

Cite as Det. No. 91-262, 11 WTD 447 (1992).

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

In the Matter of the Petition) D E T E R M I N A T I O N
for Correction of Assessment of)
) No. 91-262
)
) Registration No.
) . . . /Audit No.
)
)

[1] RULE 145: LOCAL RETAIL SALES TAX -- SALE OF TANGIBLE
PERSONAL PROPERTY -- INSTALLATION SERVICES --
COMBINATION. A combination sale of printing equipment
and installation services occurs at the place where the
services are primarily performed.

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 TELECONFERENCE: . . .

NATURE OF ACTION:

The taxpayer protests the imposition of additional taxes and
interest assessed in an audit report.

FACTS:

Okimoto, A.L.J. -- . . . (taxpayer) operates a distributorship of
large printing equipment based in . . . , California. Its books
and records were examined by a Department of Revenue (Department)
auditor for the period January 1, 1986 through March 31, 1990.
An audit resulted in additional taxes and interest owing in the
amount of \$. . . and Doc. No. . . . was issued in that amount
[in October 1990]. The taxpayer has paid the unprotested portion
of the assessment and the balance remains due.

The taxpayer explained at the teleconference that it has no in-state office, but derives its nexus solely from three salespersons. These include a resident salesperson located in [Washington], who services the [northern Western Washington area]; a nonresident salesperson located in . . . , Oregon, who services the [southern Western Washington area]; and a nonresident salesperson in . . . , Idaho, who services Eastern Washington.

Taxpayer's main product is printing equipment. In addition, it also sells spare parts and repair services related to that equipment. The taxpayer describes a typical sale as follows. First, a salesperson will contact the prospective customer and evaluate the customer's needs. This includes a discussion of the price and type of equipment and accessories needed. Once the order is obtained the salesperson writes it up at the customer's place of business and submits it to its California headquarters for final approval.

After approval the printing equipment is shipped to the customer's location, unpacked, and installed by taxpayer's service representative at the customer's printing plant. The taxpayer explained that its printing equipment is very sensitive and requires expert installation and substantial testing before it becomes operational. For example, a basic single-color press will require a minimum of three hours to install while a standard five-color press could require up to three weeks. This is because a five-color press will normally be transported in seven separate crates (one for each color press, and one for the feeding and stacking apparatuses). Each color press weighs several hundred pounds and must be pieced together and fastened to both the other color presses and to the floor. Once this is accomplished, the tolerances between the presses must then be finely tuned and adjusted. The taxpayer explained that this adjustment is necessary because the process of color printing involves printing millions of tiny colored dots directly over or offset from one another. Depending on how much the dots are offset, different colors are produced. In order to accurately produce the desired color, the presses must be adjusted to very fine tolerances during the installation process. Because of this requirement, virtually no customers have the expertise to install their own presses. The taxpayer further explained that, even if a specific customer did have the necessary expertise, few would want to perform his own installation because he would then have to bear the risk of faulty installation. Customer installation would also significantly effect future warranty claims.

TAXPAYER'S EXCEPTIONS:

Schedule V: Retail Sales Tax Collected on Wrong Rate

In this schedule, the auditor concluded that in respect to the sales of its printing equipment, the taxpayer was incorrectly charging the retail sales tax rate based on the location of the customer. The auditor concluded that because the taxpayer was making sales consisting "solely of tangible personal property (i.e. goods or merchandise) and the goods were delivered to Washington customers from an out-of-state location, then under WAC 458-20-145, Rule I(B)(1), the applicable retail sales tax rate was determined by the location of the taxpayer's resident salesperson that participated in the transaction.

The taxpayer states that its sales price of all printing equipment includes substantial installation services. Therefore, it argues that Rule II applies and that the applicable retail sales tax rate is governed by the place where those services are primarily performed. The taxpayer argues that these services are primarily performed at the customer's location.

The auditor relied on Rule 145, Rule II(B) example 1 to state that Rule II did not apply because the taxpayer did not bill the installation services as a separate charge. The taxpayer specifically refers to Rule 145, Rule II(B) example 2 as being the applicable illustration.

ISSUE:

1. When a vendor sells tangible personal property for a negotiated sales price that includes substantial installation services, should the retail sales tax rate be determined by Rule I, (sales of tangible personal property) or Rule II, (sales of tangible personal property when labor and services are rendered in conjunction therewith)?

DISCUSSION:

[1] RCW 82.14.020 defines where a sale occurs for determining the applicable local retail sales tax rate. It states in part:

...(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer; ...

(4) ... a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed; (Emphasis ours)

WAC 458-20-145 (Rule 145) is the lawfully promulgated rule implementing the above statute. It states in part:

"Place of sale" for purposes of local sales tax:

RULE I.

(A) This rule applies to retail sales consisting solely of tangible personal property (i.e., goods or merchandise). If retail labor and services are also involved Rule II applies to the entire sale. Secondly, the total tax is determined by the place at which or from which delivery is made. . . .

(B) Special applications of the rules for goods located outside the state:

(1) When the state business and occupation tax applies to a sale in which the goods are delivered into Washington from a point outside the state this means a local in-state facility, office, outlet, agent or other representative even though not formally characterized as a "salesman" of the seller participated in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, his agent or representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax shall be determined by the location of the customer. ...

RULE II.

This rule applies to retail sales of labor or services and also applies to sales of tangible personal property when labor and services are rendered in conjunction therewith. The local tax is governed by the place where the labor and services are primarily performed.

...(B) Retailers primarily performing their services at the location of their customers will collect the local sales tax for the jurisdiction in which the customer is located. Examples of this class of retailers are: Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell, as carpet layers often do, fall under Rule II-place where work is done governs the local tax to be

applied-if the installation would normally call for an extra charge) earthmovers, house-wreckers.

Examples:

(1) A dealer sells a TV set, delivers it and puts it in working order in his customer's home. This falls under Rule I, not Rule II, because there is normally no extra charge for "installing" a TV set.

(2) A hardware store sells yard fencing at \$5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.

(3) A home furnishings dealer sells carpeting at \$12.00 per yard and agrees to install it for \$2.00 per yard additional. The entire transaction falls under Rule II and the \$14.00 per yard will be subject to the local tax levied by the jurisdiction in which the customer resides. Rule I is limited to retail transactions consisting SOLELY of sales of goods or merchandise. (Emphasis ours)

We agree with the taxpayer that the local retail sales tax rate is to be computed based upon the place where the installation services are primarily performed. RCW 82.14.020 clearly states: "... a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed." In the taxpayer's case the installation services of the purchased printing equipment took a minimum of three hours and a maximum of three weeks. These services were both substantial and primarily performed at the customer's place of business. Therefore, in accordance with RCW 82.14.020 and Rule 145, Rule II, we find that the sale occurred at the customer's place of business.

We believe the auditor's reliance on Rule 145, Rule II(B), Example 1 is misplaced. This example is not meant to convert what would otherwise be a combination sale of tangible personal property and installation services to solely a sale of tangible personal property. Instead, it is meant to illustrate the point that the mere delivery and plugging-in of a television set does not constitute installation services.

Indeed, we find example 2 to be more on point. It states in part:

(2) A hardware store sells yard fencing at \$5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.

In this example, the vendor does not make an extra charge for installation services. However, because the installation services rendered are substantial and would normally involve an extra charge, Rule 145, Rule II applies and not Rule I. We believe that this example controls the disposition of the taxpayer's case. Accordingly, the taxpayer's petition is granted on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is granted. The taxpayer's petition is remanded to the Audit Division for the proper adjustment consistent with this determination.

DATED this 18th day of September, 1991.