

Cite as Det No. 12-0320, 32 WTD 168 (2013)

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>
Tax Ruling by)	
)	
...)	No. 12-0320
)	
)	Registration No. . . .
)	Appeal of Tax Ruling
)	Docket No. . . .
)	
)	

- [1] RCW 82.08.0281: RETAIL SALES TAX – EXEMPTION – SALE OF PRESCRIPTION DRUG. The sale of packaging materials for packaging drugs prior to dispensing the drugs to a patient pursuant to a prescription is not a sale of drugs exempt from retail sales tax under RCW 82.08.0281.
- [2] RCW 82.08.935: RETAIL SALES TAX – EXEMPTION – SALE OF DISPOSABLE DEVICE USED TO DELIVER PRESCRIPTION DRUG. The sale of packaging materials for packaging drugs prior to dispensing the drugs to a patient pursuant to a prescription is not a sale of disposable delivery devices used to deliver drugs exempt from retail sales tax under RCW 82.08.935.

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.

Eckholm, A.L.J. – A county jail health services program appeals a Department of Revenue (Department) letter ruling that the sale of packaging and labels used to package prescribed drugs to be dispensed to inmates is not exempt from retail sales tax under RCW 82.08.0281. The taxpayer's petition is denied.¹

ISSUES

1. Whether the sale of packaging materials for packaging drugs prior to dispensing the drugs to a patient pursuant to a prescription is a sale of drugs exempt from retail sales tax under RCW 82.08.0281.

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

2. Whether the sale of packaging materials for packaging drugs prior to dispensing the drugs to a patient pursuant to a prescription is a sale of disposable delivery devices used to deliver drugs exempt from retail sales tax under RCW 82.08.935.

FINDINGS OF FACT

[Taxpayer] provides medical, dental, and psychiatric services to inmates of [two correctional facilities]. As part of these services, the taxpayer dispenses legend drugs and over-the-counter drugs (“drugs”) to inmates pursuant to a prescription. The taxpayer purchases drugs and packaging materials from a distributor and then individually packages the drugs prior to dispensing them to the inmates free of charge. The packaging materials include containers, vials, cellophane, paper, and labels. The taxpayer prints specific warnings on labels to be placed on the packaged drugs, such as “take with a full glass of water.”

The taxpayer indicates that on July 5, 2011, one of its employees spoke to Department representatives . . . and requested advice as to whether the purchases of the drugs to be dispensed to inmates pursuant to a prescription, as well as the packaging materials, are exempt from retail sales tax. The taxpayer indicates it was advised that the described purchases of drugs are exempt from retail sales tax, and that the purchases of the packaging materials were also exempt because the materials are an integral part of the prescription and the drugs could not be dispensed without them. The taxpayer indicates the representatives also stated that the sale of the packaging materials is analogous to the sale of an intravenous set used for the delivery of prescription drugs, which is exempt from retail sales tax.

On July 6, 2011, the taxpayer requested a binding ruling from the Department’s Taxpayer Information and Education Section (TI&E) to confirm the advice received by telephone. TI&E advised that the sale of drugs to be dispensed to an inmate pursuant to a prescription is exempt from retail sales tax under RCW 82.08.0281, but that the sale of the packaging materials that are used to repackage the drugs that are then given to the inmates free of charge is not exempt from retail sales tax.

The taxpayer appealed the TI&E ruling, asserting that the sale of the packaging materials falls within the retail sales tax exemption for sales of drugs and “other substances,” as defined by WAC 458-20-18801, because the packaging materials are used to deliver the drugs to the inmates and are analogous to the listed examples of other substances: needles, tubing, the bags containing intravenous solution, catheters, and infusion pumps. The taxpayer also asserts that the sale of the drugs incorporates the packaging materials because without the packaging materials, the drugs could not be dispensed to the inmates pursuant to a prescription.²

² The taxpayer’s assertion that another government [correctional] facility is not paying retail sales tax on the purchase of drug packaging materials is not addressed because the Department is prohibited under RCW 82.32.330, from discussing the particulars of one taxpayer’s situation with another taxpayer. See Det. 92-004, 11 WTD 551, 563 (1992).

ANALYSIS

Retail sales tax is imposed on each retail sale in this state. RCW 82.08.020(1). A “retail sale” includes every sale of tangible personal property to all persons irrespective of the nature of their business. RCW 82.04.050(1)(a). “Sale” means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a “sale at retail” or “retail sale” under RCW 82.04.050. RCW 82.04.040(1). A retail sale does not include sales of tangible personal property purchased for resale without intervening use. RCW 82.04.050(1)(a). The taxpayer purchases the drugs and packaging materials to dispense the packaged drugs to the inmates free of charge; therefore, it does not purchase the drugs and packaging materials for resale. The sales of drugs and packaging materials to the taxpayer are retail sales subject to retail sales tax unless a specific exemption applies.

