

Cite as 2 WTD 239 (1987)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
for Refund of)	
)	No. 87-48
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	

RULE 113, RCW 82.04.050(1)(c) AND RCW 82.12.020:
INGREDIENTS AND COMPONENTS.

Under the "ingredients" exclusion from the definition of "retail sale", only materials which supply essential ingredients to a finished product are not subject to use 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: . . .
 : . . :
 . . .

DATE OF HEARING: January 10, 1986

NATURE OF ACTION

As a result of an audit covering the period from January 1, 1981, to December 31, 1984, the taxpayer was assessed use tax on the use of refractory bricks and molybdenum electrode rods. The bricks and electrodes were used by the taxpayer in the manufacture of colored glass. The taxpayer paid the assessment and petitioned for a refund.

FACTS

Normoyle, A.L.J. (successor to M. Clark Chandler, Administrative Law Judge) -- The taxpayer manufactures colored glass. Its glass making process involves the use of

refractory bricks (hereafter, "bricks"), and molybdenum electrode rods (hereafter, "electrodes").

The three main ingredients in the type of glass produced by the taxpayer are silica (65%), soda ash (16%), and lime stone (8%). The bricks are made of silica (20%), alumina (40%), and zirconia (40%). The electrodes are made of molybdenum, a hard metallic element.

The taxpayer's glass making process involves the mixing of ingredients according to particular color recipes. They pour this mixture into a furnace lined with refractory brick. Molybdenum rods are inserted through the walls of the brick and are used as electrodes to heat the mixture to 2,600 F. Because of the heat and the caustic nature of the molten mixture, the brick and electrodes are worn away. Part of the bricks and electrodes becomes an ingredient of the finished product. The furnaces are completely rebuilt every nine to sixteen months, as the bricks and electrodes are consumed in the manufacturing process.

The taxpayer adds much more silica to the furnace than is supplied by the bricks. As stated above, the finished product contains approximately 65% silica. Of that, the bricks supply approximately .3%.

The electrodes are used for electric conduction. The type of glass made by the taxpayer requires considerable heat, and the electrodes are a necessary part of the heating process. Part of the electrodes erode into the glass mixture and become a part of the final product. However, the metal material which makes up the electrode, molybdenum, is not an essential ingredient of the glass.

ISSUES

The taxpayer contends that both the bricks and electrodes are necessary in the manufacture of the glass. The issue is whether the use of these materials is taxable under the use tax statute (RCW 82.12).

DISCUSSION

In general terms, the use tax applies to the use of tangible personal property purchased at retail, if the user had not paid the retail sales tax. The use tax is imposed by RCW 82.12.020, which, in pertinent part, states as follows:

There is . . . levied and there shall be collected .
. . . a tax . . . for the privilege of using . . . as
a consumer any article of tangible personal property
purchased at retail . . . (Emphasis added)

RCW 82.12.010(5) incorporates the RCW 82.04.050(1)(c) definition of "retail sale". Thus, the key question is whether or not the purchase of the bricks and electrodes was a retail sale. If not, the sales and use taxes do not apply.

RCW 82.04.050(1)(c) defines "retail sale", as follows:

. . . "retail sale" means every sale of tangible personal property
. . . to all persons . . . other than a sale to a person who . . . (c) purchases for the purpose for the consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component, or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale, . . . (Emphasis added)

Under case law, and precedent established by the Board of Tax Appeals, a retail sale does not occur if the materials are consumed in the manufacturing process, and supply essential ingredients or components to the finished product. This is so, even if:

- a. the materials are used for some other, primary purpose;
- b. the materials make up only a small percentage of the total ingredients contained in the final product; and
- c. the same type of material, but from another source, is added during manufacturing.

The important question is whether or not the materials supply essential ingredients, not whether the percentage supplied is large or small. Lone Star Industries, Inc. v. Department of Revenue, 97 Wn.2d 630 (1982); Bethlehem Steel Corp. v. Department of Revenue, Board of Tax Appeals, Docket No. 85-8 (1986).

It is our conclusion, based on the above legal authority, and on the facts as provided by the taxpayer, that the use of the bricks is not taxable, but that the use of the electrodes is.

As to the bricks, it is clear that they supply an essential ingredient in glass, silica, in that silica makes up 65% of the final product.

As to the electrodes, it is equally clear that molybdenum is not an essential ingredient in the type of glass produced by the taxpayer. The fact that its use may be essential in this taxpayer's manufacturing process does not bring the electrodes within the exclusion from the definition of "retail sale". It is not enough that part of the electrodes end up in the final product. They must provide an essential ingredient if their purpose is to escape taxation.

DECISION

The taxpayer's petition is granted in part and denied in part. A refund, plus statutory interest, shall be issued by the Department for the use tax paid on the refractory bricks. No refund shall be issued for the use tax paid on the molybdenum rods.

DATED this 10th day of February 1987.