Cite as Det. No. 01-130R, 23 WTD 1 (2004)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 01-130R
. . .	)	Registration No. . . .
	)	FY . . . /Audit No. . . .
	)	Docket No. . . .

RULE 13601; RCW 82.08.02565: RETAIL SALES TAX – MANUFACTURING MACHINERY AND EQUIPMENT ("M&E") EXEMPTION – MANUFACTURING OPERATION – MANUFACTURING SITE -- PEA COMBINE – MANUFACTURING VERSUS HARVESTING. Where pea combines are used in farmers' fields to strip pea pods from vines and to de-pod peas, the pea combines are used in a harvesting activity, not a manufacturing activity. Although harvesting activities may change the form of products and enhance their value, this does not convert a harvesting activity to a manufacturing activity. Accordingly, the farmers' fields do not qualify as manufacturing sites, and the combines are not used in a manufacturing operation and do not qualify for the M&E exemption.

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.

STATEMENT OF THE CASE:

C. Pree, A.L.J. -- Manufacturer of frozen peas petitions for reconsideration of Det. No. 01-130, in which we upheld the Audit Division's disallowance of the taxpayer's claimed Manufacturing Machinery and Equipment ("M&E") retail sales tax exemption for combines that cut pea pods from vines and de-pod peas. We conclude that the combines do not qualify for the M&E exemption and affirm our prior holding.[1]

ISSUE:

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

Does a frozen pea manufacturer's purchase of combines that cut pea pods from vines and de-pod peas qualify for the M&E exemption?

FINDINGS OF FACT:

In its petition for reconsideration, the taxpayer acknowledges that our original determination "adequately" addresses the facts. Accordingly, our statement of facts from the original determination is summarized below.

The taxpayer's records were reviewed by the Audit Division of the Department of Revenue for the period of January 1, 1996, through March 31, 2000. The taxpayer protests the Audit Division's disallowance of its claimed M&E exemption and assessment of deferred retail sales tax on its purchase of two combines in 1999.

The taxpayer purchases peas on the vine in the field from farmers. The combines are then trucked to the fields. The combines strip pea pods from the vines and remove peas from their pods. The peas are then loaded into trucks and sent to the taxpayer's plant where they are washed, cleaned, and flash frozen. The taxpayer stores the peas in totes until it receives an order from a customer. When the taxpayer receives an order from a customer, the taxpayer packages the peas according to the customer's specifications.

ANALYSIS:

The retail sales tax M&E exemption applies to sales of machinery and equipment to a manufacturer where such machinery and equipment is used directly in a manufacturing operation. RCW 82.08.02565. In Det. No. 01-130, we concluded that the combines did not qualify for exemption because they were not used in a "manufacturing operation."

RCW 82.08.02565(2)(d) defines a "manufacturing operation" as "the manufacturing of articles, substances, or commodities for sale as tangible personal property," which "begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site."

The taxpayer's plant, where it washes, cleans, and freezes the peas, qualifies as a manufacturing site, because "preparing, packaging and freezing of fresh . . . vegetables" qualifies as manufacturing. *See* WAC 458-20-136 (Rule 136). The issue is whether the farmer's fields, where the combines are used to strip the pea pods from the vines and to remove the peas from their pods, also qualify as manufacturing sites. [2] To answer this question, we must determine whether the activities of stripping pea pods from vines and de-podding peas qualify as manufacturing or are

[2] ETA 2012-6S.08.12.13601, issued March 31, 2003, provides: "A site is one or more immediately adjacent parcels of real property." There is no indication that the farmers' fields and the taxpayer's plants are adjacent. Accordingly, we will not address this ETA further.

merely harvesting activities, which are excluded from the definition of manufacturing. *See* RCW 82.04.120.

As we explained in our original determination, "harvest" is not statutorily defined, but is defined in the dictionary as "to gather in (a crop)." *Webster's Third New International Dictionary (Unabridged),* p. 1036.[3] The combines are used in a harvesting activity because the combines strip the pea pods from the pea vines, which is "gather[ing] in (a crop.)" However, we must determine whether taking peas from pods, after the pea pods are stripped from the vines, qualifies as a "manufacturing" activity or is simply part of the harvesting activity.

