Cite as Det. No. 91-294R, 11 WTD 487 (1991)

THIS DETERMINATION HAS BEEN OVERRULED BY THE HOLDING IN ALDERWOOD WATER DISTRICT V. STATE OF WASHINGTON, NO. 91-2-02722-03

THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 98-208, 19 WTD 332 (2000) & DET. NO. 98-187, 19 WTD 328 (2000)

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

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	Det. No. 91-294R
. . .	)	Registration No. . . .
	)	Appeal of Letter Det. . . .

[1] RULE 179: PUBLIC UTILITY TAX -- WATER SYSTEM -- "SOLELY FOR IRRIGATION PURPOSES." Where a water district supplies a community with water and some of the water is used for open space, the deduction for water distributed "through an irrigation system" does not apply. Legislature is deemed to know the ramifications of its acts and is presumed not to engage in frivolous acts. As a result, enactment of a statute addressing "irrigation systems" specifically cannot be broadened to mean all water used to irrigate open space. FID.

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:

Taxpayer petitions for refund of public utility taxes paid on income from portions of its water distributed for irrigation use.

FACTS AND ISSUES:

Adler, A.L.J. -- Taxpayer, a municipal corporation, is engaged in providing water service to customers located in its service area. The area is a residential area . . . . Taxpayer's customers

include mostly business, industrial, residence, and recreational users.

In 1990, the district's controller performed an analysis of the public utility tax statutes as they applied to the district's method of operation. Among these was RCW 82.16.050(7), which permits a deduction for

[a]mounts derived from the distribution of water through an irrigation system, for irrigation purposes...

Based upon this statute, and WAC 458-20-179 (Rule 179), which implements the statute, the controller requested a refund of the portion of the district's taxes paid during the years 1986-1989 and attributable to water distributed for irrigation use.

In October, 1990, the Department's Audit division concluded that taxpayer did not qualify for the deduction under WAC 458-20-179(15)(d), because, in the district's case,

the amounts charged to the customers in question relate to activity on both sides of the meter. The district's system is not an irrigation system but a domestic system and thus the amounts derived are not "solely" for irrigation purposes.

The Audit Supervisor advised taxpayer that it could appeal this conclusion, which it did. On November 29, 1990, the Department's Appeals division issued a letter upholding the prior Audit letter and using the same logic.

Taxpayer appealed the November letter. Through its representative, taxpayer argues that

> [i]t is not the nature of the system, but the use of the water that qualifies for the deduction. After all, it is the distribution of water that provides the taxable income, not the distribution system. Likewise, it should be amounts received for irrigation water that qualify for the deduction. (Emphasis supplied.)

As such, he concludes that the statute should be read as follows:

> In computing tax there may be deducted from the gross income the following items:
>
> [a]mounts derived from the distribution of water for irrigation purposes through an irrigation system... (Emphasis supplied.)

Taxpayer further asserts:

> the judge's interpretation ignores the fact that the water is metered separately and after passing through the meter is distributed by a system used solely for irrigation.

Upon request, taxpayer's controller supplied more information, including the following items:

1. The resolutions of the district's Board of Commissioners, showing a separate section

for management of irrigation accounts;

2. A sample application by a fast-food restaurant for "irrigation/industrial" service;

3. The district's billing register for the period ending October 2, 1991. The register breaks out the dollar amount received for irrigation water and lists the number of irrigation accounts;

4. A copy of a bill from an irrigation account, intended to show that an audit trail is available reconciling the billing register to the actual charges billed to the customer; and

5. A statement from the controller contending that each water meter is billed as a separate account. Irrigation meters are designed into Developer Extension Plans by the district's engineering department to provide water to recreational and open spaces as well as other landscaped areas. He certifies that the billings identified as "irrigation" are for water used for these purposes only.

Taxpayer states most of the irrigation water is used for open space areas such as greenbelts, golf courses, and parks.

DISCUSSION:

[1] Chapter RCW 82.16 was first enacted, along with other tax laws, in 1933. Laws of 1933, Chapter 191. The law was re-enacted into individual titles in 1935. Laws of 1935, Chapter 180, §40.
The statutory language covering irrigation was enacted at that time and has remained the same for nearly sixty years, despite repeated amendments to both the chapter and to other parts of RCW 82.16.050. At the time of enactment, the legislature did not define what qualifies as an "irrigation system," nor did it define what it meant by "for irrigation purposes."

