

Cite as Det. No. 16-0361, 40 WTD 001 (2021)

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. 16-0361
)	
... )	Registration No. ...
)	

RCW 82.08.820: RETAIL SALES TAX – WAREHOUSE, MATERIAL-HANDLING AND RACKING EQUIPMENT REMITTANCE: Taxpayer erected and installed the racking system for the primary purpose of storing finished goods. Because the statute specifically provides for an exemption at 50% of the tax paid on the purchase and installation of racking equipment used to store finished goods, we find that the racking equipment is eligible for the exemption only as racking equipment.

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.

November 16, 2016

...

Re: ...  
Determination No. 16-0361

Dear ... :

This is the Department of Revenue’s decision regarding your May 2, 2016 petition for an administrative review of the above-referenced Tax Rulings.<sup>1</sup>

**Tax Ruling Dated December 31, 2015**

... (Taxpayer) designs, develops, and operates automated cold storage warehouses within the United States and Europe. These “high-bay” warehouses store and retrieve palletized chilled and frozen goods mechanically via an advanced automated system. On December 10, 2015, Taxpayer provided information regarding its plans to construct a new cold storage warehouse in ... Washington. Taxpayer asked the Department of Revenue (Department) “to determine if

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

[Taxpayer] qualifies for the warehouse exemption remittance for retail sales tax purposes pursuant to RCW 82.08.820,” and, if so, “to confirm the application of the exemption to each item shown in the proposed investment budget attached to the Ruling request as Exhibit A.”

The Department’s Taxpayer Information and Education (TI&E) unit of the Taxpayer Services Division responded on December 31, 2015. The pertinent information Taxpayer provided TI&E can be summarized as follows:

Taxpayer will be constructing an automated cold storage warehouse in . . . Washington where it will store customers’ goods in a temperature controlled environment. This warehouse will exceed 275,000 square feet. Sixty percent of the structure will consist of a high-bay storage area (that will reach about 131 feet high) where customers goods will be stored. The warehouse will have an automated storage and retrieval system. Forklifts and automated systems will be used to load and unload palletized goods to and from trucks transporting such goods. Material handling equipment such as conveyors and automated cranes will be used to transport the goods to and from the high-bay storage area. The rest of the warehouse will include a picking area for replacing or rewrapping damaged packages or pallets, and offices.

Based on this information and a more detailed list of the various categories of expenditures identified on its “Exhibit A” (attached to the request), the Tax Ruling determined that Taxpayer qualifies for the warehouse retail sales tax remittance exemption pursuant to RCW 82.08.820. The Tax Ruling specifically addressed each category of expenditures on the list. It also determined that certain costs would not qualify because the activities are not generally subject to retail sales tax.<sup>2</sup>

TI&E found Taxpayer would be entitled to 100% remittance of retail sales tax paid on costs for building the warehouse (e.g., construction costs, including labor and materials) and 50% of the retail sales tax paid on its purchases and installing of material-handling equipment and racking equipment (including labor and services provided in respect to the equipment and certain software).

Taxpayer believed that the racking system should have been included in the construction costs but the Ruling concluded that the racks did not qualify for the 100% remittance for construction costs regardless that the equipment is attached to the building because “the racks are primarily used to store finished goods.”

### **Tax Ruling Dated March 16, 2016**

On March 1, 2016, Taxpayer filed a request for reconsideration of the Tax Ruling’s conclusion that the racking system would be entitled to only 50% remittance under the statute. Taxpayer explained that “its primary reason for requesting reconsideration is to better understand the basis for the Department’s conclusion regarding the warehouse exemption remittance percentage of the high-bay racking and to provide the Department with clarified facts as they relate to this conclusion.”

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<sup>2</sup> . . .

Taxpayer asserted that “the primary use of the high-bay racking is to provide the internal steel structure of the warehouse that supports the entire building, similar to the traditional I-beam framework that supports most commercial buildings.” Taxpayer explained its assertions, in pertinent part, as follows:

The racking is specifically engineered to withstand seismic and wind forces and to bear the weight of the walls and roof of the warehouse. ... [I]t becomes the structure of the building, and replaces the internal steel framework that would otherwise be erected. ... Other than the high-bay racking, there literally is no support structure for the building.

