

This WTD is withdrawn effective 01/17/2003 and is no longer in effect. See ETA 2011.32.

Cite as 7 WTD 125 (1989)

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       Assessment                   of                    )  
  )                   No. 89-38  
  )  
  ) Registration No.       . . .  
  )       . . . /Audit No.       . . .  
  )

- [1] **RCW 82.04.260(7):** B&O TAX -- PROCESSING OF PERISHABLE MEAT PRODUCTS. Persons who do not engage in the actual slaughter but who are engaged in the business of rendering meat carcasses into hides, tallow, meat meal and other byproducts are processing perishable meat products and are taxable under the lower manufacturing B&O tax classification.

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 CONFERENCE: January 9, 1989

NATURE OF ACTION:

Taxpayer petitions for correction of assessment following reclassification of its income from the special B&O tax classification for meat processors to the higher manufacturing classification.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is engaged in business as a rendering plant. In the course of its operations, it obtains carcasses from slaughterhouses and manufactures meat byproducts from them, including hides, tallow, meat meal. Taxpayer's representative

explained that the carcasses are obtained quickly after slaughter and after the edible meat is removed from them; taxpayer then puts the carcasses in a "cooker," a processor for separating tallow and the meat meal. The tallow is processed from the offal and is generally used in soap. The meat meal is dehydrated from bones and other parts of the animal and is used in animal feed. Taxpayer additionally renders into yellow grease products not useable or not of a suitable quality for manufacture into tallow and meat meal.

In the audit, covering the period from January 1, 1984, through December 31, 1987, taxpayer was informed that it had not properly reported the income from its activities and that it did not qualify for the lower meat-processing classification. The audit supervisor clarified the auditor's position in a subsequent letter and noted that the limited number of taxpayers involved in this activity and the lack of legislative material on the law itself effectively forced his letter to be based on his own personal consideration of the issue. The letter stated that the supervisor believed the statute was enacted to protect that part of the industry dealing with fresh meat products intended for human consumption and noted that those manufacturers go to great lengths to refrigerate meat and protect it from spoilage. Conversely, this taxpayer uses extreme heat and no refrigeration in its manufacturing process, noting that there is apparently no effort by the taxpayer to preserve the freshness of the product; as such, it could not be considered perishable.

Subsequently, taxpayer's representative met with the regional audit supervisor, who stated his opinion that the slaughtering and processing of the meat occurred before taxpayer received the carcass, and that taxpayer's activities were simply manufacturing, not a part of the initial processing of the carcass.

Taxpayer argues that if the auditors are relying on a finding that its operation does not perform the actual slaughtering procedure and thus does not qualify as a meat processor, such an interpretation is in contravention of the plain language of the statute, which says that

Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of thirty-three one-hundredths of one percent. (Emphasis theirs.)

Further, if the audit position is that taxpayer's products are not considered "perishable," the department has taken the public position that its products do qualify for the lower tax classification. Taxpayer supplied a copy of Excise Tax Bulletin

(ETB) 403.04.135, which is quoted at length below:

The taxpayer objected to a reclassification from the Slaughtering, Breaking and/or Processing Perishable Meat Products to the Wholesaling classification of the business tax. He asserted that the legislature did not intend to distinguish between edible and nonedible portion of animals under RCW 82.04.260(8) [now RCW 82.04.260(7)]. He stresses that in the case of beef cattle, the "total steer" is processed and that hides, tallow, and meat meal are just as important to the industry profitwise as steaks.

The department sustained the taxpayer's appeal and ruled that the processing of such meat by-products as hides, tallow, and meat meal falls within the Slaughtering, Breaking and/or Processing Perishable Meat Products classification. . . .

The department found no distinction between processing edible and nonedible perishable meat products concomitant to slaughtering. At the outset one live animal is slaughtered and very nearly all of that animal is resold in processed form. (Emphasis supplied.)

#### DISCUSSION:

[1] The statute in issue here states, in pertinent part, that the lower manufacturing B&O tax rate applies to

every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale. . . .  
(Emphasis supplied.)

The words of a statute, unless otherwise defined, should be given their usual and ordinary, everyday meaning. Strenge v. Clarke, 89 Wn.2d 23, 29, 569 P.2d 60 (1977).

Clearly the use of the conjunction "or" in the statute provides alternatives for the tax classification. Just as clearly, the statute does not require that those processing perishable meat perform the actual slaughtering process to obtain the carcasses. We agree with the taxpayer's comment that it is the manufacturing activities which qualify for this tax treatment, not merely the slaughtering activity and that any other reading of the statute would have the result of giving a slaughterhouse which also performed rendering activities a preferential tax rate not enjoyed by a business solely engaged in rendering. Additionally, persons who only process meat products without slaughtering the animals

themselves would not receive the same tax treatment as would slaughterhouse/processors. Because we find that the words of the statute are clear and unambiguous, we are without authority to find that the taxpayer must be engaged in slaughtering to receive the lower tax rate for its rendering activities.

Taxpayer was also informed that its products are not considered "perishable," largely because refrigeration is not used in its process. At the hearing, taxpayer's representative noted that the size and volume of the carcasses involved in its operation make refrigeration economically and spatially unfeasible but that the process is conducted within strict time frames to reduce the risk of spoilage of the carcasses. The representative stated that the carcasses are picked up within a short time after the slaughter and removal of the edible meat portions and put directly into the cooker to begin processing; such an approach is used mainly because of the relative unavailability of refrigeration.

We find, however, that the department has publicly spoken on this issue. In ETB 403.04.135, the department unequivocally stated that the "processing of such meat byproducts as hides, tallow, and meat meal falls within the Slaughtering, Breaking and/or processing Perishable Meat Products classification." Thus, taxpayer's products fall squarely within the ETB's listing of perishable meat byproducts.

Taxpayer believed that the regional audit supervisor's opinion that the taxpayer must engage in the slaughtering of the animal to be taxable at the lower rate was based, in part, on the following language from ETB 403:

[t]he department found no distinction between processing edible and nonedible perishable meat products concomitant to slaughtering. (Emphasis supplied.)

An Excise Tax Bulletin is intended to explain or clarify the law, often using a real case to illustrate application of the law. As stated previously, the words of a statute, unless otherwise defined, should be given their usual and ordinary, everyday meaning. Webster's II New World Dictionary (1984) defines concomitant as things which occur together or "in connection with one another." Because the statute is clear on its face, the bulletin cannot be read to impose a standard greater than that present in the law itself. Consequently, the words "concomitant to slaughtering" must be read as surplus language meaning that there is no distinction between processing edible and nonedible perishable meat products in connection with the slaughtering of an animal by the processor or another person.

DECISION AND DISPOSITION:

Taxpayer's petition is granted with regard to the issue of reclassification of its income from slaughtering to the higher manufacturing B&O tax rate. Two other issues raised for purposes of preserving the right to appeal were settled between the taxpayer and the Audit Division. The portion of the assessment relating to

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the rendering issue is cancelled and an amended assessment, if necessary, will be issued.

DATED this 19th day of January 1989.