

Cite as Det. No. 18-0280, 40 WTD 013 (2021)

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

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| 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. 18-0280 |
|)) | |
| . . .) | Registration No. . . . |
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RULE 24001; RCW 82.60.030; USE TAX/DEFERRED SALES TAX – HIGH
UNEMPLOYMENT COUNTY TAX DEFERRAL – DEFERRAL
CERTIFICATE. Qualification of the tax deferral requires that application for the
tax deferral be made prior to beginning construction.

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.

Lewis, T.R.O. – Taxpayer protests the assessment of use tax/deferred sales tax [imposed by] the Audit Division of the Department of Revenue, [which] determined that Taxpayer’s construction of a building did not qualify for a high unemployment county tax deferral because construction of the building began before the Department issued the tax deferral certificate. The assessment is affirmed.¹

ISSUE

Are the costs of materials and labor incorporated into the construction of a building entitled to the retail sales tax and use tax deferral provided by chapter 82.60 RCW and WAC 458-20-24001 (“Rule 24001”) if construction of the building began prior to the issuance of the tax deferral certificate?

FINDINGS OF FACT

Taxpayer applied for a building permit with [Municipality] on November 12, 2015, to build a . . .square foot building with a canopy.

[Municipality] approved Taxpayer’s application and issued Taxpayer a building permit on March 28, 2016. The building permit was signed by Taxpayer on March 28, 2016. On March 28, 2016,

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

Taxpayer paid [Firm] \$. . . for the building permits.² A code enforcer for [Municipality] completed a footing inspection on April 27, 2016.

On May 2, 2016, Taxpayer applied for a retail sales tax deferral. On May 3, 2016, the Department issued retail tax deferral certificate # . . . with an effective date of May 3, 2016.

On May 5, 2016, [Municipality] issued a renewal of the building permit. The May 5, 2016 permit had the same number and same information as the [permit] issued on March 28, 2016.

During October 2017, the Department contacted Taxpayer to tour the facility and review the documentation related to the building of the structure. The review revealed that work had started on the building prior to the Department's issuance of the deferral.

On January 12, 2018, the Department issued a \$. . . assessment to Taxpayer.³ The assessment represented use tax assessed on the disallowed deferral of tax on materials and labor incorporated into the building's construction.

Taxpayer disagreed with the assessment. On February 12, 2018, Taxpayer filed a petition requesting correction of the assessment. Taxpayer maintained that the assessment was issued in error because the deferral certificate was issued on May 3, 2016 and the building permit was issued on May 5, 2016.

ANALYSIS

Chapter 82.60 RCW provides for a sales tax and use tax deferral program to promote economic stimulation and new employment opportunities in certain distressed areas of the state. To qualify for the deferral program the investment must meet certain criteria. RCW 82.60.020(4)(a) defines "eligible investment project" as ". . . an investment project that is located, as of the date the application required by RCW 82.60.030 is received by the department, in an eligible area as defined in subsection (3) of this section."

"Investment project" for the tax deferral program means "an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project." RCW 82.60.020(6).

RCW 82.60.030(1) expressly provides, "Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery." Rule 24001(7) adds, "Persons, applying after construction is initiated or finished or after possession of machinery and equipment, are not eligible for the program."

RCW 82.60.020(5) states that "'Initiation of Construction' has the same meaning as in RCW 82.63.010." RCW 82.63.010 defines "Initiation of Construction" to mean "the date that a building

² The \$. . . payment consisted of \$. . . Building Permit – Building, Structures & Equipment; \$. . . Building Permit – Plan Checking Fees -03/28/2016; and \$. . . Building Permit – State Building Code Fee – 03/28/2016.

³ The \$. . . assessment consisted of \$. . . in use tax/deferred sales tax, \$. . . in interest, and a \$. . . assessment penalty.

permit is issued under the building code adopted under RCW 19.27.031” RCW 82.63.010(9)(a).⁴

Generally, taxation is the rule and deductions or exemptions are exceptions to the rule. *Budget Rent-A-Car Inc. v. Department of Rev.*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972) (citing *Fibreboard Paper Prods. Corp. v. State*, 66 Wn.2d 87, 401 P.2d 623 (1965)). Thus, we construe deductions to taxation narrowly, and the party claiming the deduction has the burden of showing that it qualifies for the deduction. *Budget Rent-A-Car*, 81 Wn.2d at 174-75 (citing *Group Health Coop. of Puget Sound, Inc. v. Tax Comm’n*, 72 Wn.2d 422, 433 P.2d 201 (1967); *All-State Constr. Co. v. Gordon*, 70 Wn.2d 657, 425 P.2d 16 (1967); *Yakima Fruit Growers Ass’n v. Henneford*, 187 Wash. 252, 60 P.2d 62 (1936)). Thus, the burden is on the Taxpayer to show that it qualifies for the tax deferral.

The plain and unambiguous language of the statutes provides that the application for the tax deferral must be made prior to the initiation of construction. The language does not provide that the taxpayer is still eligible for the tax deferral if it begins construction before submitting the application. Here, Taxpayer obtained the building permit in March 2016 and began actual construction, with an inspection of footings taking place in April 2016, all of which occurred before the issuance of the deferral in May 2016. The May 5, 2016 permit that Taxpayer refers to is the renewal of its permit previously issued in March of that year. Therefore, according to the authority mentioned above, Taxpayer initiated construction prior to obtaining the deferral. Consequently, Taxpayer is not eligible for the tax deferral provided by chapter 82.60 RCW.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 18th day of October 2018.

⁴ RCW 19.27.031 addresses “State building code – Adoption – Conflicts – Opinions.”