

Cite as Det. No. 93-220, 13 WTD 358 (1994).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of)	
)	No. 93-220
)	
. . .)	Registration No. . . .
)	FY. . . /Audit No. . . .

[1] RULE 208: ACCOMMODATION SALE -- OIL EXCHANGE. Crude oil exchanges do not qualify for exemption under RCW 82.04.425 unless the recipient has a bona fide existing order.

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 oil refiner protests a wholesale business and occupation tax assessment on crude oil exchanges that it contends qualify for the accommodation sale exemption under RCW 82.04.425.

FACTS AND ISSUES:

Pree, A.L.J.-- [The taxpayer] sells petroleum products. It refines crude oil outside the state of Washington.

The taxpayer's records were examined for the period January 1, 1988 through December 31, 1991

In its petition, the taxpayer protested (1) the assessment of wholesaling business and occupation tax . . . regarding exchange deliveries of Alaska North Slope (ANS) crude oil that the taxpayer made to Washington refiners during the audit period . .

. .

The taxpayer owns and operates an oil refinery in [the U.S., outside Washington] specially set up to refine ANS crude oil. The oil is purchased from one of the major ANS producers. Federal law requires that such oil be refined in the United States. The ANS crude has a content that makes it unique and only refiners set up to receive this type of crude can refine it efficiently. They are all located on the West Coast of the United States and they do not refine other types of crude oil.

Occasionally, after purchasing the crude oil while it is being shipped down the West Coast of the United States, the taxpayer will sell a tank load to a Washington refiner and deliver it here. Likewise, the taxpayer may purchase a load of ANS crude oil from one of the Washington refiners. These transactions between the refiners, none of whom produces ANS crude, are caused by an unpredicted oversupply of the crude rather than speculation. According to the taxpayer, the crude is not held in inventory for resale as such, but resold merely as a convenience to relieve an unanticipated oversupply of the taxpayer. The taxpayer states that none of these refiners is in the business of selling ANS crude oil.

Several transactions are at issue:

1. The taxpayer may trade the ANS crude for ANS crude;
2. It may trade the ANS crude for other types of crude oil to be delivered at one of its other refineries; or
3. The taxpayer may sell ANS crude for cash.

The taxpayer states that it has continuous orders for refined products that must be delivered to its customers. None of these orders are for ANS crude or the products received for the ANS crude. The taxpayer cannot trace the ANS crude oil exchanged to any existing order. It is the taxpayer's position that these transactions should be exempt as accommodation sales.

DISCUSSION:

RCW 82.04.425 provides in part:

This chapter shall not apply to sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in

kind a previous accommodation sale by the buyer to the seller; nor to sales by a wholly owned subsidiary of a person making sales at retail which are exempt under RCW 82.08.0262 when the parent corporation shall have paid the tax imposed under this chapter.

Note that with the conjunction "and," both requirements (1) and (2) must both be met to be entitled to the exemption from business and occupation tax.

While we cannot be sure that requirement (1) is met on these exchanges valued at the time of the exchange which may be more or less than the taxpayer's cost to acquire the oil, it is even more difficult for the taxpayer to show that the second requirement is met. In fact, the taxpayer has shown no instances regarding the ANS crude oil exchanges in question, that a bona fide order of a customer existed or that the exchange was made within fourteen days to reimburse in kind a previous accommodation sale by the recipient to the taxpayer.

The taxpayer generally states, " . . . the exchanges were made to enable both parties to fill bona fide existing orders by adjusting feedstock inputs to match refinery capacity and product demands." Neither party had a bona fide existing order for the ANS crude oil, only an expectation to sell the refined products to meet demand. The exemption is inapplicable to an accumulation of orders for fungible or unascertained goods. ETB 64.04.208 (copy attached). No bona fide orders for ANS crude existed in any of the three scenarios outlined by the taxpayer regarding ANS crude oil. Whether the exchange of the petroleum products is in the form of a sale or exchange does not alter the basic taxable activity. Time Oil Company v. Department of Rev., 79 Wn.2d 143, 483 P. 2d 628 (1971).

Exemption statutes should be read narrowly. Budget Rent-A-Car v. Department of Rev., 81 Wn.2d 171, 500 P.2d 764 (1972). The burden is on one claiming the benefit of an exemption to show that he qualifies for it. In order to qualify for the deduction, there must be strict compliance with its requirements, since it is a legal axiom that statutes exempting a tax must be strictly construed in favor of the tax. Yakima Fruit Growers Association v. Henneford, 187 Wash. 252 (1936). To hold otherwise would be to exalt form over substance, and would import an exemption into the tax statutes where none now exists. Cf. Washington Sav-Mor Oil Co. v. Tax Comm'n, 58 Wn.2d 518, 364 P.2d 440 (1961).

Since no bona fide orders existed for the ANS crude oil, all of the taxpayer's exchanges and sales of ANS crude oil were taxable.

No exemption was applicable. Therefore, the taxpayer's petition as to this issue is denied.

DECISION AND DISPOSITION:

The taxpayer's petition is denied

DATED this 23rd day of August 1993.