

Cite as Det. No. 18-0032, 38 WTD 097 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 18-0032
) )	
... )	Registration No. . . .
) )	

RCW 82.08.890: RETAIL SALES TAX – EXEMPTION – QUALIFYING LIVESTOCK NUTRIENT MANAGEMENT FACILITIES. The expansion of an existing livestock nutrient management facility constitutes the construction of new facilities, and not an improvement thereupon. Thus, the labor and services rendered and tangible personal property purchased with respect thereto does not qualify for retail sales tax exemption under RCW 82.08.890.

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.

Roberts, T.R.O. – A dairy operation protests the assessment of use tax/deferred retail sales tax. Taxpayer argues that the subject sales are exempt from taxation as improvements to qualifying livestock nutrient management facilities. We deny the petition.<sup>1</sup>

### ISSUE

Does an expansion of an existing livestock nutrient management facility constitute qualifying improvements under RCW 82.08.890(1)(c)(i), or non-qualifying construction of new facilities under RCW 82.08.890(1)(c)(ii)?

### FINDINGS OF FACT

... (“Taxpayer”), is a dairy facility located in ... Washington. As an integral part of its operations, the Taxpayer has a livestock nutrient management facility in place to handle the disposal of the waste products generated by its dairy cattle.

In 2017, the Department of Revenue (“Department”) audited Taxpayer for the January 1, 2012, through June 30, 2016, tax period. On July 7, 2017, Audit issued a tax assessment in the amount of \$ . . . , having determined that Taxpayer owed a deferred retail sales tax liability for various large purchases made during the tax period.

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

On August 1, 2017, Taxpayer submitted a review petition, disputing \$ . . . of the tax assessment. Taxpayer argued that certain purchases were exempt from taxation because they related to upgrades and a new expansion of Taxpayer's livestock nutrient management facility.

Specifically, the dispute between Audit and Taxpayer arises from the addition of four corrals into an existing corral system. During the course of this expansion, Taxpayer also added gutters, curbing, piping, and an additional pit tank to connect the four new corrals to the pre-existing livestock nutrient management facility.

Prior to the assembly of the new corrals, that portion of the corral system was an open lot environment. To manage the manure in the open lot, Taxpayer utilized wheel loaders and trailers to transport the manure to the existing livestock nutrient management facility. By constructing the corrals and connecting them to the existing livestock nutrient management facility, Taxpayer is able to better control the animal waste products.

The parties do not dispute the taxability of that portion of the newly-constructed corrals . . . used for feeding, shade, and fencing. The dispute between the parties is as to the taxability of that portion of the new corrals . . . used to connect the corrals to the pre-existing livestock nutrient management facility, specifically the gutters, curbing, piping, and an additional pit tank. Audit's position is that this new construction constitutes a new livestock nutrient management facility and is therefore taxable. However, Taxpayer contends that a livestock nutrient management facility had already been in place and that the newly-constructed piping, et. al., constitute an improvement to that pre-existing facility. Taxpayer notes that the new construction replaced the manual transportation of the manure to the existing livestock nutrient management facility.

It appears that Taxpayer may also be contending that its construction of concrete slabs, upon which the livestock stand, throughout the corral system should also be considered to be a component of the livestock nutrient management facility. Audit disagrees with this position on the basis that the concrete slabs are not being exclusively used for the handling and treatment of livestock manure.

Taxpayer derived the calculation of its disputed tax amount, \$ . . . , from an estimate provided by . . . . According to the estimate, which Audit also utilized in the calculation of its tax assessment, the cost of the construction of the new corrals amounts to approximately \$ . . . . This estimate included the cost associated with the construction of the curbs, alleys, pit tank, and concrete slabs.

## ANALYSIS

RCW 82.08.020 imposes a retail sales tax on each retail sale in this state. RCW 82.04.050 defines the term "retail sale" for excise tax purposes. The term "retail sale" includes the sale of tangible personal property consumed and/or for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures on real property of or for consumers. RCW 82.04.050(2)(b).

