

Cite as Det. No. 18-0283, 39 WTD 204 (2020)

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. 18-0283
	)	
...	)	Registration No. ...
	)	

RCW82.08.820: RETAIL SALES TAX - EXEMPTIONS – DISTRIBUTION CENTERS – DEFINITION. A warehousing facility used not only to store and distribute finished goods to retail outlets, but also to fulfill online retail sales directly to customers, fails to qualify as a distribution center under Washington law for purposes of retail sales tax exemptions.

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.

L. Roinila, T.R.O. (successor to Simons, T.R.O.) – A retailer protests the denial of its application for remittance of retail sales tax paid in connection with purchases of material-handling and racking equipment for use in its Washington warehousing facility. The retailer argues that its facility constitutes a distribution center for purposes of RCW 82.08.820 and amounts spent to purchase materials for use in the facility are qualifying purchases for purposes of the exemption set forth in that provision. We deny the petition.<sup>1</sup>

ISSUE

Whether, under RCW 82.08.820(2)(d), a retailer’s warehousing facility constitutes a “distribution center,” where the retailer also uses the facility to fulfill customer orders, either by shipping finished products from the facility to a customer designated retail store or directly to the customer’s shipping addresses.

FINDINGS OF FACT

... (“Taxpayer”) is a nationwide retailer.... operates retail stores across the United States. In addition, the Taxpayer accepts orders and makes retail sales via its catalogs and the Internet.<sup>2</sup>

To support its retail network, Taxpayer operates regional distribution centers located [out-of-state], and, subject of this appeal, ... Washington (The ... facility or the facility). The ... facility, which

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

<sup>2</sup> ... (last visited January 25, 2018.)

employs between . . . and . . . workers, is a . . . square foot complex that supplies products to Taxpayer’s retail outlets across the western United States. In addition, the facility also operates as a fulfillment center, filling and shipping customers’ online orders. In this latter role, the facility either ships the finished products from its location to a customer’s designated retail store for pick-up or directly to the customer’s shipping address.

On December 30, 2015, Taxpayer submitted an application to the Department’s Taxpayer Account Administration (“TAA”) Division, seeking a remittance of some \$ . . . of retail sale tax it had paid in acquisition of material-handling and racking equipment over the period January 1, 2011, through December 31, 2015 (the “Remittance Period”) for use in its . . . facility. In its request, the Taxpayer argued that, since the purchases in question qualified as material-handling and racking equipment used in a distribution center, the purchases were exempt from Washington’s retail sales tax under RCW 82.08.820(1)(a).

On August 17, 2016, TAA disagreed, denying Taxpayer’s application for a remittance, claiming that Taxpayer’s facility in . . . does not satisfy the definition of “distribution center” set forth in RCW 82.08.820(2)(d). In TAA’s view, the Taxpayer does not use its . . . facility exclusively for the storage and distribution of finished goods to Taxpayer’s other retail outlets because Taxpayer ships some of its finished products directly to customers who place Internet orders.<sup>3</sup>

On April 19, 2017, Taxpayer petitioned for review, asking we review TAA’s denial of its application for a retail sales tax remittance. On March 1, 2018, Taxpayer submitted to us a second application for remittance of retail sales tax. This separate remittance request seeks \$ . . . in retail sales tax, covering material-handling and racking equipment purchases over the period of January 1, 2012, through December 31, 2013, and includes the same assertions of fact as law as the prior request. Accordingly, we also address Taxpayer’s additional request in this review.

### ANALYSIS

All sales of tangible personal property to consumers in the state of Washington are subject to retail sales tax, unless a specific exemption applies. RCW 82.08.020(1)(a); RCW 82.04.050(1).

RCW 82.08.820 provides a retail sales tax exemption, in the form of a remittance, for certain material-handling and racking equipment. It reads, in pertinent part, as follows:

(1) Wholesalers or third-party warehouse operators 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. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

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<sup>3</sup> . . .

RCW 82.08.820(1)(emphasis added).

