

Cite as Det. No. 17-0071, 36 WTD 533 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 17-0071
)	
...)	Registration No. . . .
)	

RCW 82.08.02745; WAC 458-20-262: RETAIL SALES TAX – AGRICULTURAL EMPLOYEE HOUSING EXEMPTION. Neither an employer’s temporary concurrent use nor recurring occasional use of a second kitchen in housing provided to agricultural employees negate the fact that agricultural employees used the kitchen as part of their housing.

Poley, T.R.O. – A dairy farm protests retail sales tax assessed on construction of a farmhouse, claiming the structure is exempt from retail sales tax under RCW 82.08.02745 as it houses agricultural employees. The petition is granted.¹

ISSUE

Does a farmhouse with two kitchens qualify for the agricultural employee housing exemption from retail sales tax under RCW 82.08.02745 and WAC 458-20-262 when employees used one of the kitchens for cheese making activities for nine months?

FINDINGS OF FACT

. . . (Taxpayer) operates a farm, raising goats, sheep, and llamas. Taxpayer’s dairy goats produce milk that Taxpayer makes into specialty cheeses. Taxpayer’s farm encompasses 87 acres over four plots of land, all zoned as rural land with agriculture permitted. Taxpayer’s members, spouses . . . (Members), own a house on an adjacent lot and oversee the farm.²

Taxpayer’s main administrative office, as well as the primary computer for Taxpayer’s business, is located in Members’ house (Member Office). Taxpayer also maintains an office in the barn (Barn Office) that Taxpayer uses for operating activities. All employees have access to the Barn Office and routinely use the Barn Office for breaks, eating lunch, and storing personal items such as boots. Taxpayer holds employee meetings in the Barn Office. Taxpayer’s public phone number goes to a telephone in the Barn Office. There is no computer in the Barn Office.

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

² [Taxpayer is organized as a limited liability company (LLC); the members own membership shares.]

In 2010, Members decided to build a house (Farmhouse) on the farmland to house their farm manager and cheesemaker, both employees of Taxpayer. Taxpayer used the same contractor who had previously built a barn for Taxpayer. During the building process, Taxpayer learned about the retail sales tax exemption for agricultural employee housing in RCW 82.08.02745 (Exemption). Taxpayer provided an exemption certificate to the contractor, who did not charge retail sales tax on the construction of the Farmhouse or the installation of appliances and fixtures.

The Farmhouse is a two-story structure with several bedrooms and bathrooms, living room, dining room, laundry room, garage, home office (Farmhouse Office), and loft. The Farmhouse has two kitchens, situated next to each other, and separated by a window. The first kitchen resembles a traditional household kitchen with cabinets for storage and decorative features. The second kitchen is built like a commercial kitchen. It has more square footage, commercial countertops, and stainless steel shelves, but no decorative features or cabinets. Both kitchens contain a sink, oven, and refrigerator.

The Farmhouse Office is just inside the front door of the Farmhouse. The Farmhouse Office does not have a closet, preventing it from being considered a bedroom. Taxpayer outfitted the Farmhouse Office with a computer, storage area for files and papers, and a telephone. Taxpayer pays for internet access and a telephone line for the Farmhouse for the resident employees' personal use. Employees also use the computer for work-related activities. All employees have access to the Farmhouse Office.

Construction of the Farmhouse finished in October 2011. Taxpayer's farm manager and cheesemaker moved into the Farmhouse soon thereafter. The Farmhouse has been occupied by at least one of Taxpayer's employees ever since. Members have never occupied the Farmhouse.

Taxpayer obtained a dairy license in February 2012. An inspector approved the commercial-style kitchen in the Farmhouse for cheese making, and Taxpayer's cheesemaker used the commercial-style kitchen to make cheese from April through December 2012. Meanwhile, Taxpayer hired the same contractor to construct a creamery to house Taxpayer's cheese making operations. The creamery was completed and certified for cheese making activities in February 2013. The creamery, barn, and Farmhouse are all located near each other on the farm so that employees living in the Farmhouse are close to their work areas.

The Department of Revenue's (Department) Audit division (Audit) conducted a partial audit of Taxpayer for the period January 2011 through June 2015. Audit discovered that Taxpayer occasionally hosts cheese making classes in the Farmhouse commercial-style kitchen.

Audit also learned that Taxpayer offers free tours of the farm once per month. Taxpayer shows guests the barn and creamery during the tour and offers a cheese sample in the display area in front of the creamery. Generally, the tour only includes viewing the exterior of the Farmhouse. However, in colder months with poor weather, Taxpayer sometimes brings tour groups into the front entry of the Farmhouse and provides the cheese sample in the commercial-style kitchen. When this happens, Taxpayer hires a housekeeper to clean up the kitchen and front entry so it looks neat without adding to the resident employees' tasks.

Audit determined that the Farmhouse did not qualify for the Exemption based on four circumstances: (1) employees use the Farmhouse Office for work-related activities; (2) Taxpayer used the commercial-style kitchen for cheese making for nine months prior to the creamery's completion; (3) Taxpayer hosts cheese making classes in the commercial-style kitchen; and (4) Taxpayer occasionally brings tour groups into the Farmhouse. As Taxpayer did not pay retail sales tax on the construction of the Farmhouse, Audit assessed deferred retail sales tax against Taxpayer on the cost of construction, fixtures, and appliances.

