Cite as Det. No. 13 WTD 154 (1993).

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

In the Matter of the Petition For Correction of Assessment of	)	F I N A L D E T E R M I N A T I O N
	)	No. 92-276ER
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] RULE 204: OUTDOOR ADVERTISING SERVICES -- DEFINITION -- BILLBOARD. A taxpayer provides outdoor advertising services when it paints or posts advertising copy for others on billboards it owns or controls. The services provided are not changed into manufacturing activities for taxation purposes simply because advertisements are painted on panels at taxpayer's plant rather than on outdoor structures. The structures merely accommodate the outdoor display of the advertisements. Painting panels is the same activity as painting billboards.

[2] RULE 204: OUTDOOR ADVERTISING SERVICES -- PAINTING BILLBOARDS -- MANUFACTURING B&O TAX -- USE TAX -- MANUFACTURING ACTIVITY AS PART OF SERVICE RENDERED. Where taxpayer provides a service involving some activities, which when isolated, would be considered manufacturing activities, there must be a clearly separate and distinct commercial or industrial use of the manufactured article in order for multiple tax liability to arise. There is no separate use of the painted panels because posting or painting advertising on a billboard is an indistinguishable part of the advertising service provided. Det. No. 87-364, 4 WTD 351 (1987).

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: . . .

NATURE OF ACTION:

An outdoor advertising company (taxpayer) petitioned for executive level reconsideration of its original request for cancellation of manufacturing business and occupation (B&O) tax and use tax assessed on the full value of advertising copy painted on metal or wood panels. Executive level review was granted because the matter is one of first impression with potential industry-wide impact.

FACTS:

Danyo, A.L.J. -- Taxpayer is in the business of providing outdoor advertising services by posting and painting customers' advertisements at various outdoor locations throughout Washington State. Taxpayer owns or controls the advertising display structures, commonly referred to as billboards. Some advertisements are posted or painted directly onto these structures. Other advertisements are painted on metal or wood panels, constructed at taxpayer's plant or purchased prefabricated, and then posted.

Taxpayer's books and records were audited for the period January 1, 1984 to December 31, 1987.[1] The Audit Division concluded that taxpayer engaged in two distinct and separate business activities, to wit: manufacturing painted panels; and, using the painted panels to provide outdoor advertising services. Thus, in addition to the service business tax reported, taxpayer was assessed manufacturing business tax based on the value of the painted panels. Use tax was also assessed upon the full manufactured value of the painted panels with credit for sales tax paid on materials from which the panels were made. Taxpayer appealed.

Det. No. 92-276 sustained the assessments finding that taxpayer was engaged in manufacturing because the advertising copy was painted on the panels at taxpayer's plant rather than on the outdoor structures. The determination concluded:

> [T]he activity of "painting billboards," where such activity is performed away from the billboard site is

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[1]Tax Assessment Document No. . . . was issued [in June 1988]. The audit report indicated a tax deficiency of $ . . . including interest. Payment was due [in July 1988]. Taxpayer did not remit payment but timely appealed the entire assessment.

> not an activity within Rule 204's definition of advertising services.

Taxpayer contends that Det. No. 92-276 erred by narrowly and incorrectly construing the term billboard to mean the outdoor structure only.[2] Taxpayer asserts that a billboard includes the displayed advertisement whether such advertisement is directly painted or posted on the outdoor structure or is first painted or posted on panels which are then mounted on the structure.

At the hearing, taxpayer's representative showed us a large, metal outdoor structure, bolted and permanently affixed to its present location, as an example of structures on which taxpayer most often displays advertisements. The upper half of the structure consists of two sides. One side is flatboard encased in a metal frame on which advertisements are posted or painted directly. The other side is open-framed on which several wood or metal panels, containing an advertising message, are mounted. According to taxpayer's representative, the advertising message was painted on the panels, generally through the use of transparencies, at taxpayer's plant. The "painted" panels are then transported to the outdoor location and attached to the metal framing where they are displayed for a specific period of time. We observed little difference between the two sides.

Taxpayer appeals that portion of the determination which sustained the manufacturing B&O tax and use tax on the value of the painted panels.[3]

ISSUE:

Whether painting advertisements on metal or wood panels, which are then posted to outdoor display structures, is a separate taxable activity distinct from providing outdoor advertising services by painting or posting advertising copy onto billboards?

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[2]The underlying facts, issues and taxpayer's arguments were developed in the Department's Det. No. 92-276 and will be restated here only where relevant to taxpayer's petition for reconsideration.

[3]Schedule II of the tax assessment asserted B&O manufacturing tax . . . measured by the costs of producing the painted panels. Schedule III reflects use tax assessed on the full manufactured value of the painted panels, less credits for retail sales and/or use tax paid on the materials incorporated into the painted panels, ... The total amount in dispute, is $ . . . plus interest. The unprotested portion of the assessment remains unpaid.

DISCUSSION:

WAC 458-20-204 (Rule 204) defines outdoor advertising as meaning "... the business of rendering an advertising service to others by posting or painting advertising copy upon billboards owned or controlled by the outdoor advertiser." There is no dispute that taxpayer is engaged in the business of providing outdoor advertising service. The ownership of the billboards is not in issue. The question is, what constitutes a billboard?

