

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. 88-444
)
)
 . . .) Registration No. . . .
) Tax Assessment No. . . .
)

RULE 115 and RULE 182: B&O TAX -- COLD STORAGE WAREHOUSING -- CUSTOM OR COMMERCIAL PACKING -- PACKING OF FISH. The activity of placing fish into standard sized boxes is subject to business and occupation tax under the cold storage warehousing classification when performed by the operator of the cold storage warehouse where the fish have been stored. It is not custom or commercial packing because it is within the activity of operating a cold storage warehouse.

RULE 115: USE TAX -- PACKING MATERIALS -- PACKING OF FISH BY PERSONS OPERATING COLD STORAGE WAREHOUSES. Persons operating cold storage warehouses under the facts described in this case are not liable for use tax on their use of packing materials in which customers' fish are placed prior to withdrawal from storage. Such persons are in the same position as processors for hire.

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: April 24, 1986

NATURE OF ACTION:

The taxpayer petitioned for a correction of an assessment issued as the result of a routine audit.

FACTS AND ISSUES:

Potegal, A.L.J. -- During the audit period the taxpayer operated a cold storage warehouse. Customers stored fish in the taxpayer's facility. The taxpayer handled, sorted, and graded the fish. When customers found buyers for the fish, the taxpayer would be directed to pack the fish either into customer-provided boxes or into standard sized boxes which the taxpayer provided. The taxpayer itemized its billings to customers as to the various services provided, including packing.

The taxpayer reported income from packing under the cold storage warehousing classification of the business and occupation tax. The taxpayer paid neither sales nor use tax on the boxes and other materials used in this activity. The audit staff took the position that this income was taxable under the service and other activities classification of the business and occupation tax because it was in the nature of income from custom and commercial packing. The audit staff also took the position that the taxpayer was the consumer of the boxes and other materials and liable for use tax on their value.

The taxpayer contends that its packing activities are inseparable from its cold storage warehousing business and should be taxed under that classification. The taxpayer also contends that it is not liable for sales or use tax on those boxes in which the fish leave its facility. These boxes are sold by its customers along with the fish they contain. In essence the boxes are purchased for resale by the taxpayer's customers.

DISCUSSION:

RCW 82.04.280 imposes the business and occupation tax:

Upon every person engaging within this state in the business of: . . . (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers;

. . .

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

There is no question that the taxpayer is in the business of operating a cold storage warehouse. The question is whether its packing activities are a part of that business. If they are, the income attributable to packing is taxable under the cold storage warehousing classification. If not, the income is taxable under the service and other activities classification.

Neither the statute nor any rule of the department explain what is meant by "operating" a cold storage warehouse. Nor does any reported case discuss what "operating" means within the context of RCW 82.04.280(4). Where a statute does not define certain words therein, they must be accepted in their ordinary and everyday meaning. Herring Magic v. U.S., 258 F.2d 197 (C.A. Wash., 1958). Resort may be had to dictionaries to ascertain the common meaning of statutory language. Garrison v. Washington State Nursing Bd., 87 Wn.2d 803 (1976).

The American Heritage Dictionary defines "operate" to mean, "to conduct the affairs of; manage: operate a business." Removing goods from storage in quantities and containers specified by the customer who placed the goods into storage is conducting the affairs of a storage business. A person placing something into storage certainly contemplates getting that item out of storage.

In this case, the taxpayer's customers put fish "loose" (in large quantities, in large containers) into storage and, when buyers are found, direct the taxpayer to remove fish from storage in standard size boxes. The taxpayer represented that this was the custom of the cold storage warehouse business with respect to fish and that cold storage warehouse operators were the only persons who could perform this activity. In our opinion, the taxpayer's packing activity is properly taxable under the cold storage warehousing classification because it is within the operation of a cold storage warehouse. In coming to this conclusion, we are guided by the principle that doubts in a taxing statute are resolved in favor of the taxpayer and against the taxing body. Vita Food Products v.

State, 91 Wn.2d 132, 587 P.2d 535 (1978). To whatever extent the meaning of "operating a cold storage warehouse" is ambiguous as applied to the facts of this case, we resolve that ambiguity in the taxpayer's favor.

Both the audit staff and the taxpayer rely on WAC 458-20-115 to support their respective positions with respect to use tax on the boxes and other materials used in the packing activity described above. The audit staff quoted this language from the rule:

Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are subject to the retail sales tax. [Use tax would therefore apply if sales tax was not paid.]

Bracketed language ours.

As discussed above, however, the taxpayer is not in the business of custom or commercial packing. Therefore, the quoted language is inapplicable.

The taxpayer cited these words from WAC 458-20-115:

Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and are not subject to the retail sales tax if title thereto passes with the goods contained therein. [Nor would use tax apply.]

Bracketed language ours.

This language does not apply to the facts of this case. The taxpayer is not selling the tangible personal property which is contained in the packing materials.

There is no rule which specifically covers the question of the applicability of use tax to the use of packing materials by operators of cold storage warehouses. However, under the unique facts of this case, we believe that the taxpayer is in the same position as a person taxable as a processor for hire and subject to tax in the same manner.

The department of revenue has long taken the position that packing materials are not subject to tax when a manufacturer or processor for hire delivers these items, along with a

product, to customers and no substantial non-manufacturing use has taken place. See, for example, ETB 340.08.115,

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 22nd day of November 1988.