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ISSUES PRESENTED

- I. ARE THE GRAIN DRYING SYSTEMS SOLD BY CUSTOM AG SERVICES OF MONTEVIDEOEO, INC., INCLUDING GRAIN CONDITIONING BINS AND WET HOLDING BINS, GRAIN DRYERS AND NOT SUBJECT TO TAX?

The Minnesota Tax Court answered in the negative.

Apposite Cases:

Custom Ag Services of Montevideo, Inc. v. Commissioner of Revenue,  
2006 WL 2380596 (Minn. Tax 2006).

- II. ARE THE WET HOLDING BINS AND CONDITIONING BINS FARM MACHINERY AS DEFINED UNDER MINNESOTA LAW?

The Minnesota Tax Court answered in the negative.

Apposite Cases:

Custom Ag Services of Montevideo, Inc. v. Commissioner of Revenue,  
2006 WL 2380596 (Minn. Tax 2006).

## STATEMENT OF CASE AND FACTS

This is an appeal brought by Custom Ag Services of Montevideo, Inc. from the Minnesota Tax Court's decision that the grain drying systems sold by Custom Ag Services of Montevideo, Inc. are subject to tax and are not farm machinery.

The Commissioner of Revenue made a Notice of Determination on Appeal dated July 1, 2004, See Joint Stipulation of the Facts, A-000127, which upheld an assessment against Custom Ag Services of Montevideo, Inc. Custom Ag Services of Montevideo, Inc. appealed the determination made by the Commissioner of Revenue.

The parties submitted cross-motions for summary judgment to the Minnesota Tax Court. The Honorable Sheryl Ramstad heard the cross-motions for summary judgment and granted the Commissioner of Revenue's motion for summary judgment and denied Custom Ag Services of Montevideo, Inc.'s motion for summary judgment.

Judge Ramstad ruled that the bins Custom Ag Services of Montevideo, Inc. purchased from CTB, Inc./Brock of Milford, Indiana (hereinafter Brock) were not farm machinery because grain bins are subject to tax and are excluded from the definition of farm machinery. Custom Ag Services of Montevideo, Inc. v. Commissioner of Revenue, 2006 WL 2380596 (Minn. Tax 2006). Judge Ramstad also ruled "that the legislature explicitly referred to a system when it intended to include a system as opposed to component pieces" in the definition of farm machinery. Id. Judge Ramstad went on to say that "the modification of the grain bins is irrelevant to a determination of whether the bins are subject to use tax." Id.

Custom Ag Services of Montevideo, Inc. sells and installs grain drying systems at customer farm sites. See Joint Stipulation of Facts, ¶1 A-000127, . The grain drying system is composed of dryers, wet holding bins<sup>1</sup> (hereinafter wet holding components), conditioning bins<sup>2</sup> (hereinafter conditioning components) and the related component parts. See Joint Stipulation of Facts, ¶4, A-000127. Custom Ag Services of Montevideo, Inc. purchases some of the equipment used in the grain drying system from Brock, including farm bins, vents, perforated floors, support floors, landing platforms and ladders. See Joint Stipulation of Facts, ¶3, A-000127. Custom Ag Services of Montevideo, Inc. takes these component parts and incorporates the Brock components into part of the grain dryeration process or grain drying system. See Joint Stipulation of Facts, ¶1, A-000127. A grain drying system is comprised of a wet holding component, grain dryer and conditioning component. See October 18, 2005 Kenneth Hellevang, Ph.D. P.E. Description of the Drying Systems Installed by Custom Ag Services, Montevideo, MN, hereinafter Hellevang Report, A-000081. The wet holding component transfers grain to the grain dryer and the grain dryer transfers grain to the conditioning component. See Hellevang Report, A-000081.

Once grain is harvested it is taken by truck to the wet holding component. See Hellevang Report, A-000081. The wet holding component is made up of a bin, perforated flooring, mushroom roof vents, support flooring, complete transition, support transitions, ladders with cages and platforms, fans and power sweeps. See Hellevang Report, A-

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<sup>1</sup> The parties used the term wet holding bin in the pleadings. Using that same term will serve no purpose to this Court in resolving the dispute. Custom Ag Services of Montevideo, Inc. will use the term wet holding component.

