

ST 15-11

Tax Type: Sales Tax

**Tax Issue: Claim Issues-Right To Refund and Machinery & Equipment Exemption-
Manufacturing**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE OFFICE OF
ADMINISTRATIVE HEARINGS CHICAGO,
ILLINOIS**

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|----------------------------------|---|--------------------------|------|
| ABC BUSINESS, |) | Docket No. | XXXX |
| |) | IBT No. | XXXX |
| v. |) | | |
| THE DEPARTMENT OF REVENUE |) | John E. White, | |
| OF THE STATE OF ILLINOIS |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

Appearances: Scott Browdy, Ryan Law Firm, LLP, appeared for ABC Business; Michael Coveny, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves an amended return that ABC Business (Taxpayer) filed to claim a refund of Illinois use tax it had previously paid to the Illinois Department of Revenue (Department) regarding machinery and equipment that Taxpayer purchased for use in Illinois. The purchases took place during October 2003 through June 2007. The Department denied Taxpayer's claim, and Taxpayer protested the denial. In lieu of hearing, the parties submitted a stipulated record, including stipulations of fact and stipulated exhibits.

The parties agreed that the issue is whether certain machinery and equipment Taxpayer purchased for use at its Illinois stores qualified for the statutory manufacturing and assembly machinery and equipment (MM&E) exemption from use tax. I have reviewed the parties' stipulated record, and I am including in this recommendation findings of fact and conclusions of law. I respectfully recommend that the Director reconsider and revise the Department's prior Denial, so as to grant Taxpayer's claim in part and to deny it in part.

Stipulations & Findings of Fact:

1. Taxpayer was incorporated under the laws of the State of Anyplace in 1887. Stip. ¶ 1.
2. Taxpayer's corporate headquarters and commercial domicile are located in Anywhere, Anyplace. Stip. ¶ 2.
3. Taxpayer's principal business activities consist of the manufacture, distribution and sale of paint and paint related products. Stip. ¶ 3.
4. Taxpayer owns and operates 141 paint stores in Illinois. Stip. ¶ 4.

Procedural Facts

5. The Department audited Taxpayer for the period October 1, 2003 through June 30, 2007. Stip. ¶ 5.
6. Based on the audit, the Department proposed assessing Taxpayer with use tax on its purchases of machinery and equipment used in the on-site processing and sale of paint. Stip. ¶ 6. The amount of the proposed assessment was \$XXXX tax and interest. *Id.*
7. Taxpayer paid the proposed assessment and then filed a form EDA-98-R, claiming a refund against the assessed audit liability. Stip. ¶ 7. In response, the Department issued a Notice of Tentative Audit Denial of Claim (Denial), which denied Taxpayer's refund claim. *Id.*; Stip. Ex. IV (copy of the Denial).
8. Taxpayer timely filed its Protest on November 26, 2012. Stip. ¶ 8.
9. Taxpayer asserts that the Department erred in denying its refund because its machinery and equipment (the Property) used in the on-site processing and sale of paint is exempt from use tax pursuant to 35 ILCS 105/3-5(18). Stip. ¶ 9. Through this case, Taxpayer seeks a refund of \$XXXX in tax, plus interest and penalties. *Id.*
10. The Property for which Taxpayer seeks a refund of use tax claimed to have been paid in error

consists of mixers, Accutinter/Dispensers, Spectrophotometers, and computer equipment. Stip. ¶ 10; Stip. Ex. V (schedule of Property). Taxpayer's cost to purchase such Property was \$XXXX. Stip. ¶ 10.

ABC Business

11. Taxpayer manufactures paint and paint-related products. Stip. ¶ 11.
12. Taxpayer sells paint to retail customers in company-owned stores in Illinois. Stip. ¶ 12.
13. In the 1960s, Taxpayer adopted a process through which computers, machinery, and equipment in the retail stores (rather than in a centralized factory) blend and process component materials to produce colored paint. Stip. ¶ 13.
14. This decentralized process reduces Taxpayer's inventory, saves storage space, and provides immediate access to the customer. Stip. ¶ 14. Customers may choose colors from in-store display palates, or they may have a color custom made on location. *Id.*
15. Each of Taxpayer's stores is able to produce over 1,400 colors of paint. Stip. ¶ 15; Stip. Ex. I (copy of color fan, which displays various colors of paints available at Taxpayer's paint stores).
16. Paint can have aesthetic appeal and functional purposes such as a bright red warning sign or a soothing pastel for a nursery. Stip. ¶ 16. Paint can also protect surfaces. *Id.* Paint has different sheens such as flat, satin, and semi-gloss; and different make-ups such as oil-based or latex. *Id.*
17. Color is the most important thing Taxpayer's customers are looking for in paint. Stip. ¶ 17. Most customers know what color they want. *Id.*
18. The base used in Taxpayer's paints is produced in base manufacturing plants and shipped to Company stores to be blended with colorant at the store to produce saleable colored paint.

Stip. ¶ 18.

19. Base is a formulation of chemicals specifically designed for use with particular colorants.

Stip. ¶ 19.

20. Colorants are chemicals or formulations of chemicals and compounds that produce a particular color when blended with a base. Stip. ¶ 20. The numerous bases provide a component material that is blended with colorant to create the finished, saleable can of colored paint. *Id.*

21. A can of base may be a completely different color than the ultimate color of saleable paint after the addition of colorant and subsequent mixing. Stip. ¶ 21. The mixing and blending of the colorant into the base permanently alters the composition of the base, as the two components never return to their separate forms. *Id.* The addition of colorant to the base also changes the physical characteristics of these components. *Id.*

22. Base is not a saleable finished product suitable for use. Stip. ¶ 22.

23. Base is not white paint. Stip. ¶ 23. To make white paint, Taxpayer must add colorant to the base. *Id.*

24. Base, prior to tinting, is a thick liquid product that would be difficult or impossible to apply. Stip. ¶ 24. Base lacks important coloring and shading characteristics. *Id.* For example, “ultra deep” bases, used to obtain darker colors, can be nearly transparent. *Id.*

25. A saleable, finished can of paint is a combination of colorant, base, binders, and solvent. Stip. ¶ 25.

26. Unlike base, “primer” is not a component ingredient of paint. Stip. ¶ 26. Primer is designed to hide the previous coating that has been applied to a wall. *Id.* Taxpayer’s customers can buy a can of primer without having it tinted and mixed/shaken, but it can be.

