

Cite as Det. No. 08-0023, 27 WTD 140 (2008)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 08-0023
...)	
)	Registration No. . . .
)	Document No. . . . /Audit No. . . .
)	Docket No. . . .
)	

RCW 82.08.890: RETAIL SALES TAX – EXEMPTIONS - DAIRY NUTRIENT MANAGEMENT EQUIPMENT. The taxpayer is ineligible for the exemption for the purchase of dairy nutrient management equipment in RCW 82.08.890 because it purchased the equipment in question prior to certification of its dairy nutrient management plan under chapter 90.64 RCW.

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.

Jensen, A.L.J. – A dairy farm appeals a use tax assessment on four pieces of equipment it purchased claiming that the equipment qualifies for the retail sales tax exemption in RCW 82.08.890 for dairy nutrient management equipment. The Department of Revenue (Department) disallowed the credit claiming that, while the taxpayer purchased these items after approval of its dairy nutrient management plan by the local conservation district, these items are ineligible for the exemption because they were purchased before certification of the plan and without an exemption certificate as required by the statute. Taxpayer also appeals the interest added to this portion of the assessment. We uphold the assessment.¹

ISSUES

1. Whether the taxpayer purchased four items of equipment before certification of its dairy nutrient management plan thereby making it ineligible for the retail sales tax exemption in RCW 82.08.890?

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

2. Does the taxpayer qualify for waiver of interest pursuant to RCW 82.32.105?

FINDINGS OF FACT

In 1998, the Legislature enacted the Dairy Nutrient Management Act, found in RCW chapter 90.64, to address water quality concerns associated with dairy farms. RCW 90.64.005. The legislation requires dairy farms in this state to develop and implement a dairy nutrient management plan to address the management and containment of waste products generated by dairy cattle for purposes of preventing ground water and air pollution. To encourage dairy farms to maintain facilities to stay in compliance with the Dairy Nutrient Management Act, the Legislature enacted tax incentives to reduce the costs of maintaining equipment used in an approved dairy nutrient management plan. *See* Laws 2001 2nd sp.s. c 18. One of these tax incentives is a retail sales tax exemption in RCW 82.08.890 for certain purchases of dairy nutrient management equipment and facilities.

[Taxpayer] operates a dairy farm [in] Washington. Taxpayer established a dairy nutrient management plan and registered with the Department of Ecology in 1998 to comply with the Dairy Nutrient Management Act. On September . . . , 2001, Taxpayer submitted its dairy nutrient management plan to the [local conservation district] as required by RCW 90.64.026. The . . . Conservation District approved Taxpayer's plan that same day. The Conservation District provided in this approval that Taxpayer's dairy nutrient plan contained all of the required elements of a dairy nutrient management plan. At the hearing, a representative of the [local conservation district] testified that Taxpayer was ahead of the curve in operating its dairy under an approved plan.

Taxpayer purchased four capital assets at the end of 2003 for the exclusive use in Taxpayer's dairy nutrient management plan, including: (1) a manure separator . . . ; (2) an HDPE liner . . . ; (3) a geocell . . . ; and (4) an extra manure separator Taxpayer purchased these items to improve existing structures to comply with the statutory and rule changes made at the state and federal levels. *See* Laws 2003 c 325. These changes required Taxpayer to replace an open pit and separator, and to expand its existing facilities.

Taxpayer did not pay retail sales tax on the four items it purchased. Taxpayer provided its vendors with a copy of its approved dairy nutrient management plan, but not an exemption certificate. These vendors considered the copy of the plan sufficient evidence of entitlement to the retail sales tax exemption for dairy nutrient management equipment and did not charge retail sales tax on these sales.

On December . . . , 2003, Taxpayer obtained an "Implementation Certification" of its dairy nutrient management plan from the [local conservation district]. This document certified that [taxpayer's name] has constructed or otherwise put in place the elements necessary to implement this dairy nutrient management plan." It is signed by [an official of the local conservation district]. This document also contains a signature by [taxpayer's name], . . . certifying that "I am managing dairy nutrient as specified in this dairy nutrient management plan developed

specifically for my operation, and approved and certified by my local conservation district.” Taxpayer later applied for an exemption certificate with the Department in . . . 2004. The Department then issued a dairy nutrient exemption certificate to Taxpayer with an effective date of December . . ., 2003.

The Department’s Audit Division (Audit) audited Taxpayer’s records for the period of January 1, 2003 through December 31, 2006. On June 14, 2007, Audit issued an assessment in the amount of \$. . . against Taxpayer, which included \$. . . in unpaid use tax and/or deferred sales tax and \$. . . in interest. \$. . . of this assessment represented use tax assessed on the purchase of the four capital assets described above, and \$. . . represented interest assessed on these purchases. Taxpayer appeals this portion of the assessment relating to its purchase of the four capital assets in September and November of 2003.