<sup>2</sup> The parties used the term conditioning bin in the pleadings. Using that same term will serve no purpose to this Court in resolving the dispute. Custom Ag Services of Montevideo, Inc. will use the term conditioning component.

000081, and Affidavit of Elray Anderson, ¶3, A-000018. The wet holding component provides aeration to the grain to keep the corn cool and maintain its quality. See Hellevang Report, A-000081. The wet holding component is filled and emptied many times during harvest. Id. Corn that enters the wet holding component is at a moisture content exceeding that which is safe for storage. Id. Grain is transferred to the dryer at the rate of drying. Id.

After the grain has been through the dryer, it is transferred to the conditioning component. Id. The conditioning component consists of a bin, perforated flooring, mushroom roof vents, support flooring, complete transition, support transitions, ladders with cages and platforms, temperature monitoring equipment, fans and power sweeps. Id.

Corn comes from the dryer at about 130° Fahrenheit and 18 percent moisture content. The corn is first steeped in the conditioning component, without airflow, for 6 to 12 hours. Id. The corn is cooled and the moisture content is reduced in the conditioning component. Id. Id. Condensation is a by-product of the steeping process. Id. As a result, the moisture content of the conditioning component is at a level that is unsafe for storage. Id.

During the cooling process, about 2 to 2.5 percentage points of moisture are removed from the corn. Id. There are additional benefits to the dryeration process involving the wet holding component and conditioning component as well: there is less stress cracking of corn kernels than would occur if the corn were dried and cooled in the dryer, there is a 20 to 40 percent energy savings and a 50 to 75 percent increase in drying capacity.

## ARGUMENT

I. Minnesota Statutes § 297A.01, Subd. 15(2) states that grain dryers are farm machinery and Minnesota Statutes § 297A.69, Subd. 4 specifically exempts farm machinery from tax.

A. Standard of Review.

A review of any final order of the Minnesota Tax Court "...may be had on the ground that the Tax Court was without jurisdiction, that the order of the Tax Court was not justified by the evidence or was not in conformity with law, or that the Tax Court committed any other error of law." See Minnesota Statute § 271.10, Subd. 1. The Minnesota Tax Court committed an error of law in granting the Commissioner of Revenue's motion for summary judgment because it ruled that the grain drying systems sold by Custom Ag Services of Montevideo, Inc. were not grain dryers. In the alternative, the Minnesota Tax Court committed an error of law granting the Commissioner of Revenue's motion for summary judgment because it ruled that the wet holding component and conditioning component sold by Custom Ag Services of Montevideo, Inc. were not farm machinery.

B. The grain drying systems sold by Custom Ag Services of Montevideo, Inc. are grain dryers.

Minnesota Statutes § 297A.01, Subd. 15(2) specifically exempts grain dryers from tax. See Minn. Stat. § 297A.01, Subd. 15(2) and Minnesota Statutes § 297A.69, Subd. 4. The Minnesota Tax Court ruled that "...adding equipment to taxable grain bins does not make those bins into tax-exempt grain dryers." Custom Ag Services of Montevideo, Inc.

v. Commissioner of Revenue, 2006 WL 2380596 (Minn. Tax. Court 2006). The Tax Court was erroneous in its determination that the grain drying system sold by Custom Ag Services of Montevideo, Inc. were not grain dryers.

Custom Ag Services of Montevideo, Inc. installed drying systems that include a wet holding component, a grain dryer and conditioning component at farm sites. See Hellevang Report, A-000081, and Anderson Affidavit, ¶2, A-000018. "All three components are required for the drying system." See Hellevang Report, A-000081. The grain dryer cannot operate without the wet holding component. Id.

Wet corn enters the wet holding component of the grain drying system. See Hellevang Report, A-000081. The grain is automatically transferred from the wet holding component to the dryer. See Anderson Affidavit, ¶5, A-000018. After the grain has gone through the dryer it is automatically transferred to the conditioning component of the grain drying system. See Anderson Affidavit, ¶6, A-000018. Wet grain enters the grain drying system and it leaves as dry grain.

The question that must be asked is it farm machinery "used directly and principally in the production for sale" of agricultural products? If the answer to that question is yes, the logical conclusion is that the grain drying systems are farm machinery and no further analysis is necessary.

