Cite as Det. No. 00-187, 20 WTD 272 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 00-187
	)	
. . .	)	Registration No. . . .

RULE 13601; RCW 82.08.02565, RCW 82.04.120: RETAIL SALES TAX – M&E TAX EXEMPTION – CONDITIONING OF SEED. An agricultural business is not entitled to a refund of sales tax it paid for the purchase, installation, and repair of machinery and equipment it uses to condition seed for planting because conditioning of seed for use in planting is not a manufacturing activity.

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:

An agricultural business seeks a refund of retail sales tax it paid on the purchase of equipment used in the conditioning of seed for planting.[1]

FACTS:

De Luca, A.L.J. -- The taxpayer is in the agriculture business. Among its activities, the taxpayer operates grain elevators and seed plants where it conditions seeds for use in planting. In short, the process of conditioning seed converts wheat grain from use for milling and baking to a use for seeds for planting. From June 30, 1998 to April 30, 1999, the taxpayer paid retail sales tax for the purchase, installation, and repair of equipment used in the conditioning of seeds. The taxpayer filed a refund request pursuant to RCW 82.08.02565 with the Taxpayer Account Administration Division (TAA) of the Department of Revenue (the Department) for the sales tax the taxpayer paid on that equipment during that time.

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

In an October 26, 1999 letter, TAA denied the refund claim by first noting RCW 82.08.02565 (providing a sales tax exemption for sales of machinery and equipment (M&E) used in manufacturing, *infra*) did not specifically include the "conditioning of seeds" as a manufacturing activity. TAA continued by noting the Legislature passed House Bill 2295 (HB2295) in 1999, which declared the term "'To manufacture' shall not include: conditioning of seed for use in planting . . . ." among other exclusions. TAA concluded that with the Legislature's "clarification" that conditioning of seed is not manufacturing and the taxpayer was not entitled to the refund. HB 2295 became law on June 7, 1999, *infra.*

TAXPAYER'S EXCEPTIONS:

The taxpayer argues the definition of "to manufacture" under RCW 82.08.02565 was unclear at the time it purchased the equipment in question and paid the sales tax. The taxpayer contends the clarification to the definition of "to manufacture" made by HB 2295 should be applied on a prospective basis since it conflicts with prior case law. Specifically, the taxpayer asserts RCW 82.08.02565 does not define "manufacturer." The statute also does not refer to any other statutory section for a definition of "manufacturer." The statute only defines "manufacturing operation." Because RCW 82.08.02565 does not define manufacturer, the taxpayer believes it is necessary to consult other sections of the Revised Code of Washington to find other definitions of the term. The taxpayer observes the term "to manufacture" is defined in both RCW 82.60.020 and RCW 82.04.120. However, the taxpayer believes prior to enactment of HB 2295 on June 7, 1999 there was an inconsistency between the two definitions, and HB2295 amended RCW 82.60.020's definition on that date to be consistent with RCW 82.04.120. In short, the taxpayer argues the prior definition of manufacturing in RCW 82.60.020 did not have any language excluding the condition of seed. By contrast, the taxpayer acknowledges RCW 82.04.120, prior to enactment of HB 2295, did contain language excluding the conditioning of seed from the definition of manufacturing. Therefore, the taxpayer argues it was only with the enactment of HB 2295 that the excluding language for conditioning of seed was included in RCW 82.60.020 and the inconsistencies between the two definitions were cured.

The taxpayer asserts because RCW 82.04.120 is a business and occupation (B&O) tax statute its definition of manufacturing is not applicable to the present matter because we are concerned with sales tax. Instead, the taxpayer contends we should look to the definition of manufacturing in RCW 82.60.020 prior to June 7, 1999 because chapter 82.60 RCW concerns sales tax exemptions (in distressed areas). Thus, the taxpayer believes its activity of conditioning seed meets the definition of manufacturing that was contained in RCW 82.60.020 prior to June 7, 1999. The taxpayer explains the seeds underwent a significant change and became different and useful articles after the conditioning. The taxpayer cites *ALF Christianson Seed Co., Inc. v. Department of Rev.*, BTA Docket No. 28880 (1985) in support of its argument that conditioning of seed is manufacturing. The taxpayer also cites several Washington Supreme Court decisions concerning the issue of manufacturing for various activities other than conditioning of seed. In general, those cases declared the various activities they addressed were manufacturing because new, different, or useful substances were created.

The taxpayer cites Det. No. 98-193, 18 WTD 338 (1998) for explaining that generally amendatory legislative acts apply prospectively only while clarifying legislative acts are presumed to be retroactive. The taxpayer and [Det. No. 98-193] both quote *Marine Power and Equip. Co. v. The Human Rts. Comm.*, 39 Wa.App. 609, 615, 694 P.2d 697 (1985) for holding that under Washington law a new legislative enactment is presumed to be an amendment rather than a clarification of existing law. This presumption may be rebutted if circumstances indicate the Legislature intended to clarify an existing statute. An indication of legislative intent to either clarify or amend is the existence or nonexistence of ambiguities in the original act. In general legislative enactments change unambiguous statutes and legislative clarifications interpret ambiguous statutes. From these holdings, the taxpayer contends if legislation clarifies ambiguities in existing law, but conflicts with published case law, then the legislative clarification should be applied prospectively only.

