

Cite as Det. No. 19-0156, 40 WTD 219 (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. 19-0156
)	
...)	Registration No. ...
)	

RCW 82.08.890: RETAIL SALES TAX – EXEMPTION – QUALIFYING LIVESTOCK NUTRIENT MANAGEMENT FACILITIES – ELIGIBLE PERSONS. A taxpayer that does not qualify for the retail sales tax exemption under RCW 82.08.890 cannot establish eligibility through its relationship with a qualifying, but legally separate, corporate affiliate because each separately organized corporation is treated as an independent “person” within the meaning of the law.

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.

Farquhar, T.R.O. – A now-dissolved Washington company (“Taxpayer”) that owned the real property assets of a dairy farm protests the Department’s assessment of [deferred sales] tax on purchases of upgrades to a livestock nutrient management system. Taxpayer argues that because an affiliated company operates the dairy farm and other state agencies treat both companies as “dairy operators,” Taxpayer qualifies as an “eligible person” and the purchases are tax-exempt under RCW [82.08.890]. Because Taxpayer does not meet the definition of an “eligible person” and we treat separately-organized companies individually for tax purposes, Taxpayer is not entitled to the [sales] tax exemption. Petition denied.¹

ISSUE

Whether Taxpayer meets the definition of an “eligible person” such that its purchases of improvements to a livestock nutrient management facility qualify for the [sales] tax exemption under RCW [82.08.890].

FINDINGS OF FACT

... (“Taxpayer”) was a Washington company that owned dairy facilities and land near . . . , Washington. Originally, the dairy facilities and land were owned by a single company, [which]

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

also operated a large dairy farm at the facility. On July 1, 2005, the company’s owners, . . . (“the Owners”), divided the real property and operations components of the dairy farm into two separate business entities. The purpose of the division was to “limit liability and to facilitate in estate planning for [the Owners.]” Attachment to Taxpayer’s Review Petition (“Attachment”), pg. 1. The Owners transferred the dairy’s real property assets to Taxpayer and the operations to . . . (“Operations”). *Id.* Taxpayer’s business activities consisted solely of holding the real property assets of the dairy, which Taxpayer leased to Operations. Taxpayer was not involved in operating the dairy and did not possess a license to produce milk during the period at issue in this case. Taxpayer sold its assets [in] 2017 and was dissolved with the Secretary of State [thereafter].

Between 2014 and 2016, Taxpayer made several purchases related to upgrading the dairy’s nutrient management system. A nutrient management system is a system of structures and equipment used for handling and treating livestock manure in order to protect surface and ground water from pollution. *See generally* Chapter 90.64 RCW. Taxpayer did not pay retail sales tax on the purchases. The purchases at issue in this case include the following (referred to collectively herein as “the Improvements”):²

Date	Vendor	Invoice No.	Item Description	Amount
. . . 14	. . .	Unknown	Manure Separator Upgrades (Progress Billing-Centrifuge Project)	\$. . .
. . . 14	Manure Separator Upgrades (Progress Billing-Centrifuge Project)	\$. . .
. . . 14	Manure Separator (Invoice divided evenly between Commodity Stationary Feed Bldg & Manure Separator-Leveling dirt, forming pit, pour curb & slabs, building erection)	\$. . .
. . . 14	Manure Separator Bldg, etc. (Materials for Separator Pump house, electrical room)	\$. . .
. . . 14	Manure Separator Bldg, etc. (Install fans, louvers, and sheet metal, doors for separator)	\$. . .
. . . 14	Manure Separator Upgrades (Final Billing-Centrifuge Project)	\$. . .
. . . 15	<u>Manure Separator Upgrades</u> Extra plumbing at pit #1, relocation of flush fill and separation feed pipes	\$. . .

² See the Auditor’s Detail of Differences and Instructions to Taxpayer, issued on April 6, 2018.

		...	Relocation of south agitator at pit #1, rework pit rails agitator locations	
		...	Remote wireless flush boxes	
		...	Cleaned DT360's #1 and #2	
		...	Pit #2-relocate flush pump & flush line to new pump location, extend flush fill line to flush pit	
		...	Paint feed mixer stairs, reception pit and building access stairs, primary separation building stairs, safety rail	
		...	Pulled west separator pump in pit #1, put north separator pump from pit #2 in its place, rebuild west separator pump, put pump in pit #2	
... 15	Manure Separator (boom lift rental)	\$...
... 16	Manure Separator Additions . . . (Secondary separation process addition to manure processing system)	\$...
			Total	\$...