27. Depending on sales volume, each store has one or two dispensing/tinting machines and up to six mixers/shakers. Stip. ¶ 27. The mixers/shakers are used in order to accommodate one-gallon and five-gallon cans/pails. *Id.*
28. Each store also has one or two computer terminals, into which a sales person types information, which is sent to the various pieces of machinery and equipment in order to produce the colored paint. Stip. ¶ 28.
29. Depending upon the color to be produced, the mixer/shaker is programmed for a specific time in order for the colorant to be properly dispersed into the base. Stip. ¶ 29. Deeper colors generally require deeper tone bases and require a longer mixing/shaking time. *Id.*
30. The addition of colorant changes the design and aesthetic qualities of the base, as well as its performance characteristics. Stip. ¶ 30. Once the colorant is added and properly mixed and blended with the base, not only are the color and complexion changed but also the resulting product flow and leveling characteristics, enabling it to be applied as paint. *Id.*
31. Each saleable can of colored paint has a specific formula of colorants and base. Stip. ¶ 31. The formula identifies the appropriate base, type and quantity of colorant, and mixing times to produce the exact color. *Id.*
32. For a color selected from the palates, the employee enters the proper color identification number into the computer that controls either the automatic color dispenser or the color matching system. Stip. ¶ 32.
33. If the color needs to be custom-made, the customer's sample is measured by the "color eye" (a spectrophotometer or other color-sensing device) of the color matching system. Stip. ¶ 33. Numerical representations of the color are processed by sophisticated color-matching algorithms and a special color formula is created on the spot. *Id.* The formula is then sent

electronically to the automatic color dispenser through associated software. *Id.*

34. The formula transmitted by the spectrographic color-matching machine ensures the customer obtains the desired color and that every gallon of paint produced for a particular customer is exactly the same color as every other gallon of paint for that customer. Stip. ¶ 34.
35. After the appropriate color and formula are identified, a short-filled can of the correct type of base is selected as determined by the formula. Stip. ¶ 35. Neither a one-gallon can nor a five-gallon bucket of base contain a full one-gallon or five-gallons of base. *Id.* A quart can does not contain a full quart of base. *Id.* Cans are short-filled to allow for the addition of colorant. *Id.* Depending upon the color to be produced, up to twelve ounces of colorant may be added to a can of base. *Id.*
36. Once the can of base is in place, the processor on the automatic color dispenser sends signals to the pumps and valves to meter out the proper amounts of individual colorants into the selected can of base as prescribed by the formula. Stip. ¶ 36. The liquid colorant is dispensed into the can of base. *Id.*
37. After the proper amount of colorant is added to the base, the can is placed inside a high-speed mixer that spins at certain high velocities and for a predetermined time to properly disperse the colorant throughout the base. Stip. ¶ 37. The mixing time is critical; deeper colors require a longer mixing/shaking time. *Id.*
38. A printer attached to the equipment produces a label which contains the color identification and the formula ingredients. Stip. ¶ 38; Stip. Ex. II (copies of two sample labels for cans of base tinted by Taxpayer).
39. The examples of labels produced by Taxpayer's printers appear as follows:

[Image redacted]

Stip. Ex. II.

40. No evidence shows that Taxpayer sells the labels its printers produce. *See* Stip. ¶ 12.
41. The labels produced by the printers provide Taxpayer's customers with documentary evidence of the particular paint formula sold. Stip. ¶ 38; Stip. Ex. II.
42. The desired colored paint could not be made without the high-speed mixer. Stip. ¶ 39. The mixing must be performed at a constant high velocity for a specified time to achieve the desired color. *Id.* The colorant must be blended in with the high-speed mixer. Customers cannot produce useable paint by simply taking the base and colorant home and mixing them with a stirring stick. *Id.*
43. Paint that is applied solely to ceilings is different from other paint in that it typically will not have to be mixed or shaken, but it can be. Stip. ¶ 40.
44. The high-speed mixing of the base and colorants causes a physical alteration of the base in order to create the colored paint. Stip. ¶ 41. The mixing and blending of the colorant into the base permanently alters the composition of the base, as the two components never return to their separate forms. *Id.*
45. Taxpayer's stores are approximately 5,000 square feet. Stip. ¶ 42.
46. Each store contains a warehouse area, which consists of approximately 3,000 square feet of storage space for base and colorants. Stip. ¶ 43.
47. The mixing process may take place in front of the customer, if the customer is purchasing individual one-gallon cans of paint. Stip. ¶¶ 43-44; Stip. Ex. III (photographs of the areas of stores in which paint and the components of paint are sold, mixed, and stored).
48. Most of Taxpayer's paint sales are for commercial projects; the paint for these sales is generally stored in larger cans and is not mixed in front of the customer. Stip. ¶ 43.

49. Taxpayer sells paint in the store that is not mixed in the store in two instances. Stip. ¶ 45.

First, some larger commercial customers may come to a store at the beginning of a painting season (i.e. in the spring) and say that they expect to have a very large job in the area that summer, such as entire allotment of new home constructions or an entire apartment complex. *Id.* The customer will tell the store that it will need a large amount (e.g. 1000 gallons) of a certain color of paint for the job. *Id.* The store will order the paint pre-mixed and ready-to-go from the factory and sell it to the large customer for use on the large job. *Id.* To the extent a store orders more of this paint than is necessary for the large job, the store may sell the remaining paint to its other customers, sometimes at a discount. *Id.* Second, there are a very small number of paints that cannot be tinted and mixed at the store and must be tinted and mixed at the factory (for example, Tri-Corn Black). *Id.* These colors are rare. *Id.*

50. When there is a special sale, customers sometimes purchase unmixed base from the store to take advantage of the sale. Stip. ¶ 46. However, these customers cannot use the base for jobs until they return at a later date to have the base tinted and mixed/shaken. *Id.* The raw material base and/or finished saleable product, colored paint, may constitute hazardous materials. *Id.*

51. Each store contains an area to safely store hazardous materials in the event that base or colored paint is spilled or is to be stored. Stip. ¶ 47.

