BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE APPEALS OF EDMISTON OIL COMPANY, INC., ET AL. (SEE ATTACHMENT) FROM ORDERS OF THE DIVISION OF TAXATION	Docket Nos. 2004-507-DT *et al.* (See attachment)

ORDER DENYING TAXPAYERS' SECOND MOTION FOR SUMMARY JUDGMENT

Now the above-captioned matters come on for consideration and decision by the Court of Tax Appeals of the State of Kansas on Taxpayers' Second Motion for Summary Judgment. The Court has jurisdiction over the subject matter and the parties pursuant to K.S.A. 74-2438.

Oral arguments were conducted on October 26, 2009. The Department appeared by counsel John Michael Hale. Taxpayers appeared by counsel S. Lucky DeFries and Jeff Wietharn.

Having reviewed Taxpayers' Second Motion for Summary Judgment and supporting evidence, along with all papers filed by the parties relative to the motion, and having considered the oral arguments of counsel, the Court enters the following order.

I.
Nature of Case and Procedural Background

This is a sales and use tax refund claim brought pursuant to K.S.A. 79-3606(kk). Taxpayers are oil and gas businesses operating oil and gas wells in the State of Kansas. They seek refunds for tax paid in connection with that portion of their well machinery and equipment used to lift oil and gas from natural formations to the earth's surface. Counsel has represented to the Court that refund claims with respect to Taxpayers' other well equipment have been settled.

For purposes of this order, well machinery and equipment used to lift oil and gas to the surface of the earth is referred to as "pre-extraction equipment" and the balance of the machinery and equipment used at Taxpayers' well sites is referred to as "post-extraction equipment."

In 2007 the parties filed cross motions for summary judgment requesting a narrow declaration regarding the meaning of the term "extracted from the earth" under K.S.A. 79-3606(kk)(2)(D)(i). The Department argued that oil and gas is "extracted from

the earth" only after it has been lifted to the earth's surface. Taxpayers contra argument was that oil and gas is "extracted from the earth" immediately upon entering the underground well bore. The Court's predecessor, the Board of Tax Appeals (BOTA), rejected Taxpayers' interpretation and endorsed the Department's interpretation, setting forth its findings and conclusions in an Order on Motions (certified June 24, 2008). The Order on Motions declares that the operative meaning of the term "extracted from the earth" under K.S.A. 79-3606(kk)(2)(D)(i), as applied to Taxpayers' oil and gas operations, contemplates extraction from the surface of the earth, not merely extraction from an underground formation.

The motion at bar, Taxpayers' Second Motion for Summary Judgment, asserts alternative grounds for exemption, as articulated on page 2 of Taxpayers' supporting memorandum:

> [W]hether we look at the pumping and down-hole machinery and equipment as exempt preproduction, or simply as part of the integrated plant, the pumping and down-hole machinery and equipment should be found to be exempt.

The specific statutory provisions now cited by Taxpayers in support of their exemption claim are subsections (kk)(1)(A), (kk)(2)(A), and (kk)(3) of K.S.A. 79-3606.

Taxpayers indicate that they are not at this time seeking reconsideration of the June 24, 2008 BOTA Order on Motions construing the term "extracted from the earth" but are preserving that issue for later review.

II.
Uncontroverted Facts

The Court finds the material facts are uncontroverted. Taxpayers' statement of uncontroverted facts numbered five (5) and six (6) are conclusions, not facts, and will be treated as such for purposes of this motion. Statements seven (7) and eight (8) are not material. Following is a summary of the uncontroverted facts.

Oil and natural gas is contained in the earth and rock formations along with water and other materials. After a successful well is drilled to the total depth, casing pipe is typically installed in the well and cemented in place to prevent the rock formations from collapsing and closing up the hole. Oil and gas are trapped in the rock formations under considerable pressure. The well bore created by drilling into the rock creates a low pressure point. The oil and gas migrate through the rock to the low pressure point to equalize the pressure in the formation. This migration into the well bore is the primary method of extracting oil, gas, condensate, and water from the earth.

