

Cite as Det. No. 12-0177, 32 WTD 285 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON¹

In the Matter of the Petition For Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 12-0177
)	
...)	Registration No. . . .
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)	Docket No. . . .
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RCW 82.08.820: RETAIL SALES TAX – WAREHOUSE TAX INCENTIVE – MATERIAL-HANDLING AND RACKING EQUIPMENT. In order to qualify for the warehouse tax incentive, a wholesaler must have paid retail sales tax on construction of a warehouse, or the purchase of material-handling or racking equipment, and certain labor or services rendered in respect to the equipment. Because the ammonia system, dock leveler, and dock doors and seals do not fit the definition of “material handling and racking equipment,” retail sales tax paid with respect to the repair and maintenance of such property does not qualify for the incentive.

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.

Chartoff, A.L.J. – A warehouse operator who applied for and was granted a partial remittance (refund) under the warehouse tax incentive in RCW 82.08.820 petitions for an increase of the remittance amount. In dispute is whether repair and maintenance of the ammonia system, dock leveler, and dock doors and seals qualify as labor and services rendered in respect to “material-handling and racking equipment” as defined in the statute. We conclude these items do not qualify and deny the petition.

ISSUE

Whether the ammonia system, dock leveler, and dock doors and seals are “material-handling and racking equipment” as defined in RCW 82.08.820.

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

FINDINGS OF FACT

The taxpayer is a grocery wholesaler who owns and operates a grocery warehouse in Washington State. The taxpayer applied for a remittance of \$... under the warehouse tax incentive (RCW 82.08.820) for second quarter of 2011. Generally, the warehouse tax incentive provides a remittance (refund) of all or part of retail sales tax paid on the construction of a warehouse, the purchase of material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment. The Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department) approved the remittance in part, for \$. . . . TAA determined the following costs did not meet the statutory requirements of the warehouse tax incentive:

- Repair and maintenance of the ammonia system,
- Repair and maintenance on dock doors and seals, and
- Repair and maintenance on dock leveler.

TAA concluded the ammonia system was not material-handling and racking equipment, and that the repairs to the dock leveler and dock doors and seals were considered non-qualifying repairs to the warehouse, rather than repairs to equipment.

Ammonia System. The ammonia system is a refrigeration system installed in the warehouse to store the finished product frozen or refrigerated as required by warehouse safety standards.

Dock Doors and Seals. Dock doors are overhead doors between the warehouse and the loading docks. The door seals are attached to the door and provide a tight compression seal between the door and the trailer. The seals reduce air gaps and energy loss and also protect the warehouse and goods from contaminants such as dirt, rodents, and insects.

Dock Levelers. Dock levelers are motorized ramps that bridge the gap between the dock and the trailer during loading and unloading of goods. Many trailers have bed heights either above or below the height of the dock. Dock levelers are ramps that move up or down to meet the trailer bed so that forklifts can drive into and out of the trailer to load and unload goods. The taxpayer's dock levelers are Kelly model 6x8. This type of leveler is permanently mounted to the front of the dock, and is only removed for replacement.

The taxpayer, however, considers the dock levelers to be equipment, and reports them as tangible personal property for property tax purposes.

ANALYSIS

The warehouse tax incentive is authorized in RCW 82.08.820 (2006), which provides, in relevant part:

(1) Wholesalers . . . who own or operate warehouses . . . and who have paid the tax levied by RCW [82.08.020](#) on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse . . . , including materials, and including service and labor costs,

are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

In order to qualify for the exemption, a wholesaler must have paid retail sales tax on construction of a warehouse, or the purchase of material-handling or racking equipment, and certain labor or services rendered in respect to the equipment. Renovation, remodeling or repair to the warehouse does not qualify. RCW 82.08.820(2)(c). In this case, the taxpayer contends TAA erred when it failed to grant the remittance for retail sales tax paid on the repair and maintenance of the ammonia system, dock leveler, and dock doors and seals. At issue is whether the term “material-handling and racking equipment” includes the ammonia system, dock leveler, and dock doors and seals.

The fundamental objective in statutory interpretation is to ascertain and carry out the legislature’s intent. As the court explains in *Port of Seattle v. Dep’t of Revenue*, 101 Wn. App. 106, 111-112 (2000) (citations omitted):

To determine legislative intent, we look first to the language of the statute. Undefined statutory terms are given their usual and ordinary meaning. Each provision of the statute should be read in relation to the other provisions, and the statute should be construed as a whole. In ascertaining the meaning of a particular word as used in a statute, a court must consider both the statute’s subject matter and the context in which the word is used.

Further, while tax statutes generally are interpreted in favor of the taxpayer, exemption statutes are construed strictly against the taxpayer, and the taxpayer has the burden of establishing any exemption.

Because the warehouse tax incentive is an exemption statute, we construe the statute strictly but fairly against the taxpayer. *Id.*

Retail sales tax paid on the purchase of material-handling and racking equipment, as well as “labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment” qualifies for the exemption. RCW 82.08.820(1)(a). The term, “material-handling equipment and racking equipment,” is defined in RCW 82.08.820(2)(h), as follows:

“Material-handling equipment and racking equipment” means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or

repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system; (Emphasis ours).

