JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2004-08-31-06
ID:	CR-03-006-K
DATE:	AUGUST 31, 2004
DISPOSITION:	DENIED
TAX TYPE:	SALES TAX
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On February 15, 2001, Claimant filed a verified claim for refund of sales taxes remitted to the Tax Commission during the period of January, 1998 through October, 1998.[1] On August 1, 2001, Claimant filed an amended verified claim for refund of sales and use taxes remitted to the Tax Commission during the period of January, 1998 through June, 2001.[2] On October 3, 2001, Claimant filed a second amended verified claim for refund of sales tax remitted to the Tax Commission during the period of January, 1998 through September, 2001.[3] All told, Claimant sought a refund of sales taxes it remitted to the Tax Commission during the period of January, 1998 through September, 2001, in the amount of $444,746.37 and a refund of use taxes it remitted to the Tax Commission during the period of January, 1998 through June, 2001, in the amount of $42,008.54.[4]

The sales and use tax refund claims were reviewed by AUDITOR, Audit Division of the Tax Commission.[5] Pursuant to this review, the Division approved the refund of $310,039.39 in sales tax and $42,002.59 in use tax and denied the remainder of the refund claims.[6] Claimant was notified of the Division's determinations by letters dated May 13, 2003 and May 22, 2003.[7] By letter dated June 3, 2003, Claimant protested the Division's partial denial of the sales tax refund claim and requested a hearing.[8]

On June 19, 2003, the Division forwarded its file in this matter to the ALJ's Office for further proceedings consistent with the Uniform Tax Procedure Code[9] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[10]. The case was assigned to ADMINISTRATIVE LAW JUDGE.

By letter dated June 23, 2003, Claimant's protest was scheduled for hearing for August 20, 2003. The hearing was continued twice by agreement of the parties and was scheduled for and held on November 20, 2003. One witness testified, WITNESS, Vice-President of Finance/Controller of Claimant, through whom Claimant's Exhibits A through F and Division's Exhibits 1 and 2 were identified and admitted into evidence. The record in this cause was held open for the parties to file post-trial findings, conclusions and recommendations. Post-trial findings, conclusions and recommendations were filed by each of the parties on March 5, 2004, whereupon the record in this cause was closed and the matter was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. During the period at issue, Claimant identified itself as "a leading developer, owner and licensor of a proprietary catalytic process for converting natural gas to synthetic liquid hydrocarbons, generally known as gas-to-liquids, or GTL, technology."[11] Tr. 11.

2. Claimant's 2000 Form 10-K filed with the Securities and Exchange Commission further indicated in the "Business Overview" that:

> We sell licenses to use our GTL technology, the PROCESS, for the production of fuels, and we plan to develop and own GTL plants based on the PROCESS Process that produce refined specialty products and fuels. We believe that the costs to produce many products from natural gas using the PROCESS Process, including diesel fuel, gasoline and lubricants, can be competitive with the costs to produce comparable quality products from crude oil using conventional refining processes. The key advantages of our technology over traditional GTL technologies are the use of air in the conversion process (in contrast to the requirement for pure oxygen in alternative technologies) and the use of our proprietary catalysts, which enhance the conversion efficiency of the catalytic reaction. We believe these advantages will reduce the capital and operating costs of GTL plants based on the PROCESS Process, while also permitting smaller unit sizes, including mobile plants that could be placed on skids, barges and ocean-going vessels. Based on our demonstrated research, we believe that the PROCESS Process can be economically applied in GTL plants with throughput levels from as low as 2,000 to over 100,000 barrels per day. The advantages of our technology combined with the large worldwide resource base of stranded natural gas provide what we believe is a significant market opportunity for the use of the PROCESS Process by our company and our licensees to develop cost-effective GTL plants.
>
> The PROCESS produces synthetic liquid hydrocarbons, also known as synthetic crude oil, which can be further processed into higher margin products through conventional refining processes. These products include:
>
>> Premium, ultra-clean liquid fuels, such as diesel, kerosene, gasoline, naphtha and fuel for fuel cells, and
>>
>> Specialty products, such as synthetic lubricants, process oils, high melting point waxes, liquid normal paraffins, drilling fluids and chemical feedstocks.
>
> We have successfully demonstrated many elements and variations of the PROCESS in pilot plant operations and laboratory tests, including our joint participation in a 70 barrel per day GTL demonstration plant with one of our licensees, LICENSEE 1. While we have not yet built a commercial-scale GTL plant based on the PROCESS Process, we are currently developing a 10,000 barrel per day specialty product GTL plant based on the PROCESS known as the NEW PLANT to be constructed in FOREIGN COUNTRY. We are also evaluating the potential development of additional GTL plants, including facilities that will produce synthetic liquid fuels.

