

Cite as Det. No. 91-128, 11 WTD 327 (1992).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment)	
of)	No. 91-128
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	

[1] RULE 173 -- REPAIRS -- SUPPLIES CONSUMED -- INVOICE.
Materials consumed in the repair process which were purchased by the taxpayer performing repairs were subject deferred sales tax even though they were separately charged to customers.

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: May 9, 1991

NATURE OF ACTION:

The taxpayer was audited for the period from January 1, 1985 through June 30, 1989. Tax Assessment No. . . . was issued [in December 1989] with a total deficiency due and assessed of \$ The entire balance remains contested and unpaid.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer is a Washington corporation engaged in the business of repairing and maintaining watercraft for boat owners. The repair and maintenance work includes such things as cleaning, repairing damage or wear, installing equipment, and painting boats. During the repair and maintenance process, the taxpayer uses materials such as paint thinner, sand for sand blasting, abrasives, rags, coveralls, mask paper, tape, gloves and similar items, as well as paint and other surface coatings.

In addition, the taxpayer sells supplies used to repair boats to the owners.

There are a number of ways the taxpayer contracts to perform repair work for its customers. One method is to contract with the customer in advance to perform the work for the cost of labor and materials. Labor is charged at an hourly rate, and a separate charge is made for the specific materials used in performing the repair work. If requested, the taxpayer provides estimates. The taxpayer states that it keeps detailed records of the time spent and material used for each contract.

A second type of contract involves a charge to the customer based on the number of square feet of boat surface rather than an hourly rate for labor. This is often used in contracts for painting boat bottoms. Estimates include the cost of painting the surface as well as the cost of related materials. The taxpayer again charged retail sales tax on the gross charge to the customers.

Occasionally, an estimate will be made for the total price of the entire job, including materials. The customer is charged retail sales tax on the gross amount.

Finally, the taxpayer sells repair materials directly to boat owners. Usually, the owners will make the repairs; but, occasionally, they will hire the taxpayer to make the repairs.

The taxpayer states that under any arrangement it charged retail sales tax on the entire invoiced amount. Detailed records were kept and presented at the hearing regarding invoices to customers. Each invoice to its customers separately listed all supplies and materials with line by line charges for each. Backup schedules drawn up as the labor was performed or the materials were used were attached to the invoices. After the job was complete, the invoice would be sent to the customer for payment.

Neither sales nor use tax was paid by the taxpayer to its vendors on the supplies used to perform the repairs. The taxpayer did not represent to any of its vendors that it purchased the materials in an agency capacity for the boat owners. Retail sales tax was not paid on the materials by the taxpayer.

The auditor assessed use tax on all those items consumed in the repair process (consumables) except paint and surface coatings. The taxpayer disputes the tax on the consumables, contending that this imposes a double tax since the taxpayer is collecting retail sales tax on the gross invoice amount.

The taxpayer contends that the material and supply purchases were not retail sales arguing that they were for purchased for resale. Because these items were itemized on the invoices to the boat owners, the taxpayer asserts they were resold to the boat owners and used to perform the repairs for which the boat owners contracted.

DISCUSSION:

RCW 82.12.020 imposes use tax:

. . . for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail . . .

RCW 82.04.050 defines "retail sale" as:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, or (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person, or . . . (emphasis supplied)

RCW 82.04.190 defines "Consumer" as:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or

decorating such real or personal property of or for consumers or . . . (emphasis supplied)

The taxpayer notes that the clause "intervening use" was used in the "retail sale" definition, but not in the "consumer" definition regarding resale. The taxpayer contends that consumables such as rags and paint remover could have been used by the taxpayer, then charged to the customers on the invoice as a resale without the taxpayer being considered a consumer for the purpose of use tax.

Since the taxpayer charges its customers based on the items listed on the invoices, it argues that it should not be charged use tax on the same items. It asserts that those items belong to the customers and it is using them for them. The taxpayer contends that the legislative purpose was to insure that a single, uniform tax is imposed on the sale or use of all tangible personal property irrespective of where it may have been purchased or how acquired. It cites the Department's use tax rule as supporting that contention.¹ The taxpayer points out that there is a presumption against legislative intent to impose double taxation on the same property citing Great Northern Railway Co. v. Cohn, 3 Wn. 2d 672, 101 P 2d 985, (1940).