Once the pressure in the formation has been depleted sufficiently, there is no longer enough pressure to carry the fluids to the surface. At that point, fluid migration or extraction of the fluids from the rock ceases as the reservoir finds new pressure equilibrium. To overcome this new equilibrium point, pumping equipment is installed, known in the industry as "artificial lift." Artificial lift refers to the use of artificial means to increase the flow of liquids, such as crude oil or water, from a producing well. Generally this is achieved by means of a mechanical device inside the well (pump or velocity stream), or by decreasing the hydrostatic column by injecting gas into the liquid down hole.

The most common type artificial lift is the rod pump operated by the pumping unit. Another common artificial lift tool is an electrical submersible pump (ESP), which contains an electrical motor attached to a centrifugal propeller, which drives the oil to the surface. This pump is attached to the bottom of the tubing, and an electrical supply line is run down the outside of the tubing from the surface to the pump; as oil flows into the casing from the producing formation, the ESP pumps the oil up to the surface. When oil is pumped it cannot be pumped by sucking the oil from the surface; that would cause the oil to vaporize in the well bore, causing cavitation in the pump and resulting in damage to the pump. Consequently, oil must be pushed from below, not pulled from above. Even though the motor used for pumping the oil in a sucker rod pump is located at the surface, the mechanical force is conveyed to the bottom by the sucker rods.

In some cases, due to pressure declines in the tubing or well bore, some separation may occur in the tubing on the way to the surface. The primary purpose of the tubing is to convey the oil to the surface so that it can be separated from the gas and water produced along with the oil. The majority of the separation is done using surface equipment.

Generally, the pumping unit is connected to the rods, the rods are connected to the pump, the pump is connected to the tubing, the tubing is connected to the wellhead, the wellhead is connected to the flow (lead) lines, and the flow lines are connected to the tank battery.

The pumping and downhole machinery and equipment are an integral or essential part of oil and gas well operations. Without such machinery and equipment, the oil and gas is not able to reach the surface, particularly after the formation pressure has been depleted. The pumping and downhole machinery and equipment is dedicated to the oil and/or gas well where the same is located and cannot be easily (if at all) moved or applied to tasks away from the well.

III.
Summary Judgment Standards

"Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The Court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. (Citations omitted.)" *See State ex rel. Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005).

The purpose of summary judgment is to eliminate delay in legal disposition where there is no real issue of material fact. *Timi v. Prescott State Bank*, 220 Kan. 377, 386, 553 P.2d 315 (1976). The movant has the burden of demonstrating that there are no genuine questions of material fact and that he is entitled to judgment as a matter of law, which is a strict burden. *See Saliba v. Union Pacific R.R.*, 264 Kan. 128, 131, 955 P.2d 1189 (1998). Summary judgment as a matter of law must be conclusively shown. *Cessna Aircraft Co. v. Metropolitan Topeka Airport Authority*, 23 Kan.App.2d 1038, 1041, 940 P.2d 84 (1997), *rev. denied* (1997).

IV.
Issue Presented

The sole issue presented in Taxpayer's Second Motion for Summary Judgment is whether the uncontroverted facts establish as a matter of law that Taxpayers' pre-extraction equipment qualifies as exempt pre-production line equipment pursuant to subsections (kk)(1)(A), (kk)(2)(A) and (kk)(3) of K.S.A. 79-3606. For purposes of this motion, we assume the validity and correctness of the BOTA Order on Motions certified June 24, 2008, and adopt the interpretation of K.S.A. 79-3606(kk)(2)(D)(i) set forth therein.

V.
Positions of the Parties

Taxpayers contend that their pre-extraction well equipment is exempt as a matter of law under two statutory provisions extending exemption status to machinery and equipment used in certain operations at a plant or facility prior to the production line. The statutory provisions relied upon by Taxpayers include subsections (kk)(2)(A), and (kk)(3) of K.S.A. 79-3606. Taxpayers' argue that the pre-extraction equipment can be likened to a conveyor belt used to move raw materials to the oil and gas wells (the production line). In framing their arguments, Taxpayers rely extensively on this Court's recent decision in *In re LaFarge Midwest/Martin Tractor Co., Inc.*, COTA Docket No. 2006-8532-DT. *LaFarge* is currently pending before the Kansas Supreme Court after

the case was transferred from the Kansas Court of Appeals pursuant to Supreme Court Rule 8.01 and K.S.A. 20-3016(a).

