Cite as Det. No. 14-0416, 34 WTD 358 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 14-0416
	)	
. . .	)	Registration No. . . .
	)	

[1] RULE 24001; RCW 82.60.070: TAX DEFERRAL – RURAL COUNTY – MANUFACTURING ACTIVITY – MAINTAINED FOR EIGHT YEARS. A taxpayer's failure to maintain the tax exempt activity for the requisite time period results in the taxpayer being required to repay taxes deferred under the deferral program.

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.

Munger, A.L.J. – A recipient of [a tax deferral under] the rural county sales and use tax deferral program ("Rural County Deferral") protests the Department of Revenue's ("Department") assessment of the amount of the tax deferral, claiming that it is not liable for the tax because the sale of the real property where the tax deferred activity took place [was] under threat of eminent domain, or that the governmental entity that threatened eminent domain and purchased the property is the recipient's successor, and is liable for the deferral. We deny the petition.[1]

ISSUES

1. Under RCW 82.60.070(2) and WAC 458-20-24001A(108) ("Rule 24001A"), is the recipient of a tax deferral not obligated to pay the tax when the real property where the qualifying manufacturing activity took place is sold under threat of eminent domain?

2. Under RCW 82.04.180 and Rule 24001A(111), is the governmental entity that threatens eminent domain but ultimately purchases the real property a successor for tax deferral purposes when the qualifying manufacturing activity had ceased prior to the sale?

3. . . .

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

FINDINGS OF FACT

[Owner], a sole proprietor[2] ("Proprietorship"), is the only listed member of [Holdings] and is listed as President, Chairman, and Director of [the Manufacturer which] owned the real property [in] Washington. . . .

[Manufacturer] manufactures custom boats. Owner undertook to expand Manufacturing to include custom boat trailers. This required construction of a building on land that Holdings owned, the Property. In 2008, Owner submitted to the Department a Rural County Application for Lessor for Sales and Use Tax Deferral, seeking deferral of sales and use tax for construction of the building under the Rural County Deferral. The Department's Special Programs Division ("Special Programs") processed the application.

Special Programs audited the project after it had been completed to ascertain the total project cost and establish the amount of sales tax or use tax to be deferred. The audit showed the qualifying building costs as $. . . , with $. . . in total sales tax or use tax to be deferred. Special Programs approved the application, issuing Rural County Sales and Use Tax Deferral Certificate number . . . to Proprietorship effective March 4, 2008. Under the terms of the deferral, the lessee, Manufacturing, was required to maintain a qualifying use of the facility through December 31, 2017, in order to fulfill all deferral requirements.

On May 24, 2010, the . . . County Public Transportation Benefit Area ("Benefit Area") contacted Owner by letter to notify him that it intended to develop a public transit and office facility on Property. Benefit Area offered $. . . for Property,[3] and stated that if he rejected the offer Benefit Area might use its right of eminent domain to acquire Property for public use. The Property was sold to Benefit Area in February 2011, under threat of eminent domain.[4] Prior to the sale, Manufacturer ceased manufacturing in the qualified building on Property in December 2010.[5]

On March 22, 2011, Owner called Special Programs to notify them that Property had been sold. Special Programs told Owner that selling a property subject to a deferral under threat of eminent domain was not a reason that it could use to not proceed with seeking collection of the amount deferred. On December 4, 2012, Special Programs issued Owner an assessment for the balance of the deferral, $. . . , due by January 3, 2013. On January 15, 2013, Owner paid $. . . in full satisfaction the amount then due.[6]

On October 3, 2013, Owner requested a refund of the amount previously paid, arguing that, but for Benefit Area's threat of eminent domain to force a sale of Property, Manufacturer would still be engaging in a qualifying deferral activity. The liability for the terminated deferral, the Owner argued, rests with Benefit Area as Benefit Area is the current owner of Property and therefore

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[2] . . .
[3] The letter also mentions a prior offer of $. . . for a presumably adjoining parcel, making the total offer $. . . . The other parcel may have been part of Property; it doesn't matter for purposes of this appeal.
[4] . . .
[5] . . .
[6] Since the tax assessment had not been paid within thirty days of its issuance, a fifteen percent penalty had been added according to RCW 82.32.090(2).

successor to Owner. On December 16, 2013, Special Programs denied the refund request, stating that the deferral became immediately due when the qualifying manufacturing activity ceased in December 2010.

