

Cite as Det. No. 03-0078, 22 WTD 223 (2003)

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>
Assessment and Refund of	)	
	)	No. 03-0078
	)	
...	)	Registration No. . . .
	)	Document No. . . .
	)	Audit No. . . .
	)	Docket No. . . .

- [1] RULE 13601, RULE 24001; RCW 82.08.02565, RCW 82.60.020, RCW 82.60.040, RCW 82.04.120: -- RETAIL SALES TAX -- USE TAX -- DEFERRAL -- MANUFACTURING MACHINERY AND EQUIPMENT ("M&E") EXEMPTION -- MANUFACTURING -- DEFINITION -- CONTROLLED ATMOSPHERE STORAGE FACILITY. "Manufacturing," for purposes of the deferral and M&E exemption, is defined in RCW 82.04.120. The operation of a controlled atmosphere storage facility is expressly excluded from the definition of manufacturing. Accordingly, the taxpayer qualifies for neither the M&E exemption nor the tax deferral.
- [2] RULE 24001; RCW 82.60.030: -- RETAIL SALES TAX -- USE TAX -- DEFERRAL -- APPLICATION -- FAILURE TO TIMELY FILE -- CONFUSING INFORMATION -- LEGISLATIVE INTENT. Even if the taxpayer's activity qualified as manufacturing, the taxpayer would not qualify for the deferral because it failed to timely file its application. The taxpayer's failure to timely file is not excused by confusing information it may have received. We are unable to disregard the specific statutory requirements to allow the deferral based on legislative intent.
- [3] RULE 13601; RCW 82.08.02565; ETA 2012-7S.08.12.13601: -- RETAIL SALES TAX -- USE TAX -- MANUFACTURING MACHINERY AND EQUIPMENT ("M&E") EXEMPTION -- CONTROLLED ATMOSPHERE STORAGE FACILITY -- BUILDINGS. Even if the taxpayer's activity qualified as manufacturing, the taxpayer would not qualify for the exemption because the controlled atmosphere storage facility is a building.

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.

#### STATEMENT OF THE CASE:

C. Pree, A.L.J – Taxpayer who constructed a controlled atmosphere facility protests the disallowance of deferral under Chapter 82.60 RCW and disallowance of the machinery and equipment exemption.<sup>1</sup>

#### ISSUE:

Does a controlled atmosphere storage facility qualify for either the tax deferral for investment projects in distressed areas under Chapter 82.60 RCW or the machinery and equipment (“M&E”) exemption under RCW 82.08.02565?

#### FINDINGS OF FACT:

The Audit Division of the Department of Revenue reviewed the taxpayer’s records for the period of January 1, 1998 through June 30, 2001. As a result, it issued an assessment in the total amount of \$ . . . . The taxpayer paid the assessment and seeks a refund of the assessed deferred sales tax of \$ . . . on the construction of a controlled atmosphere (“CA”) facility.

The taxpayer had the CA facility constructed for it in Washington in 1999. A CA facility normally is a single purpose structure, which is sealed when in use.

The taxpayer asked the vendor, the [Growers' Association], and a CPA how to file for exemption or deferral of retail sales tax on the construction. The taxpayer also telephoned the Department for guidance. Based on these contacts, the taxpayer stated, “There was a general lack of understanding as to what exemption/deferral would apply and how to qualify for it.”

The taxpayer did not file an application for “Tax Deferral for Investment Projects in Distressed Areas” under Chapter 82.60 RCW prior to the construction commencing. The Department has not issued a deferral certificate to the taxpayer for this project.

Instead, on May 24, 1999, after construction had commenced on the CA facility, the taxpayer filed a Manufacturer’s Sales and Use Tax Exemption Certificate for the project with the vendor and the Department. Although the taxpayer intended to meet the requirements for the “Tax Deferral for Investment Projects in Distressed Areas,” under Chapter 82.60 RCW, it did not file the correct forms because of its confusion regarding the proper forms to file.

#### ANALYSIS:

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

[1] Chapter 82.60 RCW establishes a retail sales and use tax deferral program (“the deferral”) for manufacturing projects to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. *See* WAC 458-20-24001 (Rule 24001). This deferral program applies to taxes imposed on the construction of qualified buildings. *See* RCW 82.60.020, .040; Rule 24001. RCW 82.60.020 defines a qualified building as “construction of new structures . . . used for manufacturing,” and for purposes of the tax deferral, “manufacturing” is defined in RCW 82.04.120.