Claimant's Exhibit B.

3. The "Business Strategy" of Claimant as identified in the 2000 10-K indicated:

Our objectives are to rapidly establish the PROCESS as an industry standard and maximize our market share relative to alternative GTL technologies. Our business strategy to achieve these objectives involves the following key elements:

BROADLY LICENSE THE PROCESS. We intend to continue offering licenses to use the PROCESS for the production of synthetic crude oil and liquid fuels. To date, we have entered into license agreements with the following companies or their affiliates: LICENSEE 1, the Commonwealth of COUNTRY, LICENSEE 2, LICENSEE 3, LICENSEE 4, LICENSEE 5, LICENSEE 6 and LICENSEE 7 (which has announced a proposed merger with OIL CO.). We believe that widespread licensing, combined with research and development activities to further improve the PROCESS Process, will provide an advantage over competing technologies, strengthen our relationships with our existing licensees and attract new licensees.

DEVELOP AND OWN GTL PLANTS. We intend to own significant equity interests in joint ventures with our licensees and other energy industry and financial partners to develop and own GTL plants for the production of specialty products and fuels. For example, we are currently developing the 10,000 barrel per day NEW PLANT to be constructed in FOREIGN COUNTRY, in which we will own a significant equity interest. We retain the exclusive right to manufacture specialty products under our license agreements. We believe that our proprietary reactor designs and catalysts, combined with our improvements to existing refining methods, will enable us to produce relatively high margin, high quality specialty products on a more economic basis than conventional refining techniques.

FURTHER EXPAND AND DEVELOP PRODUCT MARKETS. We intend to continue to develop new markets for PROCESS PRODUCEDsynthetic fuels and specialty products in order to promote the construction of plants by our licensees and to establish markets for the products of GTL plants developed and owned by us. We believe that our technology can cost-effectively provide environmentally superior ultra-clean fuels for use in diesel, gasoline and jet engines. We are in the process of applying for certification that PROCESS PRODUCEDdiesel fuels qualify as alternative fuels under the Energy Policy Act. We also believe that the availability of our fuels will enhance that successful development of fuel cells and other clean combustion technologies.

FURTHER REDUCE COSTS THROUGH NETWORKED RESEARCH AND DEVELOPMENT ACTIVITIES. We intend to continue research and development activities with a focus on improving the efficiency of the PROCESS Process, further reducing the capital and operating costs of GTL plants based on the PROCESS Process, and better understanding the unique qualities of and markets for the synthetic products produced by the PROCESS Process. We conduct research and development activities using our own resources and through our network of joint development arrangements with licensees and other industry partners. We believe that this network will provide us and our licensees with an important competitive advantage and enhance our ability to attract additional licensees and joint development partners. We generally obtain title or exclusive rights to inventions or improvements that result from our joint development activities with others. We regularly review technological advances of others in related

> fields and actively seek to acquire rights to technologies that may enhance the PROCESS Process.

Claimant's Exhibit B.

4. According to WITNESS, Claimant's business strategy as far as trying to license, build plants and develop plants, develop their markets and products and also do research and development as outlined in the 2000 10-K was no different than or was the same as their business strategy during the period at issue.[12] Tr. 14.

5. During 1990, Claimant's first pilot plant began operations in Tulsa, Oklahoma.[13] Tr. 19.

6. The pilot plant is a Fischer-Tropsch plant. It has an ATR section, which is an autothermal reactor. Natural gas is input into the plant through the ATR. The ATR produces what is called synthesis gas from the natural gas. The plant also has a Fischer-Tropsch section, which is where the product reactor occurs. The synthesis gas is introduced into the Fischer-Tropsch reactor and the resulting refinery product is produced which in this case is synthetic waxes. The synthetic waxes are a sellable product. Tr. 19.

