

Cite as Det. No. 01-102, 21 WTD 251 (2002)

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/Refund of	)	
	)	No. 01-102
	)	
...	)	Registration No. . . .
	)	Docket No. . . .
	)	FY . . . /Audit No. . . .
	)	
	)	
	)	

RULE 13601; RCW 82.08.02565: RETAIL SALES TAX--M&E EXEMPTION  
– CONCRETE MIXER TRUCKS – LEASES. Lessees of concrete mixer trucks  
must provide taxpayer/lessor with exemption certificates as prescribed in RCW  
82.08.02565(1) and Rule 13601(4)(a) in order for the taxpayer not to collect tax  
on the leases.

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 that leases concrete mixer trucks to other companies protests an assessment of retail  
sales tax on the lease payments.<sup>1</sup>

FACTS:

De Luca, A.L.J. -- A corporation (the taxpayer) leases concrete mixer trucks to companies in the  
concrete business. The lessees use the trucks to mix concrete and deliver it to their customers'  
construction sites. The taxpayer stopped charging and collecting sales tax on the truck leases  
following the enactment of RCW 82.08.02565, which became effective July 1, 1995. The statute  
exempts from retail sales tax the sales of manufacturing machinery and equipment. The statute is  
commonly referenced as the "M&E" statute.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The Department of Revenue (the Department) reviewed the taxpayer's books and records for the period January 1, 1992 through September 30, 1995 and assessed \$ . . . in retail sales tax and interest. Document No. FY . . . . The assessment resulted from the failure of the taxpayer to charge and collect retail sales tax on the leasing of its concrete mixer trucks. The Department decided that the concrete mixer truck leases did not qualify for the sales tax exemption allowed for the sales of manufacturing machinery and equipment.

#### TAXPAYER'S EXCEPTIONS:

The taxpayer argues that it meets the sales tax exemption provided in RCW 82.08.02565 for its leases of concrete mixer trucks. The taxpayer claims it was leasing the concrete mixer trucks at retail to companies that manufacture concrete in them.

#### ISSUE:

Do the taxpayer's leases of concrete mixer trucks qualify for the retail sales tax exemption provided in RCW 82.08.02565 as sales of manufacturing machinery and equipment?

#### DISCUSSION:

Following the hearing, the Appeals Division placed this matter on hold status pending the Department's adoption of a rule to administer the M&E statute. In 2000, the Department adopted WAC 458-20-13601 (Rule 13601) for that purpose, effective 6/17/2000. Rule 13601(10) provides the Department's position as to concrete mixer trucks:

##### **(10) The majority use threshold.**

Machinery and equipment both used directly in a qualifying operation and used in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: . . . the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than fifty percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the requirement is satisfied.

. . .

(c) Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used.

However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck in order to support the exemption. (Underlining ours.)

Rule 13601 provides that sales of concrete mixer trucks to a manufacturer or processor for hire qualify for the M&E exemption except in limited instances where it is apparent that the use of the truck is atypical for the industry.<sup>2</sup> Only then would the user be required to provide record keeping on the use of the trucks to qualify for the exemption. In this instance, however, the taxpayer is not using the concrete mixer trucks itself, but is leasing the trucks to third parties for their use. In such a situation, the lessees must provide the taxpayer with an exemption certificate as prescribed in RCW 82.08.02565(1) and Rule 13601(4)(a) in order for the taxpayer not to collect sales tax on the leases.

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#### DECISION AND DISPOSITION:

The taxpayer's petition is granted to the extent it can provide the Audit Division with exemption certificates in accordance with Rule 13601. We remand this matter to the Audit Division.

Dated this 18<sup>th</sup> day of July, 2001.

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<sup>2</sup> "Sale at retail" or "retail sale" includes the renting or leasing of tangible personal property to consumers. RCW 82.04.050(4).