In opposition to Taxpayers' exemption claim, the Department asserts that the post-extraction limitation in K.S.A. 79-3606(kk)(2)(D)(i) is dispositive and cannot be reconciled with Taxpayers' theory of the case. The Department argues that K.S.A. 79-3606(kk)(2)(D)(i) specifically limits exemption status to that portion of Taxpayers' well equipment used in operations where oil and gas is treated or prepared for transmission to a refinery or other wholesale or retail distribution after the oil and gas has been extracted from the earth (*i.e.*, lifted to the earth's surface). Thus, according to the Department, Taxpayers' refund request in connection with any pre-extraction well equipment should be denied. The Department also rejects Taxpayers' application of the *LaFarge* case under the facts at bar, arguing that *LaFarge* is distinguishable on its facts and should not be used as a basis for extending exemption to Taxpayers' pre-extraction well equipment.

VI.
The Integrated Plant Statute, K.S.A. 79-3606(kk)

As noted, the material facts of this case are uncontroverted. Thus the only question remaining is whether Taxpayers are entitled to judgment as a matter of law.

The statute under examination, K.S.A. 79-3606(kk), comprises approximately 1,750 words set forth in dozens of paragraphs with multiple cross-referencing definitions, and is but one of many provisions within a body of statutes referred to collectively as the Kansas Retailers' Sales Tax Act. Since its enactment in 1937, this Act has evolved from a relatively narrow collection of statutes into an admixture of tax impositions, exclusions and exemptions. Given the complexity of the statutory framework under which we are operating, that there are differing interpretations of key statutory provisions is understandable.

K.S.A. 79-3606(kk) is commonly referred to as the "integrated plant" statute because it codifies aspects of a common law doctrine known as the "integrated plant theory." This doctrine has been used by courts throughout the country to determine what processes, machinery, and equipment at a plant are so directly involved in manufacturing that they should be accorded exemption status.

The doctrine first emerged in the New York case *Niagara Mohawk Power Corp. v. Wanamaker*, 286 A.D. 446 (N.Y. 1955). There the court found that coal and ash handling machines (cranes and dumpers) were an integral part of a steam electric generating plant. Revealing its public policy rationale, the court said:

> One purpose of the sales and use tax resolutions is to reduce multiple taxation. The burden would be excessive if purchases for

> resale were taxed numerous times during the journey of goods to the ultimate consumer. The economic effect is no different where the tax is on raw materials or machines directly and exclusively used or consumed in production. *Id.* at 448.

The Kansas Court of Appeals summarized the integrated plant theory in a 1999 case, explaining that a sales and use tax exemption may be obtained for equipment and machinery that perform an "essential or indispensable function in the manufacturing process, regardless of whether a physical change is actually caused in the raw materials." *See Water District No. 1*, 26 Kan. App. 2d 371, 374, 988 P.2d 267, 270 (1999) (recognizing Kansas Supreme Court's adoption of "integrated plant theory" and its rejection of the more narrow "physical change" rule).[1]

In 2000 the Kansas Legislature codified various aspects of the integrated plant doctrine at K.S.A. 79-3606(kk).[2] The statute consists of seven subsections. Subsection (1) sets forth the general parameters of the exemption. Subsection (2) defines the salient terms used in the exemption. Subsection (3) defines the various types of machinery and equipment deemed to be part of an integrated plant operation. Subsection (4) specifies additional machinery and equipment that qualify for exemption even though they would not otherwise qualify under the integrated plant theory. Subsection (5) specifies certain machinery and equipment that do not qualify for exemption. Subsection (6) delineates how machinery and equipment used both for production and non-production purposes should be treated under the statute. And subsection (7) directs the Department to adopt rules and regulations to implement the exemption.

Following is a synthesis of the statutory provisions applicable in the instant case in view of the uncontroverted facts and contentions of the parties.

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[1] The "physical change" rule, also known as the "Ohio rule", generally holds that only machinery and equipment used in the actual manufacturing process is covered by the exemption. The Ohio rule generally excludes from exemption machinery and equipment employed in operations before and after the actual manufacturing process. Therefore, under the Ohio rule, equipment used for intra-plant transport and handling prior to the production line, as well as equipment used for post-production operations, generally are not exempt.

