Cite as Det. No. 93-158, 13 WTD 302 (1994).

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

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 93-158
. . .	)	Registration No. . . .
	)	FY . . . /Audit No. . . .

[1] RULE 155: RETAIL SALE -- USE/DEFERRED SALES TAX -- CANNED VERSUS CUSTOM SOFTWARE -- CUSTOMIZED -- INCIDENTAL MODIFICATION. "Canned" software does not become "custom" software, as that term is used in Rule 155, simply because it is adapted to meet a customer's needs.

[2] RULES 107, 138, 155, AND 257; RCW 82.32.070: RETAIL SALE -- USE/DEFERRED SALES TAX -- CANNED SOFTWARE -- COMPUTER TELEPHONE SUPPORT SERVICES -- COMPUTER TRAINING -- WARRANTY -- MAINTENANCE -- MIXED AGREEMENTS -- SEGREGATION OF CHARGES. Payments to a vendor of canned software for the training of employees are not subject to sales tax if separately stated from the charges for software maintenance. However, charges for maintenance of canned software are subject to use/deferred sales tax. Where payments are not adequately segregated, the combined charge will be subject to use/deferred sales tax.

[3] MISCELLANEOUS -- USE/DEFERRED SALES TAX -- ESTOPPEL -- MANIFEST INJUSTICE -- INCONSISTENT ACTION. Estoppel will only prevent the state from collecting public revenues when all of the elements are present and applying the doctrine is necessary to prevent a manifest injustice. Requiring this taxpayer to pay its fair share of use/deferred sales tax does not constitute a manifest injustice. Estoppel does not apply against the Department where its subsequent action is not inconsistent with its prior action. The Department is not estopped from assessing use/deferred sales tax on taxpayer's purchase of software support

services where taxpayer received no information from the Department that is inconsistent with the tax asserted.

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:

Title insurance company contests assessment of use/deferred sales tax on its use of software support services.

FACTS:

Eggen, A.L.J. -- Taxpayer was audited for the period January 1, 1988 through September 30, 1991. As a result of this audit, use/deferred sales tax [and interest] were assessed. Taxpayer protests . . . the assessment, plus interest.

Specifically, taxpayer protests the assessment of use/deferred sales tax on its use of "software maintenance" and "system support" services. The auditor classified these services as retail sales because they include replacement software, modifications, and updates. Because taxpayer had not paid sales tax, the auditor assessed use/deferred sales tax.

Taxpayer contends the services do not involve retail sales but instead involve professional services that are subject to neither sales nor use tax. Taxpayer contends the services primarily involve telephone consultation, technical assistance with program application, and problem solving. Taxpayer notes that these services "could be equated to remote training necessary to enable an operator to define and correct operator induced problems or errors."

Taxpayer contracted with four companies to provide the services at issue. Although the services relate to software owned by or licensed to taxpayer, taxpayer notes that the services were purchased separate from the underlying software. Taxpayer states that most of the services are provided over the telephone.

Under the first agreement, . . ., Provider A "agrees to support the program product ("Software") listed below in accordance with its then current user documentation and the provisions of this Agreement." . . .

Under the agreement between Provider A and taxpayer, Provider A agrees to:

1. provide two hours of telephone assistance per month;

2. maintain a copy of system software similar to taxpayer's;

3. make available an emergency password to access system source code in the event Provider A defaults on the agreement;

4. investigate any errors in system software where there is a departure from original or updated system specifications supported by Provider A;

5. correct any errors in system software where there is a departure from original or updated system specifications supported by Provider A during the first six months from installation of a program, enhancement, or modification;

6. maintain an up-to-date version of programming code and specifications incorporating "Programming Requests" enacted after initial programming;

7. propose a programming solution and price estimate to taxpayer's written Programming Request for any customization or modification, any file expansion or error correction, and any addition to software;

8. provide taxpayer with information on new systems and existing system enhancements that may benefit taxpayer and offer system upgrades or enhancements at least annually; and

9. provide installation of programming requests required by outside organizations, including government agencies.

Pursuant to this agreement, Provider A has helped taxpayer work out "bugs" in its programs over the telephone.