7. In response to the question "why is research and development terminology used throughout the documents filed with the SEC", WITNESS stated:

> Generally accepted accounting principles require certain accounting treatment as a company is going through their life cycles. One of those is the fact that our research and development cost and our plant cost, until [Claimant] can show profitability through positive net income, we are not allowed to capitalize these items or call them capital items on a balance sheet. And therefor we have to refer to these as research and development operations. And that's Statement of Financial Accounting Standards No. 2.

Tr. 20-21.

8. According to WITNESS, the business purpose of Claimant is not to be a research and development company providing services to others for research and development, but to develop fuels and plants. Tr. 21.

9. Claimant is eligible for and claims a federal research and development credit on its federal income tax return. Tr. 22-23.

10. Claimant's business is divided, research and development supports Claimant's business, but is not Claimant's business. Tr. 23.

11. In support of the statement that there is an existing market for their products produced by the PROCESS and that Claimant is selling their products, WITNESS identified two invoices, one to LICENSEE 1[14]and the other to LICENSEE 7[15] showing sales of construction costs, catalysts and gas for reactor runs during the period at issue. Tr. 23-24.

12. WITNESS testified that Claimant is in the business of producing a product, that the product is for sale and the product was sold during the period in question. Tr. 27.

13. WITNESS stated that the SEC disclosures and GAAP requirements which emphasize the research and development side of the business related to how the monies were spent and what Claimant did with the shareholders' money. She also stated that every company goes through a life cycle of start-up, and though they are not there yet, they hope to be a MAJOR OIL COMPANY. She further stated that the fact they are not A MAJOR OIL COMPANY does not mean they are not manufacturing, producing and selling a product. Tr. 27-28.

14. Typically, Claimant's revenues are all shown under Joint Development Agreement income on their annual reports because the revenues are so small that they are not carved out in specific line items. Tr. 29. The annual reports do not indicate that Claimant generated revenue from the sale of synthetic fuels. Tr. 29.

15. Any income shown on Claimant's income statements is not related to Licensing Agreements. Tr. 30. The revenue from licensing agreements is shown in deferred income on Claimant's balance sheet. Tr. 30.

16. The revenue from the two invoices identified by WITNESS were documented as "JDA revenue" on Claimant's annual report because the sales were not material to carve out on the annual report. Tr. 31.

17. Claimant's primary source of revenue in 1998 was from licensing agreements. Tr. 32.

18. In 1998, Claimant employed 62 employees, 50 of those employees were reported on the annual report as performing research and development work. Tr. 33. According to WITNESS, those employees were reported as performing research and development work because Claimant's "plants and all of that" are considered research and development. Tr. 33.

19. In October, 1998, Claimant and MAJOR AUTO MAKER entered into a fuels testing agreement whereby Claimant sold fuels to MAJOR AUTO MAKER to run in a MAKE/MODEL. Tr. 33-34.

20. In 1998, Claimant did not own a commercial scale gas to liquids plant. Tr. 34.

21. On Claimant's Business Registration form filed with the Tax Commission on July 14, 1999, Claimant indicated that it began its manufacturing business in Oklahoma on June 17, 1999, that it manufactured synthetic fuels and described the manufacturing operation as "[c]onversion of natural gas into synthetic fuels. Currently, we do not sell the fuels, but we intend to in the near future. We also develop the equipment for this conversion process for both internal and external use." Division's Exhibit 1.

22. In response to the question "[s]o at least as of July, 1999, [Claimant] was not selling synthetic fuels, correct?", WITNESS stated "`Fuels,' we - - as I indicated, we make other things. These invoices are for catalyst sales and waxes, which are the first product." Tr. 35.

23. WITNESS agreed that the business registration form filed by Claimant did not indicate that it manufactured anything other than synthetic fuels. Tr. 36. She also agreed that the business

registration form indicated that Claimant's principal taxable service was reported as "natural gas R&D." Tr. 36.

24. WITNESS further agreed that Claimant represented to the FINANCIAL CONFERENCE held on October 29, 1997[16], that [it] "was the only company in the group established specifically to be a technology provider to the energy industry." Tr. 36.

25. WITNESS testified that the purpose of the joint development agreements is to partner up in the research and development of the PROCESS to further pursue commercialization. Tr. 40.

26. Claimant's licensing agreements only allow a licensee to build a commercial scale GTL plant. Tr. 38. The joint development agreements are related to information on the fuels, the catalysts, waxes, etc. Tr. 38.

