

Cite as Det No. 11-0202, 31 WTD 62 (2012)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 11-0202
)	
...)	Registration No. . . .
)	Refund Request
)	Docket No. . . .

RCW 82.08.808 – RETAIL SALES TAX – EXEMPTIONS – MEDICAL SUPPLY MATERIALS – COMPREHENSIVE CANCER CENTERS. The retail sales tax does not apply to the sale of liquid nitrogen used to store tissue samples, because that liquid nitrogen constitutes medical supply “materials” used by a qualified comprehensive cancer center.

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.

Weaver, A.L.J. – Taxpayer, a comprehensive cancer center, petitions for refund of retail sales tax paid on liquid nitrogen purchased for the purpose of storing tissue samples used in Taxpayer’s research. Taxpayer’s petition is granted.¹

ISSUE

Whether, under RCW 82.08.808 and RCW 82.04.4265, Taxpayer is entitled to a refund of sales tax paid on materials purchased for the purpose of storing tissue samples used for research purposes.

FINDINGS OF FACT

On December 31, 2009, [Taxpayer] applied for a refund of retail sales and use taxes paid on purchases of liquid nitrogen between July 2006 and December 2008 that Taxpayer claims was used to store tissue samples used in Taxpayer’s cancer research. On June 16, 2010, the Taxpayer

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

Account Administration (TAA) Division of the Department of Revenue (Department) denied Taxpayer's refund application. Taxpayer appeals.

According to a letter from the National Cancer Institute . . . Taxpayer is recognized as a Comprehensive Cancer Center by that organization. According to a letter from the Internal Revenue Service dated February 6, 2003, Taxpayer is recognized as a tax exempt organization under 26 U.S.C. § 501(c)(3) by the Internal Revenue Service.

Taxpayer attached a "Buyer's Declaration for Refund of Retail Sales Tax" to its refund application, in which Taxpayer's Controller attests that Taxpayer attempted in good faith to obtain a Seller's Declaration regarding retail sales tax paid, but the seller refused to sign the form. That Declaration had an attached spreadsheet identifying thirty separate invoices from two different vendors The invoices were for purchases of liquid nitrogen. It is uncontested that the liquid nitrogen purchased by Taxpayer was used to store tissue samples used in its cancer research.

ANALYSIS

RCW 82.08.808 and RCW 82.12.808 exempt medical supplies, chemicals, or materials used by a comprehensive cancer center from retail sales tax and use tax. This statute became effective in 2005, and reads, as follows:

- (1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a comprehensive cancer center. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.
- (2) For the purposes of this section, the following definitions apply:
 - (a) "Comprehensive cancer center" has the meaning provided in RCW 82.04.4265.
 - (b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.
 - (c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.
 - (d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.
 - (e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a

comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

- (i) Provide preparatory treatment of blood, bone, or tissue;
- (ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and
- (iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

RCW 82.08.808.² (emphasis added).

The term "comprehensive cancer center" is defined in RCW 82.04.4265, which reads, in pertinent part, as follows:

(2) For the purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the national cancer institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501(c)(3) as existing on July 1, 2006.

RCW 82.04.4265(2).

The TAA Division, in denying Taxpayer's request for a refund of sales and use tax, relied, in part, upon a letter ruling from the Department to Taxpayer, dated January 18, 2000. That letter denied Taxpayer a refund of B&O taxes, because Taxpayer did not qualify as an organization "organized solely for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue" under the statutory language of RCW 82.04.324, as it existed in 2000

However, since the date that letter was issued to Taxpayer, the text of RCW 82.04.324 was revised, and RCW 82.08.808 and RCW 82.04.4265 were enacted into law. Since 2005, RCW 82.04.324 specifically states that its provisions and definitions do not apply to a "comprehensive cancer center." *See* 82.04.324. The tax treatment of comprehensive cancer centers is now specifically covered by RCW 82.08.808, RCW 82.12.808 and RCW 82.04.4265. Because the statutory authorities have changed since the Department's letter ruling was issued to Taxpayer on

² RCW 82.12.808, which applies to use tax, was also enacted in 2005, and reads as follows:

- (1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a comprehensive cancer center. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.
- (2) The definitions in RCW 82.04.4265 and 82.08.808 apply to this section.

January 18, 2000, the letter ruling is no longer applicable and this case must be analyzed under the current statutory scheme.

Taxpayer clearly qualifies as a “comprehensive cancer center” under the definitional requirements set forth in RCW 82.04.4265. Taxpayer has provided a letter from the National Cancer Institute confirming its status as a comprehensive cancer center. Taxpayer has also provided a letter from the IRS confirming that it qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

Taxpayer having established itself as a comprehensive cancer center, the next question is whether the liquid nitrogen purchased by Taxpayer is exempt from retail sales tax or use tax. RCW 82.08.808 exempts certain medical supply “materials” from retail sales tax, “including . . . refrigerants used or consumed in performing research on . . . storing . . . or using blood, bone or tissue.” RCW 82.08.808(2)(c). It is uncontested that Taxpayer used the liquid nitrogen it purchased as a refrigerant to store tissue samples for research purposes. Therefore, under the authority of RCW 82.08.808, we hold that Taxpayer’s liquid nitrogen purchases qualify as “materials” exempt from retail sales taxation.

Having met the substantive requirements for a refund of retail sales tax, we now turn to the procedural requirements. The Department has established requirements and procedures for claiming a refund. *See WAC 458-20-229* (Rule 229). There are some requirements that apply to all claims for refund of overpaid taxes, penalties, or interest. Rule 229(3)(a). There are also specific requirements for claims for refund of retail sales tax. Rule 229(4).

There are five requirements for an application for refund of tax, penalties, or interest. Rule 229. An application must contain the following five elements: (A) the taxpayer’s name and UBI/TRA number; (B) the amount of the claim; (C) the tax type and taxable period; (D) the specific bases for the claim; and (E) the signature of the taxpayer or taxpayer’s representative. Rule 229(3)(b)(ii). Taxpayer has met these requirements.

Taxpayer has also met the procedural requirements specific to refunds of retail sales tax. Rule 229(4) explains the steps that must be taken in order for a Taxpayer to obtain a refund of retail sales tax. If a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer should request a refund or credit directly from the seller from whom the purchase was made. Rule 229(4)(a). The Department will refund retail sales tax directly to a buyer only under specific circumstances. Rule 229(4)(b). To qualify for such a refund, the buyer must provide a seller’s declaration or a buyer’s declaration. A seller’s declaration is required unless the seller no longer exists, the seller refuses to sign the declaration, or the buyer is unable to locate the seller. Rule 229(4)(b)(ii). Here, Taxpayer provided a Buyer’s Declaration attesting that the vendors from which Taxpayer purchased liquid nitrogen refused to sign a Seller’s Declaration. Taxpayer has shown both that its purchases of liquid nitrogen are exempt from retail sales tax and has also met the procedural requirements for a refund of retail sales tax.

DECISION AND DISPOSITION

Taxpayer's petition for refund is granted.

Dated this 21st day of June 2011.