If taxpayer requests installation of programming solutions developed in response to its "Programming Requests" or if it requests the enhancements or upgrades described in item eight, it is separately charged. The tax consequences of these additional charges are not at issue.

The agreement between taxpayer and Provider S . . . provides:

> [Provider S] may, at its option, with no additional charge to [taxpayer], make modifications to improve the operation

> and/or reliability of the products being serviced under this Agreement.
>
> . . .
>
> Warranty provided hereunder for software and documentation services shall be limited to providing the software support and documentation services selected by [taxpayer].

This agreement specifically excludes the provision of training. Taxpayer states that it primarily received assistance in solving operator problems under this agreement.

Taxpayer's agreement with Provider T . . . divides the responsibilities of Provider T into two categories, and the charges for these two categories are separately stated.
The first category is Software Maintenance. Software Maintenance includes:

> 1. Extended warranty of installed software. Software releases will be issued annually. These releases are intended for bug fixes and program modifications not affecting the actual structure of [program]. . . .
>
> 2. Changes handled on an as-needed basis: New user codes and security records; new county codes, formats, and county dependent tables; changes in county procedures which prevent existing county dependent tables from being used.
>
> 3. Written documentation on the changes made, including installation instructions.
>
> 4. [Brand Name] Software support. System software upgrades will be tested and distributed as they are received by [Provider T].

The second category of services is Customer Support, which includes:

> 1. Telephone consultation for the purpose of problem solving; assistance in communicating with hardware vendors . . . ; assistance in resolving problems resulting from equipment failure, operator error, or data errors.
>
> 2. Opportunity to purchase additional [brand name] hardware from [Provider T] at a discount of five (5) percent from the published list price.
>
> 3. One annual . . . on-site visit by a [Provider T] Customer Support Representative. . . . The purpose of the

> visit can include but is not limited to: Additional operator or user training; hardware relocation; major . . . software upgrades.

Pursuant to this agreement, taxpayer has received information to fix "crashes" and to correct bugs, errors, names, and access codes.

The fourth agreement appears to relate to a specific brand name software program. It is entitled "[Brand Name] Software Maintenance Agreement." The agreement appears to be a standard form agreement, with the brand name included as part of the form. The agreement between taxpayer and Provider V states:

> [Provider V] and the LICENSEE who is currently licensed to use the [Brand Name] software (the PRODUCT) agree on the following:
>
> 1. Provider shall:
>
> Supply LICENSEE with updates to the PRODUCT and documentation
>
> Provide Technical Support by mail, phone, fax or dial-in
>
> Maintain compatibility of the PRODUCT with the . . . operating system

In its petition, taxpayer conceded that the software that is subject to the four support agreements is canned software. However, at the hearing, taxpayer asserted that the software is custom. Taxpayer further urges that we should not look to the type of program that is subject to the support agreements. Instead, we should look to the "true object" of the agreements. If the true object is to acquire professional services, we should not tax it, even if some tangible personal property is provided.

Nonetheless, taxpayer provided the following information in support of its argument that the software is custom.

Provider A provides software exclusively to the escrow and title industry. According to taxpayer, Provider A states:

> [B]ecause each of its customers operate [sic] their [sic] businesses differently, the customers have different software requirements. Also, each [Provider A] installation requires an in-depth study of how the customer does business, and this study determines the customization required to meet the customer's needs.

Provider A received input from taxpayer in compiling taxpayer's program. Taxpayer further states:

> When [Provider A] sold the Escrow Management System to [taxpayer] . . . data base screens had to be designed, calculations defined and documents created based on specifications provided to [Provider A] by [taxpayer]. These specifications differ from one customer to another and for each location, so that no two customers have completely interchangeable programs.

Taxpayer is prohibited from sharing its program with others, and the only copies of this program are the copy taxpayer uses and taxpayer's back-up copy.

Taxpayer concedes that Provider A uses a "core program" to begin the design of a customer program. However, taxpayer notes:

> [M]any of the specific fields, documents and reports are altered for each new customer [sic] [Provider A] installs. This is because every company does business in its own unique fashion. [Provider A] states that it prides itself on the ability to identify those unique qualities and customize its products accordingly.

