

Cite as Det. No. 14-0302, 34 WTD 127 (2015)

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. 14-0302
)	
... )	Registration No. . . .
)	

[1] RULE 136(4); RCW 82.04.240: RCW 82.04.210: B&O TAX – MANUFACTURING – BYPRODUCT. A manufacturer of paper products is subject to manufacturing B&O tax on the value of paper trim it sells to recycling companies.

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.

Margolis, A.L.J. – A manufacturer appeals the assessment of business and occupation (B&O) tax on the value of by-product it sells to recycling companies. We deny the petition.<sup>1</sup>

ISSUE<sup>2</sup>

Whether, under RCW 82.04.240, the paper trim that Taxpayer sells to recycling companies is a by-product of its manufacturing, the value of which is subject to manufacturing B&O tax.

FINDINGS OF FACT

Taxpayer manufactures bathroom tissue and paper towel products. It buys rolls of paper, converts the rolls into consumer products, and then sells the consumer products to wholesale and retail customers. Taxpayer explained that it cannot use all of the rolls because its products must maintain a certain width, so it cannot avoid being left with some paper trim that it considers waste. Rather than dispose of the trim, however, it sells the trim to recycling companies. [Taxpayer explained that the recycling companies set the price and pick up the trim. Taxpayer accounts for the receipts as a deduction to its cost for paper.]

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

<sup>2</sup> Taxpayer also asserts that it paid \$. . . in litter tax during the audit period and “to have to pay manufacturing B&O tax on recycled tissue and towel scrap means we are paying a litter tax for recycling, which doesn’t make sense.” Taxpayer’s Letter of December 10, 2013, Page 1. We note that Audit did not assess Taxpayer litter tax, and find no grounds under the law for adjustment of the assessment based on this argument.

The Department of Revenue's (Department's) Audit Division (Audit) examined Taxpayer's account for the period January 1, 2009 through September 30, 2012, and on July 24, 2013 assessed Taxpayer \$. . . . The assessment is comprised of \$. . . in use/deferred sales tax, \$. . . in manufacturing B&O tax, \$. . . in multiple activities tax credit adjustment, \$. . . in interest, and a credit of \$. . . in wholesaling B&O tax.

Taxpayer appealed, asserting that the assessment of manufacturing B&O tax should be adjusted by \$. . . because manufacturing income should not include \$. . . of receipts from recycling companies for paper trim.

#### ANALYSIS

RCW 82.04.240 imposes the B&O tax “[u]pon every person engaging within this state in business as a manufacturer . . . .” The statute goes on to explain that “the amount of the tax with respect to such business shall be equal to value of the products, including byproducts, manufactured, multiplied by [a specific rate].” *Id.* Persons who manufacture products in Washington are subject to the manufacturing B&O tax upon the value of the products, including by-products. WAC 458-20-136(4) (Rule 136(4)). “By-product” means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities. RCW 82.04.210.

The paper trim that results from Taxpayer's processing of the paper rolls is an additional product, which results from Taxpayer's manufacturing of bathroom tissue and paper towel products. The paper trim has a market value, as evidenced by sales to recycling companies. Under RCW 82.04.210, the paper trim is therefore a by-product of Taxpayer's manufacturing process, the value of which is subject to manufacturing B&O tax. Taxpayer essentially argues that it is not engaged in the business of manufacturing paper trim, so its value should not be included in the measure of manufacturing B&O tax. However, since the measure of B&O tax includes the value of additional by-products like paper trim, regardless of whether such products are an intended result of manufacturing activities, we sustain the assessment.<sup>3]</sup>

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 23<sup>rd</sup> day of September, 2014.

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<sup>3</sup> [The sales of paper trim in this case are Washington sales because Taxpayer's buyers pick up the paper trim at Taxpayer's facility in this state. *See* RCW 82.04.040(1). As such, wholesaling B&O tax may be due on those sales, qualifying any manufacturing B&O tax due on the sales for the multiple activities tax credit in RCW 82.04.440. This would not change the amount of B&O tax Taxpayer would owe on these transactions.]