

Cite as Det. No. 05-0193, 25 WTD 143 (2006)

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>
Assessment of)	
)	No. 05-0193
)	
...)	Registration No. . . .
)	Document No. . . .
)	Docket No. . . .
)	

[1] RULE 13601; RCW 82.08.02565: RETAIL SALES TAX -- M&E EXEMPTION -- PAVING. Paving work that is directly connected to installing a propane line that qualifies for the M&E exemption, qualifies as a service rendered in respect to installing qualifying M&E and is therefore eligible for deduction.

[2] RULE 13601; RCW 82.08.02565: RETAIL SALES TAX -- M&E EXEMPTION -- LOADING RAMP. A portable loading ramp that provides physical support for or access to tangible personal property when used directly in a manufacturing operation is eligible for deduction.

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.

Kreger, A.L.J. – A manufacturer appeals the Department of Revenue’s (Department) Audit Division’s disallowance of Machinery and Equipment (M&E) retail sales and use tax exemptions taken for paving expenses related to the installation of a propane pipe and on the purchase of a portable loading ramp. The Department disallowed the exemptions concluding that the paving was an ineligible repair expenditure and that the truck ramp was not used directly in a manufacturing operation. We conclude that the paving work qualified for exemption as necessary labor and services rendering in installing qualifying equipment and that the loading ramp is used directly and also eligible for the exemption.¹

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

ISSUES

1. Is repaving over a trench cut to install a propane line directly connected to installing that line and therefore a service rendered in respect to “installing” M&E eligible for the sales tax exemption provided by RCW 82.08.02565(1)?
2. Is a portable loading ramp used directly in a manufacturing operation and therefore eligible for exemption under RCW 82.08.02565(1)?

FINDINGS OF FACT

[Taxpayer] is a Washington corporation engaged in the business of manufacturing In January of 2004 the Audit Division completed a routine audit of the Taxpayer’s books and records The audit resulted in the assessment of additional tax The Taxpayer does not contest the entire audit, but rather protests the disallowance of two specific deductions which the Audit Division concluded were not eligible for the M&E exemption.²

At issue are two discrete expenses. The first is a . . . charge for labor and materials to patch a ditch dug in conjunction with installation of an underground propane line. In order to meet safety standards it was necessary to place the propane tank 120 feet away from the furnace that provides heat to a drying oven used by the Taxpayer in its manufacturing operation. An underground pipe was laid from the tank to the oven. This work required digging a trench, laying the pipe, and filling the trench back in. A portion of the trench passed under a paved area and so required part of the paving to be dug up. After the pipe was laid the paving was patched to cover the trench. The paving charge at issue was exclusively for replacing the paving over the trench that was dug and did not include any resurfacing or other maintenance paving.

The second charge at issue is the purchase of a portable truck loading ramp. The ramp is 30 feet long and can be attached to the rear of trucks and vans. It allows the fork lift to be driven up to the cargo area of those vehicles and allows the fork lifts to load and unload material into and from the vehicles. The portable ramp allows materials to be loaded and unloaded directly from the vehicles rather than requiring the use of a loading dock to access the cargo space. The ramp is treated as a capital expenditure and is depreciated in the same manner as the fork lifts. The ramp is used exclusively at the manufacturing site.

ANALYSIS

RCW 82.08.02565(1) provides the retail sales tax M&E exemption.

The [retail sales] tax . . . 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

² At the close of the audit the Taxpayer also contested a third item found ineligible for the M&E exemption, a canopy, but after review of the auditor’s detail of differences and instructions has withdrawn its objection to this portion of the assessment.

charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment

WAC 458-20-13601 (“Rule 13601”) implements the statute. It describes eligibility for the M&E exemption by stating the requirements as:

Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

The M&E exemption, like all tax exemptions in Washington, is strictly construed in favor of application of the tax and against the person claiming the exemption. *See, e.g.*, Det. No. 01-007, 20 WTD 214 (2001). The burden of proof is upon the one claiming the exemption. *See, e.g.*, *Budget Rent-A-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972); *All-State Constr. Co. v. Gordon*, 70 Wn.2d 657, 425 P.2d 16 (1967); *Yakima Fruit Growers Ass’n v. Henneford*, 187 Wn. 252, 258, 60 P.2d 62 (1936).

Thus, for the exemption to apply, Taxpayer must satisfy all its requirements: (1) a sale; (2) to a manufacturer or processor for hire; (3) of machinery and equipment; (4) used directly; (5) in a manufacturing operation; plus overcome the majority use threshold.