52. Depending upon the sales volume, a store may contain a conveyor system. Stip. ¶ 48.

53. Every store employee is trained on how to use all of the machinery and equipment in the store. Stip. ¶ 49.

54. The average cost of a one-gallon mixer is \$XXXX. Stip. ¶ 50.

55. The average cost of a five-gallon mixer is \$XXXX. Stip. ¶ 51.

56. The average cost of an Accutinter is \$XXXX. Stip. ¶ 52.

57. The average cost of a dispenser is \$XXXX. Stip. ¶ 53.
58. The average cost of a Spectrophotometer and computer terminal and accessories is \$XXXX. Stip. ¶ 54.
59. Depending upon the sales volume of the store, which determines the amount of machinery and equipment needed in a store, the average store contains between \$XXXX and \$XXXX of machinery and equipment. Stip. ¶ 55.
60. The costs incurred at the store to produce saleable, colored paint are included in the price of the finished product, the price upon which the customer is charged sales tax. Stip. ¶ 56.
61. Most if not all of Taxpayer's stores in Illinois are located in areas that are designated or set aside for retail and not manufacturing uses under local zoning codes. Stip. ¶ 57.

Conclusions of Law

Illinois' Use Tax Act (UTA) imposes a tax on the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 3-5 of the UTA contains a number of exemptions from tax, and during the period at issue,¹ one of those exemptions was the MM&E exemption, which is described in two related sections of the UTA, §§ 3-15(18) and 3-50, each of which provided, either in full or in pertinent part, as follows:

Sec. 3-5. Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

(18) Manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether that sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether that sale or lease is made apart from or as an incident to the seller's engaging in the service occupation of producing machines, tools, dies, jigs, patterns,

¹ The period at issue is October 2003 through June 2007. Stip. ¶ 5. The statutory text quoted here and on the following page was in effect during from August 2001 through January 2008. P.A. 92-484 (eff. August 23, 2001); P.A. 95-707 (eff. January 11, 2008).

gauges, or other similar items of no commercial value on special order for a particular purchaser.

35 ILCS 105/3-5(18).

Sec. 3-50. Manufacturing and assembly exemption. The manufacturing and assembling machinery and equipment exemption includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery and equipment that are for use in an expanded or new manufacturing facility. The machinery and equipment exemption also includes machinery and equipment used in the general maintenance or repair of exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. For the purposes of this exemption, terms have the following meanings:

(1) "Manufacturing process" means the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by a procedure commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material into a material with a different form, use, or name. In relation to a recognized integrated business composed of a series of operations that collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process commences with the first operation or stage of production in the series and does not end until the completion of the final product in the last operation or stage of production in the series. For purposes of this exemption, photoprocessing is a manufacturing process of tangible personal property for wholesale or retail sale.

35 ILCS 105/3-50.

During the period at issue, there was no regulation published under the UTA regarding the MM&E exemption. There was, however, a regulation that announced how the Department would interpret and administer the MM&E exemption authorized in § 2-45 of the complementary retailers' occupation tax act (ROTA). 35 ILCS 120/2-45; 86 Ill. Admin. Code § 130.330. For the period at issue,² that applicable retailers' occupation tax regulation (ROTR) provided, in pertinent part:

² The regulatory text quoted here and on the following pages was in effect from April 1, 2002 through December 2008. 32 Ill. Reg. 19128 (iss. 10) (eff. December 1, 2008); 26 Ill. Reg. 5369 (iss. 15) (eff. April 1, 2002).

Section 130.330 Manufacturing Machinery and Equipment

a) General. Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

b) Manufacturing and Assembling.

1) This exemption exempts from tax only machinery and equipment used in manufacturing or assembling tangible personal property for sale or lease. Thus, the use of machinery and equipment in any industrial, commercial or business activity that may be distinguished from manufacturing or assembling will not be an exempt use and the machinery and equipment will be subject to tax.

2) The manufacturing process is the production of any article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining that changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant.

3) The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope and character of a process or operation will be considered to determine if the process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating and refining.

c) Machinery and Equipment

1) The law exempts only the purchase and use of "machinery" and "equipment" used in manufacturing or assembling. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the manufacturing or assembling of tangible personal property for sale or lease. ***

2) Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process: including, machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment.

3) Equipment includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process: including computers used primarily in operating exempt machinery and equipment in a computer-assisted design, computer-assisted manufacturing (CAD/CAM) system; or any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment, parts of machinery, such as tools, dies, jigs, fixtures, patterns

and molds, and any parts which require periodic replacement in the course of normal operation. ***

d) Primary Use

1) The law requires that machinery and equipment be used primarily in manufacturing or assembling. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50 percent in an exempt manner in order to claim the deduction.

2) The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling.

3) By way of illustration and not limitation, the following activities will generally be considered to constitute an exempt use:

A) The use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;

B) The use of machinery or equipment to guide or measure a direct and immediate physical change upon the tangible personal property to be sold, provided this function is an integral and essential part of tuning, verifying, or aligning the component parts of such property;

C) The use of machinery or equipment to inspect, test or measure the tangible personal property to be sold where the function is an integral part of the production flow;

F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store;

4) By way of illustration and not limitation, the following activities will generally not be considered to be manufacturing:

F) The use of machinery or equipment in managerial, sales, or other nonproduction, nonoperational activities including disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training;

J) The use of machinery or equipment used in the last step of the retail sale. Examples are paint mixing equipment used by a hardware store, embroidery or monogramming machines used by tee-shirt retailers and a sewing machine used to hem garments sold by a clothing store.

