

Cite as Det. No. 98-212, 18 WTD 302 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 98-212
...)	
)	Registration No. . . .
)	Use and Sales Tax Deferral Certificate
)	No. . . .

[1] RULE 24001: SALES AND USE TAX DEFERRAL – COSTS INCURRED BEFORE DATE OF TIMELY APPLICATION. When an application for sales and use tax deferral is timely submitted to the Department, i.e., before the “initiation of construction,” costs incurred before the application date will be allowable if they otherwise qualify.

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:

Taxpayer petitions for the deferral of sales/use tax on preliminary construction costs incurred prior to the timely filing of his application for deferral.¹

FACTS:

Bauer, A.L.J. – In July 1995, Taxpayer decided to move its manufacturing facility to an area in Washington which was a “qualifying area” under ch. 82.60 RCW, which grants a retail sales tax/use tax deferral to “qualifying investment projects.” Pursuant to this decision to move, and in order to obtain estimates from contractors for budget purposes, Taxpayer had to accomplish certain preliminary work, including the selection of potential properties, geotechnical surveys (necessary both for the engineering of the building and for building permits), and engineering for the building. On April 19, 1996, Taxpayer’s contractor submitted two bills for preliminary work, itemized as follows:

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410
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\$ 7,845.00	... (subcontractor): geotechnical survey
<u>784.00</u>	10% contractor's fee
\$ 8,629.00	Subtotal
<u>647.25</u>	Retail sales tax @ 7.5%
\$ 9,277.19	Total
\$36,000.00	... (subcontractor): steel building deposit/engineering and shop drawings
<u>3,600.00</u>	10% contractor's fee
\$39,600.00	Subtotal
<u>2,970.00</u>	Retail sales tax @ 7.5%
\$42,570.00	Total

These bills were timely paid.

On August 19, 1996, before the commencement of actual construction, Taxpayer applied for, and was thereafter issued, the above-referenced sales and use tax deferral certificate. The "effective date" on the face of the certificate was August 19, 1996 -- the date Taxpayer mailed the application to the Department. The certificate itself provides:

This certificate is valid only for qualifying acquisitions made from August 19, 1996 through November 30, 1997, and is limited to a maximum amount of \$285,480 in total deferred tax.

Taxpayer's representative called the Miscellaneous Tax Section, Special Programs Division of the Department of Revenue (Department) and requested that the Deferral Certificate be extended back in time to include the preliminary work reflected in the April billings, all of which were incurred and paid prior to the "initiation of construction." He was advised that the postmark of Taxpayer's application (in this case, August 19, 1996) controlled, and that retail sales and use taxes on costs incurred before that time would not be eligible for deferral. This appeal followed.

ISSUE:

Whether a Deferral Certificate is effective forward only from the date application is made to the Department, or whether it also encompasses preliminary work performed prior to the date of the application.

DISCUSSION:

RCW 82.60.020 provides, in pertinent part:

(4) ... (c) ... (i) The department shall consider the entire investment project, including any investment in machinery and equipment that otherwise qualifies for exemption under RCW 82.08.02565 or 82.12.02565, for purposes of determining the portion of the investment project that qualifies for deferral as an eligible investment project;

(5) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

RCW 82.60.030 provides:

Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment or acquisition of equipment or machinery....

WAC 458-20-24001 provides:

(3)(i) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project

...

(3)(n) "Initiation of construction," for purposes of applying for the investment tax deferral relating to the construction of new buildings, shall mean the date upon which on-site construction work commences.

...

(4) Application procedure. An application for sales and use tax deferral under this program must be made prior to the initiation of construction, as defined above.

We find no statutory or regulatory authority supporting the proposition that otherwise-qualifying costs incurred before the postmark date of a timely-submitted application for sales and use tax deferral under ch. 82.60 RCW are not allowable. We particularly note that "planning" costs, specifically allowable under both the statute and the rule, would normally be incurred before a certificate could be applied for, and that an "entire investment project" would necessarily include costs regardless of when they were incurred in relation to the application procedure.

[1] Therefore, when an application for sales and use tax deferral is timely submitted to the Department, i.e., before the "initiation of construction," all otherwise-qualifying costs incurred before the application date will be eligible for the retail sales/use tax deferral program.

DECISION AND DISPOSITION:

Taxpayer's petition is granted.

DATED this 15th day of December 1998.