

Cite as Det. No. 05-0345, 25 WTD 90 (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 and Refund of)	
)	No. 05-0345
...)	
)	Registration No. . . .
)	Doc. Nos. . . .
)	Audit Nos. . . .
)	Docket No. . . .

- [1] RULE 13601: RETAIL SALES AND USE TAX – EXEMPTION -- M&E – CONCRETE STORAGE PAD -- SHELTER. Where a concrete storage pad used for the “temporary storage” of tangible personal property is an industrial fixture it qualifies for the M&E exemption. A structure used to “shelter” tangible personal property is a “building” that is ineligible for the M&E exemption.
- [2] RULE 13601: RETAIL SALES AND USE TAX – EXEMPTION – M&E – CONCRETE STORAGE PAD – COVERED BY CANOPY. When a concrete storage pad is covered by a canopy to keep materials dry so that their moisture contents remain within industry specifications, and so that the materials would not leach treatment materials onto the asphalt, the structure provided a shelter from precipitation. Because it was not merely a concrete pad used for temporary storage, it was properly considered a building and, therefore, not entitled to the M&E exemption.
- [3] RULE 24001: RETAIL SALES AND USE TAX -- DISTRESSED AREA DEFERRAL PROGRAM – APPLICATION – TIME OF. Application for deferral of taxes under the distressed area deferral program must be made before initiation of the construction of the investment project.

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

Bauer, A.L.J. – A manufacturer seeks the M&E exemption under WAC 458-20-13601 (Rule 13601) for a temporary storage facility consisting essentially of an asphalt pad and a canopy roof. Taxpayer's petition is denied.¹

ISSUE

Did a storage structure that would have otherwise qualified for the M&E exemption as a "concrete storage pad" under WAC 458-20-13601(9)(b) become a non-qualifying "building" because it was covered by a canopy roof supported by steel poles?

FINDINGS OF FACT

Taxpayer's books and records were audited by the Audit Division (Audit) of the Department of Revenue (Department) for the period January 1, 2000 to June 30, 2003 (audit period). As a result of this examination, . . . [a tax] assessment was issued on . . . in the amount of \$. . . This amount, which has not to date been paid, represented use/deferred sale tax on Taxpayer's construction of the temporary storage facility here at issue. Taxpayer completed the storage facility after the audit period, expending an additional \$. . . in retail sales/use taxes to do so.

Taxpayer uses raw lumber to manufacture cross-arms for utility poles and framing materials. Taxpayer's storage structure is covered by a roof in order to keep the product dry. This is because certain moisture contents must be maintained to meet industry specifications.

Taxpayer's operation includes the application of treating solution at the end of its manufacturing process to the wood then conformed as wooden "cross arms" or transmission arms for sale to utility industries. This treating solution has various chemicals that must, with all known "best practices," be kept from the water, both ground water or surface water, moving within, under, or over the plant surface and underlying earth.

The materials stored temporarily in the storage structure -- under the canopy and on the asphalt -- are, in the main, treated wood. Without the canopy in place protecting the asphalt pad and stored wood materials from precipitation as they absorb the treatment materials, the wood would leach treating materials onto the asphalt. This leached material would eventually run off the asphalt into the ground or surface water, endangering the community water sources. The discharge of the treating materials is strictly monitored. Failure to maintain specific limitations on such materials in the water outflow from the plant grounds could result in damage to the community water supply and termination of Taxpayer's DOE permit.

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

Taxpayer's temporary storage structure is composed of the following components: an asphalt pad, a steel canopy to protect the inventory from direct rain, and steel poles to support the canopy. There are no utility systems, although there is a sprinkler system for fire protection. Although the ground's surface has been asphalted, this asphalted surface is not directly attached to the poles and canopy.

Audit disallowed the M&E exemption on the temporary storage facility, reasoning:

The building [Taxpayer] uses as a storage area is a structure that shelters tangible personal property and therefore is an ineligible "building" for purpose of . . . Rule [13601].

ANALYSIS

Taxpayer requests the waiver of the use tax assessment in the amount of \$. . . on the construction of the above-described storage structure. Taxpayer also requests the refund of an additional \$. . . in retail sales and use taxes paid to vendors after the audit period in order to complete the structure.

RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E). In accordance with RCW 82.08.02656(2)(a), there are three categories of M&E: industrial fixtures, devices, and support facilities.

ETA 2012-7s specifically provides that "pads" may qualify as "industrial fixtures":

The word "fixture" denotes a type of property that can be distinguished from a "building" per se. A fixture does not lose its identity when installed. . . . Property outside of buildings also qualifies as "industrial fixtures." Examples are tanks, pipes, pads, and lined ponds.

(Emphasis added.) Rule 13601(9)(b) provides that concrete storage pads are "used directly," and are therefore eligible for the M&E exemption, when they are used for the temporary storage of tangible personal property at the manufacturing site:

Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria: . . . (b) . . . temporarily stores an item of tangible personal property at the manufacturing site Examples of this are . . . concrete storage pads. Floor space in buildings does not qualify under these criteria.

(Emphasis added.) Taxpayer argues that the fact that its concrete storage pad is covered by a canopy does not change its character from a "concrete storage pad" used for the storage of

tangible personal property, into a “building.” Taxpayer references Rule 13601’s discussion of “buildings”:

(7) **What is not eligible for the exemption.** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, there are four categories of items that are statutorily excluded from eligibility. The following property is not eligible for the M&E exemption:

. . . (c) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property.

(Emphasis added.) The Revenue Act does not define the word “building” for purposes of the M&E exemption. Det. No. 99-256, 20 WTD 494 (2001), states:

Rule 13601, which was filed and immediately effective on May 28, 1999, provides that a building itself is not eligible for the exemption, but industrial fixtures might be eligible. The subsequent real property status of industrial fixtures does not affect eligibility for the exemption. The rule defines the word “building” in terms of function and states that “Buildings provide work space for people or shelter machinery and equipment [or tangible personal property].”

(Emphasis added.) The Department thus uses a function test when determining whether a structure is a building for purposes of the M&E exemption.²

[1] Under Rule 13601, a concrete storage pad used for the “temporary storage” of tangible personal property is an industrial fixture that qualifies for the M&E exemption. On the other hand, a structure used to “shelter” tangible personal property is a “building” that is ineligible for

² RCW 82.60.020(8) similarly describes “qualified buildings” for purposes of the distressed area deferral by function. A “qualified building” is one that is for used for “manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development.”

RCW 82.08.820(2)(1), on the other hand, defines “warehouse” using both physical description and function for purposes of the warehouse retail sales and use tax exemptions, as follows:

an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place. . . .

(Emphasis added.) The warehouse exemption was enacted in order to support the warehouse and distribution industry, an industry with different requirements much greater than those of a manufacturer looking to temporarily store materials at its own manufacturing site.

the M&E exemption. If a structure is used to “shelter” rather than merely “store” materials, it will be considered to be a building for purposes of the M&E exemption.

[2] In this case Taxpayer’s concrete storage pad is covered by a canopy. Taxpayer states that its treated wood materials are stored under a roof for two reasons: (1) to keep them dry in order to keep their moisture contents within industry specifications, and (2) to keep them away from water to prevent the wood from leaching treating materials onto the asphalt. We hold that Taxpayer’s structure did more than provide a place to temporarily store the materials; it provided a place where they were sheltered from precipitation.

Because Taxpayer’s structure shelters its materials, it is not merely a concrete pad used for temporary storage. We hold that Taxpayer’s storage structure is a building and, therefore, not entitled to the M&E exemption.

[3] Taxpayer has, in the alternative, requested, if its structure does not qualify for the M&E exemption, that it be considered for relief under the Distressed Area Sales/Use Tax Deferral Program provided by ch 82.60 RCW. Taxpayer explains that it had no knowledge of this program prior to the audit.

However, application for deferral of taxes under the distressed area deferral program must be made before initiation of the construction of the investment project. RCW 82.60.030; Det. No. 89-265, 7 WTD 345 (1989). Because application was not made before the initial construction of this structure, the Department cannot consider Taxpayer to be eligible.

DECISION AND DISPOSITION

Taxpayer’s petition for correction of assessment and refund is denied.

Dated this 21st day of December, 2005.