86 Ill. Admin Code § 130.330.

Issues and Arguments

Taxpayer argues that the machinery and equipment (M&E) it uses at its retail stores to manufacture paint from base and colorant qualifies under the plain terms of the statutory sections authorizing the MM&E exemption. Taxpayer's Points and Authorities (Taxpayer's Brief), pp. 1, 8. When making this argument, Taxpayer stresses that the statutory definition of the term "manufacturing process" provides that the process commences with the first operation or stage of production in the series and does not end until the completion of the final product in the last operation or stage of production in the series. *Id.*, p. 8. Taxpayer points out that the parties' stipulations make clear that paint, the final product that Taxpayer manufactures and sells at retail, does not exist until after Taxpayer uses the M&E at issue, at its retail stores, to process or assemble and change two existing materials, base and colorant, into paint, a material with a different form, use, or name than its constituent ingredients. *Id.*, pp. 8-9.

The Department responds with two, alternative arguments. Department's Reply Brief (Department's Brief), pp. 8-9. First, it asserts that Taxpayer's M&E cannot be considered exempt because ROTR § 130.330(d)(4)(J) specifically excludes "paint mixing equipment" from the exemption. *Id.*, pp. 8-9. Alternatively, the Department argues that the process described in the parties' stipulations should not be "commonly regarded" as manufacturing. *Id.*, pp. 9, 11-15. This recommendation addresses each of the Department's arguments, in turn.

Analysis:

Section 20 of the UTA provides that, after a claim for credit or refund is filed with the Department, "the Department shall examine the same and determine the amount of credit or refund to which the claimant ... is entitled and shall, by its Notice of Tentative Determination of

Claim, notify the claimant ... of such determination, which determination shall be prima facie correct.” 35 ILCS 105/20. Here, the Department established the prima facie correctness of its action when its Denial of Taxpayer’s claim was included within the parties’ stipulated record, as an exhibit. 35 ILCS 105/20; Stip. Ex. IV. The Department’s prima facie case is overcome, and the burden shifts back to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department’s determinations are wrong. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 156-57, 242 N.E.2d 205, 206-07 (1968); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 832, 527 N.E.2d 1048, 1052 (1st Dist. 1988).

In this case, Taxpayer’s burden of production was obviated by the parties’ decision to submit a stipulated record, including their stipulations of fact. People v. One 1999 Lexus, VIN JT8BH68X2X0018305, 367 Ill. App. 3d 687, 691, 855 N.E.2d 194, 199 (2d Dist. 2006) (“A stipulation has the effect of eliminating the need for proof that might otherwise have been required.”); 83 C.J.S. Stipulations §§ 1 (“A stipulation is a statement of facts that both parties agree are true.”), 5 (“A stipulation is evidentiary in nature. ... It is a judicial admission that obviates the need for proof on the stipulated matters.”) (2015). Here, the written stipulations show that the parties agree on pertinent facts regarding: Taxpayer’s business (Stip. ¶¶ 1-4, 11-13); the purposes for which, and the procedures in which, Taxpayer uses the M&E at issue (Stip. ¶¶ 13-15, 18, 27-41); which particular items of M&E are being claimed as exempt (Stip. ¶¶ 51-55, Stip. Ex. V); Taxpayer’s cost price for such M&E (Stip. Ex. V); etc. They dispute only whether, given such undisputed facts, Taxpayer’s primary use of the M&E here is entitled to the statutory exemption. Stip. ¶ 9.

Before proceeding to the parties' arguments, however, the parties' stipulations of fact do not provide clear and convincing proof that the printers described in Stipulation ¶ 38, and included within Stipulation Exhibit V, the schedule of M&E included in Taxpayer's claim, are covered by the MM&E exemption. The parties stipulated that, "[a] printer attached to the equipment produces a label which contains the color identification and the formula ingredients. Exhibit II are copies of sample labels for cans of base tinted by ABC Business." Stip. ¶ 38; Stip. Ex. II.

The parties' Stipulation ¶ 38 implies that Taxpayer uses the printers to produce labels. Stip. ¶ 38. However, Taxpayer sells paint and paint related products; it does not sell the labels it prints. Stip. ¶ 12. The labels, moreover, are not a component material that, after processing, becomes a salable can of paint. *Compare* Stip. ¶¶ 11, 13, 21, 28-37, 39-41 *with* Stip. ¶ 38.

The parties' stipulated record provides facts from which it reasonably may be implied that Taxpayer prints the labels after the manufacturing or production cycle for paint has been completed. *See* Stip. ¶ 38; Stip. Ex. II; 35 ILCS 105/3-50(1). I assume that Taxpayer attaches the labels printed to a salable can of paint, or that they are given to the purchaser. The labels, if given to a purchaser, or attached to a salable can of paint, would provide the purchaser with the name, formula number, and other information regarding the colored paint purchased. Stip. Ex. II.

The stipulated record shows that the labels are like a receipt that a retailer ordinarily gives to a purchaser when making a retail sale of tangible personal property. *Compare* Stip. Ex. II *with* 86 Ill. Admin. Code § 130.405(g) *and* 86 Ill. Admin. Code § 150.1305. But a cash register or point of purchase computer system that prints out such receipts is not entitled to the MM&E exemption, because such machines are being used for a primary purpose that is other than manufacturing. 35 ILCS 105/3-5(18); 35 ILCS 105/3-50(1); 86 Ill. Admin. Code §

130.330(b)(1) (“... the use of machinery and equipment in any industrial, commercial or business activity that may be distinguished from manufacturing or assembling will not be an exempt use and the machinery and equipment will be subject to tax.”), (d)(4)(F) (“The use of machinery or equipment in ... sales, or other nonproduction, nonoperational activities including ... accounting, ... general communications, ... sales, marketing ... [is not generally not considered to be manufacturing]”).

