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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. 03-0325
)	
...)	Registration No. ...
)	FY ... /Audit No. ...
)	FY ... /Audit No. ...
)	Docket No. ...

- [1] RULE 13601; RCW 82.08.02565, RCW 82.12.02565: RETAIL SALES TAX -- M&E EXEMPTION -- MAJORITY USE -- FRUIT FLATS. Fruit flats used a majority of the time in a manufacturing operation may qualify for the M&E sales tax exemption.
- [2] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-7S: RETAIL SALES TAX -- M&E EXEMPTION -- FLOOR. A mezzanine floor upon which machinery and equipment is placed, does not qualify for the M&E exemption. A structure or improvement that functions as a floor, wall, door, roof, or other building component does not qualify for the exemption.
- [3] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-7S: RETAIL SALES TAX -- M&E EXEMPTION -- BUILDING FIXTURES -- FANS. Fans used directly in the manufacturing operation may qualify for the M&E sales tax exemption.
- [4] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; RETAIL SALES TAX -- M&E EXEMPTION -- PLASTIC BUG STRIP CURTAINS. Plastic bug strip curtains hung from the ceiling at a manufacturing facility do not qualify for the M&E sales tax exemption because they are not used directly in the manufacturing operation.
- [5] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-7S: RETAIL SALES TAX -- M&E EXEMPTION -- LOADING DOCK DOOR SEALS -- ADJUSTABLE RAMPS. Metal adjustable loading ramps, distinct from the factory floor, qualify for the M&E sales tax exemption. Door seals affixed to the

building do not qualify because they are not used directly in the manufacturing operation.

- [6] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-8S: RETAIL SALES TAX -- M&E EXEMPTION -- COMPUTER SOFTWARE: ETA 2012-8S provides the Department's position regarding the applicability of the M&E sales tax exemption to computer software purchases.
- [7] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-2S, ETA 2012-3S: RETAIL SALES TAX -- M&E EXEMPTION -- HOLDING TANKS. Waste water holding tanks may qualify for the M&E sales tax exemption as pollution control equipment. The tanks must be used to capture wastes and contain or prevent releases resulting from processes of the operation. A waste water tank plumbed into the building's general waste water, which serves a building purpose, as opposed to a manufacturing purpose, does not qualify for the M&E exemption. Ammonia tanks, which store or temporarily hold an item of tangible personal property integral to the taxpayer's freezing process, meet the directly used test under RCW 82.08.02565(2)(c)(ii).
- [8] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-3S: RETAIL SALES TAX -- M&E EXEMPTION -- ELECTRICAL SYSTEMS: To the extent building electrical fixtures are integral to the manufacturing process, they qualify for the M&E exemption. However, to the extent they serve a building purpose, as opposed to a manufacturing purpose, electrical fixtures do not qualify.
- [9] RULE 13601; RCW 82.08.02565, RCW 82.12.02565; ETA 2012-7S: RETAIL SALES TAX -- M&E EXEMPTION -- BUILDING CONSTRUCTION -- DOCUMENTATION. An engineering study, design, or plan, confirming that the reinforced portion of the wall or floor was designed and constructed to support the machinery and equipment, and that it did in fact separately and differently support the machinery and equipment, would be documentation for qualification. In determining what qualifies for exemption, the portion of the construction that would be there regardless of the support facility does not qualify. Only the additional construction qualifies for the M&E sales tax exemption.

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.

M. Pree, A.L.J. – A manufacturer, which freezes fruit, protests the assessment of sales/use tax on flats used to collect fruit in the fields and temporarily store the fruit in the plant, construction of mezzanines, computer software, holding tanks, loading dock equipment, plastic bug strips, . . . , fans, holding tanks, electrical systems, and other building fixture costs. We grant in part, deny in part, and remand in part the case for additional investigation, verification, and adjustment consistent with Excise Tax Advisories issued after the assessment and which discuss the manufacturing and equipment (M&E) exemption from sales and use tax. The flats, loading dock

ramps, . . . , fans, and ammonia holding tanks are eligible for the M&E exemption. The mezzanines, loading door seals, and bug strips are subject to tax. Additional information is necessary to determine the taxability of the computer software, waste water holding tanks, electrical systems, and other construction items.¹

ISSUES

1. Whether the flats used to collect raspberries in the field and also used in the manufacturing process are eligible for the M&E exemption based on the majority use test?
2. Whether the mezzanine floor of the taxpayer's building qualified for the M&E exemption as a support facility?
3. Were wall and ceiling fans building fixtures used directly in the taxpayer's manufacturing operation and thereby eligible for the M&E exemption?
4. Were the plastic bug strips used directly in the taxpayer's manufacturing operation and thereby eligible for the M&E exemption?
5. . . .
6. Was the loading dock equipment part of the taxpayer's building, ineligible for the M&E exemption, or was it a support facility eligible for the M&E exemption?
7. What information is necessary to determine whether the computer software was used directly in the manufacturing operation?
8. Were the holding tanks fixtures used directly in the taxpayer's manufacturing operation and thereby eligible for the M&E exemption?
9. To what extent were the taxpayer's electrical systems integral to its manufacturing operation?
10. Did the building contractor provide other building fixtures or support facilities eligible for the M&E exemption? . . .

FINDINGS OF FACT

. . . . (taxpayer) flash freezes raspberries and other fruit at its Washington processing facility, which was built [during the audit period] Some of the berries it freezes are grown on fields it owns.²

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

² A . . . field is adjacent to its processing facility and . . . additional fields . . . are located five minutes away.

The taxpayer packages the raspberries, sometimes mixing in other frozen fruit it purchases. Its customers specify how they want the fruit glazed or otherwise processed.

The Department of Revenue (Department) reviewed the taxpayer's books and records for the period from January 1, 1994 through December 31, 1999. In the two assessments referenced above, the Department's Audit Division assessed deferred retail sales or use tax on the flats, construction of mezzanines, computer software, holding tanks, loading dock equipment, plastic bug strips and . . . , fans, electrical systems, and other building costs because the taxpayer did not pay retail sales tax or use tax on these items. Interest was also assessed.

The taxpayer petitioned for correction of the assessment. The taxpayer contends these items were exempt from sales or use tax as manufacturing machinery and equipment. . . .

After the assessment was issued, the Department issued new Excise Tax Advisories (ETAs), which address some of the issues. The taxpayer has offered to obtain more information based upon the ETAs. Some factual information has been provided. While we lack sufficient information to conclusively determine the taxability of every item in the assessment, we recognize the assessment may need to be revised and believe we can provide additional guidance on the major issues to assist the resolution of the issues. We will present the facts available and discuss the applicable law for each item. The assessment will be remanded to the Audit Division to review additional information and revise the assessment accordingly.

Flats. The taxpayer harvests its raspberries with large machines (harvesters), which slowly go up and down each row shaking the bushes, so the ripe berries drop into the harvesters. In addition to the driver of the harvester, there are other employees on the harvester who pick debris out of the berries. The berries are collected in "flats" on the harvesters. The taxpayer did not pay retail sales tax on . . . flats, which cost about \$4 apiece. The flats are about 2' X 2', five inches high, and hold about 6 pounds of berries. They are stackable and have holes in two opposite sides.

The taxpayer stores the empty flats on paved areas outside the taxpayer's processing facility. When the fruit is ripe, the taxpayer's employees stack flats four to five feet high on a flat-bed truck. They drive the truck to the taxpayer's fields and wait for one of the taxpayer's harvesters to reach the end of a row. They load the full flats from the harvesters directly onto the truck and load the empty flats directly from the truck onto the back of a harvester. The harvester then takes about half an hour to pick two rows, going up one row, then back down the adjacent row. It is important to cool the berries and freeze them as quickly as possible, so a truck meets them when they come back to load any full flats on the truck. The taxpayer insists the flats are not placed or stored on the ground. It is necessary to keep the flats clean to reduce possible contamination of the fruit.

It takes less than ten minutes to drive the trucks to the facility from any of the taxpayer's fields. The loaded flats are placed in a chilling room, where cool air is blown through the flats. The sides of the flats have holes on opposite ends, which allow chilled air to pass over the berries. The berries are chilled for 24 hours to 26° Fahrenheit. When the chilling process is completed, the flats containing the chilled berries are carried to another room where they are dumped out of the flats onto a conveyer for further inspection before the berries enter the freezing tunnel, which chills them to

–10° F. After the berries are dumped out, the flats are immediately washed and either placed in a truck or stored upon the pavement adjacent to the building.

