

Cite as 4 WTD 179 (1987)

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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

- [1] **RCW 82.04.431, RCW 82.04.4297 AND RCW 82.04.050:** HEALTH AND SOCIAL SERVICE ORGANIZATIONS -- HEALTH AND SOCIAL SERVICES -- WEATHERIZATION ASSISTANCE -- RETAIL SALES -- GRANTS. Qualified health and social service organizations which perform health and social services by providing weatherization assistance or minor home repair for low income homeowners or renters are not making "retail sales," notwithstanding that the work entails constructing, repairing, decorating, or improving homes. Grants received from the Federal or State government to provide such services are not subject to retail sales tax in any part.

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: . . .
. . .

HEARING CONDUCTED BY DIRECTOR'S DESIGNEES:
Sandi Swarthout, Assistant Director
Garry G. Fujita, Assistant Director
Edward L. Faker, Sr. Administrative Law Judge

DATE AND PLACE OF HEARING: April 8, 1987; Olympia, Washington

NATURE OF ACTION:

The taxpayer has sought review of a written opinion ruling dated November 21, 1986, from Administrative Law Judge, That ruling holds that amounts provided to the taxpayers and other, local community action agencies by the State Department of Community Development for purposes of providing weatherization assistance to low income persons through residence weatherization construction and improvements constitutes the payment for retail sales taxable construction work. Thus, amounts paid and expended for labor and materials on such residential weatherization work was held to be subject to collection and payment of retail sales tax by the taxpayers. That letter ruling rescinded a previous, contrary, informal letter ruling of February 6, 1986. Thus, the later ruling had only prospective application. It has been held in abeyance, pending the Department's review.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- The taxpayer is a nonprofit community service agency which, in pertinent respects, administers funding at the local level for the weatherization of low income persons' residences. The funding is provided by the Federal government (U.S. Department of Health and Human Services) in consort with the State Department of Community Development.

The taxpayer administers the allocated funds in the most efficient and economical manner, which variously entails the procurement of third party construction and improvement contracts, or the acquisition of materials and application of installation labor by the taxpayer's own employed labor force.

The funding of these activities at the local level is done pursuant to a grant for general, residential weatherization work pursuant to the Washington State Plan for the Low-Income Home Energy Assistance Program (LIHEAP).

There is a single issue for our consideration. Do amounts provided by the state to the taxpayer for the acquisition of materials and labor for residential weatherization construction and installation work constitute charges for "retail sales" under RCW 82.04.050, as stated in the letter ruling of November 21, 1986?

TAXPAYER'S EXCEPTIONS:

The taxpayer requests a ruling by the Department that the amounts it receives from the Department of Community Development are not subject to retail sales tax on several cumulative or alternative grounds:

1) As a matter of recognizable public policy the business and occupation tax deduction of RCW 82.04.4297 (compensation by the government for health and social welfare services, expressly including weatherization assistance under RCW 82.04.431) should be extended for retail sales tax purposes as well.

Though there is no case law or express statutory provision on point, the taxpayer asserts that equity and sound public policy dictate that amounts provided by the Federal government through programs implemented by the state for the general health and welfare of its citizens should not be burdened by state sales tax. Realistically, and sensibly, the government funds provided are intended, as a matter of public policy, to assist low-income homeowners, through the greatest possible use for actual weatherization projects, rather than diverting them to tax revenues. Clearly, any amounts expended to pay sales tax reduces the direct funding available for actual weatherization work.

2) The taxpayer and similar local development councils are nonprofit, quasi-governmental agents of the government which exist for purposes of implementing the stated public policy of the government as set forth in the Federal/State plan to administer the funds. That plan (. . .) contains no provision for the payment of state taxes.

The taxpayer further argues this point by asserting, without specific support citations, that the Supremacy Clause of the U.S. Constitution prohibits the levy of state taxes upon Federally funded programs.

3) Actually, the taxpayer is reselling the weatherization materials and labor to the low-income homeowners at no cost. Thus, it merely acts as a conduit in procuring or providing the weatherization work. The payment for such work, received from the State Department of Community Development, does not, itself, constitute a "retail sale" under the definition of that term at RCW 82.04.050.

4) The taxpayer has not contracted to provide or perform any weatherization construction or installation work on any specific residence or on any unit by unit basis. Thus, no "retail sale" concept can arise.

The taxpayer again explains that it merely receives a lump sum grant with which to serve all qualifying low-income homeowners within its service area. It uses the allotted funds in the most economical manner to reduce total program costs and assure the greatest possible fund application to weatherization itself.

