

Cite as Det. No. 02-0136, 23 WTD 70 (2004)

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>
Assessment of)	
)	No. 02-0136
)	
...)	Registration No. . . .
)	FY . . . /Audit No. . . .
)	Docket No. . . .
)	

RULE 182; RCW 82.08.820: SALES TAX – EXEMPTION -- WAREHOUSE – BUILDING – PROCESSING. A taxpayer that processes fish within the same building enclosure of its cold storage warehouse is not eligible for the warehouse tax exemption under RCW 82.08.820 for the building.

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.

NATURE OF ACTION:

A company, which processes fish in the same structure as its cold storage warehouse, protests disallowance of the warehouse tax exemption.¹

FACTS:

M. Pree, A.L.J. -- . . . (taxpayer) operates a cold storage facility. The taxpayer also processes fish. Both the storage activity and the processing activity occur within a common building structure in Washington.

Different divisions of the Department of Revenue (Department) have considered whether the taxpayer qualifies for the warehouse tax incentive. The warehouse tax incentive under RCW 82.08.820 provides a sales tax exemption or refund for all or part of the sales tax paid on certain

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

equipment used in the warehouse. The taxpayer requested a warehouse tax incentive credit from the Department's Taxpayer Accounts Administration Division (TAA). TAA granted the credit and sent the taxpayer refunds for the period from May 1997 through 2001. The Department's Audit Division reviewed the taxpayer's books and records for the period from July 1, 1999 through December 31, 2001. The Audit Division advised the taxpayer this warehouse did not qualify for the exemption. The taxpayer sent in an appeal petition. The Audit Division subsequently disallowed the credit in an assessment issued after we received the taxpayer's petition. The taxpayer requests we reverse the Audit Division's disallowance of the credit.²

The taxpayer provides a public, refrigerated, third party warehouse receiving, storing, and shipping service for finished frozen food and grocery products.³ The warehouse consists of over . . . square feet of building freezer space maintained at a temperature of between minus 10 degrees Fahrenheit and minus twenty degrees Fahrenheit. To keep the space this cold, the wall, floor, and ceiling of the freezer area were constructed with eight inches of insulation. Special freezer doors, set with automatic closing sensors, allow access to this area.

The taxpayer also processes fresh or previously frozen fish within the same building. While an insulated wall separates the processing area from the storage area, the exterior walls, floor and ceiling of the processing area are not insulated, and it is at ambient temperature, open to the outside through garage doors, which are closed when the taxpayer is not processing fish. Another special freezer door provides access from the processing area to the storage area.

The fish processing area consists of over . . . square feet. According to the Audit Division, the taxpayer uses the same street address for both the storage and processing operation.

The taxpayer explains the building was constructed in stages. The processing section plus two cold storage sections of . . . square feet each were constructed in . . . by the same contractor following the plans of a single architect. A different roof structure covers the processing area, which also has different ceiling heights than the cold storage areas. The City of . . . issued three Certificates of Occupancy referencing each section's different building permit numbers. The certificates were issued on the same day for a building at the same street address. In later years . . . additional cold storage sections were added, and a second level was added in the processing unit. . . .

Building codes and other regulations required differences in the construction of the processing unit from the cold storage sections. The processing area has nonporous, epoxy coated walls,

² In addition to denying the warehouse tax incentive credit, the Audit Division assessed additional business and occupation tax involving reclassification of income under the stevedoring classification. The taxpayer appealed the assessment by separate petition involving the stevedoring issue. That appeal will be considered by the Appeals Division separately from this warehouse tax incentive appeal.

³ The taxpayer originally planned to process and freeze fish caught in Washington waters. With the decline of salmon in Puget Sound, the taxpayer began storing other grocery items. The taxpayer does not own, buy or sell the products it stores.

which are washed daily. The processing area also has floor drains and a conventional fire protection sprinkler system filled with water. The cold storage area has no drains, and has compressed air in the pipes leading to the fire protection sprinklers.

Likewise, the operations in the two sections differ. Employees in the processing and cold storage sections belong to different union bargaining groups with different pay scales. Cold storage employees are not allowed to process fish, and fish processing employees may not work in the cold storage section. The taxpayer prepares separate profit and loss statements for each operation. Legally (because of cleaning/sanitation concerns), or practically (because of the cold), the taxpayer could not process fish in the cold storage areas.

The Audit Division disallowed the exemption because manufacturing (fish processing) occurred within the building. During a prior audit, the taxpayer successfully argued its fish processing activity constituted manufacturing/processing for hire, and was granted an M&E sales/use tax exemption.⁴ We are not sure what facts were available to TAA, or the authority TAA relied upon in granting the refunds for the warehouse tax exemption. The taxpayer contends, given the separate operations, the manufacturing activities it performs in the processing area should not disqualify it from taking the warehouse exemption in its cold storage area.

ISSUE:

May a company claim the warehouse tax incentive if it performs processing-for-hire activities in the same building?

DISCUSSION:

Third-party warehouse owners who own or operate warehouses may obtain a refund of the 50% of the state sales tax paid on certain equipment used in the warehouse under RCW 82.08.820. To qualify for the refund, the building must meet the statutory definition of warehouse:

"Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. . . . A storage yard is not a warehouse, nor is a building in which manufacturing takes place. . . .

RCW 82.08.820(2)(1).

The taxpayer's building is enclosed. Within a common outer wall the taxpayer has several storage rooms, some of which were added after the original structure was built.⁵ Also within the

⁴ Manufacturing machinery and equipment exemption authorized under RCW 82.08.02565 and RCW 82.12.02565.

⁵ We also note, the largest warehouse section of the taxpayer's building is . . . square feet. Under the taxpayer's reasoning of characterizing each section as a separate building, none of the sections would exceed the 200,000 square footage requirement in RCW 82.08.820(3).

common wall, the taxpayer processes fish owned by others. We find that the storage areas and the fish processing area are in the same enclosed building.

Under RCW 82.04.120, manufacturing includes all activities of a commercial or industrial nature wherein labor or skill is applied to materials so that a new or different product is produced. Manufacturing includes the processing of fish.⁶ See *Bornstein Sea Foods, Inc. v. State*, 60 Wn.2d 169, 173, 373 P.2d 483 (1962). RCW 82.08.820 specifically states, “a building in which manufacturing takes place” is not a warehouse. Because the taxpayer’s fish processing, i.e., manufacturing, takes place within the same building enclosure as its cold storage warehousing, the taxpayer is not entitled to the warehouse tax incentive for the building.

DECISION AND DISPOSITION:

We deny the taxpayer’s petition.

Dated this 19th day of August, 2002

⁶ We recognize under RCW 82.04.120, manufacturing does not include activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state. In addition to processing frozen fish, some of which may have been frozen in Washington, the taxpayer processes fresh fish. Both activities of processing fish frozen in Washington and processing fresh fish, fall within the definition of manufacturing.