

Cite as 1 WTD 199 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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 Correction of Assessment of)
) No. 86-258
)
) Registration No. . . .
) Tax Assessment No. . . .
)

FISH TAX - RCW 82.27.030 -- FROZEN FISH -- EXEMPTION --
PREVIOUSLY LANDED OUTSIDE THE STATE. Where a taxpayer
acquired frozen fish on docks in Alaska and fish tax had been
paid on the fish to the State of Alaska, the taxpayer was
entitled to the exemption of RCW 82.27.030 for fish previously
landed outside the state shipped into the state as frozen food
fish.

These 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.

TAXPAYER REPRESENTED BY: . . .
 : : :
 . . .

DATE OF HEARING: June 18, 1986

NATURE OF ACTION

The taxpayer petitions for a correction of an assessment
issued after an audit for fish tax purposes.

FACTS AND ISSUES

Gregory I. Potegal, Administrative Law Judge -- The taxpayer's
records were audited for fish tax (Chapter 82.27 RCW) purposes

for the period from January 1, 1981 through December 31, 1982. Additional tax was found to be due. Tax Assessment No. . . . ultimately disclosing a tax and interest deficiency of \$. . . was issued against the taxpayer. The assessment is unpaid.

The taxpayer objects to the assessment of fish tax on its possession of fish purchased from Holbeck Fish Company in 1982. The grounds for this objection are that the fish were previously landed outside the state and were shipped into Washington in a frozen condition.

DISCUSSION

RCW 82.27.030, as it existed during the audit period, provides an exemption from fish tax for:

. . . Food fish or shellfish previously landed outside the state which is shipped into the state as
(a) frozen food fish or frozen shellfish . . .

This exemption has two elements:

1. The fish must be frozen when shipped into the state.
2. The fish must have been previously landed outside the state.

The first element is clear in meaning. The second element is not so clear. The term "previously landed" is ambiguous and therefore subject to interpretation. It is not defined elsewhere in the statute nor is it defined by regulation. The rules of statutory construction provide that terms used in a statute must be given their common and ordinary meaning. Reasonable minds differ as to the meaning of the term "landed" when applied to fish. Some say it means catching the fish or getting it into a boat. Others say it means getting the caught fish ashore. Webster's Third New International Dictionary, Unabridged, (1975) p. 1268 provides little aid.

1: to set or put on shore from a ship or other watercraft after a voyage or water trip.

. . .

3a: to catch and bring to shore or into a boat (a fish)
(Emphasis ours.)

The term "previously landed" must be interpreted to mean brought within the jurisdiction of some other taxing authority, that is, brought to its port. If "landed" means simply caught and taken aboard the boat then all fish caught from boats would have to be "previously landed" before being shipped into the state. A person cannot freeze fish which have not been caught. Under such an interpretation the words "previously landed" would be surplusage and thus meaningless.

In support of its appeal the taxpayer provided the affidavit of [B]. The affidavit can be summarized as follows. The fish sold by [B] to the taxpayer in 1982 were frozen. [B] tenders received the fish at sea from fishermen. The tenders would then dock in Alaska and transfer the fish to the taxpayer. The fish would be transferred in one of two ways. First, [B] packed the fish into totes (insulated boxes) which were then placed on the docks to be picked up by the taxpayer. Second, [B] pumped the frozen fish from its tenders into brine tanks on the docks from which they would be pumped again into the taxpayer's tender. [B] paid fish tax to the State of Alaska for all fish sold to the taxpayer.

The affidavit has established the taxpayer's right to the exemption. It provided evidence that the fish were frozen before entering Washington. It also provided evidence that the fish were "previously landed" outside of the state in that the fish were brought to an Alaska port, placed on docks, and subjected to an Alaska tax.

DECISION AND DISPOSITION

The taxpayer's petition is granted. Tax assessed on the possession of fish purchased from [B] in 1982 will be deleted from the assessment. The taxpayer will be notified in writing of any amount remaining due and the due date.

DATED this 24th day of September 1986.