

Cite as 2 WTD 39

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
for Tax Liability Ruling of)	
)	No. 86-302
)	
. . .)	Registration No. . . .
)	
)	

RULE 169 AND RULE 178: SALES TAX -- USE TAX -- COMMUNITY ACTION AGENCY -- MATERIALS USED IN WEATHERIZATION FOR LOW INCOME PERSONS.

The purchase of materials by a community action agency is exempt of sales and use tax where the agency installs the materials into the homes of low income persons.

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: . . .

NATURE OF ACTION

The taxpayer petitions for a ruling that it is not liable for sales or use tax on materials it purchases for use in weatherizing the homes of low income people.

FACTS AND ISSUES

Potegal, A.L.J. -- The taxpayer is a community action agency which performs weatherization services for low income persons. No charge is made for the weatherization work. Because there is no charge the taxpayer contends that there is no sale or other transaction which would render the materials used in the weatherization projects subject to either sales or use tax.

DISCUSSION

The relationship between the taxpayer and the persons to whom it provides weatherization services does not in itself lead to tax liability. The taxpayer sells neither services nor materials to these persons. That is a separate issue, however, from the taxpayer's liability for sales or use tax on its own acquisition and use of the materials used in the weatherization projects.

RCW 82.08.020 imposes the retail sales tax on each retail sale in this state. RCW 82.04.050(1) defines a retail sale to be:

. . . every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who . . . (b) installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property without intervening use by such person . . . (Emphasis ours.)

If the materials purchased by the taxpayer become ingredients or components of real or personal property, of or for consumers, being improved by the taxpayer, the materials are not purchased at retail and their purchase is not subject to sales tax.

RCW 82.04.190 defines "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 and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose . . . (b) of incorporating such property as an ingredient or component of real or personal property when installing, or repairing, cleaning, altering imprinting, improving, constructing, or

decorating such real or personal property of or for consumers

. . .

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business . . . (Emphasis ours.)

With respect to weatherization projects, the taxpayer is not a consumer because of subsection (1)(b) while the persons living in homes being weatherized are consumers because of subsection (4). The materials in question include such items as weatherstripping, insulation, and storm windows which become components of the homes being weatherized.

Under the facts presented, the taxpayer is not purchasing the materials at retail and is not subject to sales tax.

RCW 82.12.020 imposes the use tax in these terms:

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, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280, subsections (2) or (7). . . .

The taxpayer is not a consumer of the materials purchased, did not purchase the materials at retail, and did not acquire the materials by any of the methods otherwise mentioned in the law. The taxpayer, therefore, is not liable for use tax.

DECISION

The taxpayer's petition is granted. The taxpayer is not liable for sales tax on the purchase of materials used in weatherizing the homes of low income persons. It is not liable for use tax on its use of those materials.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the

time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently changes and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 21st day of November 1986.