In January of 2018, the Department's Audit Division ("Audit") began a review of Taxpayer's books and records for the period of January 1, 2014, through September 30, 2017 ("the Audit Period"). Audit identified several purchases Taxpayer made without paying retail sales or use tax, including the Improvements listed above. Taxpayer believed the Improvements were not subject to sales or use tax because Taxpayer qualified for the livestock nutrient management equipment and facilities retail sales and use tax exemptions under RCW 82.08.890 and RCW 82.12.890, respectively (collectively, "the exemptions"). However, following its review of Taxpayer's records and business structure, Audit concluded that Taxpayer did not meet the definition of an "eligible person" under RCW 82.08.890(4)(c) and, as a result, the upgrades were taxable.

On May 10, 2018, Audit issued an assessment in the amount of \$. . . ("the Assessment"). The Assessment [comprises] \$. . . in [deferred sales] tax for the Improvements, a \$. . . penalty, and \$. . . in interest. Taxpayer has since paid the Assessment.

On June 8, 2018, Taxpayer submitted a timely petition for review. Taxpayer argues that the upgrades "qualify as tax exempt improvements of qualified livestock nutrient management

facilities under RCW 82.08.890” and that Taxpayer meets the definition of an “eligible person” under RCW 82.08.890(4)(c). Taxpayer’s Review Petition (“Petition”), pg. 1. Taxpayer argues that the Department should allow the exemption because other state agencies treat both Taxpayer and [Operations] as “dairy operators” and that Taxpayer is “listed” on the nutrient management plan along with Operations.

Along with the Petition, Taxpayer provided the following records:

- [. . .] Eleven (11) non-sequential pages from a Livestock Nutrient Management Plan (“the Plan”) developed for . . . (Operations). The Plan notes that the facility that the Plan was developed for is owned by Taxpayer. The Plan was “approved” on November 8, 2000, and the permit associated with the Plan expired in July of 2011.

Taxpayer did not provide any documents related to a Livestock Nutrient Management Plan prepared in its name, nor did it provide documents related to any wastewater permits it may have obtained. Taxpayer did not request a hearing on the matter, thus our determination is based on the records provided by Taxpayer, as well as information obtained from Audit.

On June 29, 2018, Audit responded to Taxpayer’s petition. Audit concedes that if Operations had purchased the Improvements, it would have qualified for the exemption because Operations held a license to produce milk and had a certified dairy nutrient manage plan as required by chapter 90.64 RCW. However, Audit maintains that Taxpayer is not an “eligible person” under RCW 82.08.890 and Taxpayer cannot establish eligibility for the exemptions merely because an affiliated business would have qualified.

ANALYSIS

RCW 82.08.020 imposes retail sales tax on each retail sale in this state unless a specific exemption applies. The term “retail sale” is defined by RCW 82.04.050 and includes the sale of tangible personal property consumed in, and/or labor and services rendered in respect to, constructing, repairing, decorating, or improving new or existing buildings or other structures on real property of or for consumers. RCW 82.04.050(2)(b). Use tax complements retail sales tax by imposing a tax of like amount upon the privilege of using within this state as a consumer any article of tangible personal property and certain services acquired without payment of retail sales tax. *See* RCW 82.12.020(1), (2).

Here, Taxpayer’s purchases of the Improvements constitute retail sales under RCW 82.04.050(2)(b) because they involved tangible personal property and labor/services rendered in respect to “constructing, repairing, decorating, or improving new or existing buildings.” Because Taxpayer did not pay retail sales tax on the purchases, they are subject to [deferred sales] tax, unless a specific exemption applies. Taxpayer argues that the Improvements are exempt from tax under RCW 82.08.890 and RCW 82.12.890; therefore, our analysis turns to whether Taxpayer qualifies for those exemptions.

Certain labor and services rendered, as well as tangible personal property purchased, with respect to qualifying livestock nutrient management facilities are exempt from the retail sales tax under

RCW 82.08.890. *See also* WAC 458-20-210(9)(m). RCW 82.12.890 provides a corresponding exemption from use tax. The exemptions are only available to purchasers who meet one of the following definitions of an “eligible person” found in RCW 82.08.890(4)(c):³

“Eligible person” means a person:

- (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW;
- (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or
- (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

A taxpayer who wishes to claim the exemptions found under RCW 82.08.890 and RCW 82.12.890 “must keep records necessary for the department to verify eligibility under this section.” RCW 82.08.890(3)(b).