WAC 458-20-178 provides that deferred retail sales tax is due on the use of goods in Washington when Washington's retail sales tax has not been paid, such as when documentation was provided for a tax exemption and the purchase is later determined to be taxable. The deferred retail sales

tax rate is based on the rate at which retail sales tax would have been properly collected at the time of sale. [See RCW 82.12.020(4)(a).]

Certain labor and services rendered and tangible personal property purchased with respect to qualifying livestock nutrient management facilities are exempt from the retail sales tax under RCW 82.08.890. See also WAC 458-20-210(9)(m). “Qualifying livestock nutrient management facilities” is defined by statute to mean “the following structures and facilities for exclusive use in the handling and treatment of livestock manure: “(i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures . . . ; and (iv) structures used solely for the dry storage of manure . . . .” RCW 82.08.890(4)(g). Here, with the exception of the construction of the concrete slabs, there is no dispute that Taxpayer’s structures at issue constitute qualifying livestock nutrient facilities; however, Taxpayer and Audit disagree as to whether the building of these structures is tax exempt under RCW 82.08.890.

RCW 82.08.890 limits tax-exempt labor, services, and tangible personal property with respect to qualified livestock nutrient management facilities to “labor and services rendered in respect to repairing, cleaning, altering, or *improving* of qualifying livestock nutrient management facilities, or tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.” RCW 82.08.890(1)(c)(i) (emphasis added). The statute goes on to state that the following labor, services, and tangible personal property are not exempt from retail sales tax: “(A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.” RCW 82.08.890(1)(c)(ii)

Thus, by its plain language, the exemption is limited to providing tax relief for certain costs farmers incur to keep their livestock nutrient management facilities in good working order – the exemption does not apply to the expenses the farmers initially incur in making their facilities operational.

“Taxation is the rule and exemption is the exception.” *Spokane County v. City of Spokane*, 169 Wn. 355, 358, 13 P.2d 1084 (1932). Tax exemptions must be strictly construed, though fairly, and in keeping with the ordinary meaning of their language, against the taxpayer. See, e.g., *Budget Rent-a-Car, Inc. v. Dep’t of Revenue*, 81 Wn. 2d 171, 500 P.2d 764 (1972); *Group Health Coop. v. Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 07-0034E, 26 WTD 212 (2007). . . .

Here, the source of the parties’ dispute is whether an expansion of existing livestock nutrient management facility constitutes a taxable, newly-constructed facility or a tax-exempt improvement to a pre-existing facility. The sales at issue were for services and property used in constructing [new] gutters, curbing, piping, and a pit tank. Under the plain language of RCW 82.08.890, these construction expenses do not qualify as tax exempt.

Taxpayer argues the tax exemption applies to these construction costs because the livestock nutrient management facility was already in place and the expansion was built over previously

existing facilities, the open lot environment. In other words, the at-issue labor and services were rendered and the tangible personal property was purchased with respect to improving a qualifying livestock nutrient facility. We are unpersuaded. RCW 82.08.890 explicitly excludes the construction of new livestock nutrient management facilities and the gutters, curbing, piping, and the pit tank, were all newly constructed. RCW 82.08.890(1)(c)(ii). They were not pre-existing structures which Taxpayer repaired, cleaned, altered, or improved within the meaning of the exemption. RCW 82.08.890(1)(c)(i).

Accordingly, because the RCW 82.08.890 excludes labor and services rendered in respect to constructing qualifying livestock nutrient facilities, we conclude that the labor and services at issue are not exempt from retail sales tax.

With respect to sales of property, as explained above, the tax exemption applies to sales of “tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities.” “[T]angible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities” is not exempt from retail sales tax. Thus, similarly, only items that become ingredients or components of existing facilities are exempt from retail sales tax under RCW 82.08.890.

Because we conclude that Taxpayer’s expansion of its qualifying livestock nutrient management facility is construction of a new qualifying livestock nutrient management facility and not an improvement of a previously existing livestock nutrient management facility, we need not address whether the concrete slabs are tax exempt as ingredients or components of the new qualifying livestock nutrient management facility. Accordingly, we sustain Audit’s assessment of tax with respect to the labor, services, and tangible personal property in building the new qualifying livestock nutrient management facility.

#### DECISION AND DISPOSITION

We deny Taxpayer’s petition.

Dated this 2nd day of February, 2018.