Taxpayer stated that, according to its engineers, only about 5% of the racking system could be removed without “critically weakening” the building. Therefore, according to Taxpayer, the costs for erecting the racking system should be included in the construction costs and should qualify for a 100% remittance on the racking system.

As Taxpayer took issue only with the portion of the previous ruling concerning the amount of the refund (i.e., remittance) available to Taxpayer on the high-bay racking system, TI&E’s Tax Ruling of March 16, 2016, addressed only that portion of the previous Tax Ruling. Citing the applicable statutory authority, RCW 82.08.820(2)(g), defining “material handling and racking equipment,” TI&E affirmed its previous ruling, concluding:

The high-bay racking system does not qualify as part of the construction cost of the new facility; therefore, it is only eligible for the 50 percent refund program as qualifying material-handling equipment and racking equipment.

In reaching this conclusion, the Tax Ruling recognized that the racking equipment serves both a building support purpose and a storage purpose. However, it found that the building support purpose is not the main function of the racking equipment for purposes of the exemption. The Tax Ruling explained that “the building support function seems incidental to the racking equipment. The fact that the exterior walls can be attached directly to the racking equipment is efficient, but not necessary.” The Tax Ruling concluded that the primary purpose for, and use of, the racking equipment “is to store finished goods in a very efficient, stacked process.”

### **The Petition for Review of the Tax Rulings**

Taxpayer petitioned the Department’s Administrative Review and Hearings Division (ARHD) for a determination that the racking system qualifies for 100% retail sales tax remittance under RCW 82.08.820, as the installation of the racking system is integral to the construction of the warehouse. There is no dispute as to the facts and information upon which the TI&E Tax Rulings’ conclusions were based. On Review, Taxpayer provided much the same information regarding the building of the warehouse and the use and purpose of the racking system.

We summarize the relevant facts as follows:

Taxpayer specializes in the design, development, and operation of automated cold storage warehouses. These high-bay warehouses store and retrieve palletized chilled and frozen

goods mechanically via an advanced automated system. Taxpayer is planning to construct an automated cold storage warehouse in [Washington] where it will store goods for clients in the temperature controlled warehouse and charge warehousing fees for this service. Fees will be itemized and will include, for example, fees for each pallet stored, each pallet retrieved, and each pallet that needs to be re-wrapped with plastic. The average pallet of goods will stay in the cold storage warehouse for approximately four months. The warehouse will exceed 275,000 square feet when completed.

These high-bay warehouses are designed so that the high-bay racking is the internal steel structure of the warehouse that supports the entire building, similar to the traditional I-beam framework that supports most commercial buildings. The high-bay racking is specifically engineered to withstand seismic and wind forces and to bear the weight of the walls and roof of the warehouse. Once the warehouse is complete, pallets will be stacked and stored on the high-bay racking.

### **ARHD Decision**

RCW 82.08.020 imposes a retail sales tax on sales in Washington of tangible personal property unless there is an exemption. RCW 82.08.820 provides that “wholesalers or third-party warehouseurs” who own or operate a warehouse that is at least 200,000<sup>3</sup> square feet and that stores finished goods may qualify for a retail sales tax exemption in the form of a remittance or payment from the Department. A qualified wholesaler or warehouseur may claim 100% of the tax paid on the eligible construction costs of a qualified warehouse from the state’s portion of the retail sales or use tax (6.5%) and a 50% exemption from the state’s portion of the retail sales or use tax paid on the purchase and installation of material-handling and racking equipment. (RCW 82.08.820(3)(a)).<sup>4</sup>

At issue is whether the term racking equipment as used in the statutory exemption includes Taxpayer’s racking system, which both provides the physical support for the building and stores finished goods. The fundamental objective in statutory interpretation is to ascertain and carry out the legislature’s intent. See *Port of Seattle v. Dep’t of Revenue*, 101 Wn. App. 106, 111-112 (2000) where the court noted:

To determine legislative intent, we look first to the language of the statute. Undefined statutory terms are given their usual and ordinary meaning. Each provision of the statute should be read in relation to the other provisions, and the statute should be construed as a whole. In ascertaining the meaning of a particular word as used in a statute, a court must consider both the statute's subject matter and the context in which the word is used. Further, while tax statutes generally are interpreted in favor of the taxpayer, exemption statutes are construed strictly against the taxpayer, and the taxpayer has the burden of establishing any exemption.

