

Cite as Det. No. 99-198R, 19 WTD 468 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Request for)	<u>F I N A L</u>
Reconsideration of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 99-198R ¹
)	
...)	Registration No. . . .
)	FY. . ./Audit No. . . .
)	FY. . ./Audit No. . . .

- [1] RULE 210 & RULE 136: B&O TAX – AGRICULTURAL EXEMPTION – LIQUID EGGS. The production of liquid eggs is the creation of a new, different, and useful substance. Notwithstanding the fact that a farmer does not combine liquid eggs with anything, (s)he loses the agricultural B&O exemption because (s)he engages in a manufacturing activity.

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:

Request for Reconsideration of decision that denied the agricultural B&O exemption for the production of liquid eggs.²

FACTS:

Dressel, A.L.J. -- . . . (taxpayer) appeals Determination No. 99-198. To become acquainted with the pertinent facts, the reader is directed to that decision. The facts stated therein will be repeated here only to the extent necessary.

The taxpayer is a large farm that produces, among other things, milk and eggs. Some of its natural, chicken eggs are subjected to a process by the taxpayer which converts them to liquid eggs. These eggs are sold by the taxpayer, primarily, to bakeries, restaurants, and cafeterias.

¹ The original determination, Det. No. 99-198, is published at 19 WTD 463 (2000).

² Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

In its initial appeal to the Department of Revenue (Department), Appeals Division, the taxpayer claimed that its sale of liquid eggs should be exempt of the business and occupation (B&O) tax by virtue of the agricultural exemption found at RCW 82.04.330. We denied that appeal in *Det. No. 99-198*. In the present action, the taxpayer is requesting reconsideration of that denial. In so doing, the taxpayer alleges two basic errors in the original decision. First of all, the taxpayer states that the only fashion in which it could lose its status as an exempt farmer selling its products at wholesale would be to use them as *ingredients* in the production of some other product.³ While it acknowledges that it has mechanically altered the chicken eggs with which it commenced, the taxpayer contends that it has not used the liquid eggs or any component of the liquid eggs as an ingredient in some other, manufactured product. Secondly, the taxpayer cites the amendment of RCW 82.04.120, wherein the definition of “to manufacture” was altered to exclude the producing and packing of agricultural products. The taxpayer claims that this statutory change applies retroactively and fairly describes its production of liquid eggs, such that the complained of B&O tax assessment is invalid.

ISSUE:

Are liquid egg sales exempt from B&O tax under the agricultural exemption of RCW 82.04.330?

DISCUSSION:

In *Det. No. 99-198* at page 5 we said, in part:

We harmonize the exemption and the definition of “to manufacture” to conclude that a farmer will retain the exemption of RCW 82.04.330, if the farmer, otherwise, qualifies under that statute *and* does not conduct a manufacturing activity with the agricultural product in question. This taxpayer’s production of liquid eggs *is* manufacturing, therefore, its sale of same is *not* exempt of the B&O tax. (Emphasis added.)

[1] This statement is true as far as it goes, but it could have gone further. The agricultural exemption is not available because the product sold by this farmer is no longer an agricultural product. Before its sale, the taxpayer has converted it to something else. It has subjected an agricultural product, whole chicken eggs, to a manufacturing activity to create something which is not, strictly speaking, an agricultural product, namely, *liquid* eggs. Liquid eggs have been cracked, shelled, screened, pasteurized, homogenized, and combined with dozens of formerly whole eggs in a large container. By virtue of this process, the eggs are no longer “the substances obtained from such an animal.”⁴ The substance obtained from the animal is an egg in a shell. The substance at issue and sold by the taxpayer is a *manufactured* egg. It has been subjected to a process which has caused it to lose its identity, for tax purposes, as an agricultural product. Thus, it is ineligible for the B&O exemption found at RCW 82.04.330.

³ Taxpayer’s December 16, 1999 memorandum, page 3, lines 7-10.

⁴ See RCW 82.04.330, *supra*.

Our conclusion that liquid eggs are a manufactured product is consistent with the cases cited in *Det. No. 99-198*, as well as others. While we concede the taxpayer's point, as made in its Request for Reconsideration, that the agricultural exemption, *per se*, was not raised in *Stokely-Van Camp, Inc. v. State*, 50 Wa.2d 492, 312 P.2d 816 (1957), or *McDonnell and McDonnell v. State*, 62 Wa.2d 553, 383 P.2d 905 (1963), the fact remains that the Supreme Court concluded in these cases that the food products ultimately produced were *manufactured*. Again, the exemption of RCW 82.04.330 is available for *agricultural* products, not *manufactured* products.