Taxpayer concedes that the program serviced by Provider T that is referred to by brand name in the agreement is a canned program. However, there are apparently other Provider T programs that taxpayer contends are custom. Taxpayer urges that one program is "essentially a 'custom' software package developed for [three counties] exclusively" because the software was designed to match the recording practices of those counties. While taxpayer argues that this software could not be used for any other counties in any other state, taxpayer does not argue that the software could not be used by any other customer. Taxpayer's license agreement with Provider T prohibits taxpayer from copying the program for others. Taxpayer contends it was "actively involved in providing the specific county posting and searching requirements" for this program.

Taxpayer further contends that one of the programs was "developed for the exclusive use and enjoyment" of taxpayer. However, the support agreement refers to a "user group" for this program and an annual meeting for persons using this program.

Taxpayer notes that no canned programs were used in creating the Provider T programs.

Taxpayer provided no specific information regarding the custom nature of the Provider S or Provider V software.

Finally, taxpayer argues that the Department is estopped from asserting use/deferred sales tax. In support of its argument, taxpayer provided a letter it received from Provider A, which states:

> [Provider A] does not charge sales tax on support invoices as this is a service to our clients that is performed from our office.
>
> If we visited your office and performed the support services there, then we would charge sales tax.
>
> We have confirmed this several times with the Washington State Revenue Department.

Taxpayer also provided a letter that Provider A received from Taxpayer Information and Education. This letter states that income from servicing canned software is subject to retailing B&O tax, and sales tax must be collected. The letter also provides that income from servicing custom software and consultations is subject to the service classification, and sales tax need not be collected. In providing a copy of this letter to taxpayer, Provider A stated:

> As we employ programmers on our staff and customize the software to the client's needs, we do not need to charge retail sales tax on this item.

Taxpayer also provided a letter it received from Provider S. This letter states that no sales tax is due on system support, but sales tax is due on equipment maintenance. Provider S provided taxpayer with the name of the person in Taxpayer Information and Education consulted in reaching these conclusions but did not provide anything in writing from the Department.

Taxpayer contends Provider T also provided a memorandum regarding the taxation of its agreements. However, taxpayer did not provide a copy of this memorandum.

ISSUES:

1. Whether the software that is subject to the agreements is canned or custom software.

2. Whether taxpayer's agreements with its software support providers involve warranty, maintenance, or personal services, and whether the charges for each type of service are adequately segregated.

3. Whether the Department is estopped from assessing use/deferred sales tax against taxpayer based on the letters the software support providers received.

DISCUSSION:

The assessment of use/deferred sales tax on taxpayer's purchase of software support services will be sustained if these services are classified as retail sales of property or services. RCW 82.08.020; 82.12.020.

If the services are either warranty or professional services, they are not subject to sales or use tax. If, on the other hand, the services are maintenance services, they are subject to sales or use tax. To be considered warranty or maintenance services, the services must relate to tangible personal property. Thus, we will first address whether the software that is subject to the agreements is canned (tangible personal property) or custom software (intangible personal property).

[1] WAC 458-20-155 (Rule 155) provides:

> The term "custom program" means software which is developed and produced by a provider exclusively for a specific user, and which is of an original, one-of-a-kind nature.
>
> The term "standard, prewritten program," sometimes referred to as "canned" or "off-the-shelf" software, means software which is not originally developed and produced for the user.

Rule 155 further provides that a custom program is one "written to meet a particular customer's specific needs," while a program will be considered canned "irrespective of any incidental modifications to the program medium or its environment (e.g., adaptation to computer room configuration) to meet a particular customer's needs."

The sale of custom software is the sale of a professional service, which is not subject to sales or use tax. In contrast, the sale of canned software is the sale of tangible personal property, which is subject to sales or use tax. Rule 155.

Taxpayer urges that we should not look to the type of software that is subject to the support agreements. Instead, we should look to the "true object" of the agreements. If the true object of the agreements is to acquire professional services, we should not tax them, even if some tangible personal property is provided. Neither the courts in Washington nor the Department have adopted such a test as it relates to computer software, and we decline to do so here.

