

Cite as Det. No. 00-138, 20 WTD 167 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 00-138
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .

- [1] RULE 13601; RCW 82.08.02565, RCW 82.12.02565: MANUFACTURING MACHINERY AND EQUIPMENT ("M&E") – EXEMPTIONS – WHERE MACHINERY AND EQUIPMENT ARE USED. Neither RCW 82.08.02565 nor 82.12.02565 requires that manufacturing machinery or equipment actually be used in Washington.
- [2] RULE 13601; RCW 82.08.02565, RCW 82.12.02565: MANUFACTURING MACHINERY AND EQUIPMENT ("M&E") – EXEMPTIONS – WHO IS A MANUFACTURER – PARTICULAR LOGGING OPERATIONS. A “manufacturer” includes a person who cuts, delimbs, or measures felled, cut, or taken trees.

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:

A corporation appeals a tax assessment of sales and use tax assessed on machinery and equipment it sold to customers¹

ISSUES:

1. Are the taxpayer’s sales of machinery and equipment to out-of-state customers who “will call” for the items at the taxpayer’s Washington location exempt from sales and use tax under RCW 82.08.02565?

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

2. Were the taxpayer's customers "manufacturers" as defined in RCW 82.04.110?

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BACKGROUND:

This appeal involves the manufacturing machinery and equipment ("M&E") exemption found in RCW 82.08.02565. The taxpayer is a corporation that manufactures and repairs logging equipment, including log yarders, loaders, and feller bunchers, both within and without the State of Washington. The Audit Division of the Department of Revenue (the Department) audited the taxpayer for the period January 1, 1994 through June 30, 1997. The Audit Division issued Tax Assessment No. FY. . . on October 14, 1998.

In schedule 6 of the audit, the Audit Division assessed retail sales tax on (1) sales of equipment, where the buyers took delivery at the taxpayer's Washington facility but the taxpayer failed to keep adequate records showing the buyers were nonresidents of Washington, and (2) labor portions of repairs performed in Washington for qualifying nonresidents, but the taxpayer did not charge retail sales tax on the labor portion of the repairs.

The taxpayer contacted its customers after the first audit and obtained manufacturer's sales and use tax exemption certificates from them for their purchases of logging equipment repair parts. The taxpayer contacted the Audit Division for adjustments to the assessment based on these tax exemption certificates and for adjustments to other parts of the audit.

The Audit Division denied the requested exemptions, concluding that Laws of Washington, 1st Sp. Sess., ch. 3, grants the tax exemptions to businesses that are either registered in Washington or using the machinery or equipment in Washington. The Audit Division found that none of the taxpayer's customers, who bought equipment at the taxpayer's Washington manufacturing site or had equipment repaired there, was registered with the Department; each lacked a Washington Unified Business Identifier number on the certificates. The Audit Division also found that none of taxpayer's customers (originally identified in schedule 6 of the first audit) actually used the equipment in Washington.

The Audit Division issued a post assessment adjustment (PAA) in Document No. FY. . . on April 21, 1999. The taxpayer appeals that portion of the PAA pertaining to the M&E tax exemption. The question of the adequacy of records of the nonresidency of its buyers, in the first audit and tax assessment, is not appealed here. That part of the first audit is explained here to provide the context in which the M&E issue arose.

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ANALYSIS:

[1] The first issue concerns the out-of-state customers who took delivery of equipment in Washington and for whom the Audit Division denied the taxpayer's requested exemption under RCW 82.08.02565.

RCW 82.08.02565 does not restrict the tax exemption to persons who are registered with the Department of Revenue or who use the machinery or equipment in Washington. WAC 458-20-13601 (Rule 13601), the Department's administrative rule for the tax exemptions in RCW 82.08.02565 (sales tax) and RCW 82.12.02565 (use tax) states:

To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the Washington definition of manufacturer.

Rule 13601(5).

Based on the actual language of RCW 82.08.02565 and Rule 13601(5), we conclude that there is no requirement that manufacturing machinery or equipment, for which the tax exemption is sought, actually be used in Washington.

[2] The next issue is whether the taxpayer's customers meet Washington's definition of "manufacturer." Rule 13601(3)(e) defines "manufacturer" incorporating by reference the definition of "manufacturer" in RCW 82.04.110. Rule 13601(3)(f) defines "manufacturing" incorporating by reference the definition of "to manufacture" in RCW 82.04.120. RCW 82.04.120 includes the 1999 statutory amendment clarifying that "to manufacture" includes the "cutting, delimbing, and measuring of felled, cut, or taken trees." "Manufacturer" is defined using the term "manufactures," requiring reference to the definition of "to manufacture" in RCW 82.04.120. Therefore, a "manufacturer" includes a person who cuts, delimbs, or measures felled, cut, or taken trees.

The taxpayer sold three kinds of equipment: log yarders, loaders, and feller bunchers. The Dictionary of Forestry (1998, Society of American Foresters) defines these terms as follows:

Log yarders: "*harvesting* a system of power-operated winches and a tower used to haul logs from a stump to a landing – *synonym*, mobile yarder.

Loaders: "*harvesting* a self-propelled machine with a grapple or tongs and a supporting structure designed to pick up and discharge trees or logs for the purpose of piling or loading – *note 1*. The loading operation may be swing-to-load, slide-to-load, or travel-to-load – *note 2*. A loader is known as a hydraulic loader or knuckleboom if it swings to load and has hydraulically activated boom members – *see* jammer, shovel."

Feller-buncher: “*harvesting* a harvesting machine that cuts a tree with a shear or saw and carries one or more cut trees in its hydraulically operated arms as it moves to cut the next tree – *note* a feller-buncher deposits small piles of cut trees on the ground to be picked up and transported by a grapple skidder, clam-bunk skidder, tree-length forwarder, or cable yarder but not by a regular forwarder.”

Based on these definitions, feller bunchers do not qualify for the M&E exemption because they are used to cut trees; that is an extraction activity, not manufacturing. It appears that log yarders and log loaders are used after the extraction activity has ended.² Therefore, if the taxpayer’s customers purchased these items for use as described above, it appears they would meet the Washington definition of “manufacturer” with regard to the log yarders and loaders. Based on the information provided by the taxpayer, however, we do not know whether these customers were manufacturers that qualify for the exemptions.

The exemption in RCW 82.08.02565 is not an exemption for specific types of machinery per se. RCW 82.08.02565; Rule 13601. Having answered the issues on appeal, we remand to the Audit Division to determine whether the taxpayer’s customers meet the Washington definition of “manufacturer,” and whether the logging equipment sold by the taxpayer to those customers identified in schedule 6 of the first audit satisfies the “useful life,” “direct use,” and “majority use” requirements of RCW 82.08.02565 and Rule 13601.

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DECISION AND DISPOSITION:

The taxpayer’s petition is remanded to the Audit Division for verification and/or adjustment that the taxpayer’s customers qualify as manufacturers and their use of log loaders and yarders qualifies under the “useful life,” “direct use,” and “majority use” requirements of RCW 82.08.02565 and Rule 13601.

Dated this 30th day of June, 2000.

² "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use . . . fells, cuts or takes timber, Christmas trees other than plantation Christmas trees. "Extractor" does not include . . . persons who fell, cut, or take plantation Christmas trees from the person's own land or from land in which the person has a present right of possession. RCW 82.04.100.