

Cite as Det. No. 99-296, 19 WTD 594 (2000)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of )	<u>D E T E R M I N A T I O N</u>
Letter Ruling of )	
)	No. 99-296
)	
... )	Registration No. . . .

[1] RULE 13601, RCW 82.08.02565: RETAIL SALES TAX – MANUFACTURING MACHINERY AND EQUIPMENT ("M&E") EXEMPTION – USED DIRECTLY IN A MANUFACTURING OPERATION – EXEMPT AND NON-EXEMPT USES. The purchase of a crane is exempt from retail sales tax as manufacturing machinery or equipment under RCW 82.08.02565, even though it is used both on the manufacturing site and off-site, if the majority of its use is on-site.

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:

A manufacturer appeals a letter ruling from the Department of Revenue's (Department's) Taxpayer Information & Education (TI&E) section informing the taxpayer that its purchase of a crane, used both on the manufacturing site and off-site, did not qualify for the machinery and equipment sales tax exemption. The taxpayer had not paid sales tax on the crane.<sup>1</sup>

FACTS:

Gray, A.L.J. -- The taxpayer is a corporation that manufactures wood trusses in Washington. In July 1995, the taxpayer bought a crane and had the crane attached to a truck that it also purchased for the purpose of having a mobile crane. The taxpayer paid sales tax in July 1995 when it bought the truck (and a trailer), but did not pay sales tax on the crane in August 1995 when it bought the crane.<sup>2</sup>

The taxpayer wrote to TI&E on July 21, 1995, asking whether the purchase of the crane was exempt from sales and use tax. After its purchase, the taxpayer attached the crane to a truck.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

<sup>2</sup> The taxpayer ordered the crane in April 1995, before the effective date of the exemption, but took delivery of the crane and paid for the crane after the effective date of the exemption (July 1, 1995).

The taxpayer wrote that the crane is often used to move trusses to storage racks in the yard after the roof trusses are manufactured at its plant adjacent to the yard. The taxpayer uses the crane only on the trusses that are too large for its forklifts to handle. Its truck delivers the trusses to construction jobsites. The taxpayer often uses the crane to load the larger trusses on the truck in preparation for delivery to the jobsite. The crane is also used to lift the trusses from the truck at the jobsite.

On the basis of that explanation, TI&E concluded that the taxpayer's purchase of the crane was subject to sales tax. TI&E wrote:

If the only use of the boom/crane truck was to move manufactured goods and raw materials around your manufacturing site, the sales tax exemption would apply to the purchase. This is because the equipment is used directly in a manufacturing operation to convey, transport or handle the trusses being manufactured.

However, the boom/crane truck is not always directly used in the manufacturing operation. It is also used as a delivery vehicle for the completed trusses. At the time that the boom/crane truck is used for a purpose other than the purpose for which the sales tax exemption was granted, the equipment becomes subject to use tax. The tax is based on the value at the time the equipment is used for a non-exempt purpose.

The taxpayer appealed to this division.

#### ISSUE:

Whether the purchase of a boom/crane, attached to a truck, and used both on the manufacturing site and off-site at construction sites, qualifies for the exemption from retail sales tax in RCW 82.08.02565?

#### DISCUSSION:

All retail sales of tangible personal property are subject to the retail sales tax. RCW 82.04.050; 82.08.020. RCW 82.08.02565 provides an exemption from the retail sales tax for certain kinds of machinery and equipment. RCW 82.08.02565(1) provided<sup>3</sup>

The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation, or to sales of or charges made for labor and services rendered in respect to installing the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule, and the purchaser provides the

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<sup>3</sup> The version of RCW 82.08.02565 quoted in this determination is the one in effect during 1995-1996, when the taxpayer bought the boom/crane.

department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

Thus, the allowance of the exemption requires that five elements be met: (1) a sale; (2) to a manufacturer or processor for hire; (3) of machinery and equipment; (4) used directly; (5) in a manufacturing operation. RCW 82.08.02565(2)(a) defines “machinery and equipment” to mean “industrial fixtures, devices, and support facilities.” The element in question is “manufacturing operation.” RCW 82.08.02565(2)(d) defined “manufacturing operation” to mean:

the manufacturing of articles, substances, or commodities for sale as tangible personal property. The manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the finished product leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include research and development, the production of electricity by a light and power business as defined in RCW 82.16.010, or the preparation of food products on the premises of a person selling food products at retail.

