

Cite as Det. No. 93-035, 13 WTD 236 (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. 93-035
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

[1] RULE 161: B&O TAX -- GRAIN -- SCREENINGS. Absent any further processing of grain screenings to enhance digestibility, storage, or handling -- such as rolling, cracking, grinding, or pelletizing -- screenings of grain listed in RCW 82.04.260(1) will qualify for the special rate as well as the grain which has been screened. The exception to this rule will be when the screenings consist of grains which do not receive the RCW 82.04.260(1) special rate, such as buckwheat screenings which have been removed from another grain provided for by RCW 82.04.260(1).

This headnote is provided as a convenience for the reader and is 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:

Petition concerning the correct B&O tax rate for the sale of grain screenings.

FACTS:

Bauer, A.L.J.-- The taxpayer is a seed, feed, and grain dealer. The taxpayer has declared bankruptcy.

The taxpayer's business records were audited for the period from January 1, 1987 to June 30, 1991. As a result, an assessment was issued [which] included audit interest.

The taxpayer seeks an adjustment relative to its Sales Journal Account No. [A] labeled "Processed Products." The taxpayer had reported amounts in this account under the special B&O tax classification "Wholesaling Wheat, Oats, etc." The auditor reclassified this income to "Wholesaling - Other," since it appeared from the "Processed Products" label that these sales related to processed products and were thus ineligible for the lower special tax rate.

During the course of the audit, the auditor discussed this account with the taxpayer's representative, who stated that the account contained some products which were processed and some which he did not feel would be considered processed. Since the statute of limitations deadline for assessment including 1987 was approaching, it was agreed that the auditor would submit the audit and make any post-audit adjustments necessary when the taxpayer could determine what types of products were included in Account No. [A]. The taxpayer never provided the auditor with any further analysis of this account, but instead filed this appeal for correction of the assessment.

Discussion with the taxpayer's representative pursuant to this appeal has revealed the following:

1. Account No. [A] has still not been entirely analyzed, and will take a great deal of time to do so since there are a multitude of manual entries. July 1989 has been broken down by the taxpayer, and 57% of these products sold were corn screenings which were not pelletized or otherwise processed.

2. Many different kinds of products are included in this account. Some products are merely screenings of whole grain, such as the corn screenings which were reportedly not further processed before sale. Other screenings may have been processed. Some screenings which contained dust, dirt, and other extraneous materials were pelletized for consumption as cattle feed.

#### TAXPAYER'S EXCEPTIONS:

In its petition dated [January 1992], the taxpayer first generally objected to the reclassification of all sales in Account No. [A]. In a subsequent letter dated [February 1992], the taxpayer argued that products such as corn screenings, which are removed from the whole corn at the time of harvest, are simply the damaged version of the whole grain corn which receives the special tax rate. It was argued that the screenings were not "processed," and therefore should not be excluded from receiving the same special rate as the whole grain.

#### DISCUSSION:

RCW 82.04.260(1) provides a special B&O tax rate

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale . . .

Because information on the products here in question is not fully available, the analysis which follows will be general in nature:

Historically, the Department has considered screenings sold as animal feed to be processed products. This is because in the 1950's and 1960's the Washington Department of Agriculture required a permit to sell feed screenings and required these screenings to be ground before being sold in this state.

According to the Department of Agriculture, the requirement of being ground or even inspected no longer exists today.

Designating screened (i.e., clean) grain as "unprocessed" is inconsistent with designating the screenings which have been removed as "processed," since both end products have been subjected to the same screening procedure.

[1] Therefore, absent any further processing of the screenings to enhance digestibility, storage, or handling -- such as rolling, cracking, grinding, or pelletizing -- screenings of grain listed in RCW 82.04.260(1) will qualify for the special rate as well as the grain which has been screened. The exception to this rule will be the screenings which consist of grains which do not receive the RCW 82.04.260(1) special rate. [An example would be] buckwheat screenings which have been removed from [a grain other than those] provided for by RCW 82.04.260(1).

This decision overrules any other published . . . determinations or guidance to the contrary.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted as set forth above.

This case will be remanded to the Audit Division. The taxpayer will have 90 days from the date of this Determination, or within any extension period granted by the Department, to provide information regarding the products in Account No. [A] to the auditor. To this end, the taxpayer and auditor may agree on test period, or, absent such agreement, the auditor may require information on this account for the entire audit period. The

Audit Section will then make adjustments as appropriate in accordance with this determination.

If the above information is not forthcoming within the required time frame, the current assessment, including extension interest, will become final. Any information produced at a later date will be entertained only in a petition for refund.

DATED this 29th day of January 1993.