[2] In a 2000 legislative hearing on House Bill 2011, Shirley Sicilian, general counsel to the Department of Revenue, testified that the bill would move Kansas from a state that employs some characteristics of the integrated plant theory to a pure integrated plant theory state. *See* Minutes of Sen. Assessment and Taxation Committee, approved March 22, 2000.

K.S.A. 79-3606 (kk)(1)(A) provides that sales in connection with machinery and equipment used as an "integral or essential part of an integrated production operation by a manufacturing or processing plant or facility" are exempt. The phrase "by a manufacturing or processing plant or facility" has been interpreted by this state's highest court to require the machinery and equipment in question to be used not only by the plant or facility but also *at* the plant or facility. *See In re Western Resources, Inc.*, 281 Kan. 572, 579, 132 P.3d 950, 956 (2006).

In determining what is included in an "integrated production operation" we must look to subsection (2)(A), which defines the term as an "integrated series of operations at a manufacturing or processing plant or facility" used to transform or cause certain physical changes in tangible personal property. Specifically included in the "integrated production operation" definition are operations occurring at the production line—where the actual tranformation and physical changes occur—as well as certain operations occurring before and after the production line. *See* K.S.A. 79-3606(kk)(2)(A) and (kk)(3)(A) and (B). The provisions pertaining to operations occurring before raw materials are placed on the production-line are the provisions Taxpayers invoke in the instant motion.

In determining what is part of the "manufacturing or processing plant or facility" we must look to K.S.A. 79-3606(kk)(2)(C). This subsection provides that such a plant or facility must have two principal qualities: (1) it must be a "single-fixed location" and (2) it must be "owned or controlled by a manufacturing or processing business." Although the boundaries of the physical plant or facility are confined by geographic borders, the business of the plant owner has a corporate existence outside and apart from the plant location. *See* 281 Kan. at 578. Defining the physical boundaries of the plant or facility is important because only intra-plant operations are covered by the exemption. *See, generally, In re Western Resources, Inc.*, 281 Kan. 572, 132 P.3d 950 (2006).

A plant or facility that qualifies for exemption under K.S.A. 79-3606(kk) must be owned by a qualifying business (*i.e.*, a "manufacturing and processing business"). As set forth in subsection (2)(D), such a business must utilize an "integrated production operation ...as part of what is commonly regarded as an industrial manufacturing or processing operation or agricultural commodity processing operation." The statute lists, by way of illustration, certain operations that are considered "manufacturing or processing operations." They include such things as vehicle and equipment fabrication, electricity power generation, and newspaper printing. Subsection 2(D) also defines the kinds of operations that do not qualify as "manufacturing or processing operations." Non-qualifying operations generally include non-idustrial enterprises where tangible personal property is processed only as an incidental part of a business which is primarily retail in nature.

Included under the subsection defining "manufacturing and processing business" is a clause pertaining specifically to oil and gas wells, mining, and excavation operations. The clause reads as follows:

> Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution.
>
> K.S.A. 79-3606(kk)(2)(D)(i).

This clause, as interpreted in the June 24, 2008 BOTA Order on Motions, is the language the Department invokes to oppose Taxpayers' exemption claim.

VII.
Analysis

The Court is presented with two competing statutory theories, each based on different provisions of the integrated plant exemption statute, K.S.A. 79-3606(kk).

The rule of statutory construction to which all others are subordinate is that the intent of the legislature controls if the intent can be ascertained from the plain language of the statute. *See State ex rel. Stephan v. Board of Seward County Comm'rs*, 254 Kan. 446, 448, 866 P.2d 1024, 1026 (1994). Still, the words or phrases used in a legislative act cannot be read in isolation; rather, the meaning of particular sections must be drawn from the context of the entire act.

When the various statutory provisions cited by the parties are read together and in the light of all relevant sections of K.S.A. 79-3606(kk), it is evident that none of the provisions plainly and cleanly resolves the question before us. Taxpayers invoke certain provisions pertaining generally to intra-plant operations for transporting and conveying raw materials to the production line, yet those provisions are broadly drawn and make no mention of oil and gas well operations. The Department, on the other hand, invokes a clause specifically addressing oil and gas well operations, yet the clause is contained within a subsection of the statute pertaining to the business of a qualifying plant owner rather than the physical boundaries of a qualifying plant or facility. In view of these ambiguities, we find it necessary to resort to rules of statutory construction in order to arrive at a practical and workable interpretation that is consistent with the overall intent of the legislature.