On December 10, 2015, Audit issued a tax assessment against Taxpayer for \$. . . , which included \$. . . in deferred retail sales tax, \$. . . in interest, and \$. . . in substantial underpayment penalty. Taxpayer sought administrative review of the assessment.

Taxpayer claims that it is entitled to the exemption because agricultural employees have continually occupied and used the Farmhouse since it was built. Taxpayer states that every room in the Farmhouse is available for employee use and employees have actually used all rooms. Taxpayer asserts that any use of the Farmhouse by Taxpayer is marginal and temporary, and Taxpayer has never excluded its resident employees from the Farmhouse during such use. Taxpayer also claims that it never uses the Farmhouse Office.

ANALYSIS

Washington imposes retail sales tax on each retail sale in this state unless an exemption applies. RCW 82.08.020. The term "retail sale" includes services rendered in respect to the construction, improvement, or repair of new or existing buildings or other structures, under, upon, or above real property of or for consumers. RCW 82.04.050(2)(b). The retail sales tax rate is applied to the selling price of each retail sale. RCW 82.08.020(1).

Retail sales tax is considered a debt from the buyer to the seller. RCW 82.08.050(8). "Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax." RCW 82.08.050(10).

Taxpayer claimed the Exemption for the cost to construct the Farmhouse, as well as the cost of fixtures and appliances installed in the Farmhouse. The Exemption, contained in RCW 82.08.02745,³ states that retail sales tax "shall not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing" RCW 82.08.02745(1). The Exemption does not apply to housing built for occupancy by an agricultural employer, the employer's family members, or other owners of an agricultural business. RCW 82.08.02745(4). RCW 82.08.02745(5)(c) defines agricultural employee housing as follows:

"Agricultural employee housing" means *all facilities* provided by an agricultural employer . . . for housing agricultural employees on a year-round or seasonal basis, *including bathing, food handling, hand washing, laundry, and toilet facilities,*

³ RCW 82.08.02745 was amended in 2014 to add exclusions for marijuana processing facilities. We refer to the statute here as it existed during the audit period.

single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110. “Agricultural employee housing” does not include housing regularly provided on a commercial basis to the general public. . . .

(Emphasis added.)

The Department adopted WAC 458-20-262 (Rule 262) to implement RCW 82.08.02745. As a condition of the Exemption, Rule 262(3)(a)(iv) requires a buyer to provide the seller with an exemption certificate. Rule 262(3)(a)(i) also states that “[a]ppliances and furniture, including but not limited to stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure.”

Exemptions are narrowly construed in favor of application of the tax. *Budget Rent-a-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). Taxation is the rule and exemption is the exception. *Id.* A person who claims an exemption has the burden of showing that he or she qualifies for it. *Id.* at 175. The Department is without authority to expand an exemption beyond the express statement of statutory law. *Id.* at 176; Det. No. 02-0134, 24 WTD 129 (2005).

The goal of statutory interpretation is to carry out the intent of the legislature. *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Statutory interpretation begins with the statute’s plain meaning. *Id.* “The ‘plain meaning’ of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (citing *Wash. Pub. Ports Ass’n v. Dep’t of Revenue*, 148 Wn.2d 637, 645, 62 P.3d 462 (2003); *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10-11, 43 P.3d 4 (2002)).

Taxpayer is an agricultural employer that provides housing to employees on a year-round basis. The Exemption broadly proclaims that “Agricultural employee housing” means *all facilities* provided by an agricultural employer for housing agricultural employees. RCW 82.08.02745(5)(c) (emphasis added). The Exemption goes on to explain that “all facilities” includes “bathing, food handling, hand washing, laundry, and toilet facilities,” but does not limit the definition of housing to these examples. *Id.* Therefore, the types of facilities included in the definition of housing is not an exclusive or exhaustive list.

The plain meaning of the Exemption is clear: the legislature intended to apply the Exemption to *all facilities* provided to agricultural employees for housing. Here, the Farmhouse contains many rooms and facilities. The bedrooms, bathrooms, living room, dining room, and laundry room are all facilities contemplated in RCW 82.08.02745. Though the statute does not specifically list an attached garage, loft, or home office, each item is included in the facilities provided exclusively to Taxpayer’s agricultural employees for housing. Therefore, we find that these facilities comprise housing provided to agricultural employees.

As to the two kitchens in the Farmhouse, food-handling facilities are specifically listed under the definition of agricultural employee housing. Consequently, both the traditional-style kitchen and the commercial-style kitchen constitute housing facilities provided to resident employees by an

agricultural employer. Furthermore, Taxpayer's agricultural employees used both kitchens as a part of their housing. Neither Taxpayer's concurrent use of the commercial-style kitchen for cheese making activities for nine months, nor its occasional hosting of cheese making classes in either kitchen, alters the fact that Taxpayer provides the kitchens to resident agricultural employees. We also find it immaterial whether Taxpayer allows a tour group to stand in the entryway of the Farmhouse during a tour. Taxpayer provides employees who live in the Farmhouse access to all facilities within the Farmhouse, and resident employees have used all of those facilities. These circumstances meet the requirements of RCW 82.08.02745, despite temporary use of the kitchens for other purposes.⁴ Thus, under the plain meaning of the statute, the Farmhouse qualifies for the Exemption.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 16th day of March 2017.

⁴ Audit has not alleged that the commercial-style kitchen, or any other part of the Farmhouse, is disqualified as "agricultural employee housing" because the kitchen is provided as *housing* for commercial purposes to the general public. See RCW 82.08.02745(5)(c).