Cite as Det. No. 95-201, 15 WTD 166 (1995)

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. 95-201
. . .	)	Registration No. . . .
	)	Audit No. . . . & . . .

[1] RULE 179; RCW 82.16.050(7): PUBLIC UTILITY TAX -- DEDUCTIONS -- IRRIGATION. Where a water district supplies a community with filtered, potable water and some of the water is used for watering landscaping, the deduction for water distributed through an "irrigation system, for irrigation purposes" does not apply. The term "irrigation" commonly connotes the artificial watering of agricultural lands and not landscaped grounds.

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:

Water district protests the disallowance of a refund request based on a claimed deduction from income for water supplied for irrigation purposes.[1]

FACTS:

Mahan, A.L.J. -- The taxpayer is a special purpose water district. Under the comprehensive plan for the area, approximately 70% of the district is classified as rural and 30% is classified as urban. It has approximately 1,000 commercial accounts and approximately 10,000 residential accounts within the district.

Overall water usage goes from 3 million gallons per month during the winter months to a peak usage in the summer of over 11 million gallons. Water rates are on a tiered system. In accordance with a plan designed to reduce nondiscretionary consumption, and in recognition of the increased

[1]Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

costs associated with building a system to meet peak demands, higher volume users are subject to higher rates.

By resolution, the district has adopted various rate classifications, including one for irrigation. The resolution defines the irrigation classification as "service provided through a separate meter for irrigation purposes only." There is a single rate for the irrigation classification, and it is set at the same rate as the highest residential rate. In other words, irrigation rate customers cannot achieve a lower rate by using less water, as may be possible under the other classifications. Each customer must also pay a monthly fee for each meter in use. That charge goes up with each incremental increase in the meter size.

Many of its customers who elect to have an irrigation connection do so because the standard domestic water line going from the main is insufficient to meet peak summer demands. Rather than increase the size of the domestic line, a separate connection and meter are established for irrigation purposes. The advantage of doing so is that the customer can have that meter "locked off" when it is not in use and, thereby, avoid the monthly meter charge.

When a customer requests an irrigation connection, the taxpayer reviews the customer's irrigation plan to insure that the proposed system is not used for any domestic purposes and that proper back flow devices are installed. Otherwise, the taxpayer does not require its customers to have any particular use for the water in order to acquire an irrigation connection. In addition to large residential and multi-residential users, customers having irrigation hook-ups include nurseries, wineries, vegetable farms, and ranches with pasture lands.

The taxpayer requested the Department to refund the amounts of public utility tax that it had paid on irrigation income, which it contends are exempt from the tax under RCW 82.16.050(7). The amount at issue is $42,026, plus interest. That request was reviewed by the Department of Revenue's (Department) Audit Division and denied because the taxpayer made no showing that the usage involved an agricultural component. The taxpayer contends that the exemption does not require that there be an agricultural component before the exemption applies.

ISSUE:

Whether the taxpayer is entitled to deduct charges for separately metered water used by some of its customers allegedly for irrigation purposes.

DISCUSSION:

[1] RCW 82.16.050(7) permits a deduction from the public utility tax for:

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

RCW 82.16.050 has remained the same for sixty years, since enactment of the Revenue Act of 1935, Laws of 1935, c. 180, § 40, despite amendments to other parts of RCW 82.16.

The Department's administrative rule implementing the statute is WAC 458-20-179 (Rule 179). Rule 179(15)(d) is virtually identical to the statute, with the notable exception of the inclusion of the word "solely" in limiting the availability of the deduction. It provides that the deduction is available for:

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

Under this rule and the statute, the taxpayer must satisfy a two-pronged test: (1) that the water was distributed through "an irrigation system," (2) solely "for irrigation purposes." Those terms are not defined by the statute, and we must determine whether they include the various uses by the taxpayer's customers.[2]

The goal of any statutory construction is to follow the intent of the legislature. Legislative intent is to be ascertained from the statute as a whole, and all statutes relating to the same subject matter should be considered. State v. Wright, 84 Wn.2d 645, 652, 529 P.2d 453 (1974); Clark v. Pacificorp, 118 Wn.2d 167, 176, 822 P.2d 162 (1991). A term not defined in a statute is afforded its plain and ordinary meaning. However, when a word has no fixed, ordinary meaning, we must look to the subject matter, the context in which the word is used, and the purpose of the statute. KSLW v. Renton, 47 Wn. App. 587, 594, 736 P.2d 664 (1986); Sevais v. Port of Bellingham, 72 Wn. App. 183, 189, 864 P.2d 264 (1993), rev. granted, 124 Wn.2d 1001 (1994).[3]

The term "irrigation" does not appear to have an ordinary or fixed meaning, particularly in the context of irrigation or water districts. See Webster's II New Riverside University Dictionary 433 (1984) and 45 Am. Jur. 2d, Irrigation § 1 at 945 (1969). Accordingly, we must look to the subject matter and related laws, the context in which the words are used, and the purpose of the statute.

