

Cite as Det. No. 91-295, 11 WTD 493 (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. 91-295
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	
)	

[1] RETAIL SALES TAX -- TITLE PLANT -- TANGIBLE OR INTANGIBLE. Title plant microfiche records are tangible personal property subject to retail sales tax.

[2] RETAIL SALES TAX -- TITLE INSURANCE PRIORS -- RESALE. Sales tax paid for copies of prior title insurance policies or "priors" may not be credited against sales tax collected on sales of policies for which those priors are used.

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: October 15, 1991

NATURE OF ACTION:

The taxpayer petitions for the correction of use tax assessed on a title plant or microfiche system containing real estate title information. It also appeals the denial of a credit for sales taxes paid for title insurance "priors" purchased from title insurance companies.

The taxpayer was audited for the period from January 1, 1986 through March 31, 1990. Document No. . . . was issued [in November 1990] with a total deficiency due and assessed of

\$ The taxpayer paid \$. . . and the balance remains contested.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer is a Washington corporation with an exclusive agency to sell title insurance in a particular county in Washington. In 1985, it purchased title, use, and possession of a title plant pertaining to land in the county. The title plant had first been purchased for \$175,000 by a different entity, then sold to the taxpayer for \$180,000. The title plant included:

1. A microfiche copy of all tract books comprising the real property index covering periods up to 1984.
2. A microfiche copy of the general index covering recordings and filings up to 1984.
3. A photocopy of all segregated covenants, conditions, and restrictions in the county office.
4. Microfilm cartridge of all unsatisfied judgments in the county office.
5. The right to copy all office and subdivision bases.

No other property was mentioned in the contract. The contract provided that copies would be available for five years, but otherwise did not require the seller to perform any service for the taxpayer. There was no apportionment of the cost among the various properties and rights acquired with no attempt made to assign values to the individual components. No retail sales tax was paid on the acquisition of the title plant. The taxpayer listed the title plant as an asset, but did not depreciate it for Federal tax purposes.

The auditor assessed use tax on the title plant, explaining that it was subject to use tax since it was tangible personal property used in Washington upon which retail sales tax was not paid. The taxpayer contends that the property acquired was intangible property, not subject to the use tax.

The second issue involved "priors", or copies of prior title insurance policies purchased from another title insurance company. The taxpayer incorporated them into the new title insurance policies issued by the taxpayer. According to the taxpayer, if the priors were inaccurate, the taxpayer had no direct recourse against the title insurance company from whom it acquired the priors because the taxpayer was not the insured.

The property purchaser or financial company named on the policies were the insureds.

The taxpayer paid retail sales tax on the priors, but took a credit against the retail sales tax that it collected on its sales of title insurance. The auditor disallowed the credit relying on Det. No. 86-82A, 1 WTD 133 (1986) which provides:

We must conclude that, except for telephone services which the legislature has expressly addressed, no other personal services declared by statute to be "retail sales" may be purchased at wholesale for resale by a seller of retail services. In short, all charges for retail services are subject to retailing business tax and retail sales tax, even if they will be passed on to ultimate consumers for a charge. Under present statutory law it is not possible to acquire third party provided retail services for "resale" without paying sales tax or use tax upon such charges.

That determination involved credit bureau services. The taxpayer contends that the Determination is incorrect and a credit should be allowed since the service is "resold".

DISCUSSION:

[1] The retail sales tax is imposed on retail sales.¹ RCW 82.04.050 includes in the definition of "retail sale":

. . . every sale of tangible personal property . . .

We find that the title plant consisted of property purchased for \$180,000. No assertion has been made that anything else such as services were purchased, and there has been no attempt to allocate a portion of the cost to anything else of value. The only issue is, was the property purchased tangible or intangible. If it was tangible the purchase was subject to retail sales tax. If the title plant was intangible, it was exempt from the tax.

In 1972, The Board of Tax Appeals ruled that title plants are tangible personal property.² The cases involved property tax issues, but we see no reason why tangible personal property for property tax purposes should not be tangible personal property for excise tax purposes. The cases did not distinguish between

¹ RCW 82.08.020.

² Fletcher-Daniels Title Co., BTA Docket No. 1227; Land Title Company, BTA Docket No. 1240; Transamerica Title Insurance Co., BTA Docket No. 1243; Land Title Company, BTA Docket No. 2319; Pioneer National Title Insurance Co., BTA Docket No. 2320.

records consisting of paper documents and microfiche, but indicated that title plant records could include microfilm. Title plant records are tangible personal property subject to retail sales tax.

We should distinguish between these types of records used as a resource tool, similar to a library, and client lists³ where a purchaser hopes to receive future business from existing clients. Title records are necessary and valuable research tools used by title companies to check the title history of real estate. Unlike client lists or medical records, the title records which make up the title plant do not have value as referrals to obtain business. Title companies do not acquire such records for the purpose of contacting property owners to secure their business. The records are a necessary tool required for the performance of their service.⁴ The auditor correctly found them to be tangible personal property subject to the retail sales tax.

[2] The taxpayer contends that it should be entitled to credit the taxes it paid for title insurance "priors". These copies of policies originally issued to purchasers or financial companies were obtained from title insurance companies for \$25-\$50. These services constituted retail sales under RCW 82.04.050(3)(b) since they were services received from companies engaged in the title insurance business.

The Department's position is that except for telephone services, services designated "retail sales" by statute may not be purchased at wholesale and resold.⁵ Since they are expressly included within the definition of "retail sales", they are always subject to retail sales tax even if purchased for pass-on or inclusion within charges to ultimate consumers.

The taxpayer asserts that the Department's position is wrong, but gives no statutory authority. Subsection (1)(a) of RCW 82.04.050 provides a specific exemption for purchases of tangible personal property for the purpose of resale. Subsection (3)(a) of that section provides no resale exemption for sales of services by title insurance businesses. Unlike telephone services, these

³ See Det. No. 90-139A, 10 WTD 327 (1991).

⁴ According to The Board of Tax Appeals decisions, *supra*, the Insurance Commissioner requires title companies to have title plants. See RCW 48.29.020 & RCW 48.29.040. We might also note that according to those decisions, the Insurance Commissioner does not permit a reduction of their value, nor does the IRS permit them to be depreciated.

⁵ Det. No. 86-82A, 1 WTD 133 (1986)

services are not included in the definition of "sale at wholesale". It is clear that the legislature did not intend a resale exemption or credit for these services. Therefore, the taxpayer may not credit retail sales tax paid on priors against the retail sales tax it collects on its sale of title insurance.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 25th day of October 1991.