

Cite as 4 WTD 175 (1987)

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 Ruling of Tax Liability of)	
)	No. 87-325
)	
. . .)	Registration No. . . .
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)	

[1] **RULE 172, RCW 82.04.050(2)(b):** RETAIL SALES TAX --
MOVING OF EARTH -- DISKING -- HARROWING. Activity of
spreading sludge and mixing it into soil with a disk
harrow does not constitute "moving of earth," for purpose
of statute defining "retail sale."

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: May 7, 1987

NATURE OF ACTION:

The taxpayer requests a ruling that the activity of spreading
sludge and mixing it into the soil with a disk harrow does not
constitute "moving of earth," and, therefore, is not taxable as a
sale at retail.

FACTS:

Rosenbloom, A.L.J. -- The taxpayer, a municipal corporation, and a
contractor entered into a contract whereby the taxpayer agreed to
deliver sludge from its waste water treatment plants to the
contractor, and the contractor agreed to develop and implement
plans to use the sludge. The sludge is the by-product of
taxpayer's waste water (sewage) plant, and consists of 75 percent
water. Sludge is not earth.

Under one such plan, the contractor hauls the sludge to a point near a county landfill and injects the sludge into the soil.¹ The landfill operator then removes this mixture and applies it to the landfill as a soil amendment and top dressing.

Injection of the sludge into the soil is accomplished by spreading the sludge over an area of soil and then mixing the sludge into the soil with a disk harrow. This incorporates the sludge into the top 6-7 inches of the soil. The final mixture is approximately 50 percent sludge and 50 percent soil.

At this point, both the taxpayer's and the contractor's involvement is complete. The operator of the landfill then loads the sludge/soil mixture into trucks and hauls it to the landfill, where it is applied to the top of the landfill.

TAXPAYER'S POSITION:

The taxpayer contends that the contractor's activity of spreading sludge and mixing it into the soil with a disk harrow does not constitute "the moving of earth" within the meaning of RCW 82.04.050, which defines "sale at retail" or "retail sale."

DISCUSSION:

RCW 82.04.050(2)(b) defines the term "sale at retail" or "retail sale" to include "the sale of services or charges made for the clearing of land or the moving of earth excepting the mere leveling of land used in commercial farming or agriculture."

The question is whether the contractor's activities constitute "moving of earth." For the reasons which follow, we find that they do not.

When the words of a statute are not defined, they must be accorded their usual and ordinary meaning. Pacific First Federal Savings & Loan Association v. State of Washington, 92 Wn.2d 402, 409 (1979). The principal definition of "move," when used as a transitive verb, is "to change the place or position of." The American Heritage Dictionary, Second College Edition. Thus, while "move" may also refer to setting an object, astir or in motion, the term more typically means removing the object from one location and depositing it in another.

When the contractor runs the disk harrow over the sludge/soil mixture, earth "moves" for a brief moment, in the sense that it is set astir or in motion, and then immediately comes to rest.

¹The hauling is done under a separate contract, which is not at issue here. This ruling request pertains only to the injection of sludge into the soil.

However, the contractor does not move the earth in the sense of changing its place or position. The contractor does not remove the earth from one location and deposit it in another.

The contractor's activities are closely akin to activities of cultivation discussed in ETB 367.04.172, which provides in part:

(F)or hire activities of cultivation conducted on commercial farms which involve the mere disturbance of earth are not considered to be "moving of earth" within the intent of the statute. These activities include plowing, rototilling, discing, and harrowing. Income received from these activities is also subject to the business and occupation tax under the Service and Other Activities classification.

Though the above-quoted portion of the bulletin refers specifically to cultivation conducted on commercial farms, its rationale is not so limited.

The bulletin explains that clearing of land is taxable as retail sale irrespective of whether it is done for agricultural purposes. Moving of earth is taxed likewise when it involves more than the mere leveling of land. If moving of earth is limited to the mere leveling of land, however, the tax treatment depends upon whether it is done for agricultural purposes. Mere leveling land is taxed as a retail sale when it is done for other than agricultural purposes. However, the same activity performed for agricultural purposes is specifically excluded from the definition of retail sale.

The important thing to note is that "moving of earth" is a general classification of activities which includes the more specific activity "mere leveling of earth." The bulletin declares that disking and harrowing involve the mere disturbance of the earth and therefore do not constitute "moving of earth." Consequently, they do not fall within the included activity "mere leveling of land." It is therefore irrelevant whether these activities are performed for agricultural purposes.

We conclude that activities that involve the mere disturbance of earth, such as disking and harrowing, do not constitute "moving of earth," irrespective of whether the activities are performed for agricultural purposes. These activities are therefore not subject to retail sales tax and Retailing business and occupation tax. They are subject instead to the Service and Other Activities classification.

RULING:

The activity of spreading sludge and mixing it into the soil with a disk harrow does not constitute "moving of earth," and, therefore, is not taxable as a sale at retail.

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 7th day of October 1987.