The parties’ stipulated record does not provide clear and convincing proof that Taxpayer’s printers are entitled to the MM&E exemption. Stip. ¶ 38; Stip. Ex. II; 35 ILCS 105/3-5(18); 35 ILCS 105/3-50(1). Therefore, the record does not show that Taxpayer paid use tax in error regarding its purchase and use of the printers scheduled within the parties’ Stipulation Exhibit V. 35 ILCS 105/2; American Airlines, Inc. v. Department of Revenue, 402 Ill. App. 3d 579, 590, 931 N.E.2d 666, 676 (1st Dist. 2009) (“Under the UTA, unless exempted, all items of tangible personal property used in Illinois are subject to tax.”)

Does ROTR § 130.330(D)(4)(J) Prohibit An Exemption For Paint Mixing Equipment

The Department contends that ROTR § 130.330(d)(4)(J) “on its face explicitly prohibits an exemption for ‘paint mixing equipment’” Department’s Brief, p. 9. The Department points out that Taxpayer has not claimed that this applicable regulation is invalid, and that the law in Illinois is clear that regulations are presumed valid. *Id.*, p. 8.

Since the Department’s argument advances a particular construction of ROTR § 130.330(d)(4)(J)’s text, it is appropriate to recall some of the rules governing statutory and regulatory construction. The same rules apply when interpreting administrative regulations and statutes. Weyland v. Manning, 309 Ill. App. 3d 542, 547, 723 N.E.2d 387, 391 (2d Dist. 2000). When construing a statute, the primary duty is to give effect to the intent of the legislature.

Antunes v. Sookhakitch, 146 Ill. 2d 477, 484, 588 N.E.2d 1111, 1114 (1982). To ascertain legislative intent, one must first look to the language of the statute, examining the language of the statute as a whole, and considering each part or section in connection with every other part or section. *Id.* Finally, since an administrative agency has no powers but those conferred by statute, when construing an administrative regulation, the construction advanced must be considered together with the text of the statute the regulation was adopted to interpret and/or administer. *See e.g., Ruby Chevrolet, Inc. v. Department of Revenue*, 6 Ill. 2d 147, 151, 126 N.E.2d 617, 619 (1955) (“A statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder.”); Parliament Insurance Co. v. Department of Revenue, 50 Ill. App. 3d 341, 347-48, 365 N.E.2d 667, 671 (1st Dist. 1977) (“The acts of administrative agencies and officers should be upheld where ... such acts are within limits relevant to the purpose of the particular enabling legislation.”).

Paragraph (d) of ROTR § 130.330 includes the Department’s illustrations of certain types of activities that the Department will generally consider to constitute an exempt use (86 Ill. Admin. Code § 130.330(d)(3)), and other types of activities that the Department will generally not consider to be manufacturing. 86 Ill. Admin. Code § 130.330(d)(4). As to the latter, subpart (4)(J) provides:

4) By way of illustration and not limitation, the following activities will generally not be considered to be manufacturing:

J) The use of machinery or equipment used in the last step of the retail sale. Examples are paint mixing equipment used by a hardware store, embroidery or monogramming machines used by tee-shirt retailers and a sewing machine used to hem garments sold by a clothing store.

86 Ill. Admin Code § 130.330(d)(4)(J).

I do not recommend that the Director apply ROTR § 130.330(d)(4)(J) in the way the

Department argues it should be applied in this case. First, I cannot agree with the Department's argument that ROTR § 130.330(d)(4)(J) "on its face explicitly prohibits an exemption for 'paint mixing equipment'" Department's Brief, p. 9. This reading, I respectfully submit, significantly misconstrues the actual text of the regulation.

The actual text of ROTR § 130.330(d)(4) provides illustrations of activities that "will *generally* not be considered to be manufacturing[;]" it does not explicitly prohibit an exemption for any and all such activities, or for any of the machines identified in the various parts within that subparagraph. 86 Ill. Admin Code § 130.330(d)(4) (emphasis added). The meaning of the word "generally," moreover, is not consistent with the meaning of unconditional words, like always, or never. "Generally" means:

1. usually; commonly; ordinarily: *He generally comes home at noon.*
2. with respect to the larger part; for the most part: *a generally accurate interpretation of the facts.*
3. without reference to or disregarding particular persons, things, situations, etc., that may be an exception: *generally speaking.*

<http://dictionary.reference.com/browse/generally> (definition of "generally" at Dictionary.com) (last accessed on June 17, 2015). That is, the plain meaning of the word, generally, includes an inference that particular instances may be excepted from that which is generally described as being true. *Id.*

Next, the actual text of ROTR § 130.330(d)(4)(J) consists of two sentences. The first sentence provides, "[t]he use of machinery or equipment used in the last step of the retail sale." 86 Ill. Admin. Code § 130.330(d)(4)(J). Reading § 130.330(d)(4) together with § 130.330(d)(4)(J), then, what the regulatory text actually provides is that the activity that would generally not be considered manufacturing is the use of M&E at the last step of the retail sale. *Id.* The actual text, that is, does not set forth a list of particular items of M&E that the Department

intended to absolutely or explicitly prohibit from being included within the statutory exemption.

Id.

The second sentence of ROTR § 130.330(d)(4)(J) provides three examples of different types of property used by different retailers during the last step of the retail sale. *Id.* When a statute or regulation provides examples after generally describing a class or category, the examples are ordinarily understood to provide additional guidance regarding the meaning of the text generally describing the class or category. *See Sookhakitch*, 146 Ill. 2d at 484, 588 N.E.2d at 1114.