1. Paving:

[1] It is not contested that the propane line itself and the labor and services rendered in respect to installing it qualify for the M&E exemption. The dispute is whether or not the repaving work constitutes “labor and services rendered in respect to installing” for purposes of the exemption. The Audit Division characterized this work as repair labor rather than labor and services rendered in respect to installing M&E. The Audit Division’s response to the Taxpayer’s petition compared the repaving work to expenses to “re-landscape, paint the building, or wash the exterior of the building.” Because the paving work did not repair or improve specific equipment eligible for the M&E exemption, Audit concluded the work was subject to retail sales tax under RCW 82.04.050(2)(b) as a repair or improvement to the paved area.

The Taxpayer clarified that the paving at issue was strictly limited to re-paving the area dug up to install the pipe. This is not a case where general improvements or maintenance activities were bundled into the installation work. The paved area was not in need of repair prior to the trench being cut to install the pipe and the paving work did not improve the paved area but rather returned it to a passable and usable condition after the propane line had been laid.

Neither the statute nor the rule defines “services rendered in respect to.” However, RCW 82.04.051 does define “services rendered in respect to” for purposes of RCW 82.04.050, as “those services that are directly related to the constructing.” *Accord* Det. No. 88-183, 5 WTD 311 (1988). Similarly services rendered in respect to installing the M&E are those services directly connected to that installation. This is consistent with the analysis used in Det. No. 02-0134, 24 WTD 129 (2005), where we concluded that charges for building a new road in conjunction with the installation of a wind-generating facility were not qualifying installation

expenses because the road work was only indirectly connected to the installation of equipment. In that case we stated that: “constructing the road is a separate activity from installing equipment.”

We conclude that the paving work, at issue here, was part and parcel of installing the new propane line. In contrast to the road installation in Det. No. 02-0134, where the road provided access to the site where equipment was then installed, the paving work here was done to restore a paved area which already existed to its original condition. To lay the line a trench had to be dug and then re-covered, which involved paving. We conclude that the work at issue was directly connected to laying the new propane line and so qualifies as a service rendered in respect to installing qualifying M&E. It is therefore eligible for deduction. The Taxpayer’s petition is granted on this issue.

2. Loading Ramp:

[2] The dispute on the loading ramp turns on whether this piece of equipment is used directly. RCW 82.08.02565(2)(c) provides eight descriptions of when M&E is “used directly.” These are repeated and further explained in Rule 13601(9). The descriptions include providing physical support for or access to tangible personal property, and conveying or transporting tangible personal property at the site.³ The Taxpayer asserts that the ramp provides access to tangible personal property, conveys items of tangible personal property, and is used to place tangible personal property in the containers in which it is normally transported. The Audit Division conversely contends that the ramps do not provide access to qualifying equipment but rather to delivery trucks, and that providing access to raw materials being delivered is insufficient to qualify this equipment for exemption. It concludes that the ramp is not sufficiently similar to forklifts or storage bins to qualify.

In Det. No. 03-0325, 24 WTD 351 (2005), we addressed whether a loading dock and ramps on those loading docks were eligible for the M&E exemption. In that case we concluded that the loading dock itself was essentially akin to a floor and did not qualify for the M&E exemption. However as to the loading dock ramps we stated:

³ RCW 82.08.02565(2)(c)’s eight descriptions of when M&E is “used directly” are:

- (i) Acts upon or interacts with an item of tangible personal property;
- (ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;
- (iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;
- (iv) Provides physical support for or access to tangible personal property;
- (v) Produces power for, or lubricates machinery and equipment;
- (vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;
- (vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or
- (viii) Is integral to research and development as defined in RCW 82.63.010.

The manner in which a person uses an item of M&E must match one of these descriptions. Rule 13601(9).

The ramps are used directly in the manufacturing operation under RCW 82.08.02565(2)(c)(iv). They are designed for the forklifts to drive into trailers. They provide physical support for or access to tangible personal property. Rule 13601(9)(d).

In this case the ramp is a portable piece of equipment rather than being fixed to a loading dock but serves the exact same purpose and function. Accordingly we also conclude that this ramp qualifies as M&E. The Taxpayer's petition is granted on this issue.

DECISION AND DISPOSITION

The Taxpayer's petition is granted.

Dated this 30th day of August, 2005

STATE OF WASHINGTON DEPARTMENT OF REVENUE