The taxpayer uses the flats in its fields (a non-qualifying manner) for up to two hours. The taxpayer then uses the flats in the building (a qualifying manner) for at least 24 consecutive hours. For the purpose of the majority use threshold, we find the flats were used directly in taxpayer's manufacturing operation a majority of the time.³

Mezzanines. Two mezzanines are located in the same room as the tunnel freezer. They are elevated acid resistant cement slabs 4" thick. They are supported by six I beams bolted to the concrete floor on 24" footings. They differ slightly in size and use. One mezzanine holds machinery used in the taxpayer's mixing and poly-bag process. Frozen fruit is loaded on a conveyor on the ground floor below the mezzanine.⁴ On the mezzanine level, a rider or shaker attempts to remove any remaining extraneous material. The fruit is then fed into the top of a twelve-foot high machine rising up through the mezzanine. The fruit is weighed as it drops, and is bagged in a preprinted freezer poly bag, which is then sealed. The sealed bags are placed into shipping boxes, which have been assembled on the mezzanine level and fed by gravity down to a box station located under the mezzanine next to the machine that bags and seals the fruit. The weighing, bagging, and boxing process is designed to utilize gravity from the twelve-foot descent from the mezzanine level to the floor.

The second mezzanine holds up three liquid storage tanks and related piping and equipment. The tanks are used to mix and then store either sugar and water or corn syrup and water according to the customers' requirements. The syrup then flows to a sprayer on the processing line before the sugar-glazed fruit reaches the flash freezer. By using the height of the mezzanine and the weight of the syrup, gravity feeds the sprayers, and the taxpayer avoids a pumping system for these liquids.

Fans. Fans mounted in the walls of the chilling room blow the chilled (26° F.) air through holes in the sides of the flats from one end of the room to the others. They blow air through the flats to chill the berries to 26°. Other ceiling fans are used to raise the temperature of frozen berries from 5° to 20° so they can be handled for packaging.

Plastic Bug Strips. To reduce contamination of the berries, the taxpayer suspend strips of plastic from the ceiling inside the doors to keep flies out of the processing area. The foot-wide strips overlap to screen off the production area from flying insects. One of the taxpayer's customers requires these strips as well as the American Baking Institute (ABI), which inspects and certifies the taxpayer's production conditions and methods. Other customers require ABI certification.

...

³ Audit suspects some of the empty flats may be left in the fields, which the taxpayer vehemently denies. From the examples of the majority use test in Rule 13601(10), to determine total overall use, we add qualifying and non-qualifying use. For this purpose, storage of the flats, whether in the fields or at the facility, is not relevant.

⁴ Rather than using the conveyor, the taxpayer lifts sweet or sour cherries and pineapple with a forklift to the mezzanine level. They are too sticky for the conveyor.

Loading Dock Equipment. The taxpayer loads refrigerated semi-tractor trailers, which back up to its processing building's loading bays. Attached to the building are loading dock levelers and door seals, which are intended to keep the trailers cool while they are loaded. From the pictures provided by the taxpayer, the seals appear to be soft plastic cushions attached to the wall around the opening. The levelers appear to be metal ramps with one end attached to the concrete floor and the other end inclined, designed to adjust to the height level of the trailer. The levelers would allow forklifts carrying boxes of frozen, packaged products to drive from the floor surface of the manufacturing facility directly into the trailers so they can be loaded quickly.

Computer Software. The taxpayer states it purchased and installed computer software to run computers used to operate production equipment. Invoices to verify and provide more detail have been requested, but not provided.

Holding tanks. Located within a few feet of the outer building wall, three large holding tanks serve different purposes. The first tank holds liquid ammonia used in the flash freezing process. The second tank holds waste water from the facility. The third tank, which is buried in the ground, is full of water used to flush the ammonia lines in an emergency. They are all affixed to the realty.

Electrical. The taxpayer contends that some of the facility's electrical fixtures are integral to its manufacturing operation. Some of the electrical system serves a building purpose. The taxpayer has been unable to provide any breakdown of the costs and installation charges for the various electrical components.⁵ The taxpayer proposes to hire an estimator to price the equipment installed and determine the cost of the items integral to its manufacturing operation.