. . . According to taxpayer, Provider A studies each of its customers and provides software suited to its needs. Taxpayer notes that it provided input to Provider A to assist Provider A in designing taxpayer's software and that Provider A had to "alter" specific fields, documents, and reports for taxpayer's use. However, taxpayer conceded that Provider A used a "core program" to begin the design of taxpayer's software. In addition, taxpayer is prohibited from sharing this program with others.

In Det. No. 92-15, 12 WTD 57 (1992), we explained that where standard, prewritten software is combined with other standard, prewritten software and some original programming, it does not become custom software just because it may be unique or one-of-a-kind. Similar to taxpayer's argument here, the taxpayer in that determination argued that each software program was unique since it was custom tailored to each machine that used the software. We disagreed. We reasoned:

> Rule 155 requires that in order for a program to be considered a "custom program" it must be both "developed and produced by a provider exclusively for a specific user, . . ." and also "be an original, one-of-a-kind nature." In this case, the bulk of the generic program has not been developed and produced by the provider exclusively for the taxpayer. . . . Rule 155 clearly states that sales of standard, prewritten software are fully subject to the retail sales/use tax, notwithstanding some incidental modifications. Therefore, we conclude that even though a particular program may be unique to a particular machine, these modifications do not convert what was otherwise several standard, prewritten software programs into one unique custom program. To the extent that some original programming, instructions, translations, or parameters needed to be written for an individual machine, these acts constitute "incidental modifications to the program medium or its environment . . . to meet a particular customer's needs" within the meaning of Rule 155.

In Det. No. 87-359, 4 WTD 327 (1987), we stated that canned software does not become custom software, even if it is adapted at considerable expense to meet a customer's specific needs. Rather, we explained custom software as "developed from scratch" or "uniquely designed and custom tailored to meet the customer's specific requirements."

Taxpayer conceded that the program it acquired from Provider A was created using a "core program." Further, taxpayer presented no evidence that would support our finding that the modifications

were anything more than "incidental modifications." Thus, we find that the software taxpayer acquired from Provider A is canned software.

Similarly, taxpayer has failed to prove that the software it acquired from Provider T is custom software. While taxpayer argued that one of the software programs was developed for [three counties] exclusively, taxpayer presented no evidence to support our finding that it was created for taxpayer exclusively. Further, while taxpayer contends that one of the programs was "developed for the exclusive use and enjoyment" of taxpayer, we found that the support agreement refers to a "user group" for this program and an annual meeting for persons using this program. These facts contradict taxpayer's claim that the program was designed exclusively for its use. Therefore, we find that the software taxpayer acquired from Provider T is canned software.

Finally, because taxpayer presented no evidence relating to the custom nature of the software provided by Provider S and Provider V, we conclude that this software is canned.

[2] Because we have concluded that all of the software that is subject to the support agreements is canned software, we must next determine whether the agreements are for warranty, maintenance, or professional services. Effective June 2, 1990, WAC 458-20-257 (Rule 257)[1] provides:

> (a) Warranties . . . are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.
>
> . . .
>
> (c) Maintenance agreements . . . sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

Similarly, Rule 155 provides:

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[1]Prior to June 2, 1990, WAC 458-20-107 (Rule 107) governed warranties and maintenance agreements. To the extent relevant here, the provisions of Rule 107 are essentially the same as those contained in Rule 257.

> The retail sales tax also applies to all charges to users for the repair, maintenance, alteration, or modification of hardware, equipment, and/or standard, prewritten software or materials.

Rule 257 further provides that nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold are not subject to sales or use tax. In contrast, maintenance agreements are subject to sales or use tax under all circumstances. If an agreement contains both warranty and maintenance provisions, the agreement is subject to sales or use tax.

In Det. No. 88-257, 6 WTD 137 (1988), we explained that if an agreement does not require that preventive maintenance be performed, the agreement is a warranty. In contrast, if services are required that are not contingent upon breakdown, the agreement is a maintenance agreement. Det. No. 87-375, 4 WTD 393 (1987).

For an agreement to constitute a maintenance agreement, taxpayer argues that Rules 107 and 257 require "specific performance" of activities that involve actual physical "touching" of the software by the service providers. However, Rule 155 and 4 WTD 327 provide
that maintenance of canned software is subject to sales tax. Whether the services involve "touching" is not controlling.

