

Cite as 6 WTD 235 (1988)

BEFORE THE DIRECTOR  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	
For Prospective Tax Ruling of	)	<u>F I N A L</u>
	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 88-291
. . .	)	Registration No. . . .
	)	
	)	

**RULE 252 AND RCW 82.22.030:** HAZARDOUS SUBSTANCE TAX --  
WHAT CONSTITUTES -- URANIUM HEXAFLUORIDE -- NUCLEAR FUEL  
ASSEMBLIES. Neither uranium hexafluoride in natural or  
enriched form, nor completed nuclear fuel assemblies  
constitute hazardous substances  
for the purpose of taxation under chapter 82.22 RCW. F.I.D.

Headnotes are provided as a convenience for the reader and are not  
in any way a part of the decision or in any way to be used in  
construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

HEARING CONDUCTED BY DIRECTOR'S DESIGNEE:  
Edward L. Faker, Sr. Administrative Law Judge

DATE OF HEARINGS: March 10, 1988 and April 11, 1988

NATURE OF ACTION:

The taxpayer seeks an advance tax ruling under WAC 458-20-100(18)  
concerning its potential hazardous substance tax liability upon its  
possessions of uranium hexafluoride used in producing nuclear fuel  
assemblies as well as its possessions of the finished fuel assembly  
rods.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- The operative facts surrounding the taxpayer's  
possessions of substances in this state which are ingredients or  
finished products in connection with producing nuclear fuel  
assemblies are succinctly included in the taxpayer's written  
petitions. Pertinent portions, as necessary for a full

understanding of the issue before us, are included below in the Taxpayer's Position portion of this Final Determination.

The single compound issue for our resolution is, a) whether the substances possessed by the taxpayer or its customers, either as ingredients or finished products, constitute taxable hazardous substances under Chapter 82.22 RCW and, b) if so, whether the Revenue Act of this state contemplates any exclusion of b&o tax liability, including hazardous substance tax, for nuclear fuel assemblies.

#### TAXPAYER'S POSITION:

At and after an initial conference regarding the issue presented, the taxpayer's counsel prepared a detailed petition explaining its nuclear fuel assembly processing operations and responding to inquiries of the Department. Because that petition is a comprehensive presentation of the facts and legal arguments in this case, it is attached to this Final Determination in pertinent parts as Exhibit A, but without the numerous supporting exhibits submitted by the taxpayer. Exhibit A is included herein for reference at this point.

#### DISCUSSION:

In consort with representatives of the State Department of Ecology, we have determined that neither uranium hexafluoride, in natural or enriched form, nor completed nuclear fuel assemblies constitute hazardous substances within the purview of Chapter 82.22 RCW. These substances and the chemical elements which compose them are not designated as hazardous substances under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99-499. Moreover, the Department of Ecology has not identified these substances as "hazardous substances" by rule, for purposes of taxation under Chapter 82.22 RCW. Accordingly, the hazardous substance tax does not apply to the taxpayer's actual possessions nor to its customers' constructive possessions in this state of the substances in question.

Because of the foregoing conclusions it is unnecessary to rule upon the second question presented--whether the Revenue Act contemplates an exclusion of nuclear fuel assemblies from the general provisions of b&o taxation.

While we do not expressly rule upon this question, we have fully included the taxpayer's arguments with respect thereto in order to preserve them for future reference by this Department and the Department of Ecology, should the question of future inclusion of the substances by rule of that Department arise.

#### RULING:

The taxpayer's ruling request is approved.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 26th day of July 1988.