Other building costs. The taxpayer contends that it incurred substantial costs to build a facility necessary to manufacture its products. The taxpayer offers to hire an estimator to determine the costs directly related to manufacturing. . . .

ANALYSIS

A manufacturer's purchase of certain manufacturing machinery and equipment may be exempt under RCW 82.08.02565, which provides:

- (1) The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment

⁵ According to the taxpayer, the electrical contractor for the plant's construction, "has been completely uncooperative in providing a breakdown of the costs and installation charges required for the electrical components which were installed at the plant, claim none exists."

In determining what items qualify as exempt machinery and equipment under the law, we must follow several long-accepted general rules of statutory construction. Taxation is the rule; exemption is the exception. *Spokane County v. City of Spokane*, 169 Wash. 355, 13 P.2d 1084 (1932). Exemptions from a taxing statute are to be narrowly construed. *Budget Rent-A-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171, 500 P.2d 764 (1972). Exemptions are not to be extended by judicial construction. *Pacific Northwest Conference of the Free Methodist Church v. Barlow*, 77 Wn.2d 487, 463 P.2d 626 (1969). Courts and administrative bodies will not read into an act provisions they conceive the legislative body has unintentionally omitted. *Department of Labor & Industries v. Cook*, 44 Wn.2d 671, 269 P.2d 962 (1954).

There are several requirements for the M&E exemption: (1) a sale; (2) to a manufacturer or processor for hire; (3) of machinery and equipment; (4) used directly; (5) in a manufacturing operation or research and development operation. RCW 82.08.02565. All of these requirements must be met to qualify for the exemption. There is no dispute the taxpayer meets the first two requirements. The items at issue were purchased, and the taxpayer is a manufacturer or processor for hire because, under RCW 82.04.260(1)(c), freezing fruit is a manufacturing activity. *See also* WAC 458-20-136(5)(a)(iv).

The M&E exemption does not apply to:

- (i) Hand-powered tools;
- (ii) Property with a useful life of less than one year;
- (iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and
- (iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

RCW 82.08.02565(2)(b). The Department's Rule 13601 (WAC 458-20-13601) elaborates on the requirements, by adding to the definitions, offering threshold tests, and providing examples. On March 31, 2003, the Department issued nine Excise Tax Advisories (ETAs), which address issues specific to the M&E exemption. To the extent we have the relevant facts, we will apply the five statutory requirements and analyze the various disputed items in the assessment.

1. Were the taxpayer's flats used in the taxpayer's manufacturing operation a majority of the time?

[1] Provided the flats have a useful life of over one year (*see* Rule 13601(8) for the useful life threshold test), they would qualify for the M&E exemption if they are used directly in the taxpayer's manufacturing operation a majority of the time. The flats are used in the manufacturing operation to hold the berries while they are chilled and are used to move the berries within the facility. *See* RCW 82.08.02565(2)(d). The flats meet the "directly used" requirement because they are used to transport, handle, and temporarily store the fruit at the manufacturing site. RCW 82.08.02565(2)(c)(ii). However, the taxpayer's use of the flats in the

fields is not part of the manufacturing operation. Use of the flats in the fields constitutes non-qualifying use.

Machinery and equipment both used directly in a qualifying operation and used in a non-qualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Rule 13601(10). Generally, machinery and equipment may qualify for the M&E exemption only if the majority of overall use, as measured by percentage of time, percentage of revenue, volume of products derived, or other reasonable comparison measure, is in a “manufacturing operation.”

In the case of the flats, time appears to offer a practical method of applying the majority use threshold. Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Rule 13601(10)(a)(i). The flats hold the berries in the chilling room for about 24 hours and are then used to transport them within the facility. They are used in the fields or to transport the berries on the road away from the manufacturing site for not more than two hours. Because the qualifying time used in the building (at least 24 hours) is over 50% of the total time (26 hours), we conclude the flats meet the majority use threshold.

2. Was the mezzanine floor part of the taxpayer’s building, ineligible for the M&E exemption, or was it a support facility eligible for the M&E exemption?

[2] The term “machinery and equipment” means “industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof” RCW 82.08.02565(2)(a). The M&E exemption does not apply to buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. RCW 82.08.02565(2)(b)(iii). Worded another way, the only parts of a building that may be eligible for exemption are industrial fixtures or support facilities.

