

Cite as Det. No. 13 WTD 151 (1993).

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

In the Matter of the Request	)	<u>D E T E R M I N A T I O N</u>
For Reconsideration of	)	
	)	No. 92-261R
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

[1] RULE 218: B&O TAX -- SALES TAX-- ADVERTISING -- ITEMIZED CHARGES. Itemized charges for tangible personal property by an advertising agency are considered retail sales. For purposes of this rule, in order to be itemized, charges for tangible personal property may appear alone on a single billing. It is not necessary that they be listed on the same invoice along with charges for advertising services.

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:

Request for reconsideration of decision upholding the use/deferred sales taxation of advertising materials sold by an advertising agency.

FACTS AND ISSUES:

Dressel, A.L.J. -- [Taxpayer] sells . . . and . . . systems. It underwent an audit by the Department of Revenue (Department) which resulted in a tax assessment which was upheld by this division in Det. No. 92-261. In this action taxpayer asks for reconsideration of that determination. The facts and issues are as stated in Det. No. 92-261 and will not be repeated here.

## DISCUSSION:

In its request for reconsideration, taxpayer takes exception to our finding of fact that charges for brochures and other items of advertising-related tangible personal property by an advertising agency to the taxpayer were itemized. Taxpayer points out that its contract with the advertising (ad) agency calls for the providing of advertising services by the latter entity. Taxpayer urges that, according to WAC 458-20-218 (Rule 218), those services are not retail sales, nor is the provision of certain tangible personal property, i.e. advertising brochures, as part of that service. It argues that billings from the ad agency to taxpayer are not itemized and do not distinguish between amounts purely for services such as copywriting and amounts for tangible personal property such as brochures.

We regard that position as accurate in one sense but not in another. Of the sample invoices from the ad agency to taxpayer submitted with the original petition for correction, none distinguish between the sale of services and tangible personal property. The difficulty, though, is that none of them make any sort of reference to services. All invoices, except one,<sup>1</sup> state on the "Description" or "Title" line, "Reprints." To us "reprints" means tangible personal property, not advertising services. "Reprints" implies to us that the creative and technical work necessary to create the brochures in the first place, such as copyrighting, art, photography, typesetting, etc., has already been accomplished and that the taxpayer is just ordering extra copies. While the creation of the brochure in the first instance is no doubt an advertising service, the sale of additional copies is the sale of tangible personal property, pure and simple. The sale of such property is a retail sale. RCW 82.04.050. The buyer/taxpayer here owes sales tax on its purchase of tangible personal property. RCW 82.08.050. The Department may proceed directly against the buyer to collect the delinquent sales tax. Id.

We do not doubt that there was a contract here for advertising services, but we do not accept the taxpayer's implicit position that an invoice marked "reprints" includes charges for those services. We are confident that there were other invoices which made those charges but were not produced as evidence by taxpayer or that taxpayer simply wrote regular checks, unaccompanied by an invoice, to cover the retainer for the creative aspect of the advertising services for which it had contracted.

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<sup>1</sup> The invoice that does not say "reprints" is dated [September 1989] and is clearly the second half of an [August 1989] billing which is for reprints.

[1] We find that the referenced invoices were sufficiently itemized so as to invoke the exception clause of Rule 218. That clause is highlighted below.

Included in this classification [Service B&O] are amounts attributable to sales of tangible personal property, unless charges for such articles are separately stated in billings rendered to clients. The retailing or wholesaling classification applies to articles of tangible personal property sold to persons for whom no advertising service is rendered and also to charges to clients for such articles if separately stated from charges for advertising services in billings rendered.

(Bracketed inclusion and emphasis ours.)

The rule doesn't require that charges for advertising services and tangible personal property be separately stated on the same invoice. We find that tangible personal property charges are separately stated when they are the only charges that appear on a single invoice. Rule 218 says that the retailing or wholesaling classification applies to separately stated charges for tangible personal property. Retailing applies here because taxpayer is not reselling the brochures. Advertising agencies are required to collect, and their clients are required to pay, the retail sales tax upon charges taxable under the retailing classification. Rule 218.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied. The balance of the tax assessment . . . , plus statutory interest . . . is due for payment . . . . A penalty of 10% of the amount due and additional interest will be assessed if payment is not received by the due date.

This letter constitutes the final action by the Department of Revenue. However, your remedies are not at this point exhausted. If you remain convinced that the Department is incorrect in its opinion about your liability, you may pay the tax and petition for a refund in Thurston County Superior Court in accordance with RCW 82.32.180. The Thurston County Superior Court is the only court in the state that has original jurisdiction to hear excise tax matters and where venue is proper.

In the alternative, you may wish to file a petition with the Board of Tax Appeals [PO Box 40915, Olympia 98504-0915] pursuant to RCW 82.03.190. If you choose this alternative, your petition

must be filed with the Board within thirty days of this denial. Filing a petition with the Board does not stop the Department's Compliance division from pursuing collection of an outstanding assessment. In order to stay collection, a taxpayer must either enter into a payment agreement or post a bond as provided by RCW 82.32.200.

DATED this 29th day of July 1993.