

Cite as 4 WTD 379 (1987)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
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>
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For Refund of)	
)	No. 87-373
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. . .)	Registration No. . . .
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[1, 3] **RCW 82.12.0277 and RULE 18801:** USE TAX -- EXEMPTION -- PROSTHETIC DEVICES. The prosthetic device exemption to the use tax applies only to the device and those materials which become a part of the device, not tools or patterns used to make the device.

[2] ADMINISTRATIVE LAW -- ADMINISTRATIVE RULES -- CONSTRUCTION -- MEANING OF WORDS. Words not defined in an administrative rule will be given their common, ordinary meaning. Dictionaries may be used to determine the meanings of words. Gaylord v. Tacoma School Dist. No. 10, 88 Wn.2d 286 (1977); Garrison v. State Nursing Board 87 Wn.2d 195 (1976).

[4] **RULE 100:** APPEAL PROCEDURES -- TIME LIMITS. Once the time limit for appeal of a Determination has passed, with no further appeal filed, the Determination becomes final and cannot later be challenged.

NATURE OF ACTION:

Taxpayer appeals from the Department's conclusion that the "casts" used to manufacture artificial limbs are subject to use tax for commercial/industrial use.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is engaged in the business of manufacturing artificial limbs. Its records were audited for the period January 1, 1983, to June 30, 1986. It appeals that part of the assessment imposing use tax liability on "commercial use of molds." According to the taxpayer,

We do not use molds, patterns, jigs and dies in fabrication of artificial limbs. In the fabrication of a particular model car, airplane, ship, etc., molds, patterns, jigs and dies are used every time a specific model is fabricated.

We work on human beings whose anatomy varies with each individual, which precludes uniform model mass production, and requires a custom fabrication for each individual customer. Molds, patterns, jigs and dies are useless items that are not utilized in our profession.

We refer to negative and positive casting of each individual's residual limb to formulate a base for the prosthetic fabrication, fitting and alignment that could be confused by unqualified observers as a mold--which it is not. While it is a misnomer of terminology, it is used by the uninformed frequently, if not most of the time.

In our fabrication process for any level of amputation we do not reach for a prefabricated pattern, jig, die or mold, but develop a customized plaster of paris replica of our client's residual limb, which is called a negative cast, from which a positive cast is derived to allow lamination of the socket portion of the prosthesis. The positive cast is then broken out of the laminated socket in pieces and thus destroyed in the process. These plaster pieces, among other waste such as wood shavings, plastic, leather, metal scraps and trimmings, including sanding particles and dust from fabricating, grinding and shaping the prosthesis, are thrown away in the trash.

DISCUSSION:

[1] RCW 82.12.0277 exempts prosthetic devices from the use tax. Rule 18801, promulgated according to the provisions of

RCW 82.32.300, implements the exemption and defines "prosthetic devices" as "artificial substitutes which physically replace missing parts of the human body . . . and materials which become ingredients or components of prostheses. . . ."

Rule 134 imposes a use tax on "persons manufacturing . . . tangible personal property for commercial or industrial use" Thus, tools or other items used to make the prostheses, which do not become a part of the device, are not exempt from taxation.

[2] Taxpayer argues that he should not be taxed for the commercial/industrial use of the "casts" used to make the prostheses, because these "casts" are destroyed in the manufacturing process. He cites the examples given in Rule 134 regarding commercial/industrial use to show that his "casts" are not analogous to the examples given there. In particular, he points to Rule 134(2)(c): "The use by a boat manufacturer of patterns, jigs and dies which it has manufactured." Taxpayer argues that this definition means that "patterns, jigs and dies are prefabricated tools that are used over and over again by a manufacturer to aid in the production of a particular, identical model"

Undefined words in an administrative regulation should be given their ordinary, common definition, as is done in the interpretation of a statute. Gaylord v. Tacoma School Dist. 10, 88 Wn.2d 286, 599 P.2d 1340 (1977). In statutory construction, courts sometimes look to dictionaries to determine the common, ordinary meaning of a word. Garrison v. State Nursing Bd., 87 Wn.2d 195, 550 P.2d 7 (1976). Webster's gives the following definitions for the word "pattern:"

. . . a model or plan used as a guide in making things; set of forms to the shape of which material is cut for assembly into the finished article {a dress pattern} . . . the full-scale model used in making a sand mold for casting metal. . . .

Webster's New World Dictionary, 2d College Ed, 1976.

Webster's, supra.

The definition of "pattern" given in Webster's is most appropriate here. The "casts" made by taxpayer are analogous to "a set of forms to the shape of which material is cut for assembly" Here, taxpayer uses these casts as a

pattern for the prosthesis. The fact that the "casts," once used, are destroyed in the process of manufacturing is irrelevant. At the time they are being used, they have a value to the taxpayer which can be measured and which is subjected to tax.

[3] Taxpayer further argues that by enacting RCW 82.12.0277 the legislature evidenced an intent that prosthetic devices not be taxed. This is true, but what the taxpayer fails to see is that the devices are not to be taxed to the consumer; what is involved here is not a prosthetic device, but something used to make the device. Exemptions to a tax are to be narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-A-Car v. Dept. of Revenue, 81 Wn.2d 171, 174 (1972). The exemption applies here only to the device and those things which become a part of the device; not tools, "casts," or other things which do not become part of the prosthesis.

[4] Taxpayer also attempts to appeal Tax Assessment No. . . . WAC 458-20-100 (Rule 100) contains the procedures to be followed in an appeal before the Department of Revenue. Rule 100(13) provides that the decision of an administrative law judge (in an appeal of an assessment) shall be final unless timely appealed. The time limits for such appeal are either 20 days from the Determination if appealed to the Director or 30 days if the appeal is made to the Board of Tax Appeals. Once the limit expires, the Determination becomes final. Determination No. . . . , regarding Tax Assessment No. . . . , was mailed April 7, 1982. Clearly this appeal is not timely, and the taxpayer cannot again appeal the assessment.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 28th day of December 1987.