Sales of certain drugs are statutorily exempt from retail sales tax under RCW 82.08.0281. This statutory exemption was amended in 2003 as a result of the legislature’s efforts to conform Washington laws to the Streamlined Sales and Use Tax Agreement (SSUTA). *See* Laws of 2003, ch. 168, § 401 (Streamlined Sales Tax Act). Several statutory retail sales tax exemptions related to the sales of prescribed drugs, and other related items, were either amended or adopted to conform to the exemptions and definitions contained in the SSUTA, including: RCW 82.08.0283 (certain medical items, including prosthetic devices, prescribed oxygen, and medicines of mineral, animal, and botanical origin); RCW 82.08.925 (prescribed dietary supplements); RCW 82.08.935 (single use disposable devices, such as syringes, tubing, or catheters, used or to be used to deliver prescription drugs); RCW 82.08.940 (over-the-counter drugs prescribed for human use); and RCW 82.08.945 (prescribed kidney dialysis devices) (“SSUTA statutory exemptions”).³

The taxpayer cites to WAC 458-20-18801 (Rule 18801) in support of its assertions on appeal. Rule 18801 is a rule the Department adopted in 1972, and last amended in 1992, to administer taxation of prescription drugs, medical devices, and related items, according to the statutory exemptions in existence at that time. Rule 18801 has not been amended to conform to the later enacted SSUTA statutory exemptions cited above. Consequently, many of the definitions and exemptions provided in Rule 18801 are inconsistent, and in some instances in conflict, with the SSUTA statutory exemptions. In 2003, the Department filed a Preproposal Statement of Inquiry with the Washington State Code Reviser’s Office providing notice that the Department intended to amend Rule 18801 to conform to the SSUTA definitions and exemptions. Wash. St. Register (WSR) No. 03-18-120. Rule 18801 has not yet been amended; therefore, the rule is inapplicable to this appeal. The statutory exemptions related to the taxpayer’s assertions are set forth in RCW 82.08.0281 and RCW 82.08.935, and will be applied in determining this appeal. To determine whether the statutory exemptions encompass the taxpayer’s purchase of the packaging materials, the principles of statutory interpretation are applied.

³ There are corresponding use tax exemptions in Chapter 82.12 RCW. For brevity, we will limit our discussion to the sales tax exemptions with the understanding that an item that is either exempt or non-exempt for sales tax purposes is similarly exempt or non-exempt for use tax purposes.

The goal of interpreting a statute is to carry out the intent of the legislature. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Statutory interpretation begins with the statute's plain meaning. *Id.* The statute's plain meaning is discerned from the ordinary meaning of the language at issue, the statute's context, related provisions, and the statutory scheme as a whole. *Id.* Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself. *Bowie v. Dep't of Revenue*, 171 Wn.2d 1, 10, 248 P.3d 504 (2011).

When a statute fails to define a term, its ordinary meaning may be ascertained from the dictionary definition. *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). When general terms and specific terms are used in a sequence, the specific terms restrict the application of general terms to embrace only objects similar to the specific terms. *State v. Stockton*, 97 Wn.2d 528, 532, 647 P.2d 21 (1982). Terms may not be read into a statute, thereby creating legislation under the guise of interpreting a statute. *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). Where the legislature uses certain statutory language in providing an exemption in one instance, and different language in providing an exemption in a related statutory provision, there is a difference in legislative intent. *United Parcel Service, Inc. v. Dep't Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984); *see also Seeber v. Public Disclosure Comm'n*, 96 Wn.2d 135, 139-140, 634 P.2d 303 (1981).

Statutory tax exemptions are construed narrowly. *Budget Rent-A-Car of Washington-Oregon, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972). Taxation is the rule and exemption is the exception; and anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it. *Id.* Statutory tax exemptions that create doubt or ambiguity are strictly construed against the taxpayer, while construing the statute in keeping with the ordinary meaning of its language. *Sacred Heart Med. Ctr. v. Dep't of Revenue*, 88 Wn. App. 632, 637, 946 P.2d 409 (1997); *Group Health Co-op. of Puget Sound, Inc. v. Washington State Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967).