A grain dryer dries grain. The grain drying system dries grain. Wet grain goes into the grain drying system and comes out dry. The grain drying system sold by Custom Ag Services of Montevideo, Inc. dries grain in an efficient and effective manner. Each of the component parts of the grain drying system rely on each other. The wet holding

component maintains the quality of the grain and cools the grain before it is transferred to the dryer. See Hellevang Report, A-000081. The dryer dries the grain and transfers it automatically to the conditioning component. The moisture content is further reduced and the grain is cooled in the conditioning component. See Hellevang Report, A-000081. In the conditioning component, 2 to 2.5 percentage points of moisture are removed. Id.

The grain drying system sold by Custom Ag Services of Montevideo, Inc. is a more complex and beneficial way to dry grain than the traditional single grain dryer. The grain drying system keeps the grain cool before it is transferred to the dryer, the moisture content is reduced in conditioning component and there is less stress cracking of corn kernels that if the grain were dried and cooled in the dryer. The grain drying system saves energy and increases dryer capacity.

The Tax Court ruled that "...adding equipment to taxable grain bins does not make those bins into tax-exempt grain dryers." Custom Ag Services of Montevideo, Inc. v. Commissioner of Revenue, 2006 WL 2380596. Here again, the Tax Court committed an error of law. Every item classified as farm machinery starts out its useful life as something other than the end product. A tractor is farm machinery because it is "...used directly and principally in the production for sale" as well as in the seeding and harvesting threshing of agricultural products. See Minn. Stat. § 297A.01, Subd. 15. Based on the Tax Court's rationale, the steel used to construct the frame of the tractor would be taxable because adding equipment to the steel that transforms it into farm machinery does not make the steel tax-exempt.

An irrigation system starts out as a series of metal pipes. Steel is taxable. However, adding pumps, pipe fittings, valves, sprinklers and other equipment necessary for the operation of an irrigation system transforms that steel into farm machinery because of the additional materials added. The difference between the grain drying system and the irrigation system is legislation laid out the component parts of the irrigation system. Each is used directly and principally in the production for sale of agricultural products. Irrigation systems give the crops water and help them grow. The grain drying system allows the farmers to more efficiently and effectively dry their grain to make it ready for storage or sale.

The Tax Court ruled erroneously when it held that the grain drying system was not a grain dryer. Because the grain drying system is a grain dryer and grain dryers are exempt from tax, Custom Ag Services of Montevideo, Inc.'s motion for summary judgment should have been granted. At the very least, there is a fact question as to whether the grain drying systems sold by Custom Ag Services of Montevideo, Inc. are grain dryers.

II. The wet holding component and conditioning component are farm machinery under Minnesota Statute § 297A.01, Subd. 15.

If the grain drying system is not considered a grain dryer, the wet holding component and conditioning component are farm machinery under Minnesota Statutes § 297A.01, Subd. 15. The tax court was erroneous is in its determination that the wet holding components and conditioning components are not farm machinery. At the very

least, there is a fact issue as to whether the wet holding component and conditioning component are farm machinery.

- A. The Oscar Mayer® Wienermobile™ is no more a hot dog than the conditioning component and wet holding component are grain bins that are sold by Custom Ag Services of Montevideo, Inc.

The individual component parts that make up farm machinery are not determinative. It is necessary to look at the function of the machinery, equipment, implement, accessory, or contrivance in question to determine whether it is farm machinery.

The Oscar Mayer® Wienermobile™ is a vehicle with four tires, a body and an engine. This particular vehicle happens to look like a hot dog. However, because it looks like a hot dog does not mean that it is a hot dog. In order to determine what the Oscar Mayer® Wienermobile™ actually is, one must look at its purpose and function. The purpose and function of the Oscar Mayer® Wienermobile™ is to elicit joy from kids of all ages and provide transportation in a silly, time honored vehicle. The Oscar Mayer® Wienermobile™ is not a hot dog.

This same rationale can be applied to the wet holding component and conditioning component sold by Custom Ag Services of Montevideo, Inc. The wet holding component and conditioning component look like grain bins. This does not make them grain bins. The function and purpose of the wet holding component and conditioning component are to play an integral role in the grain drying process. In fact, the wet holding component and conditioning component are integral parts of the grain drying system. See Hellevang Report, A-000081.

- i. The wet holding component and conditioning component do not store grain.

The wet holding component and conditioning component sold by Custom Ag Services of Montevideo, Inc. do not store grain and are not made to store grain. See Anderson Affidavit, ¶8, A-000018 and Hellevang Report, A-000081.

The wet holding component is not a storage bin. See Hellevang Report. A-000081. The wet holding component is filled and emptied many times during the harvest season. Id. It is extremely imperative that the corn is removed from the conditioning component to a storage bin because of the condensation near the walls from steeping. Id.

The wet holding components and conditioning components do not store grain. The purpose and function of a grain bin is to store grain. Merriam-Webster Online Dictionary defines a bin as a "a box, frame, crib, or enclosed space used for storage." <http://www.m-w.com/dictionary/bin>. Applying the function and purpose rationale to the definition of a grain bin, a grain bin's purpose and function is to store grain because it is an enclosed space used for storage.

The function and purpose of the wet holding component and conditioning component of the grain drying system is to dry grain.

- B. The wet holding components and conditioning components are machines.

Merriam-Webster Online Dictionary defines a machine as "(1) an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner (2) an instrument (as a lever) designed to transmit or modify the application of power,

force, or motion (3) a mechanically, electrically, or electronically operated device for performing a task." <http://www.m-w.com/dictionary/machine>.

Minnesota Statutes § 297A.01, Subd. 15 excludes tools, shop equipment, grain bins, feed bunks, fencing material, communication and other farm supplies from the definition of farm machinery. This is a logical conclusion. None of the exclusionary items in Minnesota Statutes § 297A, Subd. 15 are machines. These items do not play an active role in the production for sale and are not involved in preparation, seeding, or cultivation of soil for growing agricultural crops nor are they involved in harvesting and threshing of agricultural crops.

Unlike the exclusionary list of items found in Minnesota Statutes § 297A.01, Subd. 15, which are not machines, the wet holding component and conditioning component are machines. They transmit force to cool the grain, dry the grain, maintain its quality, reduce stress cracking and increase energy savings and dryer capacity. See Hellevang Report, A-000081. The wet holding component and conditioning component are mechanically and electrically operated devices that perform the task of drying grain.

C. Wet holding components and conditioning components are farm machinery.

Minnesota Statutes § 297A.01, Subd. 15 defines farm machinery as "new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in the production for sale...." "'Farm machinery' includes: (1) machinery for the preparation, seeding or cultivation of soil for growing agricultural crops and sod, harvesting and threshing of agricultural products...; (2) barn cleaners, milking systems,

grain dryers, automatic feeding systems and similar installations, whether or not the equipment is installed by the seller and becomes part of the real property; (3) irrigation equipment sold for exclusively agricultural use, including pumps, pipe fittings, valves, sprinklers and other equipment necessary to the operation of an irrigation system, whether or not the equipment is installed by the seller and becomes part of the real property...." Minn. Stat. § 297A.01, Subd. 15 (2000).

There are two definitional parts to Minnesota Statutes § 297A.01, Subd. 15. Bailey Nurseries, Inc. v. Commissioner of Revenue, 2002 WL 1077273 (Minn. Tax 2002). The first is the "means" section as laid out in the first sentence of Minnesota Statutes § 297A.01, Subd. 15. Bailey Nurseries, Inc. v. Commissioner of Revenue, 2002 WL 1077273. The second definitional part is the "includes" section which is laid out in the second part of the statute. Bailey Nurseries, Inc. v. Commissioner of Revenue, 2002 WL 1077273. "[T]he items listed in the second sentence of Minn. Stat. § 297A.01, Subd. 15 and the subdivisions following, constitute farm machinery independent of the terms stated in the first sentence of Minn. Stat. § 297A.01, Subd. 15." Bailey Nurseries, Inc. v. Commissioner of Revenue, 2002 WL 1077273.

The only logical reading of Minnesota Statutes § 297A.01, Subd. 15, leads to the conclusion that the phrase "production for sale" means "production for sale of agricultural products." Agricultural production "...includes any step or steps in the production process." Minnesota Rules Chapter 8130.5500, Subpart 1 (2001). Agriculture includes raising and harvesting crops. Minnesota Rules Chapter 8130.5500, Subp. 13(2) (2001). Production begins with the removal of raw materials from stock for the purpose of

starting activities that change them in the course of producing the intended product. Minn. R. 8130.5500, Subp. 1 (2001). "The production process ends when the completed state is achieved." Minn. R. 8130.5500, Subp. 1 (2001).

Wet holding components and conditioning components are included in the "means" section of Minnesota Statutes § 297A.01, Subd. 15. They are machinery and equipment used directly and principally in the production for sale of agricultural crops. The farmers take the grain from the field that is wet. The wet grain is transferred to the wet holding component where the grain is cooled and its quality is maintained. See Hellevang Report, A-000081. The grain is then transferred to the dryer and then the conditioning component. Id. In the conditioning component the grain steeps, the moisture content of the grain is reduced and the grain is cooled. Id. All of these steps are vital to the grain drying process. The grain must be dry for sale or storage. *In fact, the grain dryer cannot operate without the wet holding component and conditioning component.* (Emphasis added) See Hellevang Report, A-000081-82.

"Agricultural production" begins with the farmer planting the crops. Production ends when the grain is dry and ready for sale or storage. Dry grain is the farmer's intended completed state. Minn. R. 8130.5500, Subp. 1 (2001). The grain drying process is part of production because the process achieves the farmer's intended product of dry grain. The grain drying system purchased and installed by Custom Ag Services of Montevideo, Inc. is directly and principally involved in agricultural production because the system aides the farmer in reaching his or her intended product of dry grain.

D. The wet holding component and conditioning component are farm machinery used in harvesting of agricultural products.

Farm machinery includes machinery used for harvesting agricultural products. Minnesota Statutes § 297A.01, Subd. 15(1). The harvest is not complete until the grain is ready for storage or sale. Grain directly coming out of the field is not ready for storage or sale because of its moisture content. The grain drying system cools the grain, reduces its moisture content and prevents stress cracking. See Hellevang Report, A-000081. Preparing the harvested grain or agricultural product for storage or sale on the market involves the grain drying system sold by Custom Ag Services of Montevideo, Inc. All of this leads to the conclusion that the wet holding component and conditioning component are farm machinery as it is defined in Minn. Stat. § 297A.01, Subd. 15.

In summary, the wet holding component and conditioning component play integral roles in the grain drying process. See Hellevang Report, A-000081. In fact, the grain dryer cannot operate without the wet holding component and conditioning component. See Hellevang Report, A-000081-82. The grain drying systems are farm machinery because they are equipment used in harvesting agricultural products. Minn. Stat. § 297A.01, Subd. 15(1).

E. Wet holding components and conditioning components are "similar installations" under Minnesota Statutes § 297A.01, Subd. 15(2).

The legislature did not intend for the "includes" section of Minnesota Statutes § 297A.01, Subd. 15 to be an exhaustive list of farm machinery. This is evidenced by the fact that "similar installations" are farm machinery. See Minn. Stat. § 297A.01, Subd.

15(2). The legislature intended the definition of farm machinery to be broader than what is listed in the statute.

The specific examples of farm machinery in Minn. Stat. § 297A.01, Subd. 15, are actively used for the production for sale of agricultural products. A plastic tube used in a milking system, taken alone, is not farm machinery. Take that plastic tube and combine it with the other parts of the milking system and it is farm machinery. Logic compels the application of this rationale to the grain drying system that Custom Ag Services of Montevideo, Inc. sells. Nothing in the statute suggests that the systems are broken down into individual component parts. If the totality of the system is used as a barn cleaner, milking system, grain dryer, automatic feeding system or a similar installation, the statute compels that the system is farm machinery and therefore exempt from tax. See Minn. Stat. § 297A.01, Subd. 15(2) and Minn. Stat. § 297A.69, Subd. 4. One must look at the entire function and purpose of the grain drying system. The grain drying system cannot be broken down into component parts. Once it is a grain dryer, it is exempt from tax. It does not matter what parts comprise the grain dryer or where the parts came from to comprise the grain dryer.