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<sup>3</sup> . . .

<sup>4</sup> Taxpayers should note that pursuant to RCW 82.08.820(4) Warehouses . . . and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section.

...

... Because the warehouse tax incentive is an exemption statute, we must construe the statute strictly but fairly against the taxpayer. *Port of Seattle, supra*. Here the statute provides for a remittance (refund) of retail sales tax paid on the costs for constructing a warehouse. It defines “construction” as meaning the actual construction of a warehouse that did not exist before the construction began. RCW 82.08.820(2)(b). The term “warehouse” is defined in RCW 82.08.820(2)(l), in pertinent part, as meaning:

[A]n 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. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. ...

The term “building” is not defined and therefore is given its usual and ordinary meaning. The ordinary meaning of the term “building” includes, but not is not limited to, walls, roof, floors, doors, and windows, even if specially designed or unique. See ETA 3124.2009; Det. No. 01-007, 20 WTD 214 (2001). Thus, for the construction costs of building the warehouse, Taxpayer qualifies for the 100% retail sales tax remittance incentive.

RCW 82.08.820 also provides for an exemption specifically for “material-handling equipment and racking equipment” that is distinctly different from the construction costs exemption. Retail sales tax paid on the purchase of material-handling and racking equipment, as well as “labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment” qualifies for the exemption. RCW 82.08.820(1)(a). The term “material handling equipment and racking equipment” is defined in RCW 82.08.820(2)(g), as follows:

Material-handling equipment and racking equipment" means equipment in a warehouse ... that is primarily used to handle, store, organize, convey, package, or repackage finished goods. ... The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse ..., or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system; ... (Emphasis ours).

Under the statute, “material-handling and racking equipment” is defined as “equipment in a warehouse.” Although the terms “material-handling equipment” and “racking equipment” are

defined generally, the list of examples of racking equipment in the statute, while expressly not exclusive, specifically identifies items that physically store or move personal property.

A specific statutory provision prevails over a general provision. *Pannell v. Thompson*, 91 Wn.2d 591, 597, 589 P.2d 1235 (1979). Courts give preference to the more specific and more recently enacted statute. *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 210, 118 P.3d 311 (2005); *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691, 697 (2000). . . .

[W]e find here that the special features of the racking system, forming an integral and structural component of the warehouse building, did not transform the racks for purposes of the exemption into construction materials eligible for the 100% retail sales tax remittance under RCW 82.08.820. We find that under the facts in this matter and based on the information provided, Taxpayer erected and installed the racking system for the primary purpose of storing finished goods. Because the statute specifically provides for an exemption at 50% of the tax paid on the purchase and installation of racking equipment used to store finished goods, we find that the racking equipment is eligible for the exemption only as racking equipment. Tax exemptions are to be narrowly construed and the burden is on the taxpayer to prove that it is entitled to the exemption. *Port of Seattle v. Dep't of Revenue*, 101 Wn. App. 106, 111-112 (2000). Taxpayer has not shown that it is entitled to the 100% construction costs retail sales tax remittance under RCW 82.08.820.

We conclude the TI&E Tax Rulings correctly categorized the racking system as eligible under RCW 82.08.820 for a 50% remittance of retail sales tax paid to erect and install the racks, regardless that they are attached to the building. We affirm the Tax Rulings dated December 31, 2015 and March 16, 2016.

This decision constitutes the final action of the Department of Revenue.

This decision is binding on the taxpayer and the department under the facts stated. It will remain binding until the facts change, the law by statute, rule, or court decision changes, the department publicly announces a change in the policy upon which the decision is based, or the taxpayer is notified in writing that the decision is no longer valid.

Jacqueline M. Danyo, T.R.O.