

Cite as 11 WTD 103 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Denial of)	<u>D E T E R M I N A T I O</u>
<u>N</u>	
an Application for Tax Deferral)	
of)	No. 91-079
)	
. . .)	Registration No. . . .
)	
)	

[1] RULE 24002: RCW 82.61.010 -- SALES/USE TAX DEFERRAL --ELIGIBILITY -- MACHINERY AND EQUIPMENT -- LEASED FIVE YEAR OLD BUILDING. The sales/use tax deferral under Chapter 82.61 RCW applies to acquisition of machinery and equipment but only where they are housed in a new leased structure. Where taxpayer houses them in a leased five year old building that is partly modified, the taxpayer does not qualify for the tax deferral. Accord: 7 WTD 279 (1989), Det. 89-170.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition protesting denial of an application for deferral of taxes on an investment project involving acquisition of machinery and equipment.

FACTS AND ISSUES:

Krebs, A.L.J. -- [Taxpayer] filed [in November of 1990] with the Department of Revenue (Department) an Application for Sales and Use Tax Deferral under the provisions of Chapter 82.61 RCW on equipment and machinery to be acquired at an estimated cost of \$160,000 for the manufacture of major

components to be used in kitchen cabinetry such as cabinet doors, drawers, valances, mouldings, etc. The taxpayer is a new company established to engage in a new operation of manufacturing the products in . . . , Washington. The taxpayer estimated that it will initially create 4 or 5 jobs and by the end of the first year it expects to employ 15 to 18 persons.

The taxpayer will be the owner of equipment and machinery. The taxpayer is a new lessee of space in the building that will house its manufacturing operation. The building was constructed in 1986. Except for a five month period in 1987 when the space was occupied by a . . . company which went bankrupt, the space had remained vacant until the taxpayer became the lessee.

[In November 1990], the Department denied the application for tax deferral on the grounds that WAC 458-20-24002 by its definition of "investment project" indicates "legislative intent that a recipient of sales and use tax deferral has an investment in a newly constructed facility or causes the investment and construction of a new facility by a third party." By another letter dated [January 1991], the Department responded to the taxpayer's request for reconsideration by stating in pertinent part:

. . . the statute is very clear regarding the requirement for newly constructed facilities to house the new manufacturing operation.

The taxpayer, in its [January 1991] request for reconsideration of the denial, stated in pertinent part:

The physical condition of the building is like new and we are currently completing work on new offices as well as interior factory walls and rest rooms. Everything that is going into the structure is new as well as all of our machinery as you already know.

The issue is whether the taxpayer, to be eligible for tax deferral, is required to house the machinery and equipment for which the tax deferral is sought in a newly constructed building.

DISCUSSION:

Chapter 82.61 RCW has the following statutory provisions pertinent to the granting of a tax deferral certificate.

RCW 82.61.010 provides the following pertinent definitions:

(4) "Eligible investment project" means:

(a) Construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, 1994; or

(b) Acquisition prior to December 31, 1994, of new machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure:...; or

(c)...

...

(8) "Machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and developmental operation. . . . For purposes of this chapter, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. (Emphasis supplied.)

RCW 82.61.050 in pertinent part provides:

The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes ... on each eligible investment project. The use of the certificate shall be governed by rules established by the department. (Emphasis supplied.)

The flow of meaning apparent in the above statutory provisions is that a tax deferral certificate can be on each eligible investment project, that is, either (4)(a) construction of new buildings and acquisition of new related machinery. or (4)(b) acquisition of new machinery and equipment if housed in "a new leased structure." While WAC 458-20-24002 (Rule 24002), which has the full force and effect as the law itself, does give (4)(a) as the meaning for "Eligible Investment Project," it does not include (4)(b) as one of the meanings. However, Rule

24002 (18) does recite a definition for "Investment project" in pertinent part as follows:

(18) "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. A person who does not build its own building, but leases from a third party, is eligible for sales and use tax deferral provided that an investment in qualified machinery is made by such person and a new structure used to house the manufacturing activities is constructed. (Emphasis supplied.)

The taxpayer has applied for a tax deferral certificate pertaining to the acquisition of new machinery and equipment. Section (4)(b) of the definition statute applies and the taxpayer would qualify if the new machinery and equipment were to be housed in "a new leased structure." Rule 24002(18) interprets the phrase "a new leased structure" found in the statute's (4)(b) to mean "a new structure is constructed," that is, the word "new" modifies "structure."

[1] Under the statute and rule, the taxpayer can be eligible for tax deferral if it builds a new building or if it leases a new building, and acquires and installs new machinery and equipment in the new building.

In this case, the taxpayer has described the building which it leases as "like new" and it is completing work on new offices as well as interior factory walls and rest rooms. Everything that is going into the structure is new as well as all of the machinery. However, the building was constructed in 1986 and was previously occupied for a five month period by another entity. The taxpayer is merely modifying an existing five year old building. Accordingly, we conclude that the taxpayer is not leasing a new structure. Therefore, the Department's denial of the taxpayer's application for a sales and use tax deferral certificate is affirmed.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 26th day of March, 1991.