

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

LAMB-GRAYS HARBOR COMPANY,	)	
	)	
Appellant,	)	Docket No. 37111
	)	
v.	)	Re: Excise Tax Appeal
	)	
STATE OF WASHINGTON	)	FINAL DECISION
DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	
_____	)	

This matter came before the Board of Tax Appeals (Board) for an informal hearing on May 21, 1990, to review a Determination of the Department of Revenue denying Appellant's request for business and occupation (B & O) tax credits and deferral of sales and use tax for the years 1988, 1989-1991. Robert E. Mack, Attorney, appeared for Appellant, Lamb-Grays Harbor Company (Lamb). Don Vanderlin, Comptroller, and David Lamb, Treasurer, testified for Lamb. Claire Hesselholt, Attorney, appeared for Respondent, Department of Revenue (Department).

This Board heard the testimony, reviewed the evidence, and considered the arguments made on behalf of both parties. This Board now makes its decision as follows:

ISSUE

Is Lamb entitled to:

I. B & O tax credits totalling \$115,000 on new employees for 1988, and

II. Sales and use tax deferrals in the amounts of \$117,780 for 1988 and \$220,350 for the years 1989-1991?

There are two matters that affect Lamb's entitlement. The first matter is the timeliness of Lamb's applications. The second matter is the eligibility of Lamb's investment project under RCW 82.60.020(4)(a)(ii).

FACTS

Lamb is a Washington State corporation that has been located in Grays Harbor County since 1903. Lamb produces equipment and services for the pulp and paper industry. The equipment includes sophisticated roll finish systems (systems to handle, wrap, and move large rolls of paper) for the pulp and paper mill environment. In addition, Lamb produces high speed pulp finishing equipment and systems. Lamb sells its equipment throughout the United States, North America, and the rest of the world.

Grays Harbor is a distressed area. The Washington State legislature acknowledged the need to provide incentives for economic development in distressed areas. The legislature provided a sales and use tax deferral for qualified "investment projects" under Chapter 82.60 RCW. The legislature also recognized that the essential purpose of state economic development programs is to encourage the hiring of the unemployed and provided a B & O tax credit on new employees under Chapter 82.62 RCW.

According to the Department's "Progress Report to Legislature" in January 1986,

Basically, both statutes provide for the deferral of state and local retail sales tax paid by eligible manufacturing or research and development firms upon plant expansion in Washington. Businesses must apply to the Department of Revenue and obtain a certificate prior to commencing construction. The certificate allows the purchase of construction and related machinery and equipment exempt from sales tax. No tax is due upon these purchases during the construction period or for the first three years following the certified completion date of the project. The total amount deferred will be repaid over the following five years . . . .

Department of Revenue and Department of Trade and Economic Development, "Progress Report to Legislature: Sales Tax Deferral Programs" 2 (January 1, 1986).

In April 1988, Lamb began expansion of its plant complex at the Hoquiam location for the development and production of Lamb automatic guided vehicles (AGVs), which are part of a unique system designed specifically for newsprint roll handling and specialized mail room applications. Lamb had a master plan for its project. Lamb provided drawings showing the entire planned project including the remodelling and expansion. Lamb projected that the project would cost a

total of \$4,335,000. The plans indicate that the project is to be constructed in phases as finances allow. Lamb planned this renovation and expansion of the "old foundry" in distinct phases for practical, scheduling purposes. The phases are related to each other but they are separate and scheduled to be initiated at different times. Depending on circumstances, some phases may never be initiated. Lamb began the initial renovation of the "old foundry" in 1988 and continued the renovation into 1989. Lamb invested over \$1,510,000 in the initial renovation of the existing building in 1988. Some additional phases began in 1989 and some were scheduled to begin in 1990 and 1991. These phases amount to \$2,662,040. Some projects which were to be initiated in 1989 had not been initiated at the date of hearing. Lamb added 115 new employees in 1988 and 83 new employees in 1989.

Although Lamb discussed the tax credit and tax deferral programs, provided under Chapters 82.60 RCW and 82.62 RCW, with local economic development officials in 1988, the company did not file written applications for tax credits and tax deferrals until early 1989. Lamb met with the Department on January 5, 1989. At that time, the Department recommended the filing of two forms for each case. This procedure would separate the request for entitlement between activities that occurred prior to the filing of applications and activities that occurred after the filing of applications. Lamb submitted four applications, two for sales and use tax deferral and two for tax credit. According to the testimony of Don Vanderlin, Comptroller, all four applications were submitted at the same time in late January 1989. Lamb supplied a copy of all four applications.

The Department does not acknowledge receipt of an application for the B & O tax credits on new employees for the year 1988. If the Department had received an application, its position on this application would be that it was not timely filed before hiring occurred. Lamb filed a second application for B & O tax credits on new employees hired after January 5, 1989, and the record indicates that the Department determined that Lamb was entitled to credits for employees hired after that date.

In Determination No. 89-265 dated May 1989, the Department concluded that none of the investment made in expanding and diversifying a current operation by improving existing buildings through renovation and expansion is entitled to the sales and use tax deferral when any of the investment is made before application.