The mezzanines are elevated floors permanently attached to the building that hold equipment. Other than a variance in size, we fail to see how the floors do more than serve a building function.⁶ A structure or improvement that functions as a floor, wall, door, roof, or other building component does not qualify for the exemption. ETA 2012-7S.⁷ Physical parts of buildings that cannot be differentiated and that are not separately identifiable from surrounding construction material do not qualify as a support facility. In order to qualify under the M&E exemption, these must be differentiated and separately identified as machine foundations and must not serve a building function. ETA 2012-7S. Because the mezzanines are floors, which are a physical part of the building, they are ineligible for the M&E exemption.

⁶ An engineering study, design, or plan, confirming that the reinforced portion of the mezzanine floor was designed and constructed to support the machinery and equipment, and that it did in fact separately and differently support the machinery and equipment as a machine foundation, would be documentation for qualification. In determining what qualifies for exemption, the portion of the construction that would be there regardless of the support facility does not qualify. Only the additional construction qualifies. ETA 2012-7S.

⁷ ETA 2012-7S.08.12.13601.

3. Were the wall and ceiling fans fixtures used directly in the taxpayer's manufacturing operation?

[3] While buildings are not eligible for the M&E exemption under RCW 82.08.02565(2)(b)(iii), industrial fixtures that are integral to the manufacturing operation might be eligible, depending on whether the fixture meets the other requirements for eligibility, such as the used directly test. Rule 13601(7)(d). A refrigeration unit that cools air is a fixture or device, and it may qualify for the M&E exemption if it is used directly in the manufacturing operation. ETA 2012-7S.

The fans were tangible personal property, which became fixtures when they were permanently attached to the walls and ceilings. The fact that a fixture might be classified as real property or personal property has no bearing on eligibility for the M&E exemption. The word "fixture" denotes a type of property that can be distinguished from a "building" *per se*. For the purpose of the M&E exemption, a fixture does not lose its identity when installed. ETA 2012-7S.

The fans meet the "used directly" test because they move the air over the fruit, for the purpose of altering the fruit temperature (as opposed to maintaining temperature, a normal building function). In this manner, the fans act upon or interact with an item of tangible personal property, and are thus used directly in the taxpayer's fruit freezing operation under RCW 82.08.02565(c)(i).

4. Were the plastic bug strips used directly in the taxpayer's manufacturing operation?

[4] The plastic bug strips, if they were used directly in the taxpayer's manufacturing operation, would qualify for the exemption. Items that are not used directly in a qualifying operation are not eligible for the exemption. Rule 13601(9). RCW 82.08.02565(2)(c) provides eight descriptions of "used directly":

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

- (i) Acts upon or interacts with an item of tangible personal property;
- (ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;
- (iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;
- (iv) Provides physical support for or access to tangible personal property;
- (v) Produces power for, or lubricates machinery and equipment;
- (vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;
- (vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or
- (viii) Is integral to research and development as defined in RCW 82.63.010.

The manner in which a person uses an item of machinery and equipment must match one of these descriptions. Rule 13601(9). None of the eight descriptions of in RCW 82.08.02565

applies to the taxpayer's use of the plastic strip curtains. They do not act on or with anything. They passively hang in place creating a barrier for flies.

The taxpayer asserts the strip curtains are used directly because "they directly support the sanitary operation of the plant required by the health department to keep operating." They do not provide *physical* support for or access to tangible personal property described in RCW 82.08.02565(2)(c)(iv).⁸ We conclude the taxpayer's purchases of strip curtains do not qualify for the M&E exemption.

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6. Was the loading dock equipment part of the taxpayer's building, ineligible for the M&E exemption, or was it a support facility?

[5] The loading dock equipment consists of two different fixtures, leveling ramps and door seals. Each must be analyzed. ETA 2012-7S provides:

Because fixtures and support facilities are considered to be a "physical part of a building" it is necessary to distinguish between eligible and ineligible physical parts.

Those parts of buildings that serve a building function do not qualify for the exemption. Walls, roofs, and floors of buildings are designed on a case by case basis to accommodate a particular building use, whether that use is by a manufacturer, retailer, or professional service provider. . . .

Physical parts of buildings that cannot be differentiated and that are not separately identifiable from surrounding construction material do not qualify as a support facility. In order to qualify under the M&E exemption, these differentiated and separately identifiable parts must meet a used directly test and must not serve a building function.

The Department distinguishes buildings from support facilities, based on the notion of "purpose and function." For example, a reinforced wall that is designed to bear the weight of the roof trusses does not qualify as a support facility. Roof trusses are part of the building and as such are not machinery and equipment. A portion of the reinforced wall specifically designed and constructed to provide physical support for a fixture or device as a machine foundation could be a support facility if (1) a taxpayer could show that its design is necessary for the operation of the machinery and equipment, and (2) that the reinforced wall can be shown to be differentiated and identifiable from the building. Floors are subject to the same analysis. In order for a part of a floor to qualify as a

⁸ Examples of this are catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criteria. Rule 13601(9)d).

support facility it has to be differentiated and separately identified and must be a machine foundation. Floors as such do not qualify for the M&E exemption.

From the pictures we have, the loading dock ramps appear distinguishable from the underlying floor.⁹ If they are metal, with the concrete floor under them, the concrete serves the building's floor function. The ramps are designed to rise above the floor, allowing the forklifts carrying the frozen fruit to drive into the trailers. Therefore, the ramps are necessary for the operation of the forklifts (equipment), and the metal adjustable ramps are separate and different from the concrete building floor. The ramps meet the two ETA 2012-7S support facility requirements.

The ramps are used directly in the manufacturing operation under RCW 82.08.02565(2)(c)(iv). They are designed for the forklifts to drive into trailers. They provide physical support for or access to tangible personal property. Rule 13601(9)(d).

The door seals do not fall under any of the used directly descriptions in RCW 82.08.02565(2)(c). Based upon the information we have, we conclude the leveling equipment (ramps) are eligible for the M&E exemption, but the door seals are not.

We understand the building contractor may have installed the leveling equipment. In determining what qualifies for exemption, the portion of the construction that would be there regardless of the support facility does not qualify. Only the additional construction qualifies. ETA 2012-7S.

7. To what extent was the computer software used to operate production equipment?

[6] At the hearing, we requested that the taxpayer provide the invoice for the computer software in dispute. We have not received the invoice or any description. Taxpayers must make records available to the Department upon request or be barred from further questioning the correctness of the assessment. RCW 82.32.070. We will allow the taxpayer thirty days from the date of this determination to provide a copy of the invoice and description of the software to the Audit Division. ETA 2012-8S provides the Department's position regarding the applicability of the M&E exemption to computer software purchases.

8. Were the holding tanks fixtures used in the taxpayer's manufacturing operation?

[7] The holding tanks located outside of the building at the manufacturing site constitute industrial fixtures because they did not lose their identity when installed and can be distinguished from the building. See ETA 2012-7S, which mentions tanks as an example of fixtures. Building fixtures can qualify for the M&E exemption if integral to the manufacturing process. In order to qualify under the M&E exemption, these different and separately identifiable tanks must meet a used directly test and must not serve a building function. ETA 2012-7S.

⁹ We have not toured the facility. We only have pictures. If the Audit Division inspects the facility and finds our factual understanding from the pictures is incorrect, this analysis and conclusion are not applicable to the loading dock equipment in dispute.

The waste water tank may qualify as pollution control equipment under RCW 82.08.02565(2)(a):

"Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation

The pollution control equipment must be used to capture wastes and contain or prevent releases resulting from processes of the operation. ETA 2012-2S.08.12.13601. The waste water tank may be plumbed into the building's general waste water, serving a building function. Utility systems that serve a building purpose, as opposed to a manufacturing purpose, do not qualify for the M&E exemption. ETA 2012-3S. The Audit Division will need to further investigate the function of the waste water tank. A portion of the waste water tank may qualify for the exemption.

Because the two ammonia tanks store or temporarily hold an item of tangible personal property integral to the taxpayer's freezing process, they meet the directly used test under RCW 82.08.02565(2)(c)(ii). These tanks should qualify for the M&E exemption.

