sections 150.300-150.370, RSMo 1949. To be subject to such a license and tax the corporation must come within the definition of a manufacturer, defined in Section 150.300, supra, as follows:

"Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purposes of sections 150.300 to 150.370."

It was stated in State ex rel. Compton v. Buder, 308 Mo. 253, 271 S.W. 770, that (Mo. l.c. 260): "Citation of authority is entirely unnecessary in support of the well recognized rule that taxing statutes must be strictly construed." Apparently Section 150.300, supra, has not been construed by the Missouri courts with reference to a corporation engaged in mining operations, but bearing in mind that a strict construction must be placed on that section, we are of the opinion that a mining corporation does not fall within its terms and does not constitute a manufacturer.

A corporation engaged strictly in mining operations does not either "hold or purchase personal property for the purpose of adding to the value thereof" by any of the methods set out in Section 150.300, supra. When the corporation purchases either the fee simple title to land, or a lease on land, or the mineral rights to certain land, it is not purchasing personal

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property but rather in each instance an interest in realty. Upon severance from the soil the ore becomes personal property which is held by the corporation but, if it is engaged strictly in mining, it is not held for the purpose of adding to the value thereof by any method of "manufacturing, refining, or by the combination of different materials."

Inasmuch as the statutory definition uses the word defined, i.e., "manufacturing," it might be well to set out what the popular definition of the word is.

In *Ward Baking Co. v. City of Ste. Genevieve*, 342 Mo. 1011, 119 S.W. (2d) 292 (1938), the court said (S.W. l.c. 293):

" \* \* \* A manufacturer is one engaged in making materials, raw or partly finished, into wares suitable for use. \* \* \*"

It is stated in 55 C. J. S., Section 3, page 685:

"The word 'manufacture' ordinarily applies to artificial products of human industry, and is not usually applied to the appropriation of an article which is furnished by nature or to the liberation of a natural product.

"A 'manufacture' is something made by hand, as distinguished from a natural growth. 'Manufacture' ordinarily refers to artificial products of human industry, so that the mere appropriation of an article which is furnished by nature is not manufacture, nor is the mere liberation of natural products. Ordinarily the term does not include such industries as have for their object the obtaining of possession of material products in the state in which they are fashioned by nature. However, the term may include the appropriating of materials or elements as they exist in a state of nature if there is also some form of processing whereby they are rendered more subject to man's control, or more serviceable to his use."

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And again in 55 C. J. S., Section 4, page 695:

"Mining alone is not regarded as manufacturing, but smelting is usually so considered.

"Under the rule, as discussed supra Sec. 3 c (2), that the mere appropriation of an article that is furnished by nature is not manufacture, mining alone is not manufacturing; but smelting may be manufacturing. However, it has been held that milling and reducing ore does not come within the commonly accepted meaning of the word 'manufacturing.'"

The distinction between smelting and mining with regard to whether a corporation engaged in those enterprises was a manufacturer within the meaning of the bankruptcy law was determined by the District Court for the Southern District of California in the case of *In re Tecopa Mining & Smelting Co.*, 110 F. 120, 121. There that court said:

" \* \* \* Has the corporation here, by smelting, made or formed anything useful? It has changed the form of the ore, by eliminating useless matter, into that which is useful; and the product has another name, being ore no longer, but 'pig' or bullion, and having a market value depending upon its assay. In a strict sense, man can create nothing. He can only alter the form of existing things. The ore, when taken from the mine by the process of mining, is changed neither in form nor in substance, unless breaking may be termed a change of form. It is ore, still. But when smelted it is ore no longer, in form, and the substance is altered by taking away some of its component parts. There has been alteration, and that by human hands and machinery. To my mind, it comes clearly within the popular definition of 'manufacturing.'"

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See, also, In re Rollins Gold & Silver Min. Co., 102 F. 982 (Dist. Ct., S.D. New York).

In Cowling v. Zenith Iron Co., 65 Minn. 263, 268, the Supreme Court of Minnesota said:

" \* \* \* The only business actually carried on was that of mining.

"We cannot hold that mining is a 'manufacturing' business, in any proper sense of the word. \* \* \*"

For other cases holding substantially the same, see Byers v. Franklin Coal Co., 106 Mass. 131; Appeal of Commonwealth, 18 Atl. 133 (Pa. Sup.).

Considering the distinction between smelting and mining as set out in the Tecopa Mining & Smelting Co. case, supra, we do not believe that a corporation engaged solely in mining would fall within the Missouri court's definition of a manufacturer as set out in the Ward Baking Co. case, supra. The process of mining does not convert any raw or partly finished material into wares suitable for use. Rather, after the process of mining is complete, the end product remains raw ore.

