

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 B&O Tax Credit and             )  
Sales/Use Tax Deferral of         )  
  )                     No. 89-265  
  )  
  )             Registration No.     . . .  
  )  
  )

- [1] RULE 24001:     SALES AND USE TAX DEFERRAL --  
APPLICATION BEFORE CONSTRUCTION.     RCW 82.62.030  
requires that applicants for sales/use tax deferrals  
apply for the program before construction begins.  
Taxpayers who apply after construction is finished  
are not eligible for the program.
- [2] RULE 24001:     SALES AND USE TAX DEFERRAL -- EQUIPMENT  
INSTALLATION -- LEASED BUILDINGS.     The sales and use  
tax deferral for equipment and machinery is  
available only to applicants who install the  
equipment in a new leased facility.     A renovated  
leased facility does not qualify for the deferral  
under the plain language of the statute.
- [3] RULE 240:     B&O TAX CREDITS -- NEW HIRING OF  
EMPLOYEES -- APPLICATION.     Application for the B&O  
tax credit for hiring new employees must be made  
before hiring begins in order to take the credit.  
Applications cannot be made retroactively.

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 protests the denial of sales and use tax deferral and B&O tax credit on its new plant.

#### FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is located in . . . , a distressed area. The company is a research and development company developing high tech systems . . . . The company has been headquartered in . . . for many years, but it has offices in other states and countries. The company is in a very volatile industry and has recently been going through a rapid boom.

The company determined to build a development, testing and manufacturing center . . . . The company was aware of the B&O tax credit program for new employees, and the sales/use tax deferral program for distressed areas. The company intended to take advantage of these programs, but failed to apply for them. The company notified the [then] current Executive Director of the . . . Economic Development [Council], in September 1988, that they were ready to start taking the B&O tax credits. The Director called the Department of Revenue and spoke to an excise tax examiner, who explained that the applications had to be filed with the state before construction and hiring began.

The building that the taxpayer is using is leased to it by a trust account. The renovations began in April 1988 and were completed in November 1988. It is not a new building. The company also hired more than 100 new employees in 1988. The taxpayer argues that the applications should be approved, even though they were not timely filed because they relied on a former Executive Director of the Economic Development Council who, in a sense, "was representing the state"; that they intended to take advantage of the programs; that the company is important to [in the area]; and that the state should be encouraging the location of these types of businesses in distressed areas. Taxpayer met with several Departmental staff members in January 1989 to discuss the situation, and as a result of that meeting, filed an application for 1989 B&O tax credits which was approved, and 1988 and 1989 use/sales tax deferrals, which were denied.

#### DISCUSSION:

[1], [2] RCW 82.60 is the chapter regarding the sales/use tax deferral program. RCW 82.60.030 states, in part,

Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [Emphasis Added.]

RCW 82.32.020 defines the term "eligible investment project." It states, in part, as follows:

(4)(a) "Eligible investment project" means that portion of an investment project which:

(i) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(ii) Either initiates a new operation, or expands or diversifies a current operation by expanding or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement; or

(iii) Acquires 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.

(5) "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.

(8) "Qualified buildings" means new structures used for manufacturing and 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 an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(10) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

Under the plain language of the statute, in order to qualify for the sales/use tax deferral, the applicant must apply for the deferral before construction has begun. In this case, the application was received after the renovations were finished. Further, the statute specifies that an eligible investment project must be housed in a new leased structure--the structure in this case is an existing structure that was extensively renovated. While we are aware of the legislative intent of the statutes, it is not within the authority of the Department to disregard the plain language of the statutes and grant relief in this case.

[3] The B&O tax credit program is governed by chapter 82.62 RCW. RCW 82.62.020 contains the requirements for an application for the credits. It provides as follows:

Application for tax credits under this chapter must be made before the actual hiring of qualified employment positions. The application shall be made to the department in a form and manner prescribed by the department. [Emphasis Added.]

Taxpayer has not actually applied in writing for the 1988 tax credits. Taxpayer apparently is taking its January 1989

meeting with Department staff as application. In any event, taxpayer did not apply for the credits for the positions it filed until after the hiring had been made. Again, the Department of Revenue is without authority to disregard the plain language of the law and grant relief in this case.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 24th day of May 1989.