

Cite as Det. No. 92-270, 12 WTD 237 (1993).

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

In The Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Balance Due )  
of ) No. 92-270  
 )  
 . . . ) Registration No. . . .  
 ) Notices of Balance Due: . . .  
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 )

[1] RULE 19301: B&O TAX--MULTIPLE ACTIVITIES TAX CREDITS--  
QUALIFYING TAXES--ALASKA FISHERIES BUSINESS TAX. The  
Alaska Fisheries Business Tax qualifies for the  
Multiple Activities Tax Credits provided in RCW  
82.04.440.

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.

NATURE OF ACTION:

Taxpayer protests the disallowance of the multiple activities tax  
credit for the Alaska Fisheries Business Tax.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. -- Taxpayer is a seafood wholesaler in  
Washington. It received Notices of Balance Due disallowing the  
Multiple Activities Tax Credits (MATC) it had taken for the  
Alaska Fisheries Business Tax. Taxpayer states that it believes  
that the tax meets the requirements of the MATC and should be  
allowed.

DISCUSSION:

The Multiple Activities Tax Credit (MATC) is found in RCW  
82.04.440. That statute provides, in relevant part, that:

(1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250 or 82.04.270 shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260 subsection (4) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

\* \* \*

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

\* \* \*

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240 and subsections (2), (3), (4), (5),

and (7) of RCW 82.04.260, and (ii) similar gross receipts taxes paid to other states.

\* \* \*

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

The credit is implemented by WAC 458-20-19301 (Rule 19301). The MATC credit for the Fisheries Tax was disallowed based on Excise Tax Bulletin 543.04.19301, which states that the tax does not qualify for the credit.

The Alaska Fisheries Business Tax is imposed by Alaska Statutes §43.75.015:

(a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this section on the value of each of the following fisheries resources processed during the year at the rate set out after each. . . .

Fisheries business, fisheries resource and value are defined at §43.75.140:

(4) "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storage, freezer ships, and processing plants;

(5) "fishery resource" means fin fish, shellfish and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollack;

\* \* \*

(11) "value" means the actual price paid for the fisheries resource by the fisheries business, including indirect consideration such as fuel, supplies, or gear, whether paid at the time of purchase of the fisheries resource or tendered as deferred or delayed payment, except that "value" means the market value of the fishery resource if the taking of the fishery resource is done in company-owned or company-subsidized boats operated by employees of the fisheries business or in

boats which are operated under lease or other arrangement.

The definition of fisheries business is included within Washington's definition of manufacturing:

"Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his own materials or ingredients any articles, substances or commodities. . . .

RCW 82.04.110.

For the fisheries tax to qualify under the MATC, it must also be considered a gross receipts manufacturing tax. In order to be a gross receipts manufacturing tax, it must meet the criteria specified in RCW 82.04.440(5)(a) and (c), quoted above. The tax is not separately stated from the selling price, and is on an activity that fits under the definition of manufacturing (RCW 82.04.440(5)(a)(ii) and (c)). The only question is whether the tax fits under RCW 82.04.440(5)(a)(i), requiring it to be measured by the "gross volume of the business."

The Fisheries Tax requires that the taxpayer pay on the "value" of the fisheries resource. AS §43.75.140(11), quoted above. The value is the price paid for the fisheries resource and includes indirect consideration. If the fishery resource is taken in company-owned or subsidized boats, the value is defined as the market value of the resource. In Washington, the manufacturing tax is imposed on the "value of products" manufactured in this state. RCW 82.04.240. The value of products for items manufactured in Washington is defined as:

(1) The value of products, including byproducts, extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or byproducts by the seller, except:

(a) Where such products, including byproducts, are extracted or manufactured for commercial or industrial use;

(b) Where such products, including byproducts, are shipped, transported or transferred out of the state, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale.

(2) In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products: Provided, That the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond: (a) To the retail selling price of such new or improved product when first offered for sale; or (b) to the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values.

Thus, in Washington the first choice for determining value of manufactured goods is the sale price of the goods, but in cases where that is unavailable or inaccurate, the market value of similar goods is used as the measure of the tax.

We believe that the Alaska Fisheries Tax is imposed against a proper incident--that is, it is imposed on the business activity of processing fish. The Alaska Fisheries Tax is not an improper income or value-added tax. Finally, the Alaska Fisheries Tax is imposed on the gross value of the products, which makes it similar to the Washington manufacturing tax.

#### DECISION AND DISPOSITION:

Taxpayer's petition is granted. The Notices of Balance Due disallowing the Multiple Activities Tax Credit for the Alaska Fisheries Tax shall be cancelled.

DATED this 30th day of September 1992.