1. Retail sales tax exemption for the sale of drugs under RCW 82.08.0281.

[1] The retail sales tax exemption set forth in RCW 82.08.0281 applies to "... sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription." RCW 82.08.0281(1). The terms "drug" and "prescription" are defined in the statute as follows:

(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(b) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements,⁴ or alcoholic beverages:

⁴ A sales tax exemption for the sale of dietary supplements is provided in RCW 82.08.925, and was enacted as part of the SSUTA legislation.

- (i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or
- (ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (iii) Intended to affect the structure or any function of the body.

RCW 82.08.0281(4)(a) and (b).

The statute provides that the retail sales tax exemption applies to sales of drugs, as defined in the statute, that are: (1) for human use; and (2) dispensed or to be dispensed to patients pursuant to a prescription. RCW 82.08.0281(1). The definition of the term “drug,” set forth above, includes “a compound, substance, or preparation, and any component of a compound, substance, or preparation” *Id.* The definition of “drug” does not include materials used for packaging the “compound, substance, or preparation” constituting a drug. Terms may not be read into a statute. *Kilian v. Atkinson*, 147 Wn.2d at 21, *supra*. The plain language of the statute provides that sales of drugs, as specified, are exempt from retail sales tax; there is no mention of sales of any other items included in the exemption. The tax exemption for the sale of drugs does not include the sale of packaging materials used to package the drugs. The legislature’s intent to limit the exemption to the sale of drugs is evidenced by its enactment of a specific sales tax exemption for sales of certain disposable prescription drug delivery devices in RCW 82.08.935, at the same time the legislature amended RCW 82.08.0281. *See United Parcel Service, Inc. v. Dep’t Revenue*, 102 Wn.2d at 362, *supra*. If the legislature intended to provide an exemption for the sale of packaging materials related to the dispensing of the prescription drugs, as it did for specified devices used to deliver prescription drugs, it would have done so. The taxpayer’s purchase of packaging materials used to package drugs is not exempt from retail sales tax pursuant to RCW 82.08.0281.

2. Retail sales tax exemption for the sale of disposable devices used to deliver prescription drugs under RCW 82.08.935.

[2] The taxpayer also asserts that its packaging of the drugs is used to deliver the drugs to the inmates according to the prescription; therefore, the sales of the packaging materials are encompassed within the tax-exempt drug sale. The taxpayer’s argument is appropriately addressed by RCW 82.08.935, mentioned above. RCW 82.08.935 provides an exemption from retail sales tax on sales of: “disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. ‘Disposable devices used to deliver drugs’ means single use items such as syringes, tubing, or catheters.”

The definition of “disposable devices used to deliver drugs” includes a list of single use items that would qualify for the exemption. Though the statutory definition lists syringes, tubing and catheters as examples of devices that would qualify, these specific terms restrict the application

of the general term, “single use items,” to the specific items in the list. *See State v. Stockton*, 97 Wn.2d at 532, *supra*. The specific items are not defined in the statute; therefore, the dictionary definitions provide their ordinary meaning as follows:

catheter: any of various *tubular* medical *devices* designed for *insertion into* canals, vessels, passageways, or body cavities so as *to permit injection or withdrawal of fluids* or substances or to maintain openness of a passageway ...

syringe: a *device* used to *inject fluids into or withdraw them from the body* or its cavities.

tubing: a material in the form of a tube ...

tube: a hollow elongated usu. cylindrical body that is *used esp. to convey fluids* ...

Webster’s Third New International Dictionary 353, 2322, 2459-2460 (1993)(emphasis added).

All of these terms involve the injection of fluids into, or withdrawal from, the body. These specific terms restrict the preceding general term “single use devices” to devices that perform similar functions in delivering the prescription medication into the body. The taxpayer’s packaging materials simply provide a container, with printed directions, to dispense the drugs to the inmates. The packaging materials are in no way similar to the items listed that are inserted into the body to deliver prescribed medication; they are not “disposable devices used to deliver drugs” encompassed by RCW 82.08.935.

The taxpayer has failed to establish that the purchases of packaging materials it uses to package drugs prior to dispensing the drugs to the inmates free of charge are exempt from retail sales tax under RCW 82.08.0821, RCW 82.08.935, or any other applicable exemption. The taxpayer’s petition is denied.

This determination is based on the facts and arguments presented. If the taxpayer would like to present other facts or authorities in support of its assertion that its purchase of drug packaging materials is exempt from retail sales tax, it should submit a another request for a tax ruling to TI&E.

DECISION AND DISPOSITION

The taxpayer’s petition is denied.

Dated this 14th day of November, 2012.