Application must occur prior to initiation of "construction of the investment project" in order that the business may obtain a certificate from the Department prior to commencing construction. The certificate allows the purchase of construction and related machinery and equipment exempt from sales tax.

Lamb's plant complex expansion was intended to, and did, result in substantial increases in employment at the Hoquiam plant. Indeed, the most significant increase in industrial and manufacturing employment in the Grays Harbor area has been the expanded Lamb plant complex at Hoquiam.

Lamb has made or will make the investment for all the improvements (remodel and additions) to the subject plant complex. Renovation of the existing building included stripping the building to a basic shell, installing a new roof, and completing all interior improvements. Lamb leases the building shell it is renovating and expanding from a family trust which owns the original plant complex. The trust was set up in 1988 after Mr. Lamb, senior, died.

#### ANALYSIS AND CONCLUSIONS

I. Timeliness of Lamb's application for B & O tax credits totalling \$115,000 on new employees for 1988.

The B & O tax credit program is governed by Chapter 82.62 RCW. RCW 82.62.020 provides that an application for tax credits must be made before the actual hiring for qualified employment positions.

Lamb does not dispute that it did not file an application for B & O tax credits before hiring people in 1988. The Department's denial on that basis does not appear to be in dispute.

II. Timeliness of Lamb's application for sales and use tax deferrals in the amounts of \$117,780 for 1988 and \$220,350 for the years 1989-1991.

Lamb argues that a sales and use tax deferral should be granted to those distinct and separate phases of investment that occurred, and continue to occur, after the application date. Lamb further contends that the Department's position is unreasonable, violates the clear provisions of the relevant statute, and is subversive of the legislative policy

behind creation of the investment incentive for distressed areas. The Department responds that Lamb investments in projects initiated and completed after the January 1989 application date are not eligible for sales and use tax deferral under the law because they are part of the "investment project" that was initiated in 1988.

The sales and use tax deferral program is governed by Chapter 82.60 RCW. The legislature has specially required application before construction begins on an "investment project". Under RCW 82.60.030, application for deferral of taxes "must be made before initiation of the construction of the investment project." RCW 82.32.300 authorizes the Department to make rules and regulations to permit effective administration of the excise tax statutes. The Department has provided a rule defining the initiation of construction.

"Initiation of construction," for purposes of applying for the investment tax deferral relating to a major improvement of existing buildings, shall mean the date upon which the new construction by renovation, modernization, or expansion, by physical alteration, begins.

WAC 458-20-24001(3)(o).

"Initiation" is defined as "the action of taking the first step or move; responsibility for beginning or originating." Webster's New Universal Unabridged Dictionary 944 (2d ed. 1983).

The Department, in its 1986 report to the legislature, reported that some taxpayers had been denied deferrals because of failure to apply before construction started. Department of Revenue and Department of Trade and Economic Development, "Progress Report to Legislature: Sales Tax Deferral Programs" 3 (January 1, 1986). The legislature was aware of the problem and did not choose to change the filing requirement.

It is very unfortunate that a local official misinformed Lamb concerning timely filing. However, there is no question that the applications for sales and use tax deferral were made after the initiation of construction of the initial phase -- the major renovation of the existing building. The question is whether Lamb is entitled to deferral on the investments for the expansion phases constructed after January 1989. In effect, Lamb asks that each expansion and addition to the now remodelled, "old foundry" be considered an eligible "investment project" insofar as the timeliness

issue is concerned. The legislature has defined "investment project" in RCW 82.60.020(5) to mean "an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project." (Emphasis added.)

Each investment project must meet the three criteria set forth in RCW 82.60.020.

(4)(a) "Eligible investment project" means that portion of an investment project which:

(i) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(ii) Either initiates a new operation, or expands or diversifies a current operation by expanding or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement; or

(iii) Acquires machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure: Provided, That the lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

Lamb has provided plans and drawings showing an entire planned project which shall be completed over several years. Lamb acknowledged in its first application to the Department that the entire project would require an investment of \$4,335,000. Clearly there would be no eligible project without the initial building renovation which precipitated the hiring of 115 additional people in 1988 and 83 people in 1989. Lamb has made timely application for investments made after the 1989 application including the purchase of equipment and machinery. However, Lamb has not presented evidence to show that each of the multiple investment projects it is attempting to prove are eligible would meet the three criteria of RCW 82.60.020.

The evidence presented here supports a conclusion that the project which is eligible is the entire project of renovation and expansion. The start of renovation of the existing building was the initial construction of this project.

The second matter, the eligibility of Lamb's investment project under RCW 82.60.020(4)(a)(ii) need not be addressed here because the application fails on the timeliness issue.

DECISION

The Determination of the Department of Revenue is sustained.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

BOARD OF TAX APPEALS

\_\_\_\_\_  
RICHARD A. VIRANT, Chair

\_\_\_\_\_  
LUCILLE CARLSON, Member

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A timely Petition for Reconsideration may be filed to this Final Decision within ten days pursuant to WAC 456-10-755.