The term billboard is not defined in Title 82 RCW or in the rules promulgated thereunder. When terms are not defined by the legislature, they are construed to have their ordinary meanings. Seattle v. Hill, 40 Wn. App. 159 (1985). The Audit Division considered the billboard to be the outdoor structure on which the advertising was displayed. Det. No. 92-276 sustained that conclusion and defined a billboard as "a structure that displays advertisements in public places or alongside highways."[4] However, taxpayer refers to Webster's 3rd New International Dictionary, which defines billboard as:

> a flat surface (as of a panel, wall or fence) on which notices are posted; specifically, a large panel designed to carry outdoor advertising and mounted on a building or framework near a road.

Panel is defined to include a thin flat piece of wood on which a picture is painted.

[1] We find that painting advertising copy on panels is the same as painting billboards, regardless of whether such activity is conducted at the outdoor location or elsewhere. The advertising service does not change simply because the panels are painted at taxpayer's plant. We concur with taxpayer's statement that "the panels are the most important part of the billboard because they carry the advertising message." The outdoor structure merely accommodates the advertisement's display. Further, when taxpayer posts the painted panels, taxpayer is engaging in outdoor advertising services. Rule 204.

Outdoor advertising services are "[t]axable under the service and other business activities classification upon the gross income from advertising services." Rule 204. Taxpayer reported B&O tax liability under this classification. The Audit Division, however, assessed manufacturing B&O tax on the full value of the painted panels.

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[4] See, Webster's II, New Riverside University Dictionary (1988).

We cannot sustain the tax in light of Rule 204's definition. The term 'to manufacture' does not include activities which are merely incidental to non-manufacturing activities. WAC 458-20-136. "[T]o manufacture" as defined in RCW 82.04.120 includes any "new, ... or useful ... article of tangible personal property ... produced for sale or commercial or industrial use, ... " (Emphasis supplied.) Commercial or industrial use means "any use as a consumer." RCW 82.04.130. If a taxpayer has engaged in manufacturing for its own commercial or industrial use, the excise tax liability can be threefold: 1) manufacturing B&O tax on the value of the article manufactured; 2) use tax on the value of the manufactured article; and, 3) service business tax upon the gross receipts from the service involving the subsequent use of the manufactured article. Det. No. 87-364, 4 WTD 351, 354 (1987).
[2] Where, however, a taxpayer provides a service involving some activities, which when isolated, would be considered manufacturing activities, there must be a clearly separate and distinct commercial or industrial use of the manufactured article in order for multiple tax liability to arise. "The conclusion that the very act of manufacturing something is not the same as using that thing for commercial or industrial purposes is so fundamental as to require no support." 4 WTD 351, 354 (1987).

Outdoor advertising requires that advertisements be painted or posted on billboards. Although it is easier to identify a separate process when the painting is done offsite, that still does not mean that there is a separate and identifiable industrial or commercial use for the painted product.[5] Such a service is different, for example, from a portrait painter who prepares a tangible, finished work for sale. See, ETB 308.04.224. Here, there is no finished work for sale. There is no separate or distinguishable use for the panels. The painted panels are merely tangible evidence of the advertising service provided. Accordingly, if the service provided is indistinguishable from the manufacturing of the item, there is no separate use of the item to give rise to a taxable event. See, 4 WTD 351 (1987).

The auditor also assessed use tax pursuant to WAC 458-20-134, WAC 458-20-178 and WAC 458-20-112 on the manufactured value of the painted panels and in accordance with Rule 204's requirement that:

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[5]WAC 458-20-134 (Rule 134) cites examples of the common and ordinary understandings of such uses.

> Persons purchasing or producing tangible personal property for use in the performance of advertising services are required to pay the retail sales tax upon purchasing such property, or the use tax upon the value of the property produced and used in the performance of such services.

Because of our conclusion that taxpayer has not engaged in manufacturing the painted panels in question for its own commercial use, the use tax may not be measured by the full value of the painted panels. As we stated in 4 WTD 354, 355:

> [T]here cannot be any manufacturing of anything for one's own commercial or industrial use unless there is some proven commercial or industrial use of the thing after it is manufactured.

For purposes of taxation, the distinction lies in the separateness of the commercial purpose of the item produced. The panels are the billboards on which advertising copy was painted. Such activity is inherent in providing outdoor advertising services. There is no separate commercial use of the painted panels, only use of the materials incorporated in the metal or wood panels upon which sales and/or use tax had been paid. (See, RCW 82.12.020 and RCW 82.12.0252).

DECISION AND DISPOSITION:

Taxpayer's petition on reconsideration is granted. Det. No. 92-276 is reversed in part and sustained in part. This matter shall be referred to the Audit Division for adjustment to [the] tax assessment . . . as follows: . . . manufacturing B&O tax and . . . use tax plus interest shall be cancelled.

A new assessment will be issued and Taxpayer shall remit full payment of the balance due on or before the due date stated therein. The balance due is $ . . . tax plus unwaived extension interest. Interest is to be calculated from the original due date of [July 1988] to the new due date less interest waived, pursuant to Det. No. 92-276, for the period of [July 1989] through [November 1992].

These issues have been given thorough treatment and full review at the executive level of the Department, as evidenced by the signature of the Assistant Director, as the director's executive designee.

DATED this 17th day of September 1993.