“Taxation is the rule and exemption is the exception.” *Spokane County v. City of Spokane*, 169 Wn. 355, 358, 13 P.2d 1084 (1932). Tax exemptions must be strictly construed, though fairly, and in keeping with the ordinary meaning of their language, against the taxpayer. *See, e.g., Budget Rent-a-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972); *Group Health Coop. v. Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 07-0034E, 26 WTD 212 (2007). “The burden of showing qualification for the tax benefit afforded . . . rests with the taxpayer.” *Group Health*, 72 Wn.2d at 429. Every taxpayer is therefore responsible for being able to demonstrate that it qualifies for each claimed deduction under a strictly construed interpretation of the rules.

Here, there is no dispute that the improvements constitute qualifying livestock nutrient facilities. However, Taxpayer and Audit disagree as to whether Taxpayer qualifies as an “eligible person” under RCW 82.08.890. RCW 82.08.890(4)(c) provides three ways for a taxpayer to be considered an “eligible person.” We will address each in turn. We can easily dispose of the first description, found in RCW 82.08.890(4)(c)(i), because Taxpayer admitted that it did not possess a license to produce milk during the Audit Period.

The remaining two descriptions pertain to taxpayers that own “animal feeding operations.” RCW 82.08.890(4)(c)(ii)-(iii). An owner of an “animal feeding operation” will qualify if it has either a permit issued under chapter 90.48 RCW (water pollution control) or “a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.” *Id.* Taxpayer has not produced records to show that it qualifies for either. Taxpayer did not provide

³ RCW 82.12.890 incorporates the definition for “eligible person” from RCW 82.08.890 by reference.

any documentation that it obtained a permit under chapter 90.48 RCW, so it does not qualify for the exemption under RCW 82.08.890(4)(c)(ii).

Taxpayer also appears to argue that it qualifies for the exemption under RCW 82.08.890(4)(c)(iii) because it is “listed” on the Plan along with Operations. This argument is unpersuasive for two reasons. First, while the Plan does reference Taxpayer as the facility’s owner, it does not state that Taxpayer was applying, or even eligible, for a permit under the Plan. To the contrary, the Plan states that it was prepared for Operations, not Taxpayer. Second, even if the Plan were prepared for Taxpayer, Taxpayer would also have to show that it also qualifies for the exemption under RCW 82.08.855 (a retail sales tax exemption for sales to eligible farmers of replacement parts for qualifying farm machinery and equipment) and it has not provided any documentation to suggest that it does.⁴ Therefore, we find that Taxpayer does not meet any of the definitions of “eligible person” found in RCW 82.08.890(4)(c).

Taxpayer also seems to argue that even if it does not qualify for the exemption on its own, the Department should allow it because of Taxpayer’s close affiliation with Operations. Taxpayer claims that other state agencies treat both Taxpayer and Operations as “dairy operators” and that Operations could not produce milk without Taxpayer’s assets. While it makes logical sense that Taxpayer’s assets are crucial to the milk production process, the Department does not consider affiliation with a separate company when determining a taxpayer’s tax liabilities. The basis for this begins with the statutory definition of “person” found in RCW 82.04.030:

“Person” or “company”, herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

The Department treats each “person” individually, as described in WAC 458-20-203 (“Rule 203”), and recognizes a division between legal entities:

Each separately organized corporation is a “person” within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

WAC 458-20-203.

Washington Courts have respected the division between “persons” engaging in business in Washington State, even though those persons may be affiliated with each other *See, e.g., Impehoven v. Dep’t of Revenue*, 120 Wn.2d 357, 841 P.2d 752 (1992) (independent contractor insurance agents affiliated with broker are not one “person” for B&O tax purposes and not “group of individuals acting as a unit” under RCW 82.04.030.); *Nordstrom Credit, Inc. v. Dep’t of*

⁴ Because Taxpayer does not possess the permit or plan required by RCW 82.08.890(ii) and (iii), we need not address whether Taxpayer owned an “animal feeding operation.”

Revenue, 120 Wn.2d 935, 845 P.2d 1331 (1993) (subsidiary formed by parent to finance parent's accounts receivable engaged in arms-length transaction with parent and was a separate "person" for B&O tax purposes); *American Sign & Indicator Corp. v. State*, 93 Wn.2d 427, 429, 610 P.2d 353 (1980) ("The tax liability of a corporation must be considered without regard to its relationship to a parent or subsidiary company or to the existence of common officers, employees, facilities, or stock ownership."). There is no authority for interpreting "person" as including two affiliated entities that share common ownership.

Therefore, because Taxpayer does not qualify for the exemption and cannot establish eligibility through its corporate affiliate, we deny Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied

Dated this 11th day of June 2019.