The three examples expressed in ROTR § 130.330(d)(4)(J) each describe a different retailer's use of M&E to perform a service that is incidental to the retailer's sale of the particular goods being sold at retail. *Id.*; 86 Ill. Admin. Code § 130.330(b)(2). When reading ROTR § 130.330(d)(4)(J) together with § 130.330(b)(2), one can further appreciate that, in each example described in § 130.300(d)(4)(J), the process of manufacturing the goods to be sold had already been completed prior to the time the retailer performed the service at the last step of the retail sale. That is, the unmixed paint was still paint after being mixed, the unadorned t-shirt was still a t-shirt after being embroidered or monogrammed, and the unfinished suit, shirt, blouse, etc. was still a suit, shirt or blouse after being hemmed, cinched, let out, etc. It is my recommendation that the better way to read and apply the actual text of ROTR § 130.330(d)(4)(J) is to treat it as informing the public that, when administering the MM&E exemption, the Department will generally not consider M&E purchased and used by retailers to provide services at the last step of the retail sale, regarding goods for which the manufacturing process has already been completed, as being included within the statutory exemption. 86 Ill. Admin Code § 130.330(d)(4); 35 ILCS 105/3-5(18).

There are two fundamental reasons why I conclude that the particular facts of this contested case do not fit within the Department’s description of activities that will generally not be considered manufacturing, and both are based on the parties’ stipulations of fact. First, the parties agree that Taxpayer is both the manufacturer and the retailer of the paint it manufactures. Stip. ¶¶ 11-12. This particular fact distinguishes Taxpayer’s two businesses with the common, single, occupation described in the three examples in ROTR § 130.330(d)(4)(J). Second, the parties’ stipulations show that Taxpayer actually and primarily uses the M&E, except for the printers, in a manner that is embraced within ROTR § 130.330(d)(3)’s description of activities that the Department “will generally ... consider[] to constitute an exempt use” 86 Ill. Admin Code § 130.330(d)(3)(A)-(B); Stip. ¶¶ 11, 13, 21, 28-37, 39-41.

More specifically, the parties have stipulated that:

- The base used in Taxpayer’s paints is produced in base manufacturing plants and shipped to Company stores to be blended with colorant at the store to produce saleable colored paint.
- Base is a formulation of chemicals specifically designed for use with particular colorants.
- Colorants are chemicals or formulations of chemicals and compounds that produce a particular color when blended with a base.
- Base is not a saleable finished product suitable for use.
- A saleable, finished can of paint is a combination of colorant, base, binders, and solvent.

Stip. ¶¶ 18-22, 25.

The parties have also stipulated to the manner in which Taxpayer uses the M&E here (Stip. ¶¶ 28-41), and to the effect that Taxpayer’s use of the M&E has on the constituent components that, after being blended and processed by the M&E, produce a salable can of paint.

Stip. ¶¶ 21, 30. Specifically, they agree that Taxpayer’s use of the M&E:

- changes the design and aesthetic qualities of the base, as well as its performance characteristics. Once the colorant is added and properly mixed and blended with the base, not only are the color and complexion

changed but also the resulting product flow and leveling characteristics, enabling it to be applied as paint.

Stip. ¶ 30. They further stipulate that:

- The mixing and blending of the colorant into the base permanently alters the composition of the base, as the two components never return to their separate forms. The addition of colorant to the base also changes the physical characteristics of these components.

Stip. ¶ 21.

Finally, the parties stipulate that:

- Taxpayer manufactures paint and paint-related products.
- Taxpayer sells paint to retail customers in company-owned stores in Illinois. In the 1960s, Taxpayer adopted a process through which computers, machinery, and equipment in the retail stores (rather than in a centralized factory) blend and process component materials to produce colored paint.

Stip. ¶¶ 11-13. Taken together, the parties' stipulations support a conclusion that Taxpayer has adopted an "integrated business composed of a series of operations that collectively constitute manufacturing, ... [which] does not end until the completion of the final product in the last operation or stage of production in the series." 35 ILCS 105/3-50(1).

Proceeding with the understanding that the Department included the examples in ROTR § 130.330(d)(4)(J) to provide guidance as to whether, in a particular situation, M&E used in the last step of the retail sale would generally not be considered manufacturing, the relevant inquiry is whether the product being sold at retail — in this case, paint — is fundamentally the same article of tangible personal property that exists before Taxpayer uses the M&E in the last step of the retail sale. 86 Ill. Admin Code § 130.330(b)(2), (d)(3), (d)(4)(J). After considering the stipulated facts of this case, it is clear that Taxpayer is not using most of the M&E here like the retailers described in ROTR § 130.330(d)(4)(J)'s examples — during the last step in the retail sale, to perform a service on goods regarding which the manufacturing process has already been completed. Rather, the parties' stipulations clearly and convincingly show that Taxpayer used all

of the items of M&E, except for the printers, “to effect a direct and immediate physical change upon the tangible personal property to be sold[, and/or] to guide or measure a direct and immediate physical change upon the tangible personal property to be sold, [where] this function is an integral and essential part of tuning, verifying, or aligning the component parts of such property” 86 Ill. Admin. Code § 130.330(d)(3)(A)-(B); Stip. ¶¶ 11, 13, 21, 28-37, 39-41.

The legislature has defined when the manufacturing process commences and when it ends (35 ILCS 105/3-50(1)), and the parties’ stipulations show that the process of producing the paint Taxpayer manufactures and sells is not complete until Taxpayer uses the M&E to precisely measure, combine and mix different bases and colorants. Stip. ¶¶ 11-13, 21, 30, 28-41. The stipulated facts show that Taxpayer was using all of the M&E, except for the printers, as the manufacturer of the paint it sold at retail, to complete the last stage in the process of manufacturing such paint, by procedures that changed base and colorant into paint, a material with a different form, use, or name than the base and colorant. Stip. ¶¶ 11, 13, 21, 28-37, 39-41; 35 ILCS 105/3-50(1).

Based on a careful consideration of the actual text of UTA §§ 3-5(18) and 3-50, together with that of ROTR § 130.330(d)(4) and (d)(4)(J), I respectfully request that the Director reject the Department’s litigation position that ROTR § 130.330(d)(4)(J) should be read as though, on its face, it “explicitly prohibits an exemption for ‘paint mixing equipment’” Department’s Brief, p. 9. The actual text of the regulation does no such thing, just as it does not explicitly prohibit an exemption for embroidery, monogramming, or sewing machines. 86 Ill. Admin Code § 130.330(d)(4)(J).

