

Cite as Det. No. 98-178, 18 WTD 149 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

| | | |
|---|---|----------------------------------|
| In the Matter of the Petition For Correction of |) | <u>D E T E R M I N A T I O N</u> |
| Interpretation of |) | |
| |) | No. 98-178 |
| |) | |
| ... |) | Registration No. . . . |
| |) | REQUEST FOR RULING |
| |) | |

[1] RULE 176; RCW 82.08.0262: RETAIL SALES TAX – COMPONENT PARTS.
The term “component part” as used in RCW 82.08.0262 means an item of tangible personal property that is permanently attached to and a part of the watercraft used for commercial deep sea fishing.

[2] RULE 176; RCW 82.08.0262: RETAIL SALES TAX – COMPONENT PARTS – TRAWL FISHING NETS. Where custom-made trawl fishing nets are permanently attached to a deep sea fishing vessel, the trawl fishing net is a component part of the vessel and repairs thereto will be exempt from retail sales tax provided that the other requirements of RCW 82.08.0262 are met.

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:

A commercial deep sea fishing business appeals instructions received from the Taxpayer Information and Education Section (TI&E) of the Department of Revenue (Department) that retail sales tax applies to its purchase and repair of custom-made trawl nets.¹

FACTS:

Coffman, A.L.J. -- The taxpayer engages in deep sea fishing. The taxpayer utilizes trawl nets, which it describes as custom-designed nets. That is – according to the taxpayer, the nets are custom designed for the specific vessel, which will use them. The taxpayer identified the following factors, which determine the design of the trawl net:

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410

Resistance of the Hull – The displacement of the hull is calculated. The length, breadth and draft (i.e., depth) of the vessel are used in this calculation.

Superstructure Drag – The dimensions and shape of the portion of the vessel which is visible above-water effects net design. This is due to the effect of wind resistance when the vessel is towing the net.

Propulsion System – Net designers must factor in the horsepower of the main engines, the reduction gear ratio (i.e., the ratio of the number of turns of the engine for each rotation of the propeller), propeller efficiency, propeller area and whether the vessel has a variable pitch or constant pitch (i.e., whether the propeller blades are fixed or movable). They also consider whether the vessel is fitted with a “kort nozzle” – this is a special nozzle which surrounds the propeller and improves the vessel propulsion.

Hydraulic System – Hydraulic winches are used to let the net out and pull the net aboard the vessel after the net has been fished. The power of this system is considered during net design.

Trawl Door Size – Trawl doors are used to “spread” the net during the fishing process. The spreading resistance of the doors effects the design of the net.

Ramp Area and Deck Length – The Ramp Area is an incline at the rear of the vessel through which the net is pulled aboard the vessel. The length of the deck affects the maximum mesh size which is employed in the net (since it limits the space available to perform on-board repairs to the net).

(Emphasis in original.) Further, the taxpayer claims the trawl nets are permanently attached to the vessel. The taxpayer described one of the various methods of attaching a trawl net to the vessel as follows:

- The nets are shackled to wire ropes (“birdies”).
- The wire ropes are shackled to “trawl doors”. These are rectangular steel objects which help ensure the nets are opened during fishing.
- The trawl doors are shackled to main wire ropes.
- The main wire ropes are swedged to a main winch which is welded to the hull of the vessel. The net reel is used to let the net out and retrieve it after the fishing tows are completed.

The taxpayer states a trawl net, which has a life expectancy of two years, is attached to the vessel at all times, including the off-season, unless it is undergoing repairs or being held as a spare. The taxpayer claims other types of fishing nets (i.e., purse seine and gill nets) are attached to the vessel only when the vessel is engaged in fishing. When not being used for fishing, these other

fishing nets are placed in storage either on the vessel during the fishing season or in net houses during the off season.

The taxpayer's representative submitted a ruling request to TI&E on behalf of an undisclosed taxpayer. The representative requested a ruling that repairs to trawl nets are exempt from retail sales tax as component parts of the fishing vessel. By letter, TI&E denied the taxpayer's request holding that retail sales tax applies to the purchase and repair of fishing nets pursuant to WAC 458-20-176 (Rule 176). Upon the disclosure of the identity of the taxpayer, the taxpayer appealed the TI&E ruling to the Department's Appeals Division. WAC 458-20-100(9).

ISSUE:

Are custom-designed trawl nets component parts of deep sea fishing vessels entitled to the exemption from the retail sales tax provided by RCW 82.08.0262?

DISCUSSION:

The beginning point of any discussion of the law is the statute. RCW 82.08.0262 provides numerous exemptions from the retail sales tax. It states, in pertinent part:

The tax levied by RCW 82.08.020 shall not apply to sales of . . . watercraft . . . for use in conducting commercial deep sea fishing operations outside the territorial waters of the state . . .; also sales of tangible personal property which becomes a component part of such . . . watercraft, . . . in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

(Emphasis added.)

[1] Rule 176 defines "component part" as "any tangible personal property which is attached to and becomes a part of a watercraft". Rule 176(1)(c).

Based on taxpayer's description, . . . custom-made trawl nets are permanently attached to the vessels, for the purpose of deep sea fishing, and are intended to remain there until they need repair [or are disposed of because they can no longer be repaired]. Therefore, under the general definition quoted above, custom-made trawl nets qualify as component parts of the vessels.

However, Rule 176(1)(c), also, provides:

"Component part" ...does not include equipment or furnishings of any kind which are not attached to a watercraft, nor does it include consumable supplies. Thus it does not include, among other things, bedding, table and kitchen wares, fishing nets, hooks, lines, floats, hand tools, ice, fuel or lubricants.

(Emphasis added.)

Because we must read rules consistent with the implementing statute, Rule 176(1)(c) must be interpreted to not conflict with RCW 82.08.0262. As we said in Det. No. 90-280, 10 WTD 79 (1990):

Administrative rules cannot exceed or conflict with the scope of the statutes they interpret. Duncan Crane v. Department of Rev., 44 Wn.App 684 (1986); Tacoma v. Smith, 50 Wn.App 717 (1988); review denied, 110 Wn.2d 1032 (1989). As a result, where a rule appears to be in conflict with a statute or to exceed the exclusions contained in a statute, the rule must be read so that it does not conflict with the statute.

Rule 176 has not been amended since 1988. The emphasized language in Rule 176 concerning fishing nets has been part of the rule since before 1970. According to the taxpayer, prior to the Magnuson Fisheries Conservation and Management Act of 1976, Washington fishermen utilized purse seine nets and rarely utilized trawl fishing nets. When not used in fishing, purse nets are stored in net sheds. When needed for fishing, they are taken out of storage, put on the vessels, and then placed in the water using a boom or a skiff. The net is then closed and the fish caught. The purse seine net is then emptied on board the vessel and then stored until needed for the next placement. During the life of purse seine nets, the nets are attached to the vessels for a total of 20 to 30 hours. The typical fishing net used in 1970 was not a component part of the vessel. It appears to us that the exclusion of fishing nets from the definition of a component part was a reflection of the fishing industry of that time (i.e., prior to 1976). Because Washington fishing vessels generally did not use trawl nets, we surmise the drafters of Rule 176 did not consider the possibility that trawl nets could or would be permanently attached to the vessel.

[2] Therefore, we find that custom-made trawl nets that are permanently attached to deep sea fishing vessels are component parts of the vessel. Provided that the other requirements of RCW 82.08.0262 are met, purchases of trawl nets are exempt from retail sales tax. Further, charges for the repair, cleaning, and attaching trawl nets to such vessels are exempt from retail sales tax.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

Dated this 9th day of October, 1998.