On April 23, 1987 the taxpayer submitted post-hearing testimony by letter, which included the following pertinent statements:

The State of Washington receives funds from the federal government (Department of Health and Human Services-(HHS) under the Low Income Home Energy Assistance Program (LIHEAP), 42 USCA 8621 et seq. This is a federal block grant program, under which the State develops a State Plan (. . .) for delivery of weatherization services to low-income homeowners and renters. The Plan is effective when adopted by the State and approved by the federal agency. Under it, contracts are made primarily with community action agencies and grant allocations are made based on a formula including local climates (average heating degree days), fuel and cost, population-in-need and a minimum funding level. The allocation to . . . [the taxpayer] and other non-profits which contract with the state is not based upon weatherizing particular pre-identified units or clients, but rather a general grant is provided so that . . . can provide weatherization services to eligible clients. In so doing, . . . and similar agencies operate within limits on percentages and amounts of grants which can be expended on categories such as materials, labor, and administration, but otherwise exercise their best judgments on how to accomplish service delivery.

. . . enters into annual contracts and amended contracts with the State (the Department of Community Development, Division of Community Services--DCD/DCS), with the amounts set by the formulae set out in the State Plan (as amended from time to time). . . is a copy of a LIHEAP contract which is typical, reflecting formula allocation of funds to . . . for weatherization.

. . . publicizes the program, accepts applications, determines eligibility, and provides weatherization as its resources and other circumstances permit. In a typical year, . . . weatherizes about 100 homes. The homeowner or renter is charged nothing for the weatherization.

. . . maintains that its weatherization work, whether one looks at the relationship with the State (DCD/DCS) or the low-income client, is not properly characterized as a retail sale or indeed as a sale at all, and so is not subject to taxation. If its services in providing weatherization are covered by the excise tax provisions, they should be characterized not as retail sales but as

services provided under Chapter 82.04, which chapter expressly exempts weatherization services provided by community action entities.

. . . 's relation with the State is not a contract to provide definite units of product to identified individuals, but rather to provide a type of service within a defined area to eligible clients as . . . shall decide within parameters. Its activities properly fall under RCW 82.04.290: provision of a type of service which does not constitute a "sale at retail" or a "sale at wholesale." So characterized, it comes under the exemption for community action weatherization.

On July 14, 1987 the Assistant Director for Community Services, Department of Community Development, submitted a letter in support of the taxpayer's position, and seeking a favorable ruling on the taxpayer's behalf. A copy of that letter is attached to this Final Determination as Exhibit No. 1.

DISCUSSION:

Our thorough review of the issue and arguments overcomes the need to specifically respond to all of the alternative grounds for relief relied upon by the taxpayer. We find, as an overriding conclusion of law, that weatherization assistance or minor home repair for low-income homeowners and renters, performed or provided by social and health service organizations do not constitute "retail sales" as a matter of statutory law. Because of this finding, which is dispositive of the issue before us, we do not reach the taxpayer's arguments predicated upon public policy considerations or constitutional grounds.

Our conclusion responds affirmatively to the third and fourth arguments raised by the taxpayer and listed earlier herein. We find no conflict between the clear and unambiguous provisions of RCW 82.04.050 which defines "retail sale," and RCW 82.04.431 which enumerates "health and social welfare services." Weatherization services provided in the manner and by the persons explained in this case constitute statutory "services," not "retail sales."

Weatherization services provided or performed by a "health and social welfare organization" constitute "health or social welfare services" under RCW 82.04.431. The State legislature has expressly and especially provided that the range of activities enumerated at RCW 82.04.431(2), subsections (a) through (l) are governmental health services. This is true, even though some of these services (e.g., weatherization) may entail activities which, isolated from their health and welfare purpose, may also qualify as "retail

sales." Thus, though the weatherization of low-income family residences certainly involves the ". . . constructing, repairing, decorating, or improving of new or existing buildings . . .", which constitute a "retail sale" under RCW 82.04.050, nonetheless, when such activities are performed for purposes of weatherization assistance for low-income residents and are performed or provided by a "health and welfare service organization," they are not properly classified as "retail sales."

There is no question that the taxpayer is a "health and welfare service organization." RCW 82.04.431 expressly includes "any community action council" as such an organization. The taxpayer qualifies as such an organization by its very nature and purpose. Moreover, its activities clearly qualify as health and social services under the statute. RCW 82.04.4297 provides a plenary business and occupation tax deduction for all amounts received from the Federal or State governments in support of such organizations' service activities.

The Department of Revenue has no authority to extend the special provisions of RCW 82.04.4297 and RCW 82.04.431 to persons, such as third party construction or improvement contractors, who perform weatherization construction and installation contracts (commercial weatherstripping, storm door and window installation, etc.). Thus, when the taxpayer and similar health and welfare service organizations contract to have the work performed by others, such work constitutes "retail sales" under RCW 82.04.050. In such instances the retail sales tax is properly due and payable. We recognize that this conclusion does not address any question raised on appeal by the taxpayer. It is provided to assure a thorough understanding of the limited scope of this ruling.

DECISION AND DISPOSITION:

The taxpayer's petition is sustained. The Department's letter ruling of November 21, 1986 is hereby rescinded.

DATED this 7th day of October 1987.