Should Taxpayer’s Use of the M&E In This Case Be Commonly Regarded as Manufacturing

The Department reasons that Taxpayer’s use of the M&E should not be commonly

regarded as manufacturing because Taxpayer uses the M&E at its retail stores, instead of at its facilities where it completes the process of manufacturing base and colorant. Department's Brief, pp. 12-15. On this point, however, the Department's arguments are inconsistent with its own stipulations of fact. The Department has stipulated that Taxpayer manufactures paint and paint-related products. Stip. ¶ 11. The Department further stipulates that "in the 1960s, Taxpayer adopted a process through which computers, machinery, and equipment in the retail stores (rather than in a centralized factory) blend and process component materials to produce colored paint." Stip. ¶ 13. Notwithstanding those stipulations, it argues that the manner in which Taxpayer uses the M&E to blend and process component materials to produce colored paint should not be commonly regarded as manufacturing. Department's Brief, pp. 12-15.

The Department's stipulations of fact are judicial admissions. Keeven v. City of Highland, 294 Ill. App. 3d 345, 348, 689 N.E.2d 658, 661 (5th Dist. 1998). An admission of fact carries with it an admission of other facts necessarily implied from it. Caponi v. Larry's 66, 236 Ill. App. 3d 660, 671, 601 N.E.2d 1347, 1351 (2d Dist. 1992). "It is well settled in Illinois that a party can ... make a judicial admission which conclusively precludes assertion of a contrary position." Dayan v. McDonald's Corp., 125 Ill. App. 3d 972, 983, 466 N.E.2d 958, 967 (1st Dist. 1984).

Here, the Department's stipulation that "[Taxpayer] manufactures paint and paint related products[,]'" implies knowledge of the meaning of the word, manufactures. Stip. ¶ 11. That very simple sentence further implies both an understanding and agreement that paint is a product of manufacturing. When the Department entered into the stipulations in this case, it is presumed to have known the Illinois General Assembly's statutory definition of the term, manufacturing process. 35 ILCS 105/3-50(1); Van's Material Co., Inc. v. Department of Revenue, 131 Ill.2d

196, 207, 545 N.E.2d 695, 701 (1989) (“In interpreting the term ‘commonly regarded’ it seems evident that application of the terms of the statute is not to be guided by some hyperbolic definition of manufacture but rather is subject to commonsense interpretations based on past and current understanding.”). As a result, when the Department stipulated that Taxpayer used the M&E during its decentralized process of producing colored paint from its constituent articles of base and colorant at its retail stores (Stip. ¶¶ 13, 25) — the same paint the Department admits Taxpayer manufactures and sells at retail (Stip. ¶¶ 11-12) — it has also made a judicial admission that *it* regarded Taxpayer’s production of colored paint as being part of a manufacturing process. Larry’s 66, 236 Ill. App. 3d at 671, 601 N.E.2d at 1351; 35 ILCS 105/3-50(1).

But if I am wrong, and the Department’s stipulations of fact do not stop it from taking a litigation position that is inconsistent with facts necessarily implied from such stipulations, I would still recommend that the Director reject the Department’s reasoning and arguments regarding this issue.

The Department’s litigation position includes its argument that “... in order to meet the commonly regarded test, ‘where’ is just as, if not more important than ‘what.’ It is not so much [a] question of what takes place in [Taxpayer’s] stores but rather that it is taking place in [Taxpayer’s] stores rather than a factory.” Department’s Brief, p. 12. To support this position, the Department cites to private letter rulings issued in 1992 and 1999. *Id.*, pp. 8, 12. I also note that the Department has asserted that the very same items of M&E that it contended were explicitly prohibited from being exempt, under ROTR § 130.330(d)(4)(J), might be exempt if they were physically located and used at the location where Taxpayer manufactures the base and/or colorant. *Id.*, p. 12.

The Department’s reasoning here appears to be based on an assumption that the

legislature intended the exemption to be conditioned upon whether a person claiming it is using M&E at a particular, approved or designated, place or location. The Department then argues that Taxpayer, itself, did not commonly regard the activities conducted at its retail stores to be part of a manufacturing process, since the parties have stipulated that Taxpayer's retail stores are zoned for commercial purposes and not manufacturing purposes, and since Taxpayer, on its annual reports filed with the SEC, accounts for and/or reports the activities conducted at its retail stores as being within a different business segment than those conducted at the locations at which it manufactures base and colorants. Department's Brief, pp. 13-14.

However, after considering the text of the MM&E exemption, the parties' stipulations of fact, and the decision in Van's Material Co., Inc., I respectfully submit that the Department's litigation position should not be followed. *Compare* Department's Brief, pp. 12-15 *with* 35 ILCS 105/3-5(18); 35 ILCS 105/3-50 *and* Van's Material Co., Inc., 131 Ill.2d at 209-10, 545 N.E.2d at 702. To begin, the plain text of UTA § 3-5(18) provides that the exemption is for "[m]anufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease" 35 ILCS 105/3-5(18). Further, the statutory term, commonly regarded, has to be read together with the text surrounding it. Sookhakitch, 146 Ill. 2d at 484, 588 N.E.2d at 1114. Again, UTA § 3-50(1)'s definition of manufacturing process provides:

"Manufacturing process" means the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by a procedure commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material into a material with a different form, use, or name. ***

35 ILCS 105/3-50(1).

Contrary to the Department's arguments, the plain text of UTA § 3-50(1) reflects that it is the procedures by which a finished product or one of such product's constituent articles are produced that have to be commonly regarded as manufacturing — it does not reflect that the place at which such procedures occur has to be commonly regarded as a place where manufacturing is permitted. *Compare id. with* Department's Brief, p. 12. Nothing within UTA §§ 3-5(18) or 3-50 provides any indication that the legislature intended the exemption to be conditioned upon or limited by the place at which particular items of M&E are physically located and used. 35 ILCS 105/3-5(18); 35 ILCS 105/3-50(1). Nor is there anything in the related statutory sections requiring the person claiming the exemption to demonstrate that M&E is being used in a location that the state has recognized as being suitable for manufacturing, or at a location that is zoned for such use or purpose. *Compare* 35 ILCS 105/3-5(18) *and* 35 ILCS 105/3-50 *with* Department's Brief, pp. 12-14. The Department's litigation position has no support within the text of UTA § 3-50(1). Van's Material Co., Inc., 131 Ill.2d at 209-10, 545 N.E.2d at 702.