In 4 WTD 327, the taxpayer received maintenance services at no additional charge at the time it purchased the software. Taxpayer seeks to distinguish that determination because taxpayer entered the software support agreements after it purchased the underlying software. Thus, taxpayer argues, its agreements do not involve additions or improvements to software purchased at the time of acquisition of the software. However, modifications to canned software are subject to sales or use tax, even where the modifications are performed by a third party after the initial acquisition of the software. Det. No. 89-43, 7 WTD 130-1 (1989), affirmed 89-43A, 8 WTD 5 (1989).

In contrast, personal or professional services are not considered retail sales and, therefore, are not subject to sales or use tax. See RCW 82.04.040, .050; WAC 458-20-138 (Rule 138); WAC 458-20-224 (Rule 224). Thus, payments to a vendor of canned software for training are not subject to sales or use tax when separately negotiated and severable from the purchase of the canned program. Det. No. 89-43, 7 WTD 130-1 (1989), affirmed, Det. No. 89-43A, 8 WTD 5 (1989). Taxpayer argues that its support agreements, like training, involve professional services. Taxpayer emphasizes

that the primary service offered to taxpayer is telephone consultation.
However, in order for professional services to be excluded from sales tax, the charges for those services must be stated separately from the charges for maintenance. In 8 WTD 5, which related to modifications to a canned program as well as the writing of a new, custom program, we stated:

> It is important to note here that the work at issue was not performed pursuant to a single contract for a single, lump sum billing. Rather, the work constituted a combination of activities classifiable as either retailing or service activities. Taxpayer now claims to have documented the various activities. Accordingly, subject to confirmation of the claimed segregation of activities and charges, the taxpayer is entitled to the appropriate tax classification for each. See RCW 82.04.440.

The Department does not generally allow a single contract to be segregated unless there is a reasonable basis on which to do so. As we stated in Det. No. 89-433A, 11 WTD 313 (1992):

> We do believe that bifurcation of a contract for taxation will be the unusual case. In most cases income from a performance contract will be taxed according to the primary nature of the activity. For example, income from processing for hire is taxed at the processing for hire rate even though some storage or other services are also involved.

In that case, segregation was allowed because the taxpayer's contract, which was negotiated before the work was performed, provided a reasonable basis for determining the value of the various activities performed. See also, Det. No. 90-35A, 9 WTD 289 (1990)("the Department does not favor bifurcation"); Det. No. 91-163, 11 WTD 203 (1991)("We must determine the predominant nature of the contract to determine the business and occupation tax classification of the receipts received under its terms. We must also determine if it is a separate service, severable from the contract."); ETB 44.08.138; ETB 85.08.107.

The burden of segregating taxable income from exempt income rests upon the taxpayer. Tidewater Terminal Co. v. State, 60 Wn.2d 155, 372 P.2d 674 (1962). Taxpayers are required to keep books and records sufficient to determine their tax liabilities. RCW 82.32.070.

Under taxpayer's agreement with Provider A, Provider A provides two separately billed services: "system support" and "user support." Taxpayer states that these services are primarily provided over the telephone. Although these amounts are

separately stated, the services provided under the two classifications are not separately itemized. Instead, the services under both categories can include telephone assistance, maintenance of system software, provision of emergency password, investigation of software errors, correction of errors in system software, maintenance of programming code, provision of information on new systems, and installation of programming requests required by outside organizations. Taxpayer conceded that Provider A helped it work out "bugs" over the telephone. While some of these services may involve warranty or professional services, because the charges for maintenance services are not adequately segregated, we sustain the auditor's assessment of use/deferred sales tax on the entire agreement.

Under taxpayer's agreement with Provider S, Provider S "may, at its option, with no additional charge to [taxpayer], make modifications to improve the operation and/or reliability of the products being serviced under this Agreement." This agreement specifically excludes the provision of training. Taxpayer states that it primarily received assistance in solving operator problems under this agreement. Although this agreement refers to the "Warranty provided hereunder," we find that the services include maintenance services because the agreement calls for the provision of modifications to canned software. Because the charges were not separately stated, we sustain the auditor's assessment of use/deferred sales tax.