TI&E based its reply to the taxpayer on RCW 82.08.02565(2)(d). The question presented here is whether the taxpayer’s use of the boom/crane on the truck at the construction sites bars the taxpayer’s qualifying for the exemption.

The legislature passed House Bill 2337 during the 1996 session. HB 2337 changed the definition of manufacturing operation in RCW 82.08.02565(2)(d) by adding the following:

In the case of the manufacturing of building trusses in eligible areas, as defined in RCW 82.60.020(3)(e), the manufacturing operation ends at the point where the finished product is delivered to the building site.

The Governor vetoed this portion of HB 2337. The Governor's partial veto is part of the legislative process and must be considered when determining legislative intent. Shelton Hotel Company, Inc. v. Jack E. Bates, 4 Wn.2d 498, 506, 104 P.2d 478 (1940); State v. Brasel, 28 Wn. App. 303, 309, 623 P.2d 696 (1981). Further, the statute must be interpreted as if the vetoed portion never existed. Shelton Hotel Company, Inc., 4 Wn.2d at 506. The Governor explained his partial veto of HB 2337 by stating:

Section 6 of House Bill No. 2337 changes the definition of “manufacturing operation” so as to extend the manufacturer’s sales and use tax exemption to purchases of vehicles used in timber impact areas to deliver trusses to a construction site. This legislation would establish a disturbing precedent. For purposes of a tax exemption, it would extend the concept of a manufacturing facility beyond the physical plant at which machinery and equipment are used to make a product to include the equipment used to deliver the product to the customer. This is contrary to the aim of the exemption enacted in the 1995 session.

Governor's explanation of the partial veto of HB 2337 (Chapter 290, Laws of 1996), March 30, 1996.

In 1999, the Legislature passed Engrossed Substitute House Bill 1887, which again amended RCW 82.08.02565. Again, the Governor partially vetoed the act. In his explanation of the partial veto, the Governor stated:

Engrossed Substitute House Bill No. 1887 clarifies the intent of the legislature regarding the application of the retail sales and use tax exemption for manufacturing equipment and machinery, and extends the exemption to machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire.

ESHB 1887 clarifies the scope of a tax exemption and is very important. Taxpayers who are eligible for the exemption, as well as our state and local governments, need the certainty that this bill will provide. I have assumed, as did the legislature (as indicated by our respective balance sheets), that there is no fiscal impact associated with sections 1 through 4 of the bill. That is based on the continuing application of the "majority use" standard for machinery and equipment that has both qualifying and nonqualifying uses. The majority use standard affords meaningful use of the exemption to taxpayers, is fair, and is a reasonable way to administer the exemption consistent with the law, legislative intent, and promotion of economic development in our state. I strongly support the Department of Revenue's continued use of this standard.

(Emphasis added.) Governor's explanation of partial veto of ESHB 1887 (Chapter 211, Laws of 1999), May 7, 1999. The Department stated if the boom/crane had been used exclusively at the taxpayer's manufacturing plant, it would have qualified for the exemption. The taxpayer demonstrated use of the boom/crane at its manufacturing site. Additionally, it is used for unqualified purposes (delivery).

Therefore, it is necessary to determine the majority use of the boom/crane. We remand the taxpayer's refund claim to the Department's Audit Division for that determination. If qualifying uses of the boom/truck constitute the majority use, then the taxpayer is entitled to a refund of the retail sales tax previously paid. The taxpayer has the burden to prove entitlement to exemption. In re All-State Construction Co., Inc., 70 Wn.2d 657, 665, 425 P.2d 16 (1967).

#### DECISION AND DISPOSITION:

The taxpayer's petition is provisionally granted, subject to verification by the Audit Division of the qualified use of the boom/crane by the taxpayer at its manufacturing site in accordance with this determination.

Dated this 29<sup>th</sup> day of October, 1999.