Additionally, we've discovered a case in which the agricultural exemption *was* raised. This was a Board of Tax Appeals matter, *National Food Corporation v. Dept. of Revenue*, BTA Docket No. 13031 (1976). Factually, the only material difference between the instant case and the cited one is that, in the latter, the liquid eggs were separated into whites and yolks. National took the same position as does the taxpayer here, that it was still eligible for the agricultural exemption, notwithstanding the fact that it converted eggs into liquid form. The Board rejected National's appeal and concluded that the chicken eggs had been subjected to a manufacturing process in converting them to liquid form. It followed the lead of the court in *Bornstein Seafoods v. State*, 60 Wa.2d 169, 373 P.2d 483 (1962), where the Supreme Court said that to determine if a new, different, or useful substance has been created or, in other words, an article has been manufactured, one should compare the product released or sold by the processor with the one initially received by that person. The Board concluded that liquid eggs were a new, different, or useful substance, as compared to whole eggs, the article originally received by National for processing.

There is an out-of-state case, as well, that stands for a similar proposition. In *Monark Egg Corp. v. Director of Revenue*, Docket No. 96-001081RV, 1997 Mo. Tax LEXIS 38 (1997), the Missouri Administrative Hearing Commission said, at page 6:

The egg-breaking facility performs a significant transformation. It alters the eggs physically, reducing them to a shelled, exclusively liquid yolk or white, and sometimes a yolk-and-white mix, and refrigerates them. The facility also alters the eggs' market value, simultaneously enhancing marketability to Monark and eliminating it to retail grocers. Such a transformation is significant enough that the legislature has given it a special term—"processing." *Mid-America Dairymen, Inc. v. Director of Revenue*, 924 S.W.2d 280, 283 (Mo. banc 1996).

The commission proceeded to conclude that the liquid eggs were not an agricultural crop, at least, for purposes of applying a use tax exemption. *Monark* at page 6.

In its December 16, 1999 memorandum, the taxpayer cites the definition of "farmer," thusly:⁵

RCW 82.04.213(2) provides in pertinent part that:

⁵ Taxpayer's December 16, 1999 memorandum, page 2, lines 5-9.

“Farmer” means any person engaged in the business of growing or producing, upon the person’s own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process.

The taxpayer then proceeds to stress and, indeed, this appears to be the major thrust of its case, that it did not use any of its products in a manufacturing process. In other words, it did not mix its eggs, or liquid eggs, or any part thereof with anything else to create a new product. Therefore, it reasons, it ought to retain its eligibility for the agricultural exemption. It goes on to state, “. . . we cannot escape the conclusion that [Taxpayer] may be disqualified as a tax-exempt ‘farmer’ not simply if it engaged in manufacturing, but only if it used its liquid eggs product as one of the ‘ingredients’ in a process to create a ‘new, different, or useful article.’”

We disagree. We disagree that is the only way the taxpayer may be disqualified and we disagree with the impression the taxpayer seems to have that our original decision was based on the taxpayer using the liquid eggs as ingredients in a new product. As we stated earlier, the reason the taxpayer’s sales of liquid eggs do not get the agricultural exemption is that they are of a *manufactured* product, not an agricultural product. The exemption of RCW 82.04.330 is available only for agricultural products which, we have concluded, liquid eggs are not.

Finally, the taxpayer argues that the recent amendment to RCW 82.04.120 applies retroactively and means that the taxpayer’s production of liquid eggs is not manufacturing. The amendment added to a list of activities which, the statute declares, are not manufacturing. The activities added are: “the growing, harvesting, or *producing of agricultural products; or packing of agricultural products*, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage.” (Italics ours.)

Consistent with what we stated earlier, the ultimate product here, liquid eggs, is a *manufactured* product. It is not an agricultural product. Just as the agricultural exemption, *per se*, applies only to agricultural products, so does the recent amendment to RCW 82.04.120. Whether it is retroactive or not, it does not apply to the precise subject of this appeal.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 31st day of January, 2000.