Cite as Det No. 08-0050, 27 WTD 189 (2008)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 08-0050
. . .	)	
	)	Registration No. . . .
	)	Document No. . . ./Audit No. . . .
	)	Docket No. . . .
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RULE 203; RCW 82.04.4336, RCW 82.04.030: B&O TAX – MEAT PROCESSING – AFFILIATE. Under RCW 82.04.4336, a taxpayer may not deduct amounts it receives for breaking or processing perishable beef products when an affiliate owns the cattle.

M. Pree, A.L.J. – A company which slaughters cattle and processes beef in Washington protests a denial of refund. The taxpayer sought to deduct amounts received for breaking or processing perishable beef products. Because the taxpayer did not own the beef (and sell it at wholesale), the taxpayer did not qualify for the deduction. Petition denied.[1]

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.

ISSUE

Under RCW 82.04.4336, may a taxpayer, which slaughters cattle then processes and breaks the beef, deduct amounts it receives for breaking or processing the perishable beef products it does not own?

FINDINGS OF FACT

[Taxpayer] is a wholly owned subsidiary of a beef marketing company (affiliate). A meat products corporation (parent) owns the affiliate. The taxpayer operates its parent's Washington processing plant where it slaughters cattle and processes beef. Prior to 2006 the taxpayer

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

processed beef it owned. The taxpayer reported this activity and deducted all of its receipts from beef slaughtering, breaking, and processing in Washington.

Then the taxpayer reorganized its operations. Beginning January 1, 2006, the affiliate owned all the beef processed by the taxpayer. The affiliate sold the beef at wholesale to retailers and distributors. In other words, the activities of processing and selling its beef conducted by the taxpayer prior to 2006, were now conducted by two companies. The taxpayer processed the beef, which the affiliate owned and sold.

For 2006, the taxpayer did not report its processing activity. The Department's Taxpayer Account Administration Division (TAA) contacted the taxpayer and inquired. TAA assessed B&O tax against the taxpayer under the processor for hire classification, and issued the above referenced assessment for the period from January 1, 2006 through December 31, 2006. The taxpayer paid the entire $. . . assessment referenced above, which included interest and penalties. The taxpayer then requested a refund based upon the deduction under RCW 82.04.4336(1), which TAA denied. The taxpayer appealed the denial of the refund.

The taxpayer explained its slaughtering, breaking, and processing activities. . . The taxpayer slaughtered the cattle and processed the perishable beef as a processor for hire. The taxpayer did not have a written processing contract with the affiliate, which owned the beef. Nor has the taxpayer identified amounts received for slaughtering versus breaking or processing.

ANALYSIS

Prior to 2006, the taxpayer took a deduction under RCW 82.04.4336 (effective March 31, 2004, expired Dec. 31, 2007), which provides in subsection (1):

> In computing tax there may be deducted from the measure of tax those amounts received for:
>
> (a) Slaughtering cattle, but only if the taxpayer sells the resulting slaughtered cattle at wholesale and not at retail;
>
> (b) Breaking or processing perishable beef products, but only if the perishable beef products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail;
>
> (c) Wholesale sales of perishable beef products derived from cattle slaughtered by the taxpayer;
>
> (d) Processing nonperishable beef products, but only if the products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail; and
>
> (e) Wholesale sales of nonperishable beef products derived from cattle slaughtered by the taxpayer.

After the taxpayer reorganized, and began slaughtering, breaking, and processing beef owned by the affiliate, TAA would not allow the deduction because the taxpayer did not sell beef it owned. We will analyze the law, and determine whether the taxpayer must sell the beef in order to take the deduction.

A person claiming a tax exemption, exception, or deduction has the burden of proving he or she qualifies for the tax benefit. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission*, 72 Wn.2d 422, 433 P.2d 201 (1967). Taxation is the rule; exemption is the exception. *Spokane County v. City of Spokane*, 169 Wash. 355, 358, 13 P.2d 1084 (1932). Exemptions from a taxing statute must be narrowly construed. *Budget Rent-A-Car, Inc. v. Dep't. of Revenue*, 81 Wn. 2d 171, 174, 500 P.2d 764 (1972); *Evergreen-Washelli Memorial Park Co. v. Dep't. of Revenue*, 89 Wn.2d 660, 663, 574 P.2d 735 (1978). The person claiming the benefit bears the burden of showing that he qualifies. *Budget* at 175.