The maxim *pari materia* holds that statutory provisions relating to the same subject matter or having the same general purpose must be read together in an attempt

to reconcile differences and reach a sensible, rational result. *McVay v. Rich*, 18 Kan. App. 2d 746, 752, 859 P.2d 399, 404 (1993), aff'd at 255 Kan. 371, 874 P.2d 641 (1994). In the instant case, the competing statutory provisions invoked by the parties cannot be reconciled to reach a sensible, rational result. As the Department correctly notes, if Taxpayers' pre-extraction well equipment were exempted under the provisions pertaining generally to pre-production line operations for raw materials, then everything at Taxpayers' well sites would be exempt. Such an interpretation would effectively nullify the post-extraction limitation under K.S.A. 79-3606(kk)(2)(D)(i), rendering the statutory language surplusage. As a rule, we must assume the legislature did not intend to enact useless or meaningless legislation. *See State v. Sims*, 254 Kan. 1, 10, 862 P.2d 359, 366 (1993).

Because the two competing statutory theories presented in this case cannot be reconciled, we must determine which statutory theory prevails. In resolving this issue, it is instructive to consider the maxim of construction favoring specific over general statutory language. It has long been the rule that statutory provisions complete in themselves and relating to a specific thing take precedence over other provisions which deal only incidentally with the same question, or which might be construed to relate to it. *Chelsea Plaza Homes, Inc. v.* Moore, 226 Kan. 430, 432, 601 P.2d 1100 (1979).

In the instant case, we find that the post-extraction limitation in K.S.A. 79-3606(kk)(2)(D)(i) is specifically germane to Taxpayers' oil and gas wells and provides a complete basis for resolving the exemption status of the pre-extraction equipment. In contrast, the broadly drawn provisions cited by Taxpayers concerning general pre-production line operations are provisions which, at best, deal only incidentally with oil and gas wells.

Here we find it important to note that the clause pertaining to post-extraction well operations in K.S.A. 79-3606(kk)(2)(D)(i) is confusing because the clause is incompatible with the words and phrases surrounding it. The clause defines the physical parameters of an oil or gas plant or facility by expressly including certain phases of operation and thereby implicitly excluding others. Yet the clause is part of subsection (2)(D), which defines the types of business enterprises that may own or control a qualifying plant or facility. Clearly the post-extraction limitation clause is imbued with contextual ambiguity. Perhaps the more logical placement for a provision defining operational limitations pertaining to the exemption of equipment at oil and gas well sites would be in subsection (5). That subsection carves out specific exceptions from exemption for certain machinery and equipment used at a plant or facility based on the operations or activities they perform.

Contextual ambiguities notwithstanding, however, we still believe the Department's statutory analysis is more in keeping with the manifest intent of the legislature than the analysis urged by Taxpayers. In view of the uncontroverted facts, we find the Department's statutory interpretation produces the most reasonable

operation permitted by the language of the statute. *See Mendenhall v. Roberts*, 17 Kan. App. 2d 34, 43, 831 P.2d 568, 574 (1992) ("A statute is not to be given an arbitrary construction according to the strict letter, but one that will advance the sense of meaning fairly deducible from the context.")

As a final matter we are compelled to address the *LaFarge* case. Taxpayers rely heavily on that case in framing their arguments. Based on the uncontroverted facts and arguments of the parties, we find *LaFarge* to be inapposite in the instant case.

In *LaFarge*, the taxpayer was a cement manufacturing business whose enterprise consisted of a series of activities, including a quarry operation. The quarry was not used for wholesale or retail distribution; rather, it was used to provide an on-site supply of raw materials (rock) for the taxpayer's cement manufacturing business. All operations occurring on the premises were performed by the taxpayer except the excavation (blasting) at the quarry, which was performed by third-party contractors. The taxpayer's post-extraction operations included scooping up the rock and hauling it from the quarry to the cement manufacturing production line.

