

Cite as 5 WTD 223 (1988)

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

In the Matter of the Petition )	<u>S</u> <u>U</u> <u>P</u> <u>P</u> <u>L</u> <u>E</u> <u>M</u> <u>E</u> <u>N</u> <u>T</u> <u>A</u> <u>L</u>
For Refund of )	<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>	
)	
)	No. 88-18A
)	
. . . )	Registration No. . . .
)	Tax Assessment No. . .
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)	

[1] **RULE 193A AND RCW 82.04.2904(2):** B&O TAX --  
RETAILING B&O TAX -- INTERSTATE SALES OF FISHING  
BOATS -- MANUFACTURING B&O TAX -- RETAILING  
INTERSTATE TRANSPORTATION EQUIPMENT (RITE) B&O TAX.  
Where taxpayer made interstate sales of fishing  
boats and reported the sales as subject to Retailing  
B&O tax which should have been reported as subject  
to Manufacturing B&O tax because the taxpayer  
manufactured the boats, the auditor erred in  
subjecting the sales to RITE B&O tax. The auditor  
should have subjected the interstate sales to  
Manufacturing B&O tax, same rate of tax as RITE B&O.

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: December 22, 1987

Krebs, A.L.J. -- On February 8, 1988, the Department of  
Revenue issued Determination No. