

Cite as Det. No. 02-0170E, 22 WTD 78 (2003)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of	)	<u>F I N A L</u>
Letter Ruling of	)	<u>E X E C U T I V E L E V E L</u>
	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	02-0170E
	)	
...	)	Registration No. . . .
	)	Docket No. . . .
	)	
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- [1] RCW 82.08.840: RETAIL SALES TAX – EXEMPTION – MACHINERY – FIELD BURNING – COMBINES – MAJORITY USE TEST. To satisfy the majority use test for field burning equipment, a taxpayer must prove that a combine is used more time in a qualifying use (i.e., to reduce field burning) than in a nonqualifying use (i.e., to harvest wheat). Where a combine simultaneously performs different functions, one of which is arguably an exempt function (reducing field burning through processing straw) and one of which is not exempt, it is not used to reduce field burning more than half of the time and does not qualify for the retail sales tax exemption under RCW 82.08.840.
- [2] RCW 82.32.330; MISC.: EQUAL TREATMENT – CONFIDENTIALITY. Although equal treatment regarding the application of exemptions is a legitimate concern, the Department cannot discuss other taxpayers because of confidentiality requirements. It is possible for taxpayers who purchase the same general type of equipment to be taxed differently because of their different uses of the equipment or because the equipment possesses different capabilities.

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.

## NATURE OF ACTION:

Purchaser of a combine with a rotary chopper petitions for correction of a ruling that denied the retail sales tax exemption available for equipment that reduces field burning.<sup>1</sup>

## FACTS:

Danyo, J. D., Director's Designee and Pree, C., A.L.J. – An Eastern Washington wheat farmer appeals Taxpayer Services' denial of his request for a ruling that a combine he purchased qualifies for the retail sales tax exemption under RCW 82.08.840 (the field burning exemption).

The combine at issue is equipped with a rotary chopper. The rotary chopper is engaged the entire time the combine is harvesting wheat. The rotary chopper is standard equipment on the combine and is not detachable.

The combine cuts the wheat stalks and separates the kernels from the chaff. The rotary chopper in the combine chops the residue from the wheat harvest, including straw, into small pieces that decompose into the soil more quickly than would larger pieces that would be left by a combine that was not equipped with a rotary chopper.

If the taxpayer purchased a combine without a rotary chopper, he states he would need to pass over the field additional times to till with a cultivator attached to a tractor to prepare the field for planting. After we issued our proposed determination in this matter, the taxpayer explained:

With the new straw chopping capabilities of this combine, [the taxpayer] cuts the stalk much lower to the ground . . . by cutting so much lower, [the combine] . . . (1) . . . chops up a great deal of the straw with the straw chopper on the combine and (2) there is less standing stubble to incorporate into the soil, thus eliminating the need to burn.

Even with a combine equipped with a rotary chopper, the taxpayer must subsequently pass over the field with a cultivator. The cultivator cuts the wheat stalks left standing by the combine, "beats" the stalks, and covers the stalks with dirt. After we issued our proposed determination in this matter, the taxpayer clarified that because the rotary chopper chops the straw into fine particles, "the tillage equipment has no trouble working through it and incorporating the straw into the soil." The taxpayer argues that, in contrast to a combine without a rotary chopper, the use of a combine with a rotary chopper reduces field burning because it chops the residue into smaller pieces for more uniform and finer residue dispersal across the soil, which results in quicker and more efficient residue decomposition.

In its denial of the taxpayer's ruling request, Taxpayer Services referenced a Special Notice entitled *Tax Incentives to Reduce Agricultural Burning* and stated:

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Machinery and equipment used to perform traditional farming activities, such as combines, do not qualify for the exemption unless it can be shown that the use of the combine in performing these farming activities is a direct result of not burning the crop residue. . . .

The combines that merely spread the residue more evenly across the field fail to demonstrate that they are used as a direct result of not burning the residue. Therefore, the combines do not fall within the exemption.<sup>2</sup>

(Footnote added.) In his appeal, the taxpayer explained:

After receiving the “Special Notice” . . . it seems that there are two basic things that the “Act” is intended to do. Those things have to do with how we, as farmers, handle chaff and straw (residue) and how we can decrease air emissions. I would like to explain how these relate to my situation.

- 1) Gathering, handling, incorporating straw and straw products: The sole purpose of a combine is to process grain. The combine separates the kernel from the plant. It saves the kernel and distributes the residue back to the soil. In addition, the rotary chopper . . . mulches the residue into smaller pieces and also helps distribute it more evenly across the soil. This purpose is to reduce the need for field burning especially in heavy residue areas during future tillage operations.
- 2) Decreasing air emissions: By doing a better and more uniform job of distributing the straw and chaff, there will be less tillage operations therefore less dust, creating a cleaner and better environment for us all.<sup>3</sup>

The other item that needs to be addressed is the Department of Revenues’ [sic] inconsistent interpretations of this “Act”. Upon discussion with other farmers in my area, I have found that others in my situation have been exempted from the Sales tax when I have not. This does not make any sense to me in that the wording is pretty clear about the status of any farm equipment that meets the requirements of the “Act”. I have enclosed a copy of their letter to confirm my position on this matter . . .<sup>4</sup>

(Footnotes added.) In a subsequent letter to the Appeals Division, the taxpayer further explained his first point, above:

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<sup>2</sup> After we issued the proposed determination in this matter, the taxpayer clarified that a rotary chopper performs a different function from a straw spreader. A straw spreader “merely would take the straw as it ended its journey through the combine and spread it out through the field.”

<sup>3</sup> We note that the exemption applies only to decreased emissions from field burning; a reduction in dust is not relevant to whether the equipment qualifies for the exemption.

<sup>4</sup> The taxpayer attached a ruling in which Taxpayer Services granted the exemption to another taxpayer.

A combine processes the grain, including the straw, by changing the composition of the straw by thrashing the grain (processing) and chopping the straw into small pieces (incorporating). It gathers and re-distributes the straw through the harvesting process, in that it takes the long straw and cuts it, then returns it to the soil in a shorter, more even pattern. These processes are all part of the harvesting process, which is a combine's sole purpose, thus it should be 100% exempt.

#### ISSUES:

1. Whether a combine with a rotary chopper qualifies for the retail sales tax exemption for equipment that reduces field burning.
2. Whether the Department must grant the exemption to the taxpayer because another taxpayer has been granted the exemption.

#### DISCUSSION:

#### **1. A combine with a rotary chopper does not qualify for the retail sales tax exemption for equipment that reduces field burning.**

RCW 82.08.840 addresses the retail sales tax exemption, in pertinent part, as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of machinery . . . if the machinery . . . is used more than half of the time:

- (a) For gathering, densifying, processing, [or] handling, . . . straw . . . that results in a reduction in field burning of cereal grains . . .; or
- (b) To decrease air emissions resulting from field burning of cereal grains. . . .

Based on this legislation, the Department sent a Special Notice to farmers, which explains:

Machinery and equipment used to perform traditional farming activities do not qualify for the exemption unless it can be shown that the use of such equipment in performing these activities is a direct result of . . . not burning the crop residue. Thus, combines, tractors, harrows, disks, balers, etc. do not qualify unless you can demonstrate that the equipment is for use as a result of not burning fields or additional use of the equipment is required as a result of not burning. For example, spray equipment would qualify if, as a result of not burning, the field was required to be sprayed five times instead of twice. This meets the more than half (50%) requirement. . . .

The Special Notice provides examples of activities that reduce field burning and air emissions:

1. Reduce Emissions from Burning – Burn less residue, burn fewer acres, burn more cleanly;

2. Alter Farming Practices – Crop rotation, alternate crops, till residue; and
3. Utilize Residue – Find new uses for straw.

Some of these methods do not require the use of machinery, equipment or structures. However, those that do, will be afforded the exemption. Cutting, baling, tilling, and storing straw are examples of activities that will reduce field burning. . . . Equipment used to perform these activities fall within the parameters of the exemption, when all other requirements are met. For example, plows or disks would qualify if used more than 50% of the time to break up residue that exists as a result of not burning.

The field burning exemption employs a majority use test. To satisfy the test, the taxpayer must prove that the combine is used more time in a qualifying use (i.e., to reduce field burning) than in a nonqualifying use (i.e., to harvest wheat).

In this case, the combine performs several functions, one of which is arguably an exempt function (reducing field burning through processing straw). However, the combine also harvests the wheat (i.e., it cuts the wheat stalks, separates the kernels from the chaff, and saves the kernels). In the context of the multiple other functions the combine performs, we cannot say that it is used to reduce field burning more than half of the time.<sup>5</sup>

Although the rotary chopper chops the residue (including straw) that is processed by the combine, the combine is not used more than half the time in a qualifying use. The straw processing and harvesting functions occur simultaneously. . . . As such, the combine is not used more than half of the time to reduce field burning and does not overcome the majority use test as set forth in the statute.

Because the taxpayer did not prove that the combine is used more than half of the time to reduce field burning, the combine does not qualify for the retail sales tax exemption under RCW 82.08.840.

**2. The Department is not required to grant the exemption to the taxpayer simply because another taxpayer may have been granted the exemption.**

The taxpayer argues that other farmers have received the exemption for combines, and it is unfair to deny him the exemption. Although this is a legitimate concern, we cannot discuss other taxpayers because of confidentiality requirements. See RCW 82.32.330; Det. No. 00-206E, 21 WTD 66 (2002).

Further, it is certainly possible for taxpayers who purchase the same general type of equipment to be taxed differently because of their different uses of the equipment or because the equipment possesses different capabilities. The Department must base its decisions on each taxpayer's

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<sup>5</sup> We note that the rotary chopper is standard equipment on the combine and is not detachable. As such, we need not rule regarding whether the purchase of a separate rotary chopper would qualify for the exemption.

unique circumstances. As we stated in Det. No. 00-206E, “Equal application of the same rules and interpretations may affect [taxpayers] differently” because of their unique circumstances, but “[t]hat does not amount to singling out some for unfair treatment.”

Finally, statutes require interpretation and application by individuals. Errors are sometimes made, and reasonable minds can differ as to a statute’s meaning and application. If the taxpayer believes the Department’s past application of RCW 82.08.840 to other farmers is inconsistent with our denial of the taxpayer’s ruling request, he may inform the Department of the names of the farmers, and the Department will look into the matter. However, even if the taxpayer’s concern should prove to be correct, that does not mean the Department must perpetuate past errors by repeating them with respect to other taxpayers. See, e.g., Det. No 00-206E.

DECISION AND DISPOSITION:

The taxpayer’s petition is denied.

Dated this 24<sup>th</sup> day of October 2002.