The dispute in *LaFarge* involved the exemption status of the loaders and haulers used to scoop up the loose rock from the quarry floor and transport the rock to the production line. The taxpayer contended that the loaders and haulers qualified as equipment used in pre-production line operations at the plant and were therefore exempt. The Department contended that the areas where the loaders and haulers were primarily used—the quarry and the service roads connecting the quarry to the production line—were not part of the cement manufacturing plant but were, instead, part of a separate excavation plant. For this proposition the Department relied upon the post-extraction limitation in K.S.A. 79-3606(kk)(2)(D)(i). The Department's argument was, in essence, that because only intra-plant operations are exempt under K.S.A. 79-3606(kk), and because the loaders and haulers were engaged in handling and transporting raw materials between two separate plant locations, the loaders and haulers were taxable.

This Court rejected the Department's delineation of what portions of the taxpayer's property were within and without the taxpayer's cement manufacturing plant location. Citing both statutory and case law, we found the geographic boundaries of the plant location extended beyond the production line to include the areas where the loaders and haulers were primarily used. Consequently, we found the loaders and haulers performed intra-plant pre-production operations—receiving, handling and transporting raw materials in preparation for placement on the production line—and were therefore exempt under subsections (2)(A)(ii) and (3)(A) of K.S.A. 79-3606(kk).

The case at bar is distinguishable from *LaFarge* in a number of important respects. In *LaFarge*, the taxpayer's quarry was not used to extract rock for wholesale or retail distribution; it was used to provide an on-site supply of raw materials for

taxpayer's cement manufacturing business. There are no such overlapping business operations or concerns in the instant case. Also, in *LaFarge*, the machinery and equipment in question were used exclusively in post-extraction operations (scooping and hauling loose rock from the excavation site to the production line); no exemption claim was made in connection with any machinery or equipment used during the blasting process. In the present case, the only equipment still in dispute is Taxpayers' pre-extraction well equipment. Finally, in *LaFarge*, the competing statutory theories offered by the parties could be reconciled to reach a sensible, rational result because the post-extraction operations in question—though occurring at an excavation site—were still intra-plant operations to receive, handle and transport raw materials to a manufacturing production line. In the instant case, no such reconciliation is possible.

LaFarge involved a unique configuration of inter-connected and overlapping business operations at a plant location, making the case difficult to apply by analogy. The *LaFarge* decision is narrow and limited by the facts of that case.

In Kansas taxation is the rule and exemption is the exception. *Assembly of God v. Sangster*, 178 Kan. 678, 680, 290 P.2d 1057 (1955). The burden of establishing an exemption from taxation rests with the party claiming exemption. *Director of Taxation v. Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 454, 691 P.2d 1303 (1984). Tax exemption statutes are to be construed strictly in favor of imposing the tax and against allowing the exemption for an applicant who does not clearly qualify. *Bd. of Sedgwick Co. Comm'rs v. Action Rent to Own, Inc.*, 266 Kan. 293, 301, 969 P.2d 844 (1998). Applying the uncontroverted facts and construing the relevant statutory provisions strictly in favor of taxation and against exemption, we find Taxpayers have failed to show that their pre-extraction equipment clearly qualifies for exemption under K.S.A. 79-3606(kk).

VIII.
Conclusions and Orders

In sum, the Court's conclusions and orders are as follows:

1. The Court affirms the BOTA Order on Motions (certified June 24, 2008). The operative meaning of the term "extracted from the earth" under K.S.A. 79-3606(kk)(2)(D)(i), as applied to Taxpayers' oil and gas operations, contemplates extraction from the surface of the earth, not merely extraction from an underground formation.

2. The post-extraction limitation in K.S.A. 79-3606(kk)(2)(D)(i) specifically applies to this case under the uncontroverted facts and provides a complete basis for resolving the exemption status of the pre-extraction well equipment. The general statutory provisions invoked by Taxpayers pertaining to pre-production line operations do not apply here.

3. This Court's decision in *In re LaFarge Midwest/Martin Tractor Co., Inc.*, COTA Docket No. 2006-8532-DT, is narrow and limited by the facts of that case. The case cannot be extended by analogy to exempt Taxpayers' pre-extraction oil and gas well equipment.

