

Cite as 11 WTD 281 (1991).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Refund of)	
)	No. 91-305S
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RCW 82.04.050 (6): HYDRATED LIME -- POST-HARVEST
TREATMENT OF FRUIT -- SALES AND USE TAXES --
EXEMPTION.

The purchase of hydrated lime when first used in cold storage to prevent carbon dioxide injury to fruit, including scald or decay, is exempt from sales and use taxes as a post-harvest treatment of the fruit. (This determination overrules the decision in Det. 90-386, 10 WTD 336 (1990), that the purchase of hydrated lime was subject to retail sales tax.)

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:

The taxpayer petitions for a refund of use tax on hydrated lime.

FACTS:

De Luca, A.L.J. -- The Department audited the taxpayer for the period January 1, 1987 through March 31, 1991. The audit resulted in a credit of \$. . . to the taxpayer. However, the taxpayer contests schedule V of the assessment which assessed \$. . . in use tax on purchases of hydrated lime.

The taxpayer is in the cold storage business. It uses the lime as a post harvest treatment of fruit, like apples, to prevent scald, internal breakdown, and decay. The taxpayer states the most efficient way to inhibit scald is to place sacks of lime in storage rooms where high volume fans blow through them. The lime reduces scald-causing carbon dioxide in the rooms to desirable levels. The taxpayer has provided pertinent parts of a U.S. Department of Agriculture article which details carbon dioxide injury to such fruits when the CO2 levels are too high. See Pierson, Ceponis, and McColloch, Market Diseases of Apples, Pears, and Quinces, Agricultural Handbook No. 376, May 1971.

The taxpayer's petition summarized the evolution of controlled atmosphere storage as follows:

The evolution of CA storages is interesting in that it bears out that an actual washing of the atmosphere in the room occurs. In earlier CA rooms, a liquid bath, including dissolved caustic soda, was trickled down a large pipe filled with small, odd-shaped plastic particles, at the same time as the atmosphere from the room was blown up the pipe. This action actually washed the carbon dioxide out of the room and away from and off of the fruit. Sacks of lime stacked in the room, together with high volume fans, have become a more efficient method of accomplishing this same result.

ISSUE:

Should hydrated lime when first used as a post-harvest treatment of fruit to prevent scald, internal breakdown, or decay be exempt from sales and use taxes?

TAXPAYER'S EXCEPTIONS:

The taxpayer correctly notes sales of chemical sprays or washes for the purpose of post-harvest treatment of fruit to prevent scald, fungus, mold, or decay are exempt from sales tax. RCW 82.04.050 (6). The taxpayer argues hydrated lime should be entitled to the same exemption because it is the most efficient post-harvest treatment to prevent scald and decay of fruit in cold storage. The taxpayer states the air in a storage room is blown by high volume fans through the sacks of lime and about the fruit. The taxpayer claims this air washes the scald-causing carbon dioxide away from and off the fruit in the room.

DISCUSSION:

RCW 82.04.050 (6) provides in part:

*** The term [retail sale] shall also not include ... fertilizer ... nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

Audit Division denied the taxpayer's claim that hydrated lime is exempt from sales and use taxes because it construed the statutory exemption to apply only to liquid sprays and washes as post-harvest treatments of fruits. Audit found the lime is not used as a liquid spray. Furthermore, in contrast to pear float, the fruit is not washed in a liquid lime bath.

We held in Determination No. 90-386, 10 WTD 336 (1990) that hydrated lime when first used in cold storage to reduce CO2 levels did not qualify for the sales/use tax exemption allowed fertilizers in RCW 82.04.050 (6) because the first use of the lime was not as a fertilizer. After use in cold storage, lime often is added to soil as a fertilizer. The taxpayer in that matter did not contend the lime should be exempt as a post-harvest treatment of fruit.

Although we construe exemptions narrowly, we believe the legislature intended to include this type of effective and widely used post-harvest treatment of fruit within the statutory exemption. We believe the legislature used the term "sprays and washes" in a descriptive manner rather than a limited one. The purpose of the exemption is to assist the agricultural industry in preventing scald or decay while the fruit is in storage or in transit to market. It is undisputed that the use of hydrated lime, just like liquid chemical sprays or washes, prevents or inhibits scald and decay. The air passing through the hydrated lime sacks is circulated throughout the cold storage rooms by fans. This action, as the taxpayer claims, washes away and reduces the damaging CO2 from the fruit. By allowing the exemption for hydrated lime in addition to the liquid sprays and washes, the legislature's statutory intent and purpose is effectively accomplished.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 30th day of October 1991.