

Cite as Det. No. 14-0245, 34 WTD 048 (2015)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
...	)	No. 14-0245
	)	Registration No. . . .
	)	
	)	

[1] RCW 82.08.962: RETAIL SALES TAX – M&E EXEMPTION – GENERATING ELECTRICITY. A geothermal heat pump is not exempt from retail sales tax as machinery and equipment because it does not convert ground energy into electricity.

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.

Sohng, A.L.J. – An individual petitions for refund of sales tax paid on a geothermal heat pump on the grounds that the heat pump is machinery and equipment used directly in generating electricity using geothermal resources. The petition is denied.<sup>1</sup>

ISSUE

Is a geothermal heat pump exempt from retail sales tax under RCW 82.08.962 as machinery and equipment used directly in generating electricity using geothermal resources?

FINDINGS OF FACT

A geothermal heat pump is a central heating and/or cooling system that extracts ground heat during winter for heating and/or transfers heat back into the ground for cooling during summer. Shallow ground temperature is warmer than the air above during the winter and cooler than the air above in the summer. A geothermal heat pump is energy-efficient because of the year-round stability of underground temperatures.<sup>2</sup> A geothermal heat pump requires electricity to operate, but does not itself produce or transmit electricity; rather, it transmits heat.<sup>3</sup>

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

<sup>2</sup> Shallow ground temperatures a few feet below the earth’s surface remain relatively constant, between 45° to 75° Fahrenheit, depending on the latitude. See U.S. Department of Energy website at <http://energy.gov/energysaver/articles/geothermal-heat-pumps> (last visited July 8, 2014).

<sup>3</sup> . . .

[Taxpayer] is an individual who resides in . . . Washington. Taxpayer purchased and installed a five-ton . . . geothermal heat pump (the “Heat Pump”) at his home. Taxpayer purchased the Heat Pump from [a supplier] and paid a total of \$. . . , including \$. . . in retail sales tax on the Heat Pump and on the labor involved in its installation.

On October 21, 2013, Taxpayer submitted a refund claim to the Department of Revenue (the “Department”) for 75% of the sales tax he had previously paid for the Heat Pump and its installation, in the amount of \$. . . . By letter dated December 6, 2013, the Department’s Taxpayer Account Administration division denied the refund claim on the grounds that the Heat Pump “does not store, transform, or transmit electricity for entry into or operation in parallel with electric transmission and distribution systems.” Taxpayer appeals the denial.

### ANALYSIS

RCW 82.08.962 provides for a 75% sales tax refund on purchases of:

[M]achinery and equipment used directly in generating electricity using . . . geothermal resources . . . 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 . . . , 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.

RCW 82.08.962(1)(a), (c) (emphasis added). Under RCW 82.08.962(3)(a), machinery and equipment is “used directly” in generating electricity by geothermal resources “if it provides any part of the process that captures the energy of the . . . geothermal resources, . . . converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.” (Emphasis added.)

Thus, one requirement in order for the Heat Pump to be “used directly” in generating electricity is that it must convert energy into electricity. Taxpayer concedes that the Heat Pump does not itself generate electricity or convert another energy source into electricity. However, Taxpayer claims that the heat transmitted by the Heat Pump effectively replaces electricity to heat his home. In essence, Taxpayer argues that because the Heat Pump produces the equivalent heating that would result from the production of electricity, he is entitled to the exemption provided in RCW 82.08.962.

Here, the Heat Pump does not convert energy from the ground into electricity, as required by RCW 82.08.962(3)(a). Rather, the Heat Pump transmits heat from the ground to Taxpayer’s residence to heat his home. Tax exemptions are strictly construed against taxpayers. *See Budget Rent-a-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972); *Group Health Cooperative v. Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967). Strict construction requires that the exemption provided in RCW 82.08.962 be limited to machinery and equipment that *actually* convert energy into electricity, not into heat or the “equivalent” of electricity. Because the Heat Pump does not convert ground energy into electricity, it is not used directly in generating electricity by geothermal resources. Therefore, the Heat Pump is not eligible for the exemption under RCW 82.08.962.

Taxpayer also argues that the legislative history of RCW 82.08.962 shows that the legislature intended to exempt systems that produce the equivalent of electricity or bypass the need for electricity, such as geothermal heat pumps, from retail sales tax. Washington courts employ a “plain meaning” approach to interpreting statutes, absent ambiguity. *City of Spokane v. Dep’t of Revenue*, 104 Wn. App. 253, 258, 17 P.3d 1206 (2001). If the statute’s meaning is plain on its face, then we must give effect to that plain meaning as an expression of legislative intent. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720, 724 (2001). When the statutory language is clear and unambiguous, the statute’s meaning is determined from its language alone; courts will not look beyond the language and do not need to resort to extrinsic aids, such as legislative history. *See, e.g., Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 170 P.3d 10 (2007); *Hi-Way Fuel Co. v. Estate of Allyn*, 128 Wn. App. 351, 115 P.3d 1031 (2005); *City of Olympia v. Drebeck*, 156 Wn.2d 289, 126 P.3d 802 (2006).

Here, we find no ambiguity in the requirement that machinery and equipment convert energy into electricity under RCW 82.08.962(3)(a). . . . Even if there was ambiguity, we are not aware of, nor has Taxpayer provided, any documents in the statute’s legislative history that supports Taxpayer’s position.

Taxpayer’s petition is denied. The Heat Pump is not used directly in generating electricity by geothermal resources, and therefore, does not qualify for the exemption under RCW 82.08.962(1)(a).

#### DECISION AND DISPOSITION

We deny the petition.

Dated this 29<sup>th</sup> day of July 2014.