

Cite as Det. No. 92-155, 12 WTD 191 (1993).

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 Correction of Assessment of)	
)	No. 92-155
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

- [1] RULE 122, RCW 82.04.050 (6): FERTILIZER -- SALES TAX -- EXEMPTION. The sale of sawdust does not qualify for the sales tax exemption for fertilizers.
- [2] RULE 122, RCW 82.04.050 (6), RCW 82.12.010 (2), RCW 15.54.272: FERTILIZER -- SALES TAX -- USE TAX -- INTERVENING USE. When taxpayer sells its customers a substance for purposes other than one which is tax exempt, such use is intervening use and negates the exemption. The test is first use, not primary or subsequent use. An exemption in a tax statute will be strictly construed in favor of taxation. Accord: Det. No. 90-386, 10 WTD 336 (1990); Det. No. 87-298, 4 WTD 87 (1987); Budget Rent-a-Car vs. Dept. of Rev., 81 Wn.2d 171, 174 (1972).

PORTIONS OF THIS DETERMINATION WERE NOT PRECEDENTIAL AND HAVE NOT BEEN PUBLISHED.

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:

The taxpayer protests the assessment of retail sales tax against the sales of sawdust.

FACTS:

De Luca, A.L.J. -- The Department of Revenue audited the taxpayer for the period January 1, 1987 through December 31,

1990. The taxpayer appeals Schedule III of the audit report which assessed retail sales tax and retailing B&O tax plus interest due to the sales of sawdust. The tax remains unpaid.

The taxpayer sold about half of the sawdust to cattle ranches for corral bedding. After such use, the ranchers sell the sawdust as fertilizer to others who spread it on their field crops. The taxpayer sells the other half of the sawdust to nurseries for ground cover to conserve moisture around shrubbery and trees. The taxpayer states the nurseries resell the sawdust to their customers.

The taxpayer contends these sawdust sales to ranchers should be exempt from sales tax because they are fertilizer sales which are exempt under WAC 458-20-122 (Rule 122). Furthermore, the taxpayer argues the sales to the nurseries are exempt because of the resales to their customers. Alternatively, the taxpayer said he was unaware of the requirement to collect sales tax on sawdust sales. The taxpayer seeks to cancel the assessment and begin collecting the tax on a prospective basis if it is due.

Audit Division denied that the sales tax exemption applied to the taxpayer because the first use of the sawdust either as bedding for cattle or ground cover for plants is not use as a fertilizer. Subsequent use of the sawdust as a fertilizer does not control whether the sawdust is exempt. Audit relied on Det. No. 90-386, 10 WTD 336 (1990). Furthermore, Audit did not believe nurseries buy sawdust to resell it as such to their customers without intervening use. Finally, Audit doubted whether sawdust alone can be construed as a fertilizer under Rule 122.

ISSUE:

Do the taxpayer's sawdust sales to ranchers and nurseries qualify for the sales tax exemption for fertilizers?

DISCUSSION:

RCW 82.04.050 (6) exempts from sales tax fertilizers sold to agricultural growers who sell their produce or crops at wholesale. The legislature has defined "commercial fertilizer" as:

...any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and which shall include limes, gypsum and manipulated animal and vegetable manures...

RCW 15.54.272. Rule 122 defines it as:

[t]he word "fertilizer" means a substance which increases the productivity of the soil by adding plant foods or nutrients which improve and stimulate plant growth.

Rule 178(7)(tt) exempts from the use tax "the use of... fertilizer and spray materials by persons raising agricultural and horticultural products for sale at wholesale...."

[1] The first question is whether sawdust is a fertilizer. The taxpayer has offered no evidence that sawdust is such. We have inquired at the Washington State University Agricultural Research Center at Puyallup about this question. A soils scientist at the center informed us, in short, that sawdust is not a fertilizer because it does not contain plant nutrients. Sawdust is occasionally added to soil as an "amendment" to improve physical properties, but it does not provide nutrition to plants. In fact, when sawdust is added to soil, additional fertilizer, in the form of nitrogen, is also needed, because sawdust takes up the soil's nutrients. This action occurs when bacteria in the soil converts the sawdust to humus and thereby depletes the nitrogen in the soil.

[2] We next discuss whether the taxpayer is entitled to the sales tax exemption for sawdust as a fertilizer if it is used first as corral bedding for livestock and subsequently is added to the soil along with the animal manure it accumulates. We will also address whether sales of sawdust are exempt if first used as ground cover at nurseries and later resold. RCW 82.12.010 (2) defines use as:

"Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state; . . .

(Emphasis supplied.)

The test, then, is the first use of the sawdust and not its subsequent use. Its initial use either as a bedding material or a ground cover is an intervening use. Intervening use will negate an exemption. Even if we were to hold that sawdust is a fertilizer (which we do not), in order for the fertilizer

exemption to apply, the sawdust must first be used as a fertilizer and not as something else.¹ An exemption in a tax statute must be strictly construed in favor of taxation. Det. No. 90-386, 10 WTD 336 (1990); Det. No. 87-298, 4 WTD 87 (1987); Budget Rent-a-Car vs. Dept. of Rev., 81 Wn.2d 171, 174 (1972).

We also note the sales tax exemption for sales of fertilizers in Rule 122(7) applies only to "farmers". A "farmer" under the rule's definition ". . . does not mean any person dealing in livestock as an operator of a stockyard, slaughter house or packing house." Rule 122(1)(e). Thus, if the sawdust sales were to stockyards, they would not be exempt even if the sawdust was a fertilizer and first used as such.

Furthermore, if the nurseries do resell the sawdust to their customers without intervening use, then the nurseries need to provide the taxpayer with resale certificates when purchasing the sawdust in order to avoid the sales or use tax obligation. WAC 458-20-102 (Rule 102).

* * *

DECISION AND DISPOSITION:

The taxpayer's petition for correction of the assessment is denied.

DATED this 22nd day of June 1992.

¹We do not need to decide at this time whether sawdust mixed with animal manure is a fertilizer because that issue is not before us.