



State of Washington
Department of Revenue

Excise Tax Advisory

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**This ETA is cancelled effective February 2, 2009 and reissued under the 3000 series.
See ETA 3001 for a cross-reference to the new series.**

OFF-SITE COMPONENT FABRICATION BY SPECULATIVE BUILDERS

Issued July 24, 1970

What tax is to be assessed upon speculative builders who fabricate components away from the job site? (As used herein the term "speculative builder" means one who constructs buildings upon his own real estate, as distinct from one who contracts to build for others.)

The taxpayer, a speculative builder, fabricated roof trusses, wall panels, and cabinets away from the job site. The auditor assessed the business and occupation tax under the Manufacturing classification and the use tax upon the value of those fabricated items which were incorporated into the taxpayer's speculatively built homes. The taxpayer alleges that the fabrication activities are incidental to his home construction activities and thereby exempt under Rule 136. He bases this argument upon the small cost of the fabricated items in relation to the cost of the total house.

The Board of Tax Appeals held that both the Manufacturing business tax and the use tax are due upon off-site construction activities by speculative builders. The activities of the taxpayer place him within RCW 82.04.110 and RCW 82.04.120 as a "manufacturer" and thus the Manufacturing business tax is due. The fabrication of roof trusses, wall panels, and cabinets falls within the statutory definition of the term "to manufacture" since they are new, different, or useful articles of tangible personal property produced through the application of the labor and skills of the taxpayer's employees for use in the construction of speculatively built houses.

The taxpayer is also liable for the use tax as prescribed by Rule 170. He is a user or consumer of those components that he has manufactured and incorporated into his speculatively built houses. Rule 170

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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states that the use tax applies generally to the use by speculative builders of all tangible personal property, including building materials, purchased or acquired without payment of the retail sales tax.

Furthermore, the taxpayer is manufacturing the component roof trusses, wall panels, and cabinets for movement to the job site, for incorporation into his speculatively built houses for his own use and is therefore a consumer of such components and subject to the use tax.

Note that where components are fabricated at the job site for incorporation into the structure at that site, they are considered as becoming a part of the real property in the course of fabrication and so are not subject to the state's excise taxes. The state has, however, held that work performed at locations other than the job site should be distinguished for tax purposes under the provisions of the tax laws. This distinction was upheld in Morrison-Knudsen, Inc. v. State of Washington, 64 Wn. 2d 86 (1964), where a contractor was held liable for the same taxes involved here. These were assessed upon the construction and use of concrete pontoons and shells which were produced for a floating bridge. These components were built at a site many miles from the bridge site, stored for a period of time, and then floated to the bridge site where they were installed.

As to the taxpayer's allegation that his off-site fabrication activities were incidental to his construction business, it is the type and not the value of the activity that may be considered as incidental. Rule 136 is not concerned with value. It is concerned with an incidental activity directly involved with the particular items of personal property being processed. Here the items of personal property which were fabricated were completed as individual components and were separate items of personal property when they left the taxpayer's headquarters. The components were not connected with the processing of other items of personal property, being incorporated into a structure of real property. Thus the element of being "incidental" as indicated in Rule 136 does not pertain to the taxpayer's activities, and therefore the components fabricated cannot be considered as being excluded from the term "to manufacture" as contained in that rule.