27. On redirect examination, the following exchange was had:

> Q WITNESS, there was -- you just answered several questions related, again, to the disclosure requirements within your SEC documents, and where the revenue from the two invoices submitted --
>
> A Right.
>
> Q -- into the Court as [Claimant's] Exhibits E and F might be shown. Does the GAAP requirements, or SEC requirements, or any other accounting pronouncement that you're aware of, require you to split out and document every single type of revenue that you generate?
>
> A No, not with revenues of this size level, no.
>
> Q Okay. All right.
>
> A There are some requirements, but not at this level.
>
> Q All right. But when these revenues obtain a certain materiality, we might say --
>
> A They'll have line items.
>
> Q -- you will be required to split them out? Okay.
>
> The Court: That's a yes?
>
> The Witness: Yes, that's a yes. Sorry.

Tr. 40-41.

28. WITNESS testified that "[a]t this stage in the game, -- until we can show profitability" which is a result of Claimant's business and product life cycle, Claimant is limited from saying X

number of employees are in production or X number of employees are in some other areas because Claimant is "required to explain where the monies were spent related to R&D." Tr. 41.

29. WITNESS stated that the FINANCIAL CONFERENCE document may have been generated with respect to only one aspect of Claimant's business - licensing portion -and does not entirely document the business plan and purpose of Claimant. Tr. 42-43.

30. WITNESS further stated that the comparable materiality of the revenues from the sale of their products and the revenues from the joint development agreements and licensing agreements do not accurately reflect the business purpose and plan of Claimant because "our revenues aren't there yet. We're not making money. We had a banner year licensing in '98. Revenues don't always indicate where the business is or where it's going." Tr. 43-44.

31. On February 15, 2001, Claimant filed a verified sales tax refund claim based on the Oklahoma manufacturer's sales tax exemption in the amount of $74,981.39 for sales taxes remitted to the Tax Commission during the period of January, 1998 through October, 1998.[17]

32. On August 1, 2001, Claimant filed an amended verified sales tax refund claim based on the Oklahoma manufacturer's sales tax exemption for an additional $348,724.62 for sales taxes remitted to the Tax Commission during the period of January, 1998 through June, 2001.[18]

33. On October 3, 2001, Claimant filed an amended verified sales tax refund claim based on the Oklahoma manufacturer's sales tax exemption for an additional $21,040.36 for sales taxes remitted to the Tax Commission during the period of January, 1998 through September, 2001.[19]

34. Claimant's sales tax refund claim based on the Oklahoma manufacturer's sales tax exemption totaled $444,746.37 for sales taxes remitted to the Tax Commission during the period of January, 1998 through September, 2001.[20]

35. By letter dated May 22, 2003, the Division notified Claimant that $310,039.39 of the sales tax refund claim was approved and $134,706.98 of the refund claim was denied.[21]

36. The Manufacturers Refund Review prepared by AUDITOR indicates the items denied included: (1) all purchases prior to June 1, 1999; (2) waste baskets from Grainger; (3) fire extinguishers; (4) hydrogen; (5) nitrogen; (6) helium; (7) computer equipment; (8) lab coats; (9) hand tools; (10) valves; (11) gauges; (12) utilities; and (13) office supplies, etc. AUDITOR also denied the amount of $2,783.81 attributable to incorrect mathematical calculations related to city and county sales tax rates and the amount of $7,136.45 attributable to remuneration.[22]

37. The Manufacturers Refund Review indicates that all purchases prior to June 1, 1999 were denied because Claimant's business registration application reported a manufacturing start date of June 17, 1999 and Claimant had not been issued an MLEC or MSEP prior to the filing of their application. The Review also indicates that Claimant's application for an MSEP filed July 14, 1999[23], was denied by letter forwarded to Claimant on January 19, 2000.[24] The Review further indicates that Claimant had applied for a MLEC in 1980 and in 1995, both of which applications were denied.[25]

38. Claimant timely protested the portion of its sales tax refund claim denied by the Division.[26]

39. Claimant no longer claims a refund for the sales taxes paid during the period of November, 1998 through May, 1999.[27]

40. The amount in controversy is $87,718.59.[28]

41. Claimant was issued MSEP No NUMBER with an effective date of July 22, 1999.[29]

ISSUE

The issue presented for decision is whether Claimant sustained its burden of proving that it was primarily engaged in manufacturing during the period in controversy.

Claimant contends that its production and sale of catalyst and synthetic liquid hydrocarbons meets the definition of manufacturing operations as defined in 68 O.S. Supp. 1994, § 1352(I). In support of this contention, Claimant argues that its annual reports do not prove that it was not engaged in manufacturing operations during the period at issue because the reports are compiled in compliance with Generally Accepted Accounting Principles, Statement of Financial Accounting Standard No. 2, which describe the reporting and disclosure of business costs during the start-up phase of a business. Claimant further argues that it is eligible for and did claim the federal research and development credit on its federal income tax return for the period at issue, which credit is not allowed to a research and development company. Claimant further argues that the Division's position denies the fact that a corporate entity can have distinguishable lines of business within the entity and the fact that a corporation can have an entity life cycle as well as its product life cycle which coincide.

The Division contends that Claimant's protest to the denial of its sales tax refund claim should be denied. In support of this contention, the Division argues that Claimant was not primarily engaged in manufacturing during the period in question nor was it generally recognized as such.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. Supp 1993, § 227(e).

2. The sale of tangible personal property in the State of Oklahoma, unless otherwise exempted by the provisions of the Oklahoma Sales Tax Code, is subject to an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of the sale. 68 O.S. 1991, § 1354(1)(A).

3. During the period at issue, the Oklahoma Sales Tax Code[30] exempted from the levy of sales tax "[g]oods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, * * * or preparing for sale a finished article and such goods, wares, merchandise, or property [which] become integral parts of the manufactured, * * * or prepared products or are consumed in the process of manufacturing, * * * or preparing products for resale"[31]; and "sale[s] of machinery and equipment purchased and used * * * in the operation of manufacturing plants" provided "such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale"[32]. In each

instance, the "manufacturing plant" must be an "establishment primarily engaged in manufacturing or processing operations, and generally recognized as such." *Id.*

4. "Manufacturing" is defined to mean and include "every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another." 68 O.S. Supp. 1994, § 1352(I). Manufacturing is "the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labor or machine." *OAC*, 710:65-13-150. "[T]he process of manufacturing has taken place whenever labor is bestowed upon an article which results in its assuming a new form, possessing new qualities or new combinations. *Id.*

5. As a general rule, statutes exempting property from taxation are to be applied circumspectly and are to be strictly construed against the allowance of an exemption. ***Bert Smith Road Machinery Co. v. Oklahoma Tax Commission***, 1997 OK 75, 563 P.2d 641, 643 (1977); ***McDonald's Corporation v. Oklahoma Tax Commission***, 1977 OK 74, 563 P.2d 635, 641 (1997); ***Phillips Petroleum Co. v. Oklahoma Tax Commission***, 1975 OK 46, 542 P.2d 1303, 1305 (1975). The language of an exemption statute may not be construed so as to give it an effect which is not intended. ***Protest of Hyde***, 188 Okl. 413, 110 P.2d 292 (1941). To be entitled to an exemption, the taxpayer has the burden of proving that the transaction falls squarely within the exemption. ***Bert Smith***, *supra*.

6. "[W]here a person engaged in business other than manufacturing incidentally manufactures something used in his regular business, his business is not thereby transformed into a manufacturing business." ***McDonald's***, *supra* at 640, citing *Dairy Queen of Oklahoma v. Oklahoma Tax Commission*, 205 Okl. 473, 238 P.2d 800 (1951), citing *Chicago, M. St. P. & P. R. Co. v. Custer County*, 96 Mont. 566, 32 P.2d 8. "Only those who manufacture articles of trade as the principal part of their business are manufacturers." ***Dairy Queen***, *supra*, citing 55 C.J.S., § 1b. Occasional casual sales do not establish that a company is primarily engaged in manufacturing and generally recognized as such, where the primary purpose of the manufacturing plant was the manufacturing of a product for private use in the performance of the company's primary business. ***Bert Smith***, *supra.*