4. Taxpayers have failed to show as a matter of law that the machinery and equipment at issue clearly qualifies for exemption under any provision of K.S.A. 79-3606(kk). Taxpayers' Second Motion for Summary Judgment is therefore denied.

5. The parties shall confer informally to determine whether any triable issues remain in this case and shall schedule a pre-hearing conference on the Court's calendar to formulate a plan for any further proceedings.

Any party to this action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 2009 Supp. 77-529. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Court's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Court of Tax Appeals, Docking State Office Building, Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. *A copy of the petition, together with any accompanying documents, shall be mailed to all parties at the same time the petition is mailed to the Court. Failure to notify the opposing party shall render any subsequent order voidable.* The written petition must be received by the Court within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute). If at 5:00 pm on the last day of the specified period the Court has not received a written petition for reconsideration of this order, no further appeal will be available.

IT IS SO ORDERED

THE KANSAS COURT OF TAX APPEALS

SEAL

REBECCA W. CROTTY, JUDGE

ATTEST:

J. FRED KUBIK, JUDGE

TREVOR WOHLFORD, JUDGE PRO TEM

JOELENE R. ALLEN, SECRETARY

ATTACHMENT

2004-00507-DT	Edmiston Oil Company, Inc.	unknown	REV.S DOCKET NO. 03-0063
	Edmiston Oil Company, Inc.	unknown	REV.S DOCKET NO. 03-0065
	Edmiston Oil Company, Inc.	unknown	REV.S DOCKET NO. 03-0169
	Edmiston Oil Company, Inc.	unknown	REV.S DOCKET NO. 03-0170
2004-00510-DT	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0067
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0068
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0172
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0592
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0649
2004-00511-DT	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0457
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0459
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0460
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0461
2004-08317-DT	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0058
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0059
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0060
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0061
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0062
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0064
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0458
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0582
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0584
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0585
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0656
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0657
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0744
2004-08318-DT	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0580
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0581
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0583
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0653
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0654
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 03-0655
2004-08494-DT	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0069
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0070
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0175
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0179
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0546
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0547
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0548
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0549
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0588
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0641
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0642
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0643
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0644
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0645
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0647
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0745
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-1180

2004-08496-DT	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0071
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0579
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0587
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0646
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-0648
	Petroleum Property Services, Inc.	unknown	REV.S DOCKET NO. 03-1181
2004-08500-DT	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0729
	Falcon Exploration, Inc.	unknown	REV.S DOCKET NO. 03-0746
2004-08502-DT	American Energies Corporation	unknown	REV.S DOCKET NO. 03-1170
	American Energies Corporation	unknown	REV.S DOCKET NO. 03-1211
	American Energies Corporation	unknown	REV.S DOCKET NO. 03-1212
	American Energies Corporation	unknown	REV.S DOCKET NO. 03-1213
2004-08503-DT	American Energies Corporation	unknown	REV.S DOCKET NO. 03-1214
2004-08956-DT	John O. Farmer, Inc./The Buckeye Corp.	2000-2003	REV.S DOCKET NO. 04-0103
2004-08957-DT	John O. Farmer, Inc./Crawford Supply Co.	2000-2003	REV.S DOCKET NO. 04-0104
2004-08958-DT	John O. Farmer, Inc./Gehrig & Sons	2000-2003	REV.S DOCKET NO. 04-0106
2004-08959-DT	John O. Farmer, Inc./Mai Excavating	2000-2003	REV.S DOCKET NO. 04-0108
2004-08960-DT	John O. Farmer, Inc./National-Oil Well, L.P.	2000-2003	REV.S DOCKET NO. 04-0109
2004-08961-DT	John O. Farmer, Inc./Pfeifer Dozer & Well Serv	2000-2003	REV.S DOCKET NO. 04-0110
2004-08962-DT	John O. Farmer, Inc./Total Lease Service, Inc.	2000-2003	REV.S DOCKET NO. 04-0111
2004-08963-DT	John O. Farmer, Inc./WB Supply Company	2000-2003	REV.S DOCKET NO. 04-0112
2004-08964-DT	John O. Farmer, Inc./Oilfield Manufactures Wa	2000-2003	REV.S DOCKET NO. 04-0120
2006-01603-DT	Edmiston Oil Company, Inc./Pratt Well Serv. -e	unknown	REV.S DOCKET NO. 04-0217
	Edmiston Oil Company, Inc./Pratt Well Serv. -e	unknown	REV.S DOCKET NO. 04-0218
	Edmiston Oil Company, Inc./Pratt Well Serv. -e	unknown	REV.S DOCKET NO. 04-0219
	Edmiston Oil Company, Inc./Pratt Well Serv. -e	unknown	REV.S DOCKET NO. 04-0220
2006-01604-DT	F.G. Holl Company, L.L.C./Hi-La Engine -etal	unknown	REV.S DOCKET NO. 04-0183
	F.G. Holl Company, L.L.C./Hi-La Engine -etal	unknown	REV.S DOCKET NO. 04-0184
	F.G. Holl Company, L.L.C./Hi-La Engine -etal	unknown	REV.S DOCKET NO. 04-0185
	F.G. Holl Company, L.L.C./Hi-La Engine -etal	unknown	REV.S DOCKET NO. 04-0186
2006-06532-DT	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0186
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0187
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0188
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0189
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0190
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0191
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0192
	Oil Producers, Inc. of Kansas	unknown	REV.S DOCKET NO. 06-0193

