

Cite as Det. No. 93-065, 13 WTD 239 (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. 93-065
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

[1] RULE 178; RCW 82.04.050(1)(a), 82.12.020, 82.12.010(2), 82.04.190(1): RETAIL SALES TAX -- USE TAX -- DIES -- INTERVENING USE. The taxpayer purchased and used dies to manufacture labels. The taxpayer "used" the dies to produce the labels before they were actually sold to the customer. Use tax found to be due, because the taxpayer's use of the dies before sale constituted intervening use.

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:

The taxpayer petitions for correction of an assessment of use tax on the purchase and use of dies that are later sold to customers.

FACTS:

Lewis, A.L.J. -- . . . (Taxpayer) business records were audited by the Department of Revenue (Department) for the period January 1, 1988 through March 31, 1992. The audit disclosed additional tax and interest owing . . . . The taxpayer protests the . . . tax and interest assessed on the purchase and use of dies that are subsequently sold to customers.

The taxpayer manufactures and sells labels and printed items. The use of various dies are a necessary part of the label producing process. The taxpayer purchases two types of dies: 1)

those that are standard and have future use, are kept by the taxpayer, and are not directly charged to the customer and 2) those that are special order, designed specifically for a customer's needs and are billed directly to the customer. The possession of the second type of die is not ordinarily transferred to the customer, however, if the customer requested possession of their die the taxpayer would relinquish it.

The taxpayer does not protest the tax assessed on the purchase and use of type one dies. However, the taxpayer does protest the tax assessed on the second type of die. The taxpayer contends that the second type of die should not be taxed because the taxpayer charges the customer retail sales tax. The taxpayer argues that subjecting the die to both use tax and retail sales tax amounts to double taxation.

#### DISCUSSION:

The Department's justification for the assessment of use tax on the second type of die was that the taxpayer put the die to "intervening use" when it was used by the taxpayer to produce the labels for their customer.

RCW 82.12.020 imposes the use tax:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail. . . .

Thus, if the taxpayer purchases dies at retail and uses them within this state as a consumer, the taxpayer is liable for the tax.

RCW 82.04.050(1) defines a retail sale as:

. . . every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business... other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person. . . .

RCW 82.12.010(2) states:

"Use," "used," or "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal

from storage, or any other act preparatory to subsequent actual use or consumption within this state: . . .

RCW 82.04.190 defines a consumer as:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of his business . . . other than for the purpose (a) of resale as tangible personal property in the regular course of business. . . .

Applying these statutes to the facts of this case, we find that the taxpayer is liable for the tax. The taxpayer's purchase of the dies was a retail purchase under the law because, while the sale to the taxpayer was for the purpose of resale, the taxpayer also put the dies to "intervening use."

The taxpayer was a "consumer" because it purchased the dies and then used them other than for the exclusive purpose of resale in the regular course of the business.

The taxpayer "used" the die within the meaning of the statute. As RCW 82.12.010(2) makes clear, "use" is defined in extremely broad terms. In addition, the taxpayer's "use" need not have been substantial because any use whatsoever as a consumer, will lead to tax liability.

The taxpayer's assertion that the same transaction is taxed twice is incorrect. Although, the taxpayer ultimately charges its customers retail sales tax on the sale of the die, the important fact is that the taxpayer used the die before it was sold. The "dies" were used by the taxpayer before they were sold thus triggering use tax liability. The subsequent sale to the taxpayer's client is a sale at retail. Thus, in this case there are two taxable transactions. Additionally, RCW 82.08.020(2) provides that "[t]he tax imposed under this chapter shall apply to successive retail sales of the same property."

#### DECISION:

The taxpayer's petition is denied.

DATED this 24th day of February 1993.