The taxpayer recognizes the legislature expressed its intent that HB 2295 was a clarifying statute and applied both retroactively and prospectively. Nonetheless, the taxpayer claims the law conflicts with *Alf Christianson, supra,* and should be applied only on a prospective basis, i.e. after June 7, 1999.

ISSUE:

Is the taxpayer entitled to a refund of sales tax it paid for the purchase, installation, and repair of machinery and equipment it uses to condition seed for planting?

DISCUSSION:

The taxpayer is seeking a refund pursuant to RCW 82.08.02565, the M&E sales tax exemption. The taxpayer is not seeking a refund pursuant to RCW 82.60 (Tax Deferrals for Investment Projects in Distressed Areas), although the taxpayer is citing RCW 82.60 in support of its argument. Consequently, RCW 82.60 and HB 2295 are not pertinent to this discussion for the following reasons. The Final Bill Report for HB 2295 summarizes that the purpose of the bill was to exclude farming and the packing of agricultural products from the definition of manufacturing for excise tax purposes. The Final Bill Report declared "businesses packing agricultural products are no longer eligible for the distressed area tax incentive programs."[2] By contrast, we are not concerned in the present matter with packing agricultural products in a distressed area.

[2] HB 2295 was in response to *Valley Fruit v. Department of Rev.*, 92 Wn. App. 413, 963 P.2d 886 (1998), *rev. denied*, 137 Wn.2d 1017, 978 P.2d 1078 (1999). The Washington Court of Appeals ruled two fruit companies were entitled to the sales tax and use tax deferral/exemption per RCW 82.60 for constructing apple packing and storage facilities. The Court of Appeals concluded the process the fruit companies used in the rinsing, waxing, drying, and storing of apples in controlled atmospheres constituted manufacturing. Therefore, the Court of Appeals held the fruit companies qualified for the tax deferrals/exemptions provided for buildings in RCW 82.60.020(8) and machinery and equipment in RCW 82.60.020(9).

While HB 2295 amended the definition of "to manufacture" in RCW 82.04.120 to exclude the packing of agricultural products it also amended the definition of "manufacturing" in RCW 82.60.020(6) to be "the same as defined in RCW 82.04.120." HB 2295 specifically provides "this act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." Thus, even if RCW 82.60 were applicable to the present matter, we would use the definition of "manufacturing" in RCW 82.04.120 for both past and future periods.

We note the definition of manufacturing in RCW 82.04.120 has excluded the act of "conditioning of seed for use in planting" since 1987. We find it ironic that the taxpayer cites *Alf Christianson, supra*, as authority for the argument that conditioning seed is manufacturing. It's true the BTA in that case ruled that conditioning of seed was a manufacturing activity under RCW 82.04.120, but in 1985 RCW 82.04.120 did not expressly exclude the conditioning of seed from the definition of manufacturing. Because of that BTA decision, the Legislature prospectively amended RCW 82.04.120 in 1987 to expressly exclude conditioning of seed from the definition of manufacturing.

The background sections of both the Senate Bill Report and the House Bill Report for the 1987 amendment provide:

> The activities that qualify as manufacturing activities for the purpose of that tax are defined broadly. In 1985, the State Board of Tax Appeals upheld a determination by the department of revenue that conditioning of vegetable seeds be a seed company constituted "manufacturing" for B&O tax purposes.

A similar statement appears in the Final Bill Report. The Fiscal Note provided to the Legislature by the Department provided:

> This bill would exempt from manufacturing business and occupation tax the processing of seed that is sold out-of-state for use in planting. Such processing includes screening and cleaning of seeds.

House Bill 67, Chapter 493, Laws of 1987. Thus, since 1987 the definition of manufacturing in RCW 82.04.120 has excluded the conditioning of seed. Obviously, the Legislature acted to change the law as it was interpreted by the BTA. Such action by the Legislature is surely within its powers. The BTA in *Alf Christianson* quoted *McDonnell & McDonnell v. State*, 62 Wn.2d 553, 557, 383 P.2d 905 (1963), which stated "the definition in RCW 82.04.120 of the term manufacture and its tax scope is subject to legislative determination."

