

Cite as Det. No. 92-260, 12 WTD 425 (1992).

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 Tax Ruling for)	
)	No. 92-260
)	
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

- [1] RULE 218: SERVICE B&O -- ADVERTISING AGENCIES -- GRAPHIC DESIGN SERVICES -- INTERMEDIATE STEP. Advertising agencies that perform only advertising services such as procuring advertising space or products on behalf of a client, consultation services, graphic design services, copy writing, editing, layout, and coordinating the printing of advertising material for a client and producing or procuring intermediate steps in the printing process for a client are taxable under the Service and Other Activities tax classification. Accord: ETBs 308 and 417.
- [2] RULE 140 -- RETAIL SALES TAX -- PHOTOGRAPHY -- LICENSE TO USE. Photographers who expose film, develop, and imprint those images upon photographic paper are making sales of tangible personal property and subject to Retailing B&O and retail sales tax upon the gross proceeds of sale. A photographer who specifically retains ownership of the photographs and only grants a license to publish a photograph is not making a sale of tangible personal property. Accord: WAC 458-20-140.
- [3] RULE 144: RETAIL SALES TAX -- GROSS PROCEEDS OF SALE -- PRINTED PRODUCT -- DESIGN SERVICES. Graphic design services or other intermediate steps performed by the actual printer of the product are services rendered "in respect to" imprinting tangible personal property if those services are directly related to the imprinting services and performed under one or more concurrently executed contracts or invoices.

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.

NATURE OF ACTION:

A full service advertising agency asks for a tax ruling on its business activities.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: . . .

FACTS:

Okimoto, A.L.J. -- . . . (taxpayer) is a full service advertising agency located in . . . , Washington. It performs advertising consultations, graphic design, photography, typesetting, and also printing services for clients for a fee. It now requests a ruling as to the tax classifications of each activity.

DISCUSSION:

Advertising Services:

[1] WAC 458-20-218, (Rule 218) is the lawfully promulgated rule covering the taxability of advertising agencies. It provides in part:

Advertising agencies are primarily engaged in the business of rendering professional services, but may also make sales of tangible personal property to their clients or others or make purchases of such articles as agents in behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

In general, advertising agencies are taxable under the Service and Other Activities tax classification on the gross income received for services performed. This includes income or commissions received for the following services:

1. Procuring advertising space or time in a publication or other medium on behalf of a client.
2. Consultation services.

3. Graphic design services. (i.e. producing original intermediate sketches, designs, drawings, and other art work which is not a finished product.)
4. Purchasing advertising products on behalf of a client for which a commission is received.
5. Copy writing, editing, layout, and coordinating the printing of advertising material for a client.
6. Producing or procuring intermediate steps in the printing process for a client. (ie. typesetting, camera ready art, and etc.)

Advertising agencies may also make sales of tangible personal property to their clients or make purchases of such articles as agents on behalf of their clients. However, in order for purchases of tangible personal property to be considered for resale to clients, all subsequent sales of that tangible personal property must be clearly and separately itemized in the agencies' billings to its clients. Absent itemization, these purchases will be considered purchases for consumption by the advertising agency during the course of performing its advertising services. Under these circumstances the purchases would be fully subject to retail sales tax upon their acquisition and service B&O tax when subsequently reimbursed by the client. (Rule 218.)

Photography Services:

[2] Taking photographs for a fee, without developing or printing is a professional and artistic service and is not subject to the Retailing B&O or retail sales tax. The undeveloped film is considered the tangible evidence of the service being provided. However, RCW 82.04.050(1) includes within the definition of a retail sale "every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons."

We believe that the Legislature intended to include within the definition of a retail sale, the imprinting of an image upon photographic paper. WAC 458-20-140 (Rule 140).

However, RCW 82.04.050 also includes within a definition of a retail sale "the sale of or charge made for ... labor and services rendered in respect to the following: ... imprinting, or improving of tangible personal property of or for consumers..."

Therefore, even though services when rendered by themselves, may not be included within the definition of a retail sale, they nevertheless become separately defined as retail sales when rendered in respect to "imprinting... of tangible personal

property of or for consumers...." The term "in respect to" is not defined in the statute or rule and therefore it must be given its usual and ordinary meaning. Marino Property v. Port of Seattle, 88 Wn.2d 822 (1977). Webster's New Universal Unabridged Dictionary, (2d. ed., 1983), defines the term "in respect of" to mean "with reference to; as regards."

After considering the above definition, we believe that services are rendered "in respect to" the imprinting of tangible personal property of or for consumers when they are directly related to the imprinting services being performed and are also being performed under one or more concurrently executed contracts with a person performing those imprinting services. Accordingly, a shooting fee for photographic services will be considered "services rendered in respect to ... (a) The ... imprinting ... of tangible personal property of or for consumers" when the shooting fee is directly related to subsequent printing services, is performed by the same person, and performed under a single contract or invoice or concurrently executed contracts or invoices. Under these circumstances, the "total charge for printing" (including the shooting fee) falls within the definition of a retail sale and is properly subject to the Retailing B&O and retail sales tax.

Under certain circumstances a photographer may only sell or authorize a license to publish photographs in newspapers, books, or advertising material. In these cases the photographer retains the ownership of negatives and all reproduction rights. This income is subject to the Service and Other Activities tax classification. It should be noted that in order for the taxpayer to establish that only a license to publish is being conveyed, it must clearly indicate this restriction on its invoice or contract. The Department will presume that all charges for photographs to be outright sales of tangible personal property unless the invoice or contract clearly specifies to the contrary.

Printing Services:

[3] The above instructions regarding advertising services apply only where the taxpayer does not perform the actual printing services. In those instances where the taxpayer also performs the printing of the advertising material or other printed material, it is taxable as a printer under RCW 82.04.280. RCW 82.04.280 imposes tax:

Upon every person engaging within this state in the business of: (1) Printing,, the amount of tax on such business shall be equal to the gross income of the

business multiplied by the rate of forty-four one hundredths of one percent¹.

In addition RCW 82.04.050(1) includes within the definition of a retail sale:

... every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons.

(Emphasis ours.)

WAC 458-20-144 (Rule 144) is the lawfully promulgated rule implementing the above statutes. It provides:

The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax.

(Emphasis ours.)

Accordingly, the taxpayer is taxable under the Printing and Publishing tax classification upon the gross income from the printing business. Under RCW 82.04.080, this includes gross proceeds of sale of the printed product in addition to compensation for services rendered.

As previously stated, RCW 82.04.050 also includes within a definition of a retail sale "the sale of or charge made for... labor and services rendered in respect to the following: ... imprinting, ...of tangible personal property of or for consumers."

We similarly believe that graphic design services, photography services, intermediate steps in the printing process, copy writing, editing, layout and all other services performed by the printer which relate directly to the production of the printed product and are performed under a single contract or invoice are services rendered "in respect to" imprinting of tangible personal property for consumers. Therefore, they are also included within the definition of a retail sale.

DECISION:

¹RCW 82.04.2904 adds a 10% surcharge to this basic tax rate. The actual tax rate is .00484.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 21st day of September 1992.