7. Here, Claimant failed to sustain its burden of proving that it was primarily engaged in manufacturing during the period at issue, and generally recognized as such. First, the fact that Claimant is eligible for and claims a federal research and development credit on its federal income tax returns, a fact not conceded by the Division, does not prove that Claimant was a manufacturer or engaged in manufacturing during the period in question. See, I.R.C. § 41. Second, the documents received into evidence generally refute Claimant's contention, and generally show, as more likely than not, that Claimant was primarily engaged in research and development during the period at issue and generally recognized as a technology provider to the oil and gas industry. Third, Claimant argues that the Division's position denies the fact that a corporate entity can have distinguishable lines of business within the entity and can have an entity life cycle as well as a product life cycle that coincide, however, it appears that this is exactly what the Division has recognized in this case. During the period at issue, Claimant's sales of its products were minuscule when compared to its other lines of business, the licensing of the PROCESS Process and plants, and the research and development of the process and products. Further, Claimant's witness concluded that during this period, Claimant was still in the

start up phase of the business and was expending large amounts of money, work and effort to get the oil and gas industry to recognize its process and the resulting product which she admitted was a daunting task.

8. Claimant's protest to the denial of its sales tax refund claim should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the claim for refund of Claimant, CORPORATION, be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

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[1] Admitted fact. The file of the ALJ's Office does not include a copy of this refund claim.

[2] Admitted fact. Official notice of the refund claim is taken, a copy of which is included in the file of the ALJ's Office.

[3] Admitted fact. Official notice of the refund claim is taken, a copy of which is included in the file of the ALJ's Office.

[4] See, Notes 1, 2 and 3.

[5] The Manufacturers Refund Review prepared by AUDITOR on February 12, 2003, a copy of which is included in the file of the ALJ's Office and of which Official notice is taken.

[6] The Manufacturers Refund Review prepared by AUDITOR dated February 12, 2003, and the letters of the Division to the Claimant dated May 13, 2003 and May 22, 2003, copies of which are included in the file of the ALJ's Office and of which Official notice is taken. The Manufacturers Refund Review notes that adjustments to the refund claims were made to correct mathematical calculations related to incorrect city and county tax rates used by Claimant in the amounts of $2,783.81 for the sales tax refund claim and $5.55 for the use tax refund claim.

[7] See, Note 6.

[8] Official notice of the letter of protest and request for hearing is taken, a copy of which is included in the file of the ALJ's Office.

[9] 68 O.S. 2001, § 201 et seq.

[10] *OAC*, 710:1-5-20 through 710:1-5-47.

[11] Claimant's Exhibits A and B.

[12] Claimant's Exhibits C and D. Claimant's Exhibit C is a copy of the 1997 Annual Report of XYZ CORPORATION. XYZ CORPORATION owned approximately 31 to 32 percent of Claimant. XYZ CORPORATION was an insurance company that had spun off as an investment into Claimant. In August, 1998, Claimant and XYZ CORPORATION went through a reverse acquisition where Claimant was the surviving entity. Prior to August, 1998, XYZ CORPORATION had reported publicly on Claimant's business operation, since XYZ

CORPORATION was a public entity and Claimant was a private entity. Claimant's Exhibit D is a copy of Claimant's 1998 Form 10-K.

[13] Claimant's Exhibit C.

[14] Claimant's Exhibit E.

[15] Claimant's Exhibit F.

[16] Division's Exhibit 2.

[17] See, Note 1.

[18] See, Note 2.

[19] See, Note 3.

[20] See, Note 4.

[21] See, Notes 6 and 7.

[22] See, Note 5.

[23] Division's Exhibit 1.

[24] The application was reviewed by OTC EMPLOYEE, whom determined Claimant did not qualify as a manufacturer at that time. AUDITOR reported that "[t]he reasons appears to be that the company was a Research and Development only and the company's production was for additional research and development." AUDITOR also reported "I did some follow up Internet research and found [Claimant] held themselves out as a Research and Development company, which sold licenses to their proprietary process to clients for usage in their GTL plants."

[25] See, Note 5.

[26] See, Note 8.

[27] Paragraph 10 of the Findings of Facts of Protestant's Proposed Findings, Conclusions and Recommendations.

[28] Paragraph 9 of the Findings of Facts of Protestant's Proposed Findings, Conclusions and Recommendations.

[29] Division's Exhibit 1.

[30] 68 O.S. 1991, § 1351 et seq.

[31] 68 O.S. Supp. 1997, § 1359(1).

[32] 68 O.S. Supp. 1997, § 1359(3).