ANALYSIS

During the timeframe relevant in this appeal, RCW 82.08.890² provided the following exemption from retail sales tax:

The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of dairy nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities. The equipment and facilities must be used exclusively for activities necessary to maintain a dairy nutrient management plan as required under chapter 90.64 RCW. *The exemption applies to sales made after the dairy nutrient management plan is certified under chapter 90.64 RCW.* RCW 82.08.890(1).³ (Emphasis added).

Taxpayer purchased four capital assets in September and November of 2003. Audit does not dispute that these capital asset purchases mentioned above are for property that normally qualifies for this exemption, but asserts that these purchases are ineligible for the exemption because Taxpayer purchased the equipment prior to the date its dairy nutrient management plan was certified under chapter 90.64 RCW. Audit claims that the plan was certified under chapter 90.64 RCW on . . . the date Taxpayer acquired its “Implementation Certification” from the [local conservation district]. Taxpayer claims that these purchases qualify for the exemption because the purchases occurred in 2003, two years after its dairy nutrient management plan was approved by the [the local conservation district].

² An equivalent use tax exemption is found in RCW 82.12.890.

³ The Legislature broadened this exemption in 2006 to cover the maintenance of livestock nutrient management equipment and facilities. *See* Laws 2006 c 151 § 2. Additionally, the new language allows the exemption for “sales made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under subsection (4)(c)(iii) of this section.” RCW 82.08.890(2)(b). Subsection (4)(c)(iii) applies to persons who own “an animal feeding operation and [have] a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards.” RCW 82.08.890(4)(c)(iii).

Because RCW 82.08.890(1) expressly mentions certification “under chapter 90.64 RCW,” it is necessary to look to that chapter to ascertain the date certification occurs. RCW 90.64.010 defines “certification” as:

- (a) The acknowledgement by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and
- (b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

RCW 90.64.010(4)(a) &(b).

Taxpayer’s dairy nutrient management plan was approved by the [the local conservation district] on . . ., 2001. That approval indicated: (1) that Taxpayer’s plan contains the elements required in a dairy nutrient management plan; and (2) that [taxpayer’s name] had “seen and had input in the developing of [Taxpayer’s] Dairy Nutrient Management Plan.” It does not contain either of the acknowledgements needed to certify a dairy nutrient management plan as required in RCW 90.64.010(4).

The “Implementation Certification” provided by Taxpayer does contain the two required acknowledgements in the definition of “certification” in RCW 90.64.010(4). The [local conservation district] certified that “[taxpayer’s name] has constructed or otherwise put in place the elements necessary to implement this dairy nutrient plan.” This statement is signed by [an official of the local conservation district] on December . . ., 2003. [taxpayer’s name] provides the second acknowledgment below [the official’s] signature, stating “I, [taxpayer’s name], certify I am managing dairy nutrients as specified in this dairy nutrient management plan developed specifically for my operation, and approved and certified by my local conservation district.” This later statement was signed by [taxpayer’s name] on November . . ., 2003.

This means that certification of Taxpayer’s dairy nutrient management plan occurred on December . . ., 2003, or the date that both of the two required acknowledgements were completed pursuant to RCW 90.64.010(4). The four capital assets purchased by Taxpayer [at the end of] of 2003 were made before December . . ., 2003, and were therefore made before Taxpayer’s dairy nutrient management plan was certified under chapter 90.64 RCW. These purchases are ineligible for the retail sales tax exemption found in RCW 82.08.890.

Another problem for Taxpayer is that it purchased these capital assets before the effective date of the exemption certificate provided by the Department. RCW 82.08.890 provides that “[t]he exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.” RCW 82.08.890(3)(b).⁴ Taxpayer applied for

⁴ This language was moved from RCW 82.08.890(2)(b) to subsection (3)(b) in Laws 2006 c 151 § 2.

and received an exemption certificate from the Department in early 2004, but it was given an effective date of December . . ., 2003. Taxpayer purchased the four capital assets before the effective date of the exemption certificate and only gave its vendors a copy of its approved dairy nutrient management plan. Such action renders Taxpayer ineligible for the retail sales tax exemption in RCW 82.08.890.

Finally, Taxpayer asks the Department to waive the interest included within this assessment. RCW 82.32.105(3) provides the two circumstances under which the Department will waive or cancel interest:

- (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or
- (b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

Because Taxpayer does not meet either of these circumstances, we cannot waive or cancel interest in this assessment.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24th day of January 2008.