9. To what extent were the taxpayer's electrical systems integral to its manufacturing operation?

[8] The taxpayer's manufacturing activity is freezing fruit. This process not only requires special equipment, but also consumes more electrical power than would ordinarily be required of a manufacturing facility. Building fixtures such as electrical utility systems that are not integral to the manufacturing operation, do not qualify for the M&E exemption under RCW 82.08.02565(2)(b)(iv). To the extent the electrical fixtures are integral to this freezing process, they qualify for the M&E exemption. *See* ETA 2012-3S. However, to the extent they serve a building purpose, as opposed to a manufacturing purpose, the electrical fixtures do not qualify. *Id.*

The taxpayer has been unsuccessful in obtaining a cost breakdown from its electrical contractor for the components of its electrical system. Fortunately ETA 2012-3S anticipates this problem, and offers a solution for the taxpayer's specific industry, manufacturing frozen raspberries:

If a utility system is used for both qualifying and nonqualifying purposes, the system should be allocated so that only the qualifying portion of the system receives the exemption, and the building portion does not receive an exemption.

One way of allocating a utility system is by applying the ratio of the qualifying use made of the system to the total use of the system. This ratio must be established and substantiated by sufficient documentation, such as, but not limited to, engineering analyses and power bills. Thus, if the taxpayer can document that 30 percent of a system is used for the manufacturing activity (e.g., 30 percent of the system is dedicated

to manufacturing frozen raspberries vs. 70 percent dedicated to cold storage) then this 30 percent qualifies for the exemption.

The taxpayer provided a summary showing five payments totaling \$. . . for the electrical systems. The taxpayer has offered to hire an expert to estimate the price the components related to the taxpayer's M&E. ETA 2012-3S applies a ratio to the total. The Audit Division may consider additional documentation including an expert's analysis and power bills.

10. Did the building contractor provide other building fixtures or support facilities eligible for the M&E exemption?

[9] The taxpayer asserts that a substantial portion of its building cost should be exempt as a qualifying M&E expenditure. The taxpayer's building contractor is unable to provide a cost breakdown of the industrial fixtures and support facilities. The taxpayer initially asked that we allow the difference between the cost of its building designed for its manufacturing process and the estimated cost of a general purpose building. However, RCW 82.08.02565(2)(b)(iii) specifically provides that the machinery and equipment definition does not include buildings. Because many factors can be attributed to a buildings cost, other than fixtures and support facilities that may be eligible as M&E, the taxpayer is not entitled to an M&E exemption based upon cost difference of buildings. ETA 2012-7S states:

Those parts of buildings that serve a building function do not qualify for the exemption. Walls, roofs, and floors of buildings are designed on a case by case basis to accommodate a particular building use, whether that use is by a manufacturer, retailer, or professional service provider. Walls, roofs, and floors are also designed differently on the basis of external elements such as stability of the underlying earth, winter and summer temperature, and precipitation levels. Walls, roofs, and floors thus serve a general building function, even if designed and constructed differently.

* * *

The M&E exemption does not extend to buildings and this restriction applies even if the building is specially designed and unique.

In the alternative, the taxpayer offers to hire a cost estimator to analyze the cost to construct those items directly related to the manufacturing process. While helpful and interesting, that information alone does not entitle the taxpayer to the exemption. Again, ETA 2012-7S guides us to determine what may qualify as industrial fixtures and support facilities under RCW 82.08.02565(2)(b) and specifies the documentation necessary:

An engineering study, design, or plan, confirming that the reinforced portion of the wall or floor was designed and constructed to support the machinery and equipment, and that it did in fact separately and differently support the machinery and equipment, would be documentation for qualification. In determining what qualifies for exemption, the portion

of the construction that would be there regardless of the support facility does not qualify. Only the additional construction qualifies.

We will allow the taxpayer sixty days from the date of this determination to make such documentation available to the Audit Division. We strongly suggest the taxpayer and the Audit Division meet prior to having a study, design, or plan produced to identify the specific industrial fixtures and support facilities, which may qualify as M&E. The Audit Division, in its discretion, may extend the due date for providing such information. . . .

DECISION AND DISPOSITION

We grant the taxpayer's petition in part, deny in part, and remand in part. The flats, loading dock ramps, . . . , fans, and ammonia holding tanks are eligible for the M&E exemption. The mezzanines, loading door seals, and bug strips are subject to tax. Additional information is necessary to determine the taxability of the computer software, waste water holding tank, electrical system, and other construction items. This matter is remanded to the Audit Division for adjustment to the assessment based on this decision and for possible additional adjustment based on records the taxpayer must provide within sixty (60)

Dated this 26th day of November, 2003