Owner timely appealed the refund request denial. On appeal, Owner argues that he satisfied the terms of the deferral as best he could, and would currently qualify had he not been forced to sell Property to Benefit Area under threat of eminent domain. He, therefore, should not be assessed the amount of the deferral. He argues that he could not control Benefit Area's demand for his property, and since the deferral was not factored into Property's sale price,[7] to demand it of Owner constitutes a taking without just compensation. Owner cites to WAC 458-61A-206, the Department's exemption from real estate excise tax when property is transferred subject to threat of eminent domain, as a Department rule that supports its argument that tax should not be assessed to Owner in this case.

Owner also argues on appeal that Benefit Area is a successor since it now owns Property, and should be liable for the amount of the assessed deferral. Owner cites to the Department's rule regarding successorship, WAC 458-20-216, noting that the rule does not contemplate involuntary successors, as would be the case here. Owner then notes the legislative intent of the Rural County Deferral, which is to "creat[e] employment opportunities and reduc[e] poverty in the distressed counties of the state." RCW 82.60.010. Owner argues that the successorship rule should be liberally construed to allow for successorship in this case, which would suit the broad purpose of the Rural County Deferral.

ANALYSIS

1. Rural County Deferral

Chapter 82.60 RCW establishes the Rural County Deferral. Rule 24001A governs implementation of the Rural County Deferral program for applications filed prior to July 1, 2010. The purpose of the program was to give tax benefits to investors and landowners to build qualified investment projects to promote economic stimulation, increase employment, and reduce poverty in rural counties. RCW 82.60.010. The program deferred sales and use tax on materials, labor, and services provided in the construction of qualified buildings or the acquisition of qualified machinery and equipment. If the owner or lessee completed all statutory requirements for eight years, the deferred tax was not required to be repaid. *See* RCW 82.60.060. In other words, the program provided for complete waiver of the deferred sales and use tax.[8]

To remain qualified for the Rural County Deferral, Owner had to comply with two requirements: 1) file a complete annual survey for each of the eight years of the deferral period and 2) maintain the manufacturing activity for the eight years of the deferral period. Rule 24001A(106)(b) and (107). RCW 82.60.070(2) describes when repayment of a tax deferral is triggered:

[7] Owner submitted an affidavit by . . . , Chairman of Benefit Area at the time of Property's sale, stating that Benefit Area did not consider the deferral in its price negotiations with Owner.
[8] S*ee generally* RCW 82.60.010, *et seq.*; WAC 458-20-24001A.

> Except as provided in RCW 82.60.063,[9] if, on the basis of a survey under RCW 82.32.585 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project, according to the repayment schedule in RCW 82.60.060, is immediately due.

Rule 24001A(108)(b) describes the circumstances when repayment is required in further detail:

> (i) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual survey or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.
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> (ii) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual survey or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions under subsection (102)(i) of this section, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(Emphasis added). In this case, Special Programs found the manufacturing activity ceased in December 2010, based on Owner's representative's statement. Under Rule 24001A(108)(b)(i), the Department will declare deferred amounts immediately due when it finds that a manufacturing operation in a qualifying facility has ceased based on other information. This statement of Owner's representative certainly qualifies as "other information" that the manufacturing operation ceased, and therefore, Special Programs was correct to declare the deferred amounts immediately due.