RCW 82.08.02565 provides the sales tax exemption for purchases of machinery and equipment by manufacturers or processors for hire when used directly in a manufacturing operation. RCW 82.12.02565 provides a comparable use tax exemption. The M&E tax exemption became effective July 1, 1995. The exemption has been subject to a number of legislative amendments in 1996, 1998 and 1999. In 1999, the original 1995 legislation was clarified retroactively by Engrossed Substitute House Bill 1887 (ESHB 1887), *infra*. *See* WAC 458-20-13601 (Rule

13601). As noted, RCW 82.08.02565 does not define "manufacturing." However, RCW 82.04.120 does define manufacturing as:

> "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimbing, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.
>
> "To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; or packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage.

Clearly, the conditioning of seed for use in planting is not and has not been a manufacturing activity for tax purposes under RCW 82.04.120 since 1987.

The Governor approved ESHB 1887 in May 1999, a month before he approved HB 2295. ESHB 1887 declares it was:

> AN ACT Relating to revising the machinery and equipment tax exemption by more precisely describing terminology and eligibility; amending RCW 82.04.120, 82.08.02565, 82.12.02565; creating new sections, providing an effective date; and declaring an emergency.

Section 1 of the act provides:

> The legislature finds that the application of the manufacturer's machinery and equipment sales and the tax exemption has, in some instances, been difficult and confusing for taxpayers, and included difficult reporting and recordkeeping requirements. In this act, it is the intent of the legislature to make clear its intent for the application of the exemption, and to extend the exemption to the purchase and use of machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire.

Section 2 of ESHB 1887 then amended the definition of "to manufacture" contained in RCW 82.04.120. Section 2 provided in part:

> "To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; (({-or-})) activities which consist of cutting, grading, or ice glazing seafood

> which has been cooked, frozen, or canned outside this state {+ ; or the growing, harvesting, or production of agricultural products +}.

Thus, in amending the statutes that are applicable to the M&E sales and use tax exemptions (RCW 82.04,120, RCW 82.08.02565, and RCW 82.12.02565), the Legislature continued to exclude the conditioning of seed for use in planting from the definition of manufacturing in RCW 82.04.120. The Legislature also added the growing, harvesting and production of agricultural products to the list of activities not considered manufacturing for tax purposes. Obviously, the Legislature, by enacting ESHB 1887, was using the definition of "to manufacture" in RCW 82.04.120 for purposes of applying the M&E tax exemptions in RCW 82.08.02565 and RCW 82.12.02565. Furthermore, we note Section 4 of ESHB 1887 declared:

> The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation.

This language overcomes any presumption that the enactment was an amendment that applied prospectively only. *Marine Power, supra.* We lack authority to disregard the legislatively imposed requirements of this statute. We cannot disregard the plain language of a statute. Det. No. 95-132ER 17 WTD 213, 218 (1998).

As noted, a month after approving ESHB 1887, the Governor approved HB 2295, which further amended the definition of manufacturing in RCW 82.04.120 by adding the following language to the list of activities not considered manufacturing:

> . . . or packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage.

However, HB 2295 retained "conditioning of seed for use in planting" as an activity not included in the current definition of manufacturing in RCW 82.04.120. Thus, the enactment of HB 2295 affected neither the M&E tax exemptions nor the exclusion of conditioning of seed from the definition of manufacturing.

Finally, Rule 13601 is the Department's rule it adopted to administer the M&E tax exemptions. The Department uses the definition of "to manufacture" in RCW 82.04.120 to help determine whether M&E tax exemptions in RCW 82.04.02565 and RCW 82.12.02565 apply. Specifically, Rule 13601(3)(e) and (f), respectively, provide that the definition of " 'manufacturer' has the same meaning as provided in chapter 82.04 RCW" and the definition of " 'manufacturing' has the same meaning as 'to manufacture' in chapter 82.04 RCW." In interpreting a statute, courts grant deference to the interpretation made by the agency charged with the statute's enforcement. *Impecoven v. Department of Rev.*, 120 Wn.2d 357, 841 P.2d 752 (1992*); Seattle Bldg. and Construction Trades Council v. Apprenticeship and Training Council*, 129 Wn.2d 787, 799, 920 P.2d 581, *cert. denied*, 117 S. Ct. 1693 (1996).

In sum, the taxpayer does not qualify for the M&E tax exemption for the following reasons. One, since 1987 RCW 82.04.120 has expressly excluded the conditioning of seed as a manufacturing activity. Two, the enactment of ESHB 1887 clarified retroactively the original 1995 M&E legislation by specifically amending RCW 82.04.120, RCW 82.08.02565 and RCW 82.12.02565, which showed the Legislature's intent to use the definition of manufacturing in RCW 82.04.120 for the M&E tax exemptions. Three, Rule 13601 defines "manufacturing" and "manufacturer" for the M&E tax exemptions as those terms are defined in RCW 82.04.120. Because the taxpayer does not engage in a manufacturing activity, it is not entitled to the M&E sales/use tax exemption.

DECISION AND DISPOSITION:

The taxpayer's refund petition is denied.

Dated this 31st day of October, 2000.