In its petition for reconsideration, the taxpayer draws our attention to *McDonnell & McDonnell v. State,* 62 Wn.2d 553, 383 P.2d 905 (1963), which we cited in our original determination and in which the court held that splitting peas is a manufacturing activity. The court reasoned:

> [T]he end product--that is, the product or substance as it is released or sold by the one performing the process--must be compared with the substance initially received by that processor. In making the comparison, consideration should be given to the following factors: among others, changes in form, quality, properties (such changes may be chemical, physical, and/or functional in nature), enhancement in value, the extent and the kind of processing involved, differences in demand, et cetera, which may be indicative of the existence of a "new, different, or useful substance."

In our original determination, we concluded that the de-podding activity resulted in a change in form, quality, and physical properties of the peas, and the de-podded peas may have been enhanced in value. On reconsideration, the taxpayer argues;

> This concession is fatal to the Department's erroneous conclusion that the combines do not qualify as M&E. In fact <u>any equipment</u> that changes the form, quality, physical properties or value of tangible personal property is <u>by definition</u> manufacturing machinery and equipment.

(Emphasis original.) We disagree. As we noted in our original determination, harvesting activities may change the form of products and enhance their value, but this does not convert a harvesting activity to a manufacturing activity. As an example in our original determination we noted that baling hay makes the hay more valuable and changes its form, but baling is nonetheless considered to be part of the harvesting activity and not manufacturing. *See* WAC 458-20-209 (Rule 209); RCW 82.04.120. The taxpayer argues that our comparison to baling hay "is not determinative" because:

> the inquiry is <u>not</u> whether the activity engaged in by the taxpayer (here depodding peas) is similar to baling hay . . . but whether the combines begin a process which results in a change

[3] Absent a contrary definition in a statute, words are given their ordinary and common meaning, which can be found in dictionaries. *John H. Sellen Constr. Co. v. Department of Rev.,* 87 Wn.2d 878, 558 P.2d 1342 (1976).

> of form, quality, property, enhancement in value, or other factors such that at the end of the process a new, different or more useful article of tangible personal property for sale results.

(Emphasis original.) The taxpayer misconstrues our analysis. We simply used baling hay as an example of another activity that changes the form of a product and enhances its value, but is not manufacturing. Thus, while an activity must change the form, enhance the value, or result in other changes as indicated in *McDonnell* in order to be considered manufacturing, this does not mean that any activity which changes form and enhances value will be considered manufacturing.

The taxpayer further argues:

> [I]f the Department finds it instructive to compare commercial agricultural activities, it should compare splitting peas to depodding peas. As noted above, the McDonnell case already holds that splitting peas is a manufacturing activity. There is no question that all equipment related to the pea splitting activity is exempt M&E.

(Footnote omitted.) We agree that because both *McDonnell* and the taxpayer deal with the same agricultural product the *McDonnell* case may initially appear more comparable to the taxpayer's business than baling hay, which clearly involves a different agricultural product. However, the *McDonnell* case is readily distinguishable because all of the processes at issue in *McDonnell* occurred after harvest. Specifically, McDonnell purchased raw, dried peas. 62 Wn.2d at 554. In contrast, the taxpayer purchases peas that are still on the vine in the field. When McDonnell began its manufacturing process, the peas had already been harvested, de-vined, and removed from the pods. These are precisely and the only activities performed by the taxpayer's combines. As noted above, these activities are harvesting activities, not manufacturing activities.

Finally, the taxpayer argues, "[T]he machinery in question is typically used and located at a manufacturing plant with all of the other processing equipment, and there is no question that when this same machinery is utilized at such location, it is considered manufacturing machinery and equipment." However, we note that the combines at issue begin their process with the peas on vines while the vines are standing in the farmers' fields. This is a harvesting activity that simply cannot be performed at a manufacturing plant.

Because the combines are used for a harvesting activity, and not a manufacturing activity, the fields in which the combines are used do not qualify as manufacturing sites. Because the fields do not qualify as manufacturing sites, the combines are not used in a manufacturing operation and do not qualify for the M&E exemption. Accordingly, we must deny the taxpayer's petition for reconsideration.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 22nd day of May 2003.