

Cite as 3 WTD 187 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Review of)	
)	No. 87-179
)	
. . .)	Registration No. . . .
)	

RULE 24001: TAX DEFERRAL -- MANUFACTURING FACILITIES -- DISTRESSED AREAS -- TIMELY APPLICATION -- SEPARATION OF INVESTMENT IN BUILDINGS FROM INVESTMENT IN MACHINERY AND EQUIPMENT. An application for deferral of sales and use tax with respect to the construction of manufacturing facilities in distressed areas of the state (Chapter 82.60 RCW) is not timely if it is submitted after the initiation of construction of a building but before initiation of construction of the machinery and equipment to be placed inside the building. An investment project, which is what the deferral applies to under the law, involves an investment in both buildings and machinery and equipment. The application must be submitted before the initiation of any portion of the project.

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: . . .

DATE OF HEARING: October 27, 1986

NATURE OF ACTION:

The taxpayer petitioned for review of the denial of its application for sales and use tax deferral under chapter 82.60 RCW.

FACTS:

Potegal, A.L.J. -- The taxpayer manufactures green wood veneer. In September 1985 a major portion of its plant at . . . was destroyed by fire. By March 1986 the taxpayer decided to rebuild the facility but to use more modern equipment than that which was destroyed. A new building would be built to house the new equipment. Some equipment which was not destroyed by the fire would remain in use.

Also in March 1986 the taxpayer learned of the existence of a program to defer sales and use tax on the construction of new manufacturing facilities in distressed areas of the state. It learned this from an employee of . . . , a community development organization. This person acted as liaison between the taxpayer and the Department of Revenue. He set up a meeting between the taxpayer and the Department which took place on April 21, 1986. The purpose of the meeting was to discuss the tax deferral program. The liaison assured the taxpayer that nothing need be done prior to the meeting and that the taxpayer was not in jeopardy of losing benefits due to such inaction. This assurance took place on about April 2, 1986. There is no evidence that the liason's advice was based on any communication with the Department. Construction of the building which was to house the new equipment began on April 4, 1986. At or just prior to the meeting the taxpayer found out that the application for deferral had to be submitted before the initiation of construction.

The taxpayer submitted an application for deferral which was received by the Department on May 1, 1986. The application divided the project into two phases. The first phase was construction of the building which started April 4, 1986. The second phase was construction of the veneer peeling equipment to be housed in the new building. The second phase was to start May 1, 1986.

The Department denied the application on two grounds. First, the application was not submitted timely. Second, the project was neither a new operation nor did it meet the requirement that the cost of renovating or expanding an existing building exceed twenty-five percent of the value of the plant complex prior to improvement.

DISCUSSION:

RCW 82.60.030 states in part:

Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project.

There is no question that application was made after the initiation of construction of the building. However, the application was submitted before the initiation of construction of the veneer peeling equipment.

When the taxpayer learned of the timeliness problem on or about April 21, 1986 it made a conscious decision to split the project into two phases in hopes of qualifying for deferral of taxes on at least a portion of the work. This split was more than a fiction created for the sole purpose of obtaining tax benefits. The first phase, building construction, was to be performed under a contract with a construction company. The second phase, construction and installation of the veneer peeling machinery and equipment, was to be performed under a separate contract with a separate contractor.

Nevertheless, we deny the taxpayer's petition. As noted above, application for deferral of taxes must be made before initiation of "construction of the investment project." RCW 82.60.030. "Investment project" is defined by RCW 82.60.020(5) to mean

an investment in qualified buildings and qualified machinery and equipment. (Underscoring ours.)

Thus, an investment project must involve both buildings and machinery and equipment. Without building construction there can be no investment project eligible for tax deferral. When the taxpayer began construction of the building it initiated "construction of the investment project." The application for deferral was not made until after this construction was initiated. Because the law states that application must be made before initiation of construction the Department had no choice but to deny the application.

Because the decision in this appeal is required for the reasons stated we will not discuss the other objections raised by the taxpayer.

DECISION:

The taxpayer's petition is denied.

DATED this 28th day of May 1987.