Taxpayer's agreement with Provider T . . . divides the responsibilities of Provider T into two categories, and the charges for these two categories are separately stated.

The first category of Provider T services is Software Maintenance. Software Maintenance includes "extended warranty" of installed software; annual software releases to fix "bugs"; new codes, security records, and tables; written documentation on the changes made, including installation instructions; and testing and distribution of system software upgrades. These services include both warranty and maintenance services. Under Rules 107 and 257, mixed agreements are taxed as maintenance agreements, subject to sales or use tax. The auditor's assessment of use/deferred sales tax on this portion of the agreement is therefore sustained.

The second category of Provider T services is Customer Support, which includes: telephone consultation for the purpose of problem solving; assistance in communicating with hardware vendors; assistance in resolving problems resulting from equipment failure, operator error, or data errors; opportunity to purchase additional hardware at a discount; one annual on-site visit by Provider T for training, hardware relocation, or major

software upgrades. This category of services includes both professional services and maintenance. Because the charges were not separately stated, use/deferred sales tax on this portion of the agreement is also sustained.

Taxpayer's agreement with Provider V provides that provider V will supply product updates and documentation, technical support, and maintain compatibility of the product with the operating system. These services include maintenance and, perhaps, professional services. However, because the charges for the services are not segregated, we sustain the auditor's assessment of use/deferred sales tax on the entire agreement.

[3] Finally, taxpayer argues that the Department is estopped from asserting use/deferred sales tax, citing Harbor Air Serv., Inc. v. Board of Tax Appeals, 85 Wn.2d 359, 560 P.2d 1145 (1977). In support of its argument, taxpayer provided a letter it received from Provider A, which states that Provider A does not charge sales tax on services that are performed from Provider A's office. Provider A states that it "confirmed this several times with the Washington State Revenue Department." In support of its statement, Provider A supplied taxpayer with a letter Provider A received from Taxpayer Information and Education, which states that income from servicing canned software is subject to sales tax but that income from consultations and servicing custom software is not.

Taxpayer also provided a letter it received from Provider S, which states that no sales tax is due on system support, but sales tax is due on equipment maintenance. Provider S provided taxpayer with the name of the person in Taxpayer Information and Education consulted in reaching these conclusions but did not provide anything in writing from the Department.

Taxpayer contends Provider T also provided a memorandum regarding the taxation of the agreements. However, taxpayer did not provide us a copy of this memorandum.

In Det. No. 92-15, 12 WTD 57 (1992), we stated:

> As the Washington State Supreme Court stated in Kitsap-Mason Dairymen's Association v. Tax Commission, 77 Wn.2d 812, 818 (1970), "The doctrine of estoppel will not be lightly invoked against the state to deprive it of the power to collect taxes." It has further held that estoppel will only prevent the state from collecting public revenues when all of the elements are present and applying the doctrine is necessary to prevent a manifest injustice. Harbor Air v. Board of Tax Appeals, 88 Wn.2d 359 (1977). In the taxpayer's case, even assuming that all of the elements are

> present, we do not believe that the application of the estoppel doctrine is required to prevent a manifest injustice. This is not a case where a taxpayer has relied on [prior written instructions] and failed to collect retail sales tax from its customers. Nor is this a case where a taxpayer has relocated a repair facility in reliance on a prior ruling. On the contrary, the tax involved here is use tax, upon which the primary liability falls squarely upon the taxpayer as a consumer. . . . We do not believe that requiring this taxpayer to pay its fair share of taxes constitutes a manifest injustice.

(Footnote omitted.)

This reasoning applies equally here. Further, we note that to create an estoppel, three elements must be present: (1) an admission, statement, or act inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act. Harbor Air Serv., Inc. v. Board of Tax Appeals, 88 Wn.2d at 366-67. The support providers appear to have received very general information from the Department. None of the communications indicates that any specific facts were given. In each instance, the Department's advice was correct; the Department simply was not addressing the fact situation presently before us. Taxpayer's petition on this issue is denied.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 27th day of May 1993.