It might be contended that the process of mining constitutes "refining" as that term is used in the statutory definition of a manufacturer in Section 150.300, supra. Such a contention was made to the Tax Commissioner of Ohio in the case of Cleveland-Cliffs Iron Co. v. Glander, 145 Ohio St. 423, 62 N.E. (2d) 94 (1945). Section 5385, Ohio General Code, defines a manufacturer as a "person who purchases, receives or holds personal property, of any description, for the purpose of adding to the value thereof by manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing."

In that case the plaintiff was engaged in mining iron ore. During the mining operations foreign material, lean ore and rock were sorted out, some ore was crushed and screened by machinery, and by a washing process some free silica was removed. The court asked itself this question (N.E. l.c. 96): "Under the facts presented by the record in this case, is the appellant a manufacturer within the purview of these statutory provisions?" The court went on to answer the question in the negative as follows:

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"This court has heretofore considered a similar question in the case of Schumacher Stone Co. v. Tax Commission, 134 Ohio St. 529, 18 N.E. 2d 405, 120 A.L.R. 1199. The Schumacher Stone Company was engaged in quarrying stone and preparing the stone for sale by successive processes of crushing and screening. Purchasers from the stone company required different sizes of stones and this process prepared the stone to meet the various specifications. This court there held that the 'Machinery, used in crushing and screening limestone into various merchantable sizes without the application of any art or process to change the form or appearance of the broken pieces of stone, each grade being designated according to size and use, mostly for road construction but also for other minor purposes, is not, and should not be assessed as, personal property used in manufacturing, within Sections 5385, 5386 and 5388, General Code.'

"The similarity between the process involved in that case and the operations of the appellant herein is apparent. In neither instance was the product substantially altered. The ore produced by the appellant is still iron ore when sold to the steel manufacturing companies, and it was sold to them as such. Numerous cases were cited in the opinion in the Schumacher case which show the rule to be well established that such operations as above set forth are not deemed to be manufacturing. Neither do the processes performed by the appellant constitute 'refining, rectifying, or by the combination of different materials' within the meaning of Section 5385, General Code. Those words have clearly defined meanings and do not include such operations. The mere separation and removal of free silica from the iron ore, which thereby leaves the ore higher in iron and lower in silica, does not constitute either rectifying or refining as those terms are defined. The supporting cases cited in

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the opinion in the Schumacher case are applicable to this case, as is also the discussion of the term 'manufacturing.'"

Therefore, we do not believe it could be successfully asserted that a corporation engaged solely in mining operations constitutes a manufacturer by virtue of the use of the word "refining" in the statutory definition of a manufacturer contained in Section 150.300, supra.

Your first question having been answered in the negative, the next question is whether the ore which has been stock piled by the mining corporation in your county can be taxed as personal property.

It is fundamental, of course, that when ore has been severed from the soil, it becomes personal property. 50 C. J., Section 44, page 768.

Section 137.120, RSMo 1949, in specifying what the property list of the assessor shall contain, says:

"Such lists shall contain:

\* \* \* \* \*

"(6) \* \* \* every other species of tangible personal property not exempt by law from taxation."

Section 6 of Article X of the Constitution of Missouri, 1945, reads as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit, and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

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Section 137.100, RSMo 1949, is the legislative enactment following the Constitution and in which we are unable to find anything which would relieve a mining corporation such as you describe from the tax burden as it is placed on others.

It was said in State ex rel. v. Gehner, 320 Mo. 1172, 11 S.W. (2d) 30, 34:

"As the burden of taxation ordinarily should fall upon all persons alike, when one claims an exemption therefrom he must be able to point to the law granting such immunity and it must be clear and unambiguous." Kansas Exposition Driving Park v. Kansas City, 174 Mo. loc. cit. 433, 74 S.W. 981."

We call your attention, also, to Sections 137.095 and 137.140, RSMo 1949, which read, respectively, as follows:

"All tangible personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the first day of January of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owing tangible personal property on the first day of January in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county or township where situated, in the same manner as other tangible personal property is required by law to be returned."

"The real and tangible personal property of all corporations operating in any county in the state of Missouri and in the city of St. Louis, and subject to assessment by county or township assessors, shall be assessed and taxed where situated."

#### CONCLUSION

It is the opinion of this office that a corporation engaged exclusively in a mining operation is not a "manufacturer" within



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the meaning of Section 150.300, RSMo 1949, and hence is not subject to the manufacturer's license and tax provided for in Sections 150.310, et seq., RSMo 1949. It is the further opinion of this office that stock-piled ore owned by such a mining corporation may be taxed by the county in which the ore is situated as provided in Sections 137.095 and 137.140, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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