RCW 82.08.02565 provides a retail sales tax exemption (“the M&E exemption”) for sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation. As in the deferral program, “manufacturing” is defined, for purposes of the M&E exemption, in RCW 82.04.120. *See* Rule 13601.

Exemptions in Washington are strictly construed in favor of application of the tax and against the person claiming the exemption. *See, e.g., Budget Rent-a-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171, 500 P.2d 764 (1972); *Yakima Fruit Growers Ass’n v. Henneford*, 187 Wash. 252, 258, 60 P.2d 62 (1936); Det. No. 02-0039, 21 WTD 318 (2002); Det. No. 01-007, 20 WTD 214 (2001). The burden of proof is upon the person claiming the exemption. *See, e.g., Budget Rent-A-Car*, 81 Wn.2d 171 at 174-75; *All-State Constr. Co. v. Gordon*, 70 Wn.2d 657, 425 P.2d 16 (1967); *Yakima Fruit Growers*, 187 Wash. at 258; Det. No. 02-0039.

Thus, to qualify for either the tax deferral or the M&E exemption, the CA facility must be used in manufacturing. RCW 82.04.120 defines “to manufacture” as “all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use.” However, in 1999, the statute was amended as follows:

"To manufacture" shall not include: . . . the growing, harvesting, or producing of agricultural products; or packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage.

In Det. No. 00-085, 21 WTD 48 (2002), we denied the tax deferral to a taxpayer who was engaged in apple packing. We noted that the 1999 amendment amended the definition of manufacturing for purposes of the deferral, and that the amendment was expressly retroactive: “This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively.”

Thus, because qualification for both the M&E exemption and the tax deferral are contingent upon the taxpayer engaging in a manufacturing activity, and because the operation of a controlled atmosphere storage facility is expressly excluded from the definition of manufacturing, we conclude that the taxpayer qualifies for neither the M&E exemption nor the tax deferral.

[2] Further, with respect to the deferral, we note that even if the taxpayer's activity qualified as manufacturing, the taxpayer would not qualify for the deferral because it failed to timely file its application. *See* RCW 82.60.030 ("Application for deferral of taxes under this chapter **must** be made before initiation of the construction of the investment project." Emphasis added.); *see also* Rule 24001(7) ("Persons who apply after construction is initiated . . . are not eligible for the program.") No statutory or regulatory authority permits the Department to award the exemption in the absence of timely application by the taxpayer. *See* Det. No. 89-265, 7 WTD 345 (1989). The taxpayer's failure to timely file is not excused by confusing information it may have received. The Department lacks legal authority to allow the deferral where the taxpayer failed to timely file the application, even if its failure to file were based on oral instructions from the Department. *See* RCW 82.32A.020 (which provides authority to waive tax only based upon reliance on specific, official written advice or written reporting instructions from the Department); Det. No. 02-0039; Det. No. 00-001, 19 WTD 681 (2000); ETA 419.32.99. Further, the Department cannot allow the deferral based on the taxpayer's reliance on incorrect advice from its accountant or the growers' association. *See* WAC 458-20-228 (Rule 228).

Finally, with respect to the deferral, the taxpayer argues that we should be guided by legislative intent and allow the deferral. However, we are unable to disregard the specific statutory requirements to allow the deferral. As discussed above, both Chapter 82.60 RCW and Rule 24001 make clear that the building must be used in manufacturing and the taxpayer must file its application for deferral prior to commencing construction. We cannot ignore these requirements simply based on the purpose of the legislation.

[3] Further, with respect to the M&E exemption, we note that even if the taxpayer's activity qualified as manufacturing, the taxpayer would not qualify for the exemption because the CA facility is a building. RCW 82.08.02565 expressly provides that buildings are excluded from the M&E exemption. Further, ETA 2012-7S.08.12.13601, issued March 31, 2003, explains:

Those parts of buildings that serve a building function do not qualify for the exemption. Walls, roofs, and floors of buildings are designed on a case by case basis to accommodate a particular building use, whether that use is by a manufacturer, retailer, or professional service provider. . . .

The M&E exemption does not extend to buildings and this restriction applies even if the building is specially designed and unique.

Accordingly, we conclude that the taxpayer failed to qualify for both the M&E exemption and the deferral under RCW 82.60.030.

CONCLUSIONS OF LAW AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 10<sup>th</sup> day of April 2003.