RCW 82.16.050(7) permits a deduction from public utility tax for

> Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

The Department's administrative rule implementing the statute is WAC 458-20-179 (Rule 179). It has the same force and effect as the law itself unless overturned by a court. RCW 82.32.300. Rule 179 (15)(d) is virtually identical to the unamended statute, with the notable exception of its inclusion of "solely" in listing the availability of a deduction for

> [a]mounts derived from the distribution of water through an irrigation system, <u>solely</u> for irrigation purposes. (Emphasis and brackets supplied.)

Taxpayer's argument is essentially twofold. First, it argues that the lack of a definition in the statute means that any watering of open spaces should qualify as "irrigation." As such, it argues that the

Department's reliance on the presence of the word "solely" in the rule is misplaced. Under this theory, the Department would be improperly requiring that the entire system be dedicated to irrigation use before any deduction for water used for irrigation purposes would be permitted.

Administrative rules cannot exceed or conflict with the scope of the statutes they interpret. Duncan Crane v. Department of Rev., 44 Wn.App 684 (1986); Tacoma v. Smith, 50 Wn.App 717 (1988); review denied, 110 Wn.2d 1032 (1989). As a result, where a rule appears to be in conflict with a statute or to exceed the exclusions contained in a statute, the rule must be read so that it does not conflict with the statute.

In this case, however, we disagree that the rule's language conflicts with the broad language of RCW 82.16.050. Reading the rule in harmony with the statute merely results in reading the rule to mean that only the income from water distributed for and clearly traceable to irrigation use would be entitled to the deduction.

Second, taxpayer essentially argues that any system by which water is distributed and put to irrigation use qualifies as an "irrigation system." As stated previously, the statute and the rule do not define "irrigation system." We note that they also do not contain any language implying that the deduction is lost to a district supplying water for more than one use.

RCW 82.16.050 grants an unqualified exemption for water distributed through an irrigation system for irrigation purposes. Although it does not define "irrigation system," use of the term is deemed to have a certain meaning.

As to the basic rules of statutory construction, the Washington Supreme Court has consistently started from the premise that the legislature does not engage in unnecessary or meaningless acts, and it presumes some significant purpose or objective in every legislative enactment. Sellen Constr. v. Department of Rev., 87 Wn.2d 878 (1976), Wilson v. Lund, 80 Wn.2d 91 (1971).

Chapter 82.16 RCW imposes the public utility tax on a wide variety of activities. RCW 82.16.010(4) broadly defines "water distribution business" to mean

> the business of operating a plant or system for the distribution of water for hire or sale.

RCW 82.16.050(7) grants a deduction from the tax for irrigation water distributed through an irrigation system. If the taxpayer had an irrigation system and sold some of its water to domestic users, the tax would only apply to sales for domestic use. See, e.g. The Highlands, Inc. v. Department of Rev., Docket No. 12078 (Washington Board of Tax Appeals, 1975). In this case, the deduction would still be available for the portion of the water proven to be distributed through an irrigation system for irrigation purposes.

Here, however, the taxpayer has not shown that it has an irrigation system. The deduction requires satisfaction of a two-prong test to qualify: the taxpayer must show it has an irrigation system, and it

must show the water was used for irrigation purposes. In order for the deduction to have meaning, it cannot be read to grant a deduction to the portion of income earned by persons engaged in the water-distribution business who happen to sell water to others who use it to water greenbelts and other recreational open spaces.

The Department has an obligation to interpret a statute in such a way as to avoid an absurd result. Yakima First Baptist Homes v. Gray, 82 Wn.2d 295 (1975); Det. No. 87-298, 4 WTD 87 (1987). Here, to follow the interpretation urged by the taxpayer would lead to the absurd result that "irrigation system" would have to be defined as "any system by which water is distributed and eventually put to use for watering open spaces." Further, because supporting documentation would be required, a water district whose accounting methods separated accounts by claimed use of the water might receive the deduction, while an identical neighboring system using a different accounting method might not receive it.

Clearly, such a convoluted interpretation is not intended by the legislature. Further, we are persuaded that the legislature knew the consequences of using these terms, imposing the tax on the water distribution business, while granting the deduction to income from water distributed through irrigation systems for irrigation purposes. Otherwise, it would not have created both water districts, Title 57 RCW, and irrigation districts, Title 87 RCW. Among the purposes for which an irrigation district can be formed is

> the construction, reconstruction, repair or maintenance of a system of diverting conduits from a natural supply to the point of individual distribution for irrigation purposes. (Emphasis supplied.)

This language first appeared in Laws of 1923, chapter 138, Section 2, page 419. It was in effect and is similar to the language used in Chapter 82.16 RCW, which first appeared ten years later.

Consequently, we find that the 1990 letters to the taxpayer denying the deduction for accounts where mixed use occurs correctly interpret the law.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 25th day of October 1991