Here, Taxpayer and TAA agree that the purchases in question involve material-handling and racking equipment as envisioned by RCW 82.08.820(2)(g).<sup>4</sup> Thus, the lone issue to resolve asks whether Taxpayer's facility constitutes a distribution center.

RCW 82.08.820(2)(d) defines the term "[d]istribution center" as "a warehouse that is used exclusively by a retailer *solely* for the storage and distribution of finished goods to retail outlets of the retailer." RCW 82.08.820(2)(d) (emphasis added). The statute further states, "[d]istribution center' does not include a warehouse at which retail sales occur." *Id.* Therefore, it is clear from the statute that a qualifying distribution center is one used exclusively for storage and distribution of finished products to the retailer's retail outlets. *Id.*

Here, Taxpayer operates a facility in . . . Washington to store its finished products. Taxpayer uses the facility to distribute the finished products to its retail outlets and ship the finished products directly to retail customers who have placed an order on the Internet. Therefore, Taxpayer's . . . facility is not a qualifying distribution center for purposes of RCW 82.08.820 because it is not used solely for its storage and distribution of the finished goods to its retail outlets.

Taxpayer argues that this interpretation contradicts the legislative intent it discerns from the legislative history of the statute.

If the statute's meaning is plain on its face, the court must give effect to that meaning as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The "plain meaning" of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 645, 62 P.3d 462 (2003); *Campbell & Gwinn*, 146 Wn.2d at 10-12. A statute is ambiguous when it is susceptible to more than one reasonable interpretation. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). Here, the statute is not ambiguous because it is not susceptible to more than one reasonable interpretation. The plain language of the statute

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<sup>4</sup> RCW 82.08.820(2)(g) states:

"Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repack finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, 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[.]

reads that the facility must be used “solely for the storage and distribution of finished goods to retail outlets of the retailer,” which leaves no room for another interpretation. RCW 82.08.820(2)(d). [Because the language of the statute is not ambiguous, we have no reason to consider legislative history. *See Campbell & Gwinn*, 146 Wn.2d at 12.]

Taxpayer argues that the statute is ambiguous and it has more than one interpretation. Taxpayer argues that its online orders, taken as a whole, qualify as a retail outlet. The statute does not define “retail outlets of the retailer.” Even if we assume that Taxpayer’s online ordering system qualifies as a retail outlet, to qualify as a distribution center the sales at issue would have to be distributed to that retail outlet. This is not the case here because Taxpayer distributes finished goods to its end customers from the facility, rather than sending them to one of its retail outlets.<sup>5</sup>

Taxpayer also argues that its facility qualifies as a distribution center because its online retail sales do not occur at its facility. This argument appears to rely on the sourcing rules of RCW 82.32.730, which define how retail sales are sourced among the different jurisdictions. RCW 82.08.820(2)(d) defines “distribution center” as “a warehouse that is used exclusively by the retailer solely for the storage and distribution of finished goods to the retail outlets of the retailer. ‘Distribution center’ does not include a warehouse at which retail sales occur.” This provision does not say that retail sales must be sourced to the warehouse under RCW 82.32.730 in order for the retail sales to disqualify a facility from being a distribution center. Rather, as mentioned above, this provision clearly provides that the facility must [be used] “solely for the storage and distribution of finished goods to the retail outlets of the retailer.” *Id.* The second part of that definition explaining that a distribution center is not a “warehouse at which retail sales occur” supports the first sentence and explains that a taxpayer cannot make retail sales from the distribution center without regard to where those sales are sourced. We find that because Taxpayer stores and distributes goods directly to consumers from the same location, it is not exclusively using the warehouse for distribution to its retail outlets.

Because Taxpayer does not solely use its facility for storage and distribution of its finished products to other retail outlets it owns, the facility is not a distribution center under RCW 82.08.820(2)(d). Therefore, Taxpayer’s purchases at issue are subject to retail sales tax.

We deny the petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 23rd day of October 2018.

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<sup>5</sup> Taxpayer also argues that the statute is ambiguous because a “retailer behaving as a wholesaler or third party warehouse qualifies for the exemption when sales are not made at the warehouse.” Petition for Review, Page 4. Taxpayer has not provided any legal authority for this argument.