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Tobacco Company Entitled to Exemption for Inventory-In-Transit

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In *Pinkerton Tobacco Company, LP v. Department of Revenue*, KBTA, File No. K11-R-20, Order No. K-23033, (March 27, 2013), the Kentucky Board of Tax Appeals' ("Board") held that Pinkerton Tobacco Company, LP ("Pinkerton") was entitled to an exemption from state tangible personal property tax on inventory-in-transit even though the inventory had been sold to Swedish Match North America, Inc. ("Swedish Match"), Pinkerton's parent company, at the time of out-of-state shipment of the inventory.

The Board noted that the case involved a single issue – whether inventory stored in a Kentucky warehouse qualified for the state property tax exemption for inventory-in-transit set forth in KRS 132.097, which provides an exemption for personal property "placed in a warehouse or distribution center for the purpose of subsequent shipment to an out-of-state destination. Personal property shall be deemed to be held for shipment to an out-of-state destination if the owner can reasonably demonstrate that the personal property will be shipped out-of-state within the next six (6) months."

Pinkerton manufactures tobacco products, including loose leaf tobacco, pipe tobacco and snuff in Kentucky, and stores the products on-site until sold to Swedish Match, the only buyer. The undisputed evidence at the Board hearing indicated that Swedish Match then sold 93% of the tobacco to customers located outside Kentucky. The evidence also indicated that either Pinkerton or Swedish Match made arrangements with a third-party common carrier to deliver the goods to out-of-state customers. There was also undisputed evidence presented at the hearing indicating the tobacco had to be shipped to customers within six months of manufacture in order to be "fresh."

The Department of Revenue's ("Department") position was that because Pinkerton was the owner of the tobacco on the assessment date of January 1 it was subject to the tax. It also argued that Pinkerton could not qualify for the exemption once it sold the tobacco to Swedish Match since Pinkerton was no longer the owner of the goods and therefore could not "reasonably demonstrate that the personal property will be shipped out-of-state within the next six months," as required by KRS 132.097. Pinkerton argued that the plain language of the statute was met, and there was no requirement that the taxpayer own the property at the time of shipment out-of-state.

The Board rejected the Department's argument and held that KRS 132.097 "is neither ambiguous nor unclear, and must be given its plain meaning." The Board further stated: "As the

Supreme Court most recently stated, '[w]here the words of the statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written.' Kentucky Unemployment Commission v. Diana Cecil, 381 S.W.3d 238 (Ky. 2012). The Board held that KRS 132.097 does not require the out-of-state sale to take place in any particular manner, does not require the sales to be first consummated in Kentucky before the goods are shipped out-of-state, and does not require that the owner of the goods ship them out-of-state.

The Board noted that the Department did not dispute that the property was shipped out of Kentucky within six months of manufacture, and appeared to have created a non-rebuttable presumption that intervening sales automatically disqualify taxpayers from claiming the exemption. The Board concluded that the Department's denial of the exemption to Pinkerton was not supported by the law or the evidence of record, and that Pinkerton had reasonably demonstrated that the tobacco was shipped out-of-state within six months of manufacture, as required by KRS 132.097.