

Cite as Det. No. 99-179, 19 WTD 177 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 99-179
)	
...)	Registration No. . . .
)	Request For Refund
)	
)	

[1] RULE 193, RULE 235; RCW 82.08.02565: MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION – RECEIPT BEFORE AND AFTER EFFECTIVE DATE OF EXEMPTION. When a taxpayer purchases machinery and/or equipment that qualifies for the manufacturing machinery and equipment exemption from the retail sales and use taxes and receives a portion of the machinery and equipment before the effective date of the exemption (July 1, 1995) and a portion after the effective date, only the portion received after the effective date qualifies for the exemption.

[2] RULE 235; RCW 82.08.02565: MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION – RECEIPT BEFORE AND AFTER EFFECTIVE DATE OF EXEMPTION. When a taxpayer, in addition to purchasing machinery and/or equipment that qualifies for the manufacturing machinery and equipment exemption from the retail sales and use taxes, purchases installation services and the installation services are provided both before and after the effective date of the exemption, the taxpayer is entitled to the exemption for the entire installation costs. However, if the taxpayer is unable to document a separate charge for the installation services, the exemption shall apply based on the percentage of the tangible property received after the effective date of the exemption.

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 printer protests the denial of its request for refund of retail sales tax paid on a press claiming the manufacturing machinery and equipment exemption applies to the entire purchase price even

if portions of the press were delivered and partially installed before the effective date of the exemption.¹

FACTS:

Coffman, A.L.J. -- The taxpayer is a commercial printer in Washington. It purchased a printer from supplier for \$. . . , plus retail sales tax of \$. . . . The taxpayer wrote to the Taxpayer Information and Education Section (TI&E) of the Department of Revenue (Department) requesting a ruling that it was entitled to a refund of the retail sales tax paid under the manufacturing machinery and equipment exemption (M&E exemption). RCW 82.08.02565 provided the M&E exemption and became effective on July 1, 1995. TI&E ruled:

We do believe that press components and installation services rendered on or after July 1, 1995, qualify for the exemption. The components delivered and installation services rendered on or before June 30, 1995 do not qualify for the sales tax exemption.

TI&E letter of March 7, 1996, page 2.

The contract was entered into on January 20, 1995 and amended on February 9, 1995. As amended, the contract required the taxpayer to make payments of \$. . . prior to shipment of the press and issue an irrevocable letter of credit for the balance payable 180 days after the first shipment of components. The contract required the supplier to install the printer and ensure it operated properly. If the printer failed to operate properly, the taxpayer could require the supplier to remove the press and refund deposits made by the taxpayer. The contract amendment stated: "CLARIFY: start-up/ commercial production date June 15, 1995."

According to the taxpayer, the first components arrived at taxpayer's place of business in April 1995. However, the final components were received in July 1995. The installation of the components began on May 1, 1995 and was completed on July 12, 1995. The taxpayer states the installation was 80% complete before July 1, 1995.

The taxpayer claims the M&E exemption applies to the entire purchase price of the press because delivery and installation were not completed until after July 1, 1995.

ISSUE:

Does the M&E exemption apply to equipment received and partially installed prior to the effective date of the exemption when final acceptance occurs after the effective date?

DISCUSSION:

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

We note that exemptions and deductions are narrowly construed. Budget Rent-A-Car, Inc. v. Department of Rev., 81 Wn.2d 171, 500 P.2d 764 (1972). Taxation is the rule; exemption is the exception. Spokane County v. City of Spokane, 169 Wash. 355, 13 P.2d 1084 (1932). Exemptions are not to be extended by judicial construction. Pacific Northwest Conference of the Free Methodist Church v. Barlow, 77 Wn.2d 487, 463 P.2d 626 (1969).

The taxpayer states 80% of the printer components were received prior to July 1, 1995. However, the taxpayer argues:

As delivery of the press was not complete, payment was not made and installation was not complete (all conditions of the Agreement) until after July 1, 1995 and title to the press had not passed to [Taxpayer] and a sale did not occur until after July 1, 1995, the effective date of 2ESSB 5201. Therefore, the manufacturing machinery and equipment sales and use tax exemption, enacted by 2ESSB 5201, applies to the above transaction.

Taxpayer petition, page 2. We agree the contract was not completed, however, a significant portion (80%) of the press was received by the taxpayer and installed by the supplier prior to July 1, 1995 (the effective date of the M&E exemption).

[1] The supplier is an out-of-state business. WAC 458-20-193 (Rule 193) addresses sales in Washington from out-of-state vendors. Rule 193 provides that sales are subject to Washington tax at the time the purchaser receives the goods in Washington. Receipt is defined in Rule 193(2)(d) as when "the purchaser or its agent first either [takes] physical possession of the goods or [has] dominion and control over them." Passage of title is not relevant in determining the time of receipt. WAC 458-20-103. Rather, we rely on the time of physical possession. See Det. No. 94-209A, 15 WTD 100 (1995) and Det. No. 86-161A, 2 WTD 397 (1987).

The taxpayer physically received 80% of the press components prior to July 1, 1995. Therefore, the M&E exemption does not apply to the portions so received. However, the 20% received after June 30, 1995 qualify for the M&E exemption.

Further, in Det. No. 98-098, 17 WTD 424 (1998), we considered the M&E exemption and its application to contracts entered into prior to July 1, 1995 with delivery after June 30, 1995. We relied on WAC 458-20-235 ("Rule 235"), which governs the effects of rate changes on prior contracts and sales agreements. Rule 235 provides, in part:

When an unconditional contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the goods are delivered after that date, the new rates will be applicable to the transaction. When an unconditional contract to sell tangible property is entered into prior to the effective date, and the goods are delivered prior to that date, the tax rates in effect for the prior period will be applicable.

We said:

Although Rule 235 pertains to rate changes, its logic reasonably applies to the question whether sales tax applies to pre-exemption installment payments. Its provisions relate to the statutory requirements for the exempt purchase requirements of RCW 82.08.02565.

[2] Det. No 98-098, *supra*. The installation portion of the contract is more complicated. The contract did not allocate the total price between the press and the installation services. Rule 235 also provides:

Persons installing, ... tangible personal property for others, ... will collect retail sales tax and pay the business and occupation tax at the new rates with respect to all such services performed and billed on and after the effective date of a rate change. With respect to contracts requiring the above services or construction which were executed prior to the effective date of a change in rates, the new rates will be applicable to the full contract price unless the contract work is completed and accepted prior to the effective date. If, however, under the terms of the contract, the seller is entitled to periodic payments which amounts are calculated to compensate the seller for the work completed to the date of payment, the applicable tax rates upon such payments ... will be those in effect at the time the contractor becomes entitled to receive said payments.

(Emphasis added.) RCW 82.32.070 provides:

(1)(a) Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue. ... Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

If the taxpayer is able to document the value of the installation services, i.e. if the taxpayer received separate bids from the supplier for equipment only and for the “turn key” installation, then the difference, the entire value of the installation service, is also exempt from the retail sales tax. However, if the taxpayer is unable to do so, then we will follow the ruling of TI&E and find the taxpayer is entitled to a refund equal to 20% of the retail sales tax paid² plus interest.

DECISION AND DISPOSITION:

The taxpayer’s petition is denied. However, if the taxpayer can document the installation charges included in the total contract price, the taxpayer will be entitled to an additional refund of retail sales tax paid to the extent not previously granted by this determination.

² This equals \$. . . .

Dated this 14th day of June 1999.