Cite as Det. No. 98-187, 19 WTD 328 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 98-187
. . .	)	Registration No. . . .
	)	FY. . . /Audit No. . . .

[1] RULE 179; RCW 82.16.050(7): PUBLIC UTILITY TAX -- DEDUCTIONS -- IRRIGATION. When an irrigation district supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life, as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied water are subject to the deduction for water distributed through an "irrigation system, for irrigation purposes".

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 irrigation district protests the disallowance of a deduction with respect to income from supplying water for irrigation purposes.[1]

FACTS:

Mahan, A.L.J. -- The taxpayer is authorized under Title 87 of the Revised Code of Washington to operate as an irrigation district. Under a contract with the United States Department of Interior, Bureau of Reclamation (Bureau), dated August 1, 1963, the district operates an irrigation system constructed by the Bureau.

Each parcel of land within the district is assessed an annual “irrigation acreage charge”, which is currently $20.00 per acre per year. Each residential lot under one acre is charged the minimum irrigation acreage charge of $20.00. The charge allows an irrigation allotment of 108,900 cubic feet of water per acre to be used during the April through October period. Each residential lot is also assessed an annual domestic water charge of $114.00 per year, which allows 16,000 cubic

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

feet of water to be used during the calendar year.[2] Typically, parcels of ten acres or more have separate meters for irrigation water so that any excess usage can be monitored. In general, customers install back flow or cross-connection control devices to avoid any contamination of the domestic supply, in accordance with WAC 246-290-490. Currently, both irrigation and domestic water come from an aquifer, and the water coming from that aquifer does not require any treatment.

The contract with the Bureau provides for the delivery of both "irrigation water" and "D,M, & I water". Irrigation water is defined to mean "water made available for use on land for the nourishing of plant life." D,M, & I water is defined to mean "water made available for domestic, municipal, and industrial services for use other than on land for the nourishing of plant life." Both irrigation water and D,M, & I water are made available through the same "closed pipe distribution system", with "turnouts" for irrigation water and "service connections" for D,M, & I water.

The Department of Revenue (Department) audited the taxpayer for the January 1, 1993 through September 30, 1996 period. The Department disallowed the irrigation deduction provided for under RCW 82.16.050(7) when irrigation acreage charges may have involved water distributed for non-agricultural purposes.

The taxpayer contends that it should be allowed to continue taking the deduction with respect to the irrigation acreage charge. The taxpayer states that the deduction was not disallowed in a previous audit. Moreover, the district has taken the irrigation deduction for over thirty years, and it has never been required to limit the irrigation deduction to water distributed solely for agricultural purposes.

ISSUE:

Whether an irrigation district is entitled to deduct charges for water that is segregated from domestic water and supplied for the nourishment of plant life.

DISCUSSION:

[1] RCW 82.16.050(7) permits a deduction from the public utility tax for:

> Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;. . .

RCW 82.16.050 has remained the same for sixty years, since enactment of the Revenue Act of 1935, Laws of 1935, c. 180, § 40, despite amendments to other parts of RCW 82.16.

[2] In addition to the power to construct or purchase works for the irrigation of lands, as provided for under RCW 87.03.010, under RCW 87.03.015 an irrigation district is authorized to construct and maintain a system for the sale of domestic water to the owners of irrigated lands.

The Department's administrative rule implementing the statute is WAC 458-20-179 (Rule 179). Rule 179(15)(d) is virtually identical to the statute, with the notable exception of the inclusion of the word "solely" in limiting the availability of the deduction. It provides that the deduction is available for:

> Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

Under this rule and the statute, the taxpayer must satisfy a two-pronged test: (1) that the water was distributed through "an irrigation system," (2) solely "for irrigation purposes." Those terms are not defined by the statute, and we must determine whether they include the various uses by the taxpayer's customers.

The goal of any statutory construction is to follow the intent of the legislature. Legislative intent is to be ascertained from the statute as a whole, and all statutes relating to the same subject matter should be considered. State v. Wright, 84 Wn.2d 645, 652, 529 P.2d 453 (1974); Clark v. Pacificorp, 118 Wn.2d 167, 176, 822 P.2d 162 (1991). A term not defined in a statute is afforded its plain and ordinary meaning. However, when a word has no fixed, ordinary meaning, we must look to the subject matter, the context in which the word is used, and the purpose of the statute. KSLW v. Renton, 47 Wn. App. 587, 594, 736 P.2d 664 (1986).[3]

The term "irrigation" has different meanings, depending on the context in which it is used. Under ordinary usage, it is broadly defined. For example, Webster's II New Riverside University Dictionary 645 (1984) defines the term “irrigate” to mean “to supply (dry land) with water by means of ditches, pipes, or streams.” In contrast, Blacks Law Dictionary 744 (5th ed. 1979) defines an "irrigation company" as one that conveys water "by means of ditches or canals through a region where it can be beneficially used for agricultural purposes." Similarly, the legislature used the term "irrigable acreage" to mean "all lands included in the district capable of being used for agricultural purposes." RCW 87.22.085 (Laws of 1929, c. 202, § 88). In 45 Am. Jur. 2d, Irrigation § 1 at 945 (1969), the term was defined as follows:

> Irrigation is defined as the artificial watering of agricultural lands in regions where rainfall is insufficient for crops. The ordinary and popular conception of the term is that it denotes the application of water to land for the production of crops; the term embraces all artificial watering of lands, whether by channels, by flooding, or merely by sprinkling.

In Det. No. 95-002, 15 WTD 106 (1996) and Det. No. 95-201, 15 WTD 166 (1996), we addressed the deduction when it was taken by water districts for water separately supplied for the

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[3] On several occasions the Department has addressed the scope of the irrigation deduction. See Det. No. 91-294R, 11 WTD 487 (1991); Det. No. 95-002, 15 WTD 106 (1996); Det. No. 95-201, 15 WTD 166 (1996). The Thurston County Superior Court has reversed the Department in two cases: Alderwood Water Dist. v. Washington, Thurston County Sup. Ct. No. 91-2-02772-3 (1993) and Woodinville Water Dist. v. Department of Rev., Thurston County Sup. Ct. No. 95-2-03654-3 (1996). Although the Department sought review of the Woodinville case by Division II of the Washington State Court of Appeals, that appeal was withdrawn.

purpose of watering golf courses and landscaping. In those cases we concluded that an industry specific definition, which required an agricultural component, should be used to construe the statute.

This case presents, for the first time, a factual situation whereby an irrigation district has, for over thirty years, used a broader definition of irrigation, i.e., "water made available for use on land for the nourishing of plant life." It further presents a situation whereby, based on a long-standing practice within the industry, it would be impractical to distinguish between water made available for nourishing landscaping as opposed to agricultural crops. Upon further consideration of this matter, we conclude that it was error to require an agricultural component in order for the deduction to apply.

Based on the additional evidence submitted in this case, we overrule Det. No. 91-294R, 11 WTD 487 (1991); Det. No. 95-002, 15 WTD 106 (1996) and Det. No. 95-201, 15 WTD 166 (1996), as they apply to the distribution of water through an irrigation system for irrigation purposes.[4] So long as an irrigation district or a water district supplies potable water and it segregates and separately supplies some of the water solely for nourishing plant life, as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied water qualify for the deduction for water distributed through an "irrigation system, for irrigation purposes".

DECISION AND DISPOSITION:

The taxpayer's petition is granted and the assessment is remanded to the Audit Division for adjustment in accordance with this determination.

Dated this 30th day of October 1998.

[4] In order to meet the "irrigation system" requirement, a district must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.