

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 Sales and Use Tax Deferral)
of) No. 89-170
)
) Registration No. . . .)
)

RULE 24002: RCW 82.61.010--SALES/USE TAX DEFERRAL--
ELIGIBILITY. The sales/use tax deferral under
chapter 82.61 RCW only applies to the construction
of new buildings. Modifications to an existing
structure, no matter how extensive, do not qualify.
However, the construction of a new office building,
if it is an integral or essential part of the
facility, is eligible for the deferral.

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 petitions for a reconsideration of the denial of
sales and use tax deferral under RCW 82.61.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is a manufacturer
It applied for a sales and use tax deferral for the
construction of a planned Washington facility in October,
1988. That application was denied by the Department of
Revenue and the taxpayer petitions for a reversal of that
decision.

The taxpayer described the construction in its application as
follows:

Recently . . . vacated a 21,000 square foot building at the This building, now vacant, after extensive modifications and additions will be suitable for our purposes. The modifications needed are as follows: 1) New concrete floor. 2) Install gas heating units. 3) Install extensive electrical & plumbing. 4) Add truck loading ramp. 5) Add rail box car unloading platform. 6) Extend existing rail line. 7) Add shop and storeroom. 8) Add about 1000 feet of cyclone fencing. 9) Add a new access to the property. The new construction will be the addition of a 2000 square foot office/laboratory building.

The taxpayer believes that because of the extensive site work required to both the building and the existing property, its application is legitimate. It states that the total expenditure will be approximately \$2,000,000; that the new building will cost in excess of \$100,000; that in addition to the work listed above, "approximately 80 pilings will have to be driven to support the foundation for a new tank farm. These pilings plus the associated engineering fees will cost approximately \$200,000."

DISCUSSION:

Chapter 82.61 RCW was originally passed in 1985. The legislation was requested by the governor to provide for sales tax deferral on the construction of new plant and equipment utilized for manufacturing and research and development purposes. The bill, as enacted, provided a sales and use tax deferral for eligible investment projects. The bill has been extended, so that it currently allows application for the deferral through June 30, 1994. Eligible investment project is defined in relevant part, as

(a) Construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities. . . .

(b) Acquisition. . . of new machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure: Provided, That the lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the

buildings, machinery, and equipment vests
exclusively in the same person. . .

RCW 82.61.010(4).

WAC 458-20-24002 (Rule 24002) is the Department's duly
authorized administrative rule implementing the deferral. It
provides, in relevant part:

(6) "Eligible investment project" means
construction of new buildings and the acquisition of
new related machinery and equipment when the
buildings, machinery, and equipment are to be used
for either manufacturing or research and
development, which construction is commenced prior
to December 31, 1994. . .

(9) "Buildings" means only those new structures
used for either manufacturing or research and
development activities, including plant offices and
warehouses or other facilities for the storage of
raw material or finished goods if such facilities
are an essential or integral part of a factory,
mill, plant, or laboratory used for manufacturing or
research and development purposes. If a building is
used partly for manufacturing or research and
development purposes and partly for other purposes,
the applicable tax deferral shall be determined by
the apportionment of the costs of construction under
this section.

(18) "Investment project" means an investment in
qualified buildings and qualified machinery and
equipment, including labor and services rendered in
the planning, installation, and construction of the
project. A person who does not build its own
building, but leases from a third party, is eligible
for sales and use tax deferral provided that an
investment in qualified machinery is made by such
person and a new structure used to house the
manufacturing activities is constructed. The
lessor/owner of the structure is not eligible for
deferral unless the underlying ownership of the
buildings, machinery, and equipment vests in the
same persons. An eligible investment project does
not include any project which or person who have
previously been the recipient of a tax deferral
under Washington law.

(Emphasis added.)

Taxpayer's petition was denied because it is not building a new building, but modifying an old one. Under the statute and rule, taxpayer can be eligible if it builds a new building or if it leases a new building, and puts new machinery and equipment into it. Taxpayer is performing extensive modifications to an existing building. It is also building a new structure to house its office.

The language of the statute and rule are clear. They require the construction of a new building. There is no provision in the law for modifying an existing building, regardless of the extent of the modifications. Thus taxpayer cannot be granted a deferral for the modifications to the existing structure.

However, since taxpayer is building a new building to house its offices, if taxpayer can show that the office is an essential or integral part of its facility, then that part of the costs that are attributable to the construction of the office building shall be eligible for the tax deferral.

DECISION AND DISPOSITION:

Taxpayer's petition is granted in part and denied in part. Taxpayer may apply for a sales and use tax deferral for the construction of the new office building. The modifications to the existing structure do not qualify for the deferral.

DATED this 24th day of March 1989.