

Cite as Det. No. 93-102, 13 WTD 246 (1994).

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. 93-102
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

[1] RCW 82.04.270, 82.04.212: INTERNAL DISTRIBUTIONS TAX -  
- RETAIL STORES OR OUTLETS DEFINED -- VENDING MACHINES.  
A taxpayer which places and stocks its vending machines  
on property owned by others, and which does not operate  
as a business establishment that makes its retail sales  
through the device of a vending machine, does not have  
a "retail store or outlet" and so is not subject to the  
internal distributions tax.

This headnote is provided as a convenience for the reader and is  
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 corporation appealed the assessment of the internal  
distributions tax on food items that are sold from vending  
machines owned by the corporation and that are physically located  
on property owned by others.

FACTS AND ISSUES:

Gray, A.L.J. -- The taxpayer was an out-of-state corporation that  
did business in Washington. The taxpayer owned vending machines  
that were placed in various locations that were owned by  
unrelated parties. The taxpayer stocked and supplied the  
tangible goods that are sold through the vending machines, such  
as candy, gum, soft drinks, and cigarettes. The unrelated

parties received a commission based upon the sales from the vending machine(s) at their place of business.

The taxpayer did not control the time, manner or access of the public to the vending machines. The unrelated parties had control over the vending machines to the extent that those parties controlled access to the property on which the machines were located.

The Department of Revenue (Department) audited the taxpayer for the period January 1, 1987 through June 30, 1991. The assessment against the taxpayer included the tax on wholesalers and distributors. The auditors concluded that the taxpayer's vending machines were a "retail store or outlet" based on the language in RCW 82.04.212 that defines "retail store or outlet" to include "automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus." The Department contended that the taxpayer is a "business establishment" and assessed the internal distributions tax. The taxpayer disagreed and appealed.

The issue is whether the taxpayer's distribution of food products to its vending machines is subject to the internal distributions tax.

#### DISCUSSION:

The internal distributions tax is placed on "every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs." RCW 82.04.270. [Emphasis supplied.] RCW 82.04.212 excludes vending machines from the definition of "retail stores or outlets":

"Retail store or outlet" does not mean a device or apparatus through which sales are activated by coin deposits but the phrase shall include automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus.

However, the second part of the statute declares that "automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus" are within the definition of "retail store or outlet." The words "such devices or apparatus" refer back to the earlier language in the statute: "a device or apparatus through which sales are activated by coin deposits;" i.e., "vending machines." Although not defined in the statute, an "automat" is defined as a restaurant having an

apparatus for serving foods mechanically when a coin is dropped in a slot. Webster's New Universal Unabridged Dictionary, Deluxe Second Edition (1972), p. 127. The same dictionary defines "establishment" as, among other things, "the place where a person is settled for residence or for transacting business." So, a "business establishment" would be the place where a person transacts business (or "engages in business;" RCW 82.04.150).

[1] We do not agree with the Audit Division's interpretation of RCW 82.04.212, because that interpretation renders meaningless the exclusion of vending machines from the definition of "retail store or outlet." It appears that the Audit Division's view of this statute is that a taxpayer is by definition a "business establishment," and therefore its vending machines are within the definition of "retail store or outlet." Consequently, any person engaging in business in Washington by selling tangible personal property from a vending machine is subject to the internal distributions tax; yet vending machines are not included in the definition of "retail store or outlet" and thus are not subject to the internal distributions tax. A statute should not be interpreted in such a manner as to render any portion meaningless, superfluous or questionable. See, Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 103-104, 829 P.2d 746 (1992); Avlonitis v. Seattle District Court, 97 Wn.2d 131, 138, 641 P.2d 169, 646 P.2d 128 (1982).

The statutory language shows that the legislature intended to exclude "vending machines" from the definition of "retail stores or outlets," but to include "automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus." The legislature provided an example of what it had in mind when it used the word "automat." An automat is a specific kind of business establishment. It is a business that invites the public onto its premises to make purchases through vending machines. We believe the legislature intended to treat automats differently from other (possibly most) vending machine operations. The legislature did not want to restrict it to "automats" and so added the words "business establishments." Using this construction, any person who engages in business by inviting the public onto its premises to purchase that person's tangible personal property from vending machines is a "retail store or outlet."

We believe this construction gives effect to both parts of RCW 82.04.212: it excludes vending machines from the definition of "retail stores or outlets," but includes certain types of business establishments that make their sales through vending machines. The taxpayer is not an "automat or business establishment." It has agreements with others to place its vending machines on property belonging to others and to make its sales from its vending machines. We believe that the taxpayer's

situation was not intended to be subject to the internal distributions tax.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 26th day of March 1993.