11-0666

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

FEROLETO STEEL CO., INC.,

Petitioner,

vs. Civil Action NO. 10-P-8

THOMAS A. OUGHTON, ASSESSOR OF BROOKE COUNTY
COUNTY COMMISSION OF BROOKE COUNTY and
WEST VIRGINIA STATE TAX COMMISSIONER,

Respondent.

MEMORANDUM OF OPINION AND ORDER

This matter is before this Court on a factually simple case that has legal consequences of vital significance.

I. ISSUE PRESENTED

The question raised in these competing Motions for Summary Judgment is the applicability of the "Freeport Exemption" to the taxation of tangible personal property (coils of steel) which is consigned from a point of origin outside of the State of West Virginia to the Petitioner's warehouse in the State of West Virginia, when the steel coil is cut in dimensions consistent with the request of a customer. Does the activity of cutting the steel coil result in a product of different utility thus losing the exemption to the taxpayer from *ad valorem* taxes which is bestowed pursuant to West Virginia Constitution Article 10, Section 1c.

II. DISCUSSION

When all of the undisputed facts are distilled to a common denominator, this case requests a determination of the taxability of a steel coil when the taxpayer receives a generic product (steel coil) which has a variety of non-specific potential uses and which is then transformed to a product of specific utility, when the taxpayer takes that coil and cuts it to

conform to the custom dimensions dictated by the needs of the ultimate end user.

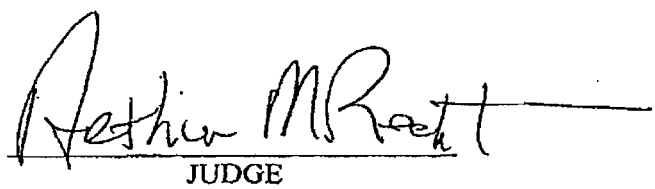
Does the transformation of a steel coil of generic utility to a specific utility determined by the needs of the customer of the taxpayer require a finding of a "different utility", thus losing the exemption from *ad valorem* taxation?

When the question is shaped in these terms the answer is clearly that there can be no exemption from *ad valorem* taxation under West Virginia Constitution, Article 10 1c because the product is one of a "different utility" when the steel coil is converted from a generic utility to a specific utility. This conversion creates a "different utility" by which the taxpayer loses any exemption under the Freeport Exemption.

Accordingly, the Respondent's Motion for Summary Judgment is hereby **GRANTED** with the exception of the Petitioner preserved to this ruling.

IT IS SO **ORDERED.**

ENTER this 16th day of March.



JUDGE

A copy of this Memorandum of Opinion and Order has been sent to all parties as follows:

Copies mailed 3/16/11 mc

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I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
Attest Glenda Brooks
Clerk, Circuit Court
Brooke County, West Virginia
Glenda Taylor, Deputy