Owner argues that we should look to WAC 458-61A-206 as analogous to this situation. WAC 458-61A-206 is the Department's rule implementing RCW 82.45.010(3)(h).[10] . . . While Owner does not cite to any specific statutory authority here, he does cite to *Wilson v. Lund,* 74 Wn.2d 945, 947-48, 447 P.2d 718 (1968) and *Corey v. Nethery*, 19 Wn.2d 326, 332, 142 P.2d 488 (1943) for the propositions that statutes should be construed liberally and that courts favor sensible statutory interpretation aimed at implementing the intention of lawmakers. However, there are specific canons of construction that apply to tax statutes. One is that exemptions from a taxing statute are to be narrowly construed. *Budget Rent-A-Car, Inc. v. Dept. of Revenue,* 81

[9] None of the relief from repayment of deferred taxes sections in RCW 82.60.063 apply in this case.

[10] RCW 82.45.010 defines "sale" for real estate excise tax purposes. Section 3 defines what is not a sale. The text of RCW 82.45.010(3)(h) is as follows: "Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation."

Wn.2d 171, 500 P.2d 764 (1972). Another is that courts and administrative bodies will not read into an act provisions they conceive the legislative body has unintentionally omitted. *Dept. of Labor & Industries v. Cook*, 44 Wn.2d 671, 269 P.2d 962 (1954).

Under *Budget Rent-A-Car* and *Dept. of Labor & Industries* we cannot base our decisions on statutes that are not applicable. Since no statutory authority for exempting the assessment of deferred sale and use taxes when a qualifying building has been sold under threat of eminent domain exists, we conclude that Special Programs was correct in its assessment of the deferred taxes.

2. Successorship

Owner next argues that since Benefit Area is the current owner of Property and acquired it from Owner under threat of eminent domain, it is the successor to Owner and should be liable for the deferred tax under Rule 24001A(111).[11] There are two fatal flaws with this argument.

First is the timing of the sale. According to Owner's representative, Manufacturing ceased its manufacturing operation in the qualifying building in December 2010.[12] According to Rule 24001A(108)(b)(i) and the analysis above, the deferred tax became immediately due in December 2010. Benefit Area did not purchase the property until two months later in February 2011. The deferral certificate was issued to Owner and it was sales or use tax that Owner would have otherwise had to pay that was deferred.

Second is the definition of successor. "Successor" is defined in RCW 82.04.180[13] as:

> (1)(a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (1) tangible assets or (ii) intangible assets of the taxpayer; or
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> (1)(b) A surviving corporation of statutory merger.
>
> (2) Any person obligated to fulfill the terms of a contract shall be deemed the successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

There has been no evidence provided that sections (1)(b) or (2) apply. Section (1)(a) does not apply because Property does not qualify as either tangible assets or intangible assets. As we discussed in Det. No. 88-216, 6 WTD 15 (1988), tangible personal property (or assets) is any

[11] The text of Rule 24001A(111) is as follows:

> **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

[12] Even if the manufacturing operation was ceased in anticipation of Property's sale, that does not change the outcome of the analysis in section 1.

[13] The definition of successor is also repeated in WAC 458-20-216(2)(a).

tangible item that is not real property. [Because the] Property here is real property, section (1)(a) does not apply. [Because] Owner has not shown that Benefit Area is a successor under the definition of successor, we conclude Benefit Area is not Owner's successor, and therefore Benefit Area is not responsible for payment of the deferred taxes.[14]

. . .

DECISION AND DISPOSITION

Owner's petition is denied.

Dated this 29th day of December, 2014.

[14] WAC 458-20-216(8) specifically addresses tax deferrals and successors. The pertinent part reads:

> **Tax deferrals not terminated.** A tax deferral granted to a (predecessor) taxpayer may be transferred to the successor if the successor meets the eligibility requirements for the remaining periods of the deferral and the parties agree in writing that the successor will assume liability for the tax deferral. RCW 82.60.060, 82.63.045, 82.68.050 and 82.69.050.

Since Benefit Area is not Owner's successor, this section does not apply. Even if the Benefit Area were the Taxpayer's successor, it did not agree to assume the tax liability as required by WAC 458-20-216(8) cited above.