The terms "Material-Handling equipment" and "racking equipment" are defined generally and with reference to examples. While the list of examples is expressly not exclusive, we note that all of the examples of material-handling equipment are of equipment that physically lifts or moves tangible personal property. And all the examples of racking equipment are items that physically store or move personal property. The court in *Port of Seattle v. Dep't of Revenue* explains the doctrine of ejusdem generis as follows:

Under the doctrine of ejusdem generis, "specific words or terms modify and restrict the interpretation of general words or terms where both are used in sequence." "The ejusdem generis rule is generally applied to general and specific words clearly associated in the same sentence in a pattern such as ... '[general], including [specific] and [specific].'" *Southwest Wash. Chapter, Nat'l Elec. Contractors Ass'n v. Pierce County*, 100 Wash.2d 109, 116, 667 P.2d 1092 (1983).

Port of Seattle v. Dep't of Revenue, 101 Wn. App. 106, 113-114, (2000) (citations omitted). Under this doctrine, we hold the legislature intended to include within the definition of material-handling and racking equipment only equipment similar to the examples in the statute.

We also note that "material-handling and racking equipment" is defined as "equipment in a warehouse." The term "warehouse" is defined in RCW 82.08.820(2)(m), in pertinent part, as:

"Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. . . .

Thus property that is a component of the building or structure is not material-handling and racking equipment. The term “building” is not defined and therefore is given its usual and ordinary meaning. The ordinary meaning of the term “building” includes, but not is not limited to, walls, roof, floors, doors, and windows, even if specially designed or unique. See ETA 3124.2009; Det. No. 01-007, 20 WTD 214 (2001).

In light of the foregoing analysis, we will now examine the specific purchases the taxpayer contends qualify for the incentive.

Repair and Maintenance to the Ammonia Refrigeration System

The ammonia system cools the air in the warehouse to keep food cold or frozen. The taxpayer argues that the ammonia system qualifies as material-handling and racking equipment because it is used “to store” goods that are required to be kept refrigerated or frozen. We note that the definition of material-handling and racking equipment does include generally equipment used “to store” goods. However, in the context of the examples in the statute, it is clear that only equipment that physically stores the goods is intended. The examples of equipment used to store goods are as follows:

- “Material Handling equipment includes . . . automated handling, storage, and retrieval systems . . . whose purpose is to lift or move tangible personal property.”
- “Racking equipment includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system.”

Because material-handling and racking equipment includes only devices that physically lift, move, or physically hold the goods, equipment to refrigerate the air does not “store goods” within the meaning of the statute. Accordingly, the ammonia system does not fit the definition of material-handling or racking equipment in RCW 82.08.820(2)(h) and the repairs do not qualify for the incentive.

Repair and Maintenance of the Dock Doors and Seals

As we discussed above, material-handling and racking equipment is defined as equipment in a warehouse. A warehouse is defined as a “building or structure in which finished goods are stored” and includes the loading docks. RCW 82.08.820(2)(m). Dock doors are overhead doors on the warehouse which open to the loading dock. Door seals are attached to the doors. Det. No. 01-007, 20 WTD 214 (2001), held that dock doors are generally considered part of a building, and the fact that doors had special features did not transform the doors into equipment or fixtures. *See also Consolidated Freightways, Inc. v. C.I.R.* 708 F.2d 1385, 1390 (C.A.9,1983), a federal tax case which held that overhead doors were building components and not equipment. Accordingly, we conclude that dock doors and seals are part of the warehouse and not equipment. Repairs to a warehouse do not qualify for the exemption.

In addition, we find that the dock doors and seals do not fit the definition of material-handling or racking equipment. Dock doors and seals do not lift, move or physically store finished goods. We therefore hold repair and maintenance to the dock doors and seals do not qualify for the incentive.

Repair and maintenance to the dock leveler

The type of dock leveler at issue in this case is permanently affixed to the warehouse loading dock. This type of dock leveler is generally considered to be part of the warehouse building. Det. No. 03-0325, 24 WTD 351 (2005)^[2] is an M&E exemption case that held that a dock leveler was a support facility, which is a building component. We also note that the IRS considers dock levelers bolted to the loading dock to be permanently installed structural components of a building for federal tax purposes. *See Rev. Rul. 85-90, 1985-2 C.B. 8.* We hold dock levelers are part of the warehouse and not equipment. Therefore repairs and maintenance to the dock levelers do not qualify for the incentive.

In sum, we conclude TAA properly denied the remittance for repair and maintenance of the ammonia system, dock doors and seals, and dock levelers. We deny the taxpayer's petition for increase of the remittance amount.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 13th day of July 2012.

² [While Det. No. 03-0325, 24 WTD 351 (2005) stands for the proposition that the dock levelers as building components qualified for the machinery and equipment exemption under RCW82.08.02565, that does not make them material-handling equipment for the warehouse tax incentive purposes.]