We disagree. This is not a case of double taxation. The tax assessed may be more properly referred to as deferred sales tax rather than use tax since the taxpayer was not entitled² to exemption from retail sales tax. That tax is a transactional tax. Retail sales tax should have been paid on the transaction when the taxpayer acquired the materials,³ and again on the transaction for repairs charged to its customers. That is not double taxation, but rather a single tax on each transaction.

WAC 458-20-173 (Rule 173) provides in part:

Persons engaged in the business of installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are required to collect the retail sales tax upon the total charge made

¹ WAC 458-20-178

² * Unless items were purchased out of state, or some other exemption applied.

³ Except those incorporated in the repaired property as ingredients or components such as paint exempt under subsection (1)(b) of RCW 82.04.050 and 82.04.190 respectively, which are exempted by that authority.

for the rendition of such services, even though no tangible personal property in the form of materials or supplies is sold or used in connection with such services. Where tangible personal property in the form of materials and supplies is sold or used in connection with such services, the retail sales tax applies to the total charges made for the sale of the materials and supplies and the services rendered in connection therewith.

* * * *

The following are illustrative of services upon which the retail sales tax applies to the total charge made to consumers:

Boat repairing (see WAC 458-20-175 and 458-20-176 for certain exemptions); . . .

* * * *

The retail sales tax does not apply to sales to such persons of materials which are resold as a part of the articles of tangible personal property being repaired, altered or improved.

* * * *

On the other hand the retail sales tax does apply to the purchase of all other supplies which may be consumed and utilized by such persons in the rendition of such services, such as fuel, lubricant, machines, hand tools, stationery and other supplies and equipment. (emphasis supplied)

The materials purchased by the taxpayer such as paint which become ingredients or components of the repaired item are exempt from sales and use tax and were not included in the auditor's assessment. The supplies which were consumed in the process such as sandpaper were part of the assessment since they were not "resold" as part of the repaired property.

The taxpayer seeks to distinguish its situation from that in the rule because it itemized the materials on the invoice. We do not believe that distinction is significant and the same principle should apply to the taxpayer as to those who do not itemize the materials. This treatment is consistent with the taxation scheme for manufacturers and independent contractors who receive no tax benefit by itemizing their billings.

The taxpayer purchases the materials in bulk, and in its capacity alone. The vendors do not know whose boat the materials will be used for repairing, and would not and could not ask the boat owners for payment. The taxpayer was not their agent.

The taxpayer did not necessarily pass through its cost of the items to the customers. It usually marked the prices shown on its invoices up above its cost of those items. Title to those items did not pass to the customers when the repairs were ordered. Title passed, if at all, after they were used and "purchased" by the customers when the invoices were sent and paid. We do not see that as the proper way to analyze these transactions. Rather, the taxpayer purchased the consumables and used them. They were only shown on the invoice as a way of justifying the total invoice price to the customer. Therefore, they were never "resold" and the exemption does not apply to them.

There is an exception however, that may be applicable here. In situations where boat owners purchased the supplies first, then made the repairs, the taxpayer would be entitled to a credit against sales tax paid (or in this case, the use tax assessment) even if the boat owner later arranged to have the taxpayer perform the repairs. In those situations, the repair obligation is clearly independent from the resale of the supplies.

The taxpayer states that use tax was assessed on items resold to boat owners which were used by the owners to perform the repairs. To the extent the taxpayer can document those instances where boat owners purchased the supplies and either the boat owners themselves made the repairs or later contracted with the taxpayer to make the repairs (and the taxpayer did not rebill the owners for the supplies with the repairs), it should be granted relief. This does not mean that the taxpayer can separately invoice the repairs and supplies to avoid tax on the supplies. The transactions must be clearly separate and not part of a single contract.

DECISION AND DISPOSITION:

The petition for correction of assessment is denied with the exception of those instances where customers purchased supplies first, then arranged for the repairs. The taxpayer has 30 days from the date of the assessment to contact the auditor and prove the extent of such instances so the audit division can revise the assessment if necessary.

DATED this 20th of May 1991.