While a business may operate in whatever form it deems appropriate for business reasons, if the chosen form has adverse tax consequences the business cannot require the Department to disregard the form to avoid or minimize those adverse consequences. A business must bear the tax consequences that come with its choice of form. *Sav-Mor Oil v. State Tax Commission*, 58 Wn.2d 518, 522-523, 364 P.2d 440 (1961).

Affiliated corporations are each a "person" within the meaning of Washington's Revenue Act. RCW 82.04.030. Therefore, we consider the taxpayer's affiliate a separate person. WAC 458-20-203 (Rule 203) provides:

> Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.
>
> Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

"The tax liability of a corporation must be considered without regard to its relationship to a parent or subsidiary company or to the existence of common officers, employees, facilities, or stock ownership." Det. No. 96-046, 16 WTD 74, 77, (1996) (citing Rule 203 and quoting *American Sign & Indicator v. State*, 93 Wn.2d 427, 429, 610 P.2d 353 (1980) and *Rena-Ware Distribs., Inc. v. State*, 77 Wn.2d 514, 463 P.2d 622 (1970).)

The affiliate's beef ownership may not be consolidated with the taxpayer's parent. Nor may the taxpayer's activities be combined with the affiliate. We conclude that because the affiliate is a separate person, the affiliate's sale of the beef cannot be attributed to the taxpayer.

RCW 82.04.4336(1)(a) allows taxpayers who slaughter cattle a deduction for, "Slaughtering cattle, but only if the taxpayer sells the resulting slaughtered cattle at wholesale and not at retail." The affiliate, not the taxpayer sold the cattle. Because the taxpayer did not sell the resulting slaughtered cattle, it is not eligible for the deduction under RCW 82.04.4336(1)(a).[2]

RCW 82.04.4336(1)(b) allows a deduction for, "Breaking or processing perishable beef products, but only if the perishable beef products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail." The requirement that the beef products be "sold at wholesale only and not at retail," is written in the passive voice. The statute, RCW 82.04.4336(1)(b) does not clearly state whether the seller must also be the person breaking or processing the beef products.

We must construe the statute so as "to avoid strained or absurd consequences." *Deaconess Medical Center v. Dep't. of Revenue*, 58 Wn. App. 783, 788, 795 P.2d 146, 149 (1990). "To this end, the statute must be read as a whole; intent is not to be determined by a single sentence." *Human Rights Comm'n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P. 2d 163, 164 (1982).

The legislature chose different language in (b) than (a) possibly suggesting that it intended (b) not to require that the person conducting the breaking and processing must be the same person selling the beef at wholesale.[3] However, applying this analysis to the entire clause, results in absurd consequences. Ultimately, the affiliate's customers, or the customers' customers will sell the beef at retail. The taxpayer has processed the beef for human consumption. Someone will eat the beef sold at retail. If RCW 82.04.4336(1)(b) does not require the same person conducting the breaking and processing to sell the beef at wholesale, and if we allow another person to sell the beef, ultimately the beef will be sold at retail, violating the requirement that the beef products be "sold at wholesale only and not at retail." Under such an interpretation, no person breaking and processing beef ultimately sold at retail would qualify for the deduction, clearly a consequence contrary to the legislature's intent. Therefore, under RCW 82.04.4336(1)(b), the same person breaking and processing the beef must sell the beef at wholesale. . . . Because the taxpayer did not sell the beef, we conclude it does not qualify for the deduction under RCW 82.04.4336(1)(b).

RCW 82.04.4336(1)(c) allows the deduction for amounts received from wholesaling The taxpayer does not qualify because the taxpayer received nothing from wholesaling. The taxpayer was paid to slaughter, break, and process the beef. The affiliate received the amount from wholesaling.

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[3] The taxpayer contends that RCW 82.04.4336(1)(b) is unambiguous, and not subject to judicial review, arguing we must derive its meaning from the plain language under *Group Health of Puget Sound, Inc. v. Dep't of Revenue*, 106 Wn.2d 391, 401, 722 P2d 787 (1986). We consider the passive language ambiguous.

The deductions allowed under RCW 82.04.4336(1)(d) and RCW 82.04.4336(1)(c) apply to nonperishable beef. The taxpayer's brief indicates after the reorganization, it processes perishable beef products. Therefore, we need not analyze these subsections.

We conclude that after January 1, 2006, the taxpayer no longer qualified for any deduction under RCW 82.04.42336.

DECISION AND DISPOSITION

We deny the taxpayer's refund petition.

Dated this 28th day of February 2008.