

This Week in State Tax (TWIST)

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Washington State: Gases used in solar panel production exempt from use tax, says appellate court

The Washington Court of Appeals, Division Three, recently reversed a Board of Tax Appeals decision and granted the taxpayer a use tax exemption for gases used in producing materials ultimately incorporated into solar panels. In this case, the court was required to determine the proper construction of a sales and use tax exemption for gases and chemicals in the production of semiconductor materials that was limited as follows:

This exemption is limited to gases and chemicals used in the production process to grow the product, ... and other such uses whereby the gases and chemicals come into direct contact with the product during the production process

The taxpayer used natural gas in manufacturing solar grade polysilicon that was sold to solar panel manufacturers. The natural gas was used to help decompose and deposit silicon onto silicon seed particles which then grew in size to eventually form the solar grade polysilicon that was ultimately sold to the panel manufacturers. The natural gas did not come into contact with the silicon. The taxpayer sought a refund for tax paid on the purchase of the natural gas used in the process, arguing it was used to "grow the product" (i.e., the silicon).

The Department of Revenue denied the refund claim, arguing that the statute in question required all exempt uses enumerated in the statute to have "direct contact" between the gas and the final product. The taxpayer argued that the "direct contact" requirement did not apply to the use of gases to "grow the product," but only to the "other such uses" phrase in the law. The Board of Tax Appeals agreed with the Department, and the Superior Court certified the case to the Court of Appeals.

In its review, the appellate court applied the "last antecedent" rule of statutory construction, concluding that the "direct contact" requirement modifies only the last catchall phrase "and other such uses," and not the entire list of enumerated uses which included the "grow the product" language. In legal parlance, the court applied the "last antecedent" rule, rather than the "series-qualifier" rule which would say that the "direct contact" requirement should be applied to all uses of gases listed in the statute. The court determined that the syntax, structure, and legislative intent of the law favored a broader exemption to promote semiconductor manufacturing in Washington. For any questions on [REC Solar Grade Silicon v. Department of Revenue](#), please contact [Michele Baisler](#).

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