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BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 21-0114
)	
...)	Registration No. . . .
)	

RCW 82.08.820: RETAIL SALES TAX – WAREHOUSE TAX INCENTIVE.
Taxpayer is disqualified from the warehouse remittance incentive when it makes both wholesale and retail sales of goods stored in the warehouse, but it does not dedicate at least 200,000 square feet of warehouse space exclusively to wholesaling.

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.

Margolis, T.R.O. – A manufacturer, wholesaler, and retailer of medical supplies (Taxpayer) petitions for refund of retail sales tax under the warehouse remittance incentive on grounds that it qualifies for the incentive as a wholesaler. We deny the petition.¹

ISSUE

Whether, under RCW 82.08.820, Taxpayer is disqualified from the warehouse remittance incentive when it makes both wholesale and retail sales of goods stored in the warehouse, but it does not dedicate at least 200,000 square feet of warehouse space exclusively to wholesaling.

FINDINGS OF FACT

Taxpayer is a manufacturer, wholesaler, and retailer of medical supplies. On January 17, 2017, Taxpayer submitted Warehouse Tax Incentive applications for the second, third, and fourth quarters of 2016, requesting remittance of retail sales tax and use tax paid for costs associated with the construction of a new finished goods warehouse in . . . , Washington. Taxpayer checked the boxes on the applications indicating that it is both a wholesale business that owns and operates a warehouse, as well as a retail business that owns and operates a distribution center. Application for Q2/2016, Q3/2016, and Q4/2016, page 2. It also checked the box indicating that the structure for which the application is being made is a warehouse that stores finished goods for sale, but it did not check the box indicating that the structure is a retail distribution center that stores its own

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

finished goods. *Id.* On December 7, 2017, after the Department's Taxpayer Account Administration Division (TAA) began processing the applications for 2016, TAA also received applications for the first, third, and fourth quarters of 2017, where Taxpayer checked the same boxes in response to substantially the same questions.²

TAA reviewed the applications and requested additional information. On January 10, 2018, Taxpayer sent TAA the following message (in pertinent part):

Hello . . . : I apologize for the confusion, but to be clear, [Taxpayer] does not conduct retail sales at the warehouse through a website, phone or catalog order. [Taxpayer] has a team of . . . sales representatives that work out of their homes which are located throughout the State of Washington. These sales representatives meet with their customers (hospitals, nursing homes and healthcare providers) at the customer's Washington place of business. The retail sale occurs when the sales representative makes the sale at the customer's location. The order fulfillment for these sales occurs from the new . . . Distribution center.

TAA denied the applications, explaining that because the warehouse is a distribution center that is not being used exclusively for distribution to retail outlets, it does not qualify for the incentive. Taxpayer asserts that approximately 69% of its sales from the warehouse are at wholesale, and petitions for review on grounds that Taxpayer is a wholesaler and the fact that it also makes retail sales from the warehouse is not disqualifying.

The undersigned asked Taxpayer whether it could provide any evidence indicating whether 200,000 square feet of the warehouse is dedicated exclusively to wholesaling. Taxpayer responded that goods are sited in the warehouse based on efficiency, not whether the goods are sold at wholesale or retail, and it is unable to provide any such evidence.

ANALYSIS

RCW 82.08.820 provides an incentive that reduces certain liabilities for taxpayers engaged in qualifying activities as follows, in pertinent part:

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. . .

(2) For purposes of this section and RCW 82.12.820: . . .

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the

² Taxpayer seeks a total refund of \$. . . plus interest.

retailer. "Distribution center" does not include a warehouse at which retail sales occur; . . .

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property; . . .

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. . . .

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. . . . For warehouses with square footage of two hundred thousand or more . . . the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

RCW 82.08.820 (emphasis added).

Previously, the Department issued (originally on September 19, 1997, then again April 2002) a Special Notice regarding this warehouse sales tax exemption. The Special Notice included 10 general eligibility questions and answers, including the following (in pertinent part):

10) Is the exemption available to a business that has other taxable activities at an otherwise qualifying warehouse?

Generally yes, if at least 200,000 square feet are dedicated exclusively to the business' activity as a third party warehouse, a wholesaler, or retail distribution center. If less than 200,000 square feet are dedicated to qualifying use, none of the construction qualifies for the exemption.

Special Notice, at 3 (emphasis added.)

Currently, the Department publishes a brochure titled "Tax Incentives Warehouse remittance." . . . It includes a section titled "Qualifying activity," which explains that sales or use tax paid on construction or expansion of a warehouse or distribution center with other taxable activities can qualify "if at least 200,000 square feet is dedicated to the qualifying use (other activities may not include retail sales or manufacturing activities)."

In any question of statutory construction, we strive to ascertain the intention of the legislature by first examining a statute's plain meaning. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010). Tax benefits and all other deductions, exemptions, and credits must be strictly construed in keeping with the ordinary meaning of their language. *See, e.g., Budget Rent-a-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972); *Group Heath Coop. v. Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 07-0034E, 26 WTD 212 (2007); Det.

No. 14-0217, 33 WTD 623 (2014). When determining the Legislature's intended meaning of a statute, we must interpret the language at issue in the context of the entire statute, and not in a single sentence. *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995); *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993); *Human Rights Comm'n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P.2d 163 (1982).

Because exemptions are strictly construed, and we interpret the language at issue in the context of the entire statute, when RCW 82.08.820(3)(a) refers to 200,000 square feet, we find that the statute contemplates square feet dedicated exclusively to the qualifying activity, which in this case is wholesaling. If the Legislature had intended to provide an incentive applicable to both qualifying and non-qualifying use of the same space, it could have indicated this by providing appropriate standards. It has made no such indication, and we find no grounds to broadly construe the exemption statute and reverse the Department's longstanding position that 200,000 square feet must be dedicated exclusively to a qualifying activity. Because Taxpayer has failed to prove that at least 200,000 square feet of the warehouse at issue are dedicated exclusively to wholesaling, we conclude that Taxpayer does not qualify for the exemption.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 20th day of July 2021.