

Cite as Det. No. 16-0277, 36 WTD 121 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 16-0277
)	
...)	Registration No. ...
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RULE 263; RCW 82.08.962: RENEWABLE ENERGY – SOLAR ENERGY SYSTEM – SALES AND USE TAX – M&E EXEMPTION. Charges for electrical and structural engineering, electrical and building permits, construction bond, plan review, project management and coordination, equipment rental, and weather station with solar radiation monitoring, do not qualify for the renewable energy machinery and equipment (M&E) exemption from retail sales tax, as provided in RCW 82.08.962 and WAC 458-20-263.

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, T.R.O. – A [taxpayer] sought review of the partial denial of its request for refund of 75 percent of the retail sales tax paid on the purchase and installation of a solar energy system. The taxpayer asserts that the Department improperly denied its refund, allowable under RCW 82.08.962 and WAC 458-20-263, of tax paid on charges for electrical and structural engineering, electrical and building permits, a construction bond, plan review, project management and coordination, equipment rental, and a weather station with solar radiation monitoring. The taxpayer's petition is denied.¹

ISSUE

Are charges for electrical and structural engineering, electrical and building permits, a construction bond, plan review, project management and coordination, equipment rental, and a weather station with solar radiation monitoring, eligible for exemption from retail sales tax as provided in RCW 82.08.962 and WAC 458-20-263?

FINDINGS OF FACT

... The taxpayer applied for a refund of 75 percent of retail sales tax paid on the purchase and installation of a [number] kilowatt solar energy system . . . , in the total amount of \$ The Department of Revenue (Department) Taxpayer Account Administration (TAA) Division

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

granted the majority of the refund request and denied \$. . . , representing sales tax paid on certain items that it determined did not qualify for refund under the renewable energy [M&E] exemption, according to RCW 82.08.962 and WAC 458-20-263. These items included electrical and structural engineering, electrical and building permits, construction bond, plan review, project management and coordination, equipment rental, weather station with solar radiation monitoring, and a roofing modification.

The taxpayer sought review of the refund denial except for tax associated with the roofing modification. The taxpayer asserted in its review petition that all of the denied installation items were included in the contractor's itemized schedule of values and were required to complete installation of the solar panels, which are qualified as M&E; therefore, these items represent "sales of or charges made for labor and services rendered in respect to installing such machinery and equipment," as provided in RCW 82.08.962(1)(a). The taxpayer also asserted that the weather station with solar monitoring was industry standard and qualified as M&E because it was integral to ensuring the proper operation of the solar energy system.

At the hearing, the taxpayer provided additional information about the project. The taxpayer indicated that the denied equipment rental charges were for rental of the forklifts to lift the solar panels to the roof for installation and rental of a safety barrier required by code while installation activities were in progress. The taxpayer also indicated that the denied storage costs were for rental of an onsite shipping storage container to protect the . . . solar panels during the installation period because all of the solar panels could not be installed in one day. The taxpayer conceded that the weather station with solar radiation monitoring may not be considered qualified M&E used directly in generating electricity via solar energy, but that it is integral and necessary to the operation of the solar energy system by monitoring the correct operation and efficiency of the electricity-producing solar panels, and that it is industry standard to be included in a solar energy system.

ANALYSIS

All sales of tangible personal property to consumers in Washington are subject to retail sales tax unless a specific exemption applies. RCW 82.08.020; RCW 82.04.050. [A specific exemption, RCW 82.08.962, partially exempts] purchases of qualified M&E that is used directly in generating electricity using solar energy where the M&E is part of a solar energy system capable of generating at least 1000 watts of electricity, and certain charges incurred for installing the M&E . . . , as follows:

(1)(a) Except as provided in RCW 82.08.963, purchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

...

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

...

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department.

...

RCW 82.08.962(1)(a), (c), (4)(a) (emphasis added). The corresponding use tax exemption is provided in RCW 82.12.962.

“Machinery and equipment” is defined in RCW 82.08.962(2), as follows:

(d)(i) “Machinery and equipment” means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power.

(ii) “Machinery and equipment” does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

RCW 82.08.962(2)(d) (emphasis added).

Tax exemptions are strictly construed in favor of application of the tax and against claiming the exemption, and the burden of proving entitlement to the exemption is on the taxpayer. *See Budget Rent-A-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972); Det. No. 05-0193, 25 WTD 143, 145 (2006); Det. No. 01-007, 20 WTD 214, 231 (2001).

The Department’s rule applicable to the renewable energy M&E exemption, WAC 458-20-263 (Rule 263), describes exempt installation charges and includes examples of nonqualifying charges:

Installation charges. The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for charges for labor and services rendered in respect to constructing buildings or access

roads that may be necessary to install or use qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes paid with respect to tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes for services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.

Rule 263(405) (emphasis added).

As set forth above, RCW 82.08.962(1)(a) exempts “sales of or charges made for labor and services rendered in respect to installing” M&E. In detailing the types of installation charges that are excluded from the renewable energy M&E exemption in Rule 263(405), the Department construed the exemption narrowly, as is appropriate for construing exemptions. *See Budget Rent-A-Car, Inc.*, 81 Wn.2d 171 at 174-75; *Tesoro Refining and Marketing Co. v. Dep’t of Revenue*, 164 Wn.2d 310, 322, 190 P.3d 28 (2008) (the rules of statutory construction apply to agency regulations as well as statutes).

The taxpayer asserts that it qualifies for the renewable energy M&E exemption and allowable refund of retail sales tax paid on the charges for electrical and structural engineering, electrical and building permits, construction bond, plan review, project management and coordination, equipment rental, and weather station with solar radiation monitoring. In regards to the equipment rental charges, Rule 263(405) excludes such charges even if the equipment (including forklifts) is used for installing M&E because the equipment rental charges are not charges for labor or services rendered with respect to installing the M&E. TAA consistently applied Rule 263(405) in granting the taxpayer’s request for refund of tax paid on the total installation labor charges, which would include charges for labor necessary to operate the forklifts or any other installation equipment, because the charges were directly related to the labor for installing the M&E and not simply for the rental of equipment. [See RCW 82.08.962(1)(a).]

Similarly, the TAA Division correctly applied Rule 263(405) in denying refund of tax paid on charges for electrical and structural engineering, electrical and building permits, construction bond, plan review, and project management. These charges are encompassed within Rule 263(405)’s exclusion of “services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.” These types of charges are for project activities that customarily occur prior to the beginning of actual construction and installation. The taxpayer has not shown how the charges for engineering, permitting and bonding, plan review, and project management, were for labor or services directly related to the actual installation of the qualifying M&E.

As to the weather monitoring station, the taxpayer appropriately recognized that this item may not qualify as M&E because it is not integral and necessary to the generation of solar sourced electricity. *See* RCW 82.08.962(2)(d). We recognize that the weather monitoring station is included in a solar energy system as industry standard and beneficial in monitoring the efficient

operation of the system, but the taxpayer has not shown it is integral and necessary to the production of electricity. In addition, the weather monitoring station is not similar to any of the qualified solar M&E examples provided in Rule 263, including: “solar modules; inverters; Stirling converters; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.” Rule 263(404)(a).

The taxpayer has not met its burden in establishing that it qualifies for the renewable energy M&E exemption and allowable refund of retail sales tax paid on the charges for electrical and structural engineering, electrical and building permits, construction bond, plan review, project management and coordination, equipment rental, and weather station with solar radiation monitoring, according to RCW 82.08.962 and Rule 263. The taxpayer’s petition is denied.

DECISION AND DISPOSITION

The taxpayer’s petition is denied.

Dated this 30th day of August 2016.