Related laws that existed at the time of the enactment of RCW 82.16.050, indicate that the legislature intended the term "irrigation" to mean something more than what is advocated by the taxpayer. For example, the laws regarding irrigation districts gave them the authority to construct and operate:

> [A] system of diverting conduits from a natural source of water supply to the point of individual distribution for irrigation purposes.

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[2] In Det. No. 91-249R, 11 WTD 487 (1991), we held that water distributed through a domestic water system for use by separately metered "irrigation accounts" did not qualify as an "irrigation system". On a de novo appeal to superior court, the taxpayer was granted summary judgment. Alderwood Water Dist. v. State, No. 91-2-02722-3 (Thurston County Sup. Ct. 1993). The Department, however, is not precluded from having this issue again considered here. See, e.g., Cunningham v. State, 61 Wn. App. 562, 567, 811 P.2d 225 (1991).

[3] We are also guided by the principle that an exemption statute, such as the one before us, must be narrowly construed. As stated in Budget Rent-A-Car, Inc. v. Department of Rev., 81 Wn.2d 171, 174, 500 P.2d 764 (1972):

> Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction taxable category has the burden of showing that he qualifies for it.

RCW 87.03.010(4) (Laws of 1923, c. 138, § 2). Although the legislature did not define the term "irrigation" in RCW Title 87, such a system in the ordinary conception would be for agricultural purposes. In a related provision, the legislature defined the term "irrigable acreage" to mean "all lands included in the district capable of being used for agricultural purposes." RCW 87.22.085 (Laws of 1929, c. 202, § 88). These provisions were in effect, and the legislature was presumed to have been aware of them, when RCW 82.16.050 was first enacted. Accordingly, when related statutes are read together and in context, it appears that the legislature contemplated an agricultural aspect with respect to the use of water for irrigation purposes.[4]

The beneficial purpose behind a legislative grant of an irrigation exemption is readily apparent when the water is used for agricultural purposes. In contrast, the taxpayer has advanced no theory or explanation why the legislature would grant a tax exemption for income from the use of water for the watering of lawns and the like, and none is apparent to us.

Given the context and purpose of the statute, the definition for the word "irrigation" provided in 45 Am. Jur. 2d, Irrigation § 1 at 945 (1969) is most apt. It provides:

> Irrigation is defined as the artificial watering of agricultural lands in regions where rainfall is insufficient for crops. The ordinary and popular conception of the term is that it denotes the application of water to land for the production of crops; the term embraces all artificial watering of lands, whether by channels, by flooding, or merely by sprinkling.[5]

In applying such a meaning to the case at hand, the watering of lawns or a parking strip by a developer does not come within the scope of what is ordinarily understood to be the use of water for irrigation purposes. However, some of the taxpayer's customers would be considered to be using water for irrigation purposes. Such customers include nurseries, wineries, vegetable farms, and ranches with pasture lands.

The use of water by these customers must also meet the second element of the test. Again, the term "irrigation system" is not defined. Relying on the above definition, a system for the artificial watering of agricultural lands, one that is maintained separate and apart from a domestic water system, appears to meet the "irrigation system" requirement. Here, the taxpayer connects a meter only after verifying that the proposed system is not connected to the domestic supply system and that a back flow device is installed. Under such circumstances, such a system for the artificial watering of agricultural lands would meet the criteria for the exemption.

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[4]Although this state's legislature did not define the term "irrigation", other states in establishing irrigation districts have been more explicit in this regard. For example, Arizona defines the term "irrigation" to mean the application of "water to two or more acres of land to produce plants for sale or human consumption or for use as feed for livestock, range livestock, or poultry...." Ariz. Rev. Stat. Ann. § 45-402 (1994). Similarly, Kansas specifically identified that irrigation districts were formed for the use of water in "the aid of agriculture." Kan. Stat. Ann. § 42-357 (1994).

[5]Blacks Law Dictionary 744 (5th ed. 1979) similarly defines an "irrigation company" as one that conveys water "by means of ditches or canals through a region where it can be beneficially used for agricultural purposes."

DECISION AND DISPOSITION:

The taxpayer's refund petition is granted in part and denied in part. The case is remanded to the Audit Division for a refund with respect to water supplied to customers who are using it solely for agricultural purposes such as may occur with nurseries, wineries, vegetable farms, and ranches with pasture lands. The taxpayer will have 60 days from the date of this determination to contact the Audit Division and to provide it with documents to identify the percentage of income under its irrigation rate classification that in fact qualifies for the deduction.

DATED this 20th day of October 1995.