In Van's, moreover, the Court rejected the Department's reliance on a prior version of ROTR § 130.330, since repealed, which limited the activities that the Department would commonly regard as manufacturing to those conducted at a fixed location. More specifically, the Court held:

Earlier in this opinion we addressed the Department's contention that the statutory provisions limit manufacturing to a situation in which the process only takes place in a fixed location and found that argument lacking in merit. The Department's rules and regulations limiting manufacturing to a fixed location and attempting to define "commonly regarded" by its own limited definition are unduly restrictive in the light of the statutory language. This court has long held that administrative rules may not limit the scope of a statute. (*Du-Mont Ventilating Co. v. Department of Revenue* (1978), 73 Ill.2d 243, 247-48, 22 Ill.Dec. 721, 383 N.E.2d 197.) Even if the regulations were not determined to be unduly restrictive, we are not bound by the Department's

interpretations of the statute. (*Canteen Corp. v. Department of Revenue* (1988), 123 Ill.2d 95, 104-05, 121 Ill.Dec. 267, 525 N.E.2d 73; *Du-Mont Ventilating*, 73 Ill.2d at 247, 22 Ill.Dec. 721, 383 N.E.2d 197.) We therefore decline to limit manufacturing to fixed locations or to apply the Department's limited definition of the term 'commonly regarded.'

Van's Material Co., Inc., 131 Ill.2d at 209-10, 545 N.E.2d at 702.

The Department's litigation position in this case is a resilient vestige of similar arguments the Illinois Supreme Court unanimously rejected in Van's. Compare *id.* with Department's Brief, p. 12. In Van's, the Department wanted the Court to agree with its regulatory determination that the only procedures that would be commonly regarded as manufacturing were those procedures conducted at a fixed location. Van's Material Co., Inc., 131 Ill.2d at 209-10, 545 N.E.2d at 702. Here, the Department wants me to recommend that the Director adopt its litigation position that Taxpayer's use of the M&E here should not be commonly regarded as manufacturing because Taxpayer uses them at its retail stores (Department's Brief, pp. 12-14), despite its stipulations that the procedures for which Taxpayer primarily uses most of such M&E occur when Taxpayer completes the final stage in its decentralized process of manufacturing paint. Stip. ¶¶ 11-13, 21, 28-37, 39-41. The Van's decision cautions against accepting the Department's litigation position here.

Finally, the Department's litigation position fails to take into account ROTR § 130.330(d)(3)'s provision that one of the activities generally considered to constitute an exempt use is "[t]he production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store" 86 Ill. Admin. Code § 130.330(d)(3)(F) (emphasis added). That subpart of ROTR § 130.330 was adopted in 2002 (26 Ill. Reg. 5369 (iss. 15) (eff. April 1, 2002)), after the Department wrote and issued the private letter rulings the Department cites to support its litigation position here. Department Brief, pp. 8, 10, 12. Now clearly, Taxpayer's M&E is not

covered by ROTR § 130.330(d)(3)(F). But its existence seriously calls into question the Department's argument that "it would be difficult to show what activities, if any, taking place in a store would ever be "commonly regarded" as manufacturing" Department's Reply, p. 14. If the Department's litigation position in this case is premised on the Department's 1992 and 1999 private letter rulings, the Department's 2002 amendment to ROTR § 130.330(d)(3) must be seen as the Department's reconsideration of those prior, informal statements about the types of activities that would be commonly understood as manufacturing. Subparagraph (d)(3)(F) of ROTR § 130.330 reflects the Department's plainly expressed determination that there are instances in which M&E used at a retail store will be commonly understood to be exempt. 86 Ill. Admin. Code § 130.330(d)(3)(F). Given the parties' stipulations here, this case is also an instance in which M&E used at Taxpayer's retail stores should be commonly understood to constitute manufacturing. Stip. ¶¶ 11-13, 21, 28-37, 39-41; 86 Ill. Admin. Code § 130.330(d)(3)(A)-(B).

The stipulated facts show, clearly and convincingly, that all of the M&E at issue — except for the printers — was primarily used by Taxpayer to perform the last step in its decentralized process of manufacturing paint for wholesale or retail sale. Stip. ¶¶ 11-13, 21, 28-37, 39-41; 35 ILCS 105/3-50(1). Taxpayer uses such M&E to perform procedures that are commonly understood to constitute manufacturing (35 ILCS 105/3-50(1); 86 Ill. Admin. Code § 130.330(d)(3)(A)-(B)), and which procedures cannot be distinguished from manufacturing. 35 ILCS 105/3-50(1); 86 Ill. Admin. Code § 130.330(b)(1).

Conclusion:

I respectfully recommend that the Director reconsider and revise the Department's prior Denial, so as to grant Taxpayer's claim in part and to deny it in part. The Denial should be

finalized in part, so as to deny Taxpayer any refund or credit regarding tax paid regarding the printers scheduled in the parties' Stipulation Exhibit V. I respectfully recommend that the Director grant Taxpayer's claim in part, and either issue a refund or credit to Taxpayer for the tax it paid in error regarding the remaining M&E scheduled in Stipulation Exhibit V, plus interest, pursuant to statute.

August 25, 2015

John E. White

Administrative Law Judge