2006-07907-DT	Abercrombie Energy, L.L.C./Dan's Oilfield -etal	unknown	REV.S DOCKET NO. 06-0203
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0205
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0206
	Abercrombie Energy, L.L.C./Dan's Oilfield -cta	unknown	REV.S DOCKET NO. 06-0209
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0210
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0211
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0212
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0213
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0214
	Abercrombie Energy, L.L.C./Dan's Oilfield -eta	unknown	REV.S DOCKET NO. 06-0215
2006-07908-DT	Edmiston Oil Company, Inc./Hanover Compres	unknown	REV.S DOCKET NO. 06-0207
2006-08528-DT	Baird Oil Company, L.L.C./Swift Services -eta	unknown	REV.S DOCKET NO. 06-0380
	Baird Oil Company, L.L.C./Swift Services -eta	unknown	REV.S DOCKET NO. 06-0381
	Baird Oil Company, L.L.C./Swift Services -eta	unknown	REV.S DOCKET NO. 06-0394
	Baird Oil Company, L.L.C./Swift Services -eta	unknown	REV.S DOCKET NO. 06-0395
2006-08529-DT	Edmiston Oil Company, Inc./Express Well Servi	unknown	REV.S DOCKET NO. 06-0396
	Edmiston Oil Company, Inc./Express Well Servi	unknown	REV.S DOCKET NO. 06-0397
	Edmiston Oil Company, Inc./Express Well Servi	unknown	REV.S DOCKET NO. 06-0398
	Edmiston Oil Company, Inc./Express Well Servi	unknown	REV.S DOCKET NO. 06-0399
	Edmiston Oil Company, Inc./Express Well Servi	unknown	REV.S DOCKET NO. 06-0400
	Edmiston Oil Company, Inc./Express Well Servi	unknown	REV.S DOCKET NO. 06-0401
2007-03637-DT	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0812
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0813
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0814
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0815
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0816
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0817
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0818
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0819
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0820
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0821
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0822
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0823
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0824
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0843
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0844
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0845
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0846
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0847
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0848
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0849
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0850
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0851
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0857
	American Energies Corp./Jayhawk Oilfield & S	unknown	REV.S DOCKET NO. 06-0858

CERTIFICATION

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket Nos. 2004-507-DT et al., and any attachments thereto, was placed in the United States Mail, on this 16th day of July, 2010, addressed to:

Jon M Callen, President
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Wichita, KS 67202-1774

Micheal S Mitchell, President
Falcon Exploration Inc et al.
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John S Weir, President
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Logan, KS 67646

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Coffman DeFries and Nothern
534 S Kansas Ave Ste 925
Topeka, KS 66603-3407

and a copy was hand delivered, addressed to:

John Michael Hale, Attorney
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DSOB, 915 SW Harrison, 2nd Floor
Topeka, KS 66612

General Counsel
Legal Services Bureau, KDOR
DSOB, 915 SW Harrison, 2nd Floor
Topeka, KS 66612

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

Joelene R. Allen, Secretary