

Cite as Det. No. 18-0267, 39 WTD 171 (2020)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of Tax )	<u>D E T E R M I N A T I O N</u>
of )	
)	No. 18-0267
)	
... )	Registration No. ...
)	

RULE 263; RCW 82.08.962: RETAIL SALES TAX – EXEMPTION – PURCHASES OF MACHINERY AND EQUIPMENT USED IN GENERATING ELECTRICITY. Purchases for the installation of machinery and equipment to generate electricity qualify for the exemption set forth under RCW 82.08.962 only where the purchases are directly related to the actual labor and services charged for installing the qualifying machinery and equipment. Purchases for the design, engineering, and permitting of the machinery and equipment do not qualify for the 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.

Lewis, T.R.O. – Taxpayer seeks review of the partial denial of its request for refund of 75% of the retail sales tax paid on the purchase and installation of a solar energy system. Taxpayer asserts that the Department improperly denied its refund request, allowable under RCW 82.08.962 and WAC 458-20-263 (“Rule 263”),<sup>1</sup> of tax paid on charges for the design, engineering, and permitting for a solar system that generates electrical energy. Taxpayer’s petition is denied.<sup>2</sup>

ISSUE

Are charges for the design, engineering, and permitting of a solar system that generates electrical energy eligible for exemption from retail sales tax under the provisions of RCW 82.08.962 and Rule 263?

<sup>1</sup> [Subsequent to the issuance of this determination, Rule 263 was amended on December 27, 2018. However, most Department rules are treated as interpretive statements that . . . apply retroactively, unless the interpreted statutory language has changed or [a taxpayer reported its taxes in accordance with] the prior rule. See *Association of Washington Businesses v. Dep’t of Revenue*, 155 Wn.2d 430, 120 P.3d 46 (2005). As such, all references to Rule 263 in this determination refer to the new version of that rule.]

<sup>2</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

## FINDINGS OF FACT

Taxpayer filed an “Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment” (“Application”) on November 9, 2017. The detail of Taxpayer’s Application for refund listed two invoices:

Date of Purchase	Purchase Price (Before Tax)	Amount of Retail Sales Tax Paid	Name and Address of Seller
8/3/17	\$ . . .	\$ . . .	. . .
9/28/17	\$ . . .	\$ . . .	. . .

The Application form, which Taxpayer signed, states that the exemption applies to charges for installing machinery and equipment:

Sales and use tax exemptions apply to purchases and charges for installing machinery and equipment that will be used directly to generate electricity using fuel cells, sun, wind, biomass energy, tidal and wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust or landfill gas in a facility that generates not less than one kilowatt of electricity based on the nameplate of the equipment.

On December 12, 2017, the Department sent Taxpayer a message, stating the application was approved for a 75% remittance of the retail sales tax paid on solar modules, inverters, and a racking system. The correspondence also stated that a remittance was not approved for the portion of the retail sales tax paid on the charges described as design, engineering, and permitting.

On December 13, 2017, Taxpayer sent the Department a message stating it did not understand why certain expenses were denied. Taxpayer maintained that it read Sections [101(a)] and [305] of Rule 263 to mean that all service charges directly related to the actual labor for installing the system should qualify for the retail sales tax refund.

The Department responded that the program does not provide a refund of tax for the design, planning, studies, project management or other charges not directly related to the actual labor for installing the qualifying machinery and equipment. The message also informed Taxpayer that it had a right to appeal the decision.

On December 19, 2017, the Department received Taxpayer’s petition requesting correction of the Department’s action. Taxpayer’s petition stated:

Per WAC 458-20-263, Sec. [(101)(a)], “The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment.” Before the actual installation could occur, my installer performed design, engineering, and permitting services. I could not have legally proceeded with my solar project without these services, therefore they are directly related to the actual labor for installing the solar equipment.

Sec. [305] clarifies that charges for labor and services must be directly related to the actual labor for the solar project, and not for those unrelated to solar that may be under contract. It does not say that all services for design, engineering, and permitting are inherently excluded; just those not directly related to the solar installation. Since I am not contracting for any other labor or construction, all of the above solar-related services should be eligible for the 75% tax remittance.

#### ANALYSIS:

All sales of tangible personal property to consumers in Washington are subject to retail sales tax unless a specific exemption applies. RCW 82.08.020; RCW 82.04.050. RCW 82.08.962 exempts from retail sales tax purchases of qualified Machinery and Equipment (“M&E”) that is used directly in generating electricity using solar energy where the M&E is part of a solar energy system capable of generating at least 1000 watts of electricity, and certain charges incurred for installing the M&E. The exemption provides as follows:

(1)(a) . . . [P]urchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

...

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department.

RCW 82.08.962(1)(a) & (b), (4)(a) (emphasis added).

Tax exemptions are strictly construed in favor of application of the tax and against claiming the exemption, and the burden of proving entitlement to the exemption is on the taxpayer. *See Budget Rent-A-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972); Det. No. 05-0193, 25 WTD 143, 145 (2006); Det. No. 01-007, 20 WTD 214, 231 (2001).

Rule 263[305] describes how the tax refund applies to installation charges:

**[Installation charges.** The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for:

(a) Charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment;

(b) Tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment; or

(c) Services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.]

Rule 263[305] (emphasis added).

Taxpayer submitted two invoices for refund. The Department’s Taxpayer Account Administration Division (“TAA”) allowed a refund of retail sales tax paid on the machinery and equipment purchased from [Seller], as recorded on the purchase invoice dated 9/28/17. TAA denied the refund of \$ . . . retail sales tax paid on the “design, engineering, and permitting for the 99.75 KW PV system” purchased from [Seller], as recorded on the purchase invoice dated 8/3/2017.

Qualification for tax refund requires that the purchases and charges be for the installation of machinery and equipment that will be used directly to generate electricity from certain sources. Rule 263[305] excludes refund for payment if the charges are not charges for labor or services rendered with respect to installing the M&E. TAA correctly applied Rule 263[305] in denying refund of tax paid on charges for the design, engineering and permitting of the system. Those charges, as explained in Rule 263[305], are “not directly related to the actual labor for installing the qualifying machinery and equipment,” [as required under RCW 82.08.962(1)(a)].<sup>3</sup>

Consistent with the billing dates, the design, engineering, and permitting occur prior to the beginning of actual construction and installation. We find that such charges do not qualify for the tax exemption because they were not for labor or services directly related to the actual installation of the qualifying M&E. Taxpayer’s petition is denied.

#### DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 3rd day of October 2018.

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<sup>3</sup> [This holding is limited to the application of Rule 263 with respect to qualifying installation charges on qualifying M&E].