The Tax Court stated that "[t]he legislature referred to a 'system' when it intended to include a system and defined the equipment that might be included in a system." Custom Ag Services of Montevideo, Inc. v. Commissioner of Revenue, 2006 WL 2380596 (Minn. Tax. 2006). The Tax Court was erroneous. The legislature left the door open for "similar installations" to be classified as farm machinery. See Minn. Stat. § 297A.01, Subd. 15(2). If the legislature intended Minn. Stat. § 297A.01, Subd. 15 to be

an exhaustive list of farm machinery, it would not have included the phrase "and similar installations." See id. The items listed in Minn. Stat. § 297A.01, Subd. 15, are not exhaustive. If a particular piece of equipment is used directly and principally in the production for sale of agricultural products it is classified as farm machinery, regardless if it is listed in the statute.

Minnesota Statutes § 297A.01, Subd. 15(2) states that "barn cleaners, milking systems, grain dryers, automatic feeding systems and similar installations" are farm machinery. The systems listed in Minn. Stat. § 297A.01, Subd. 15(2) are not the exclusive list of systems or similar installations classified as farm machinery. The statute allows similar installations to be defined as farm machinery as well. Minn. Stat. § 297A.01, Subd. 15(2). The wet holding component and conditioning component sold by Custom Ag Services of Montevideo, Inc. should also be classified as "similar installations" under Minnesota Statutes § 297A.01, Subd. 15(2).

The grain drying systems sold by Custom Ag Services of Montevideo, Inc. are "similar installations" to the above-referenced examples because they are used directly and principally in the production for sale and harvesting agricultural products. Minn. Stat. § 297A.01, Subd. 15.

The wet holding component and conditioning component are used directly and principally in the production for sale and harvesting agricultural products because they cool grain, maintain its quality, reduce its moisture content, it saves energy, increase dryer capacity and decrease stress cracking. Minn. Stat. § 297A.01, Subd. 15. As stated

previously, the wet holding component and conditioning component play an integral role in the grain drying process.

III. Custom Ag Services of Montevideo, Inc. should not be liable for the tax imposed because what they sell does not fit under the traditional definition of grain dryer

The grain drying system sold by Custom Ag Services of Montevideo, Inc. dries grain. That is its function and purpose. Farmers should not be limited on how they can dry their grain. The grain drying system sold by Custom Ag Services of Montevideo, Inc. is a more efficient grain dryer than the traditional one-piece grain dryer. The grain drying system reduces stress cracking, increases energy savings and increases dryer capacity. See Hellevang Report, A-000081.

The use tax issue that was discussed by the Tax Court is inapplicable in this case. See Custom Ag Services of Montevideo, Inc. v. Commissioner of Revenue, 2006 WL 2380596. The distinction in this case as to whether sales or use tax applies does not matter. The wet holding component and conditioning component sold by Custom Ag Services of Montevideo, Inc. are farm machinery. As a result the Tax Court was erroneous in its application of use tax because farm machinery is exempt from tax. See Minn. Stat. § 297A.69, Subd. 4.

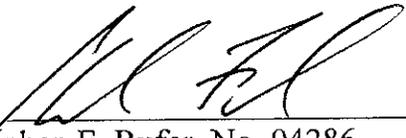
CONCLUSION

The grain drying systems sold by Custom Ag Services of Montevideo, Inc. are grain dryers. The conditioning components and wet holding components are farm machinery under Minnesota Statutes § 297A.01, Subd. 15. The Tax Court was erroneous in granting the Commissioner of Revenue's motion for summary judgment.

For the foregoing reasons, Custom Ag Services of Montevideo, Inc. would respectfully request that this Court find that the Tax Court erroneously granted the Commissioner of Revenue's motion for summary judgment and request that this Court grant the Custom Ag Services of Montevideo, Inc.'s motion for summary judgment. In the alternative, Custom Ag Services of Montevideo, Inc. would respectfully request this Court to find that there is a fact issue as to whether the grain drying systems are grain dryers and a fact issue as to whether the wet holding component and conditioning component are farm machinery and remand to the Minnesota Tax Court.

Respectfully submitted,

PEMBERTON, SORLIE, RUFER  
& KERSHNER, P.L.L.P.

By 

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).