

Cite as 11 WTD 189 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment )	
of )	No. 91-149
)	
. . . )	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	

[1] RULE 218: DEFERRED SALES TAX -- USE TAX -- B&O TAX  
--ADVERTISING AGENCY -- BROCHURES. Advertising  
agencies are not liable for deferred sales tax or  
use tax on brochures when they purchase same from an  
unregistered, out-of-state printer as an agent on  
behalf of a Washington client and the brochures are  
shipped directly from the printer to the client.  
The commission or mark-up for such purchasing  
service, however, is Service B&O taxable to the  
advertising agency.

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.

TAXPAYER REPRESENTED BY: . . .  
. . .

DATE OF HEARING: August 12, 1988

NATURE OF ACTION:

Appeal of use/deferred sales tax on brochures printed for  
clients of taxpayer.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is an advertising agency.  
Its books and records were examined by the Department of  
Revenue (Department) for the period January 1, 1981 through

September 30, 1987. As a result tax assessments, identified by the above-captioned numbers, were issued for \$ . . . and \$ . . . . The first one was later adjusted downward to \$ . . . . The taxpayer appeals portions of the assessments.

In connection with work it was doing for six clients, the taxpayer ordered large numbers of brochures from . . ., [an] Oregon printer.<sup>1</sup> The brochures were printed in [Oregon] and shipped directly to the Washington-based clients or to their Washington customers. The printer would then bill the taxpayer. The taxpayer would, in turn, bill its clients for the amount of the printer's bill plus a mark-up plus amounts for other aspects of its advertising service to the clients. Invoices from the taxpayer to the clients were itemized, reflecting such services as "account executive, PR account service, pasteup/production, creative direction, art direction, copy typesetting, freight, and printing". The amount for "printing" was the printer's charge for the brochures plus a mark-up or profit factor for the taxpayer.

The Department's auditor assessed deferred sales and/or use tax on the printer's charges for the brochures. In support of this action, his supervisor cites WAC 458-20-218 (Rule 218) and states that "an advertising agency is required to pay retail sales tax to vendors upon retail purchases made by them as agent in behalf of clients".

The taxpayer's attorney stresses that the taxpayer's purchase orders say that the taxpayer is ordering as an agent for the principal, its client. The attorney also suggests that the Department should pursue the clients, not the taxpayer, for the tax. The taxpayer was not billed by the printer for sales tax.

Whether an advertising agency is liable for sales/use tax on brochures it procures for its clients is the issue in this case.

#### DISCUSSION:

[1] Rule 218 is the pertinent administrative regulation. It recognizes that advertising agencies can have agency relationships with clients in terms of the purchase by the advertising agencies of tangible personal property for their clients. The rule reads in part: "The retail sales tax must

---

<sup>1</sup> . . . [Oregon printer] is not registered with the Washington Department of Revenue.

be paid by advertising agencies to vendors upon retail purchases made by them as agent in behalf of clients." The brochures, at issue here, fit this description. Their purchase is at retail by the advertising clients through the medium of the advertising agent (taxpayer). Their purchase is not for resale by the clients nor for any other purpose which would allow the transactions to qualify as wholesale. RCW 82.04.050 and RCW 82.04.060.

The complicating factor here, however, is that the brochures were purchased from an Oregon printer. We presume, because that printer was not registered with the Washington Department of Revenue, that the printer had insufficient presence in this state for the purpose of establishing taxing nexus.<sup>2</sup> If that is so, the printer was not required to collect sales or use tax and, indeed, the printer did not attempt to do so. In this circumstance the taxpayer and its clients were not required to pay sales tax to the vendor/printer. If they had, most likely the Oregon vendor would not have known what to do with it.

If sales tax was not required, the question becomes was its complement, use tax, required of the taxpayer. Unlike the retail sales tax section of Rule 218, the use tax section of the same rule does not require that an advertising agency, purchasing as an agent for a client, pay use tax for the client. Further, the brochures in this case are not otherwise used by the taxpayer advertising agency. In fact, except for a few sample copies, they are not even touched by the advertising agency. They are sent directly to the agency's clients or to the client's customers by the out-of-state printer. The clients may owe use tax in this circumstance, but such liability will not be imputed to the advertising agent without specific statutory or regulatory authority.

Inasmuch as the taxpayer is a purchasing agent with respect to these brochures, it is liable for Service B&O tax on the gross income it realizes from the transactions. Rule 218 and WAC 458-20-159 (Rule 159). In most sales agency situations, such income is called a "commission". Here, as referenced above, the taxpayer has labeled it a mark-up. Regardless of name, it is subject to Service B&O tax.

---

<sup>2</sup> The requirements for nexus are set forth in WAC 458-20-193B (Rule 193B). See also WAC 458-20-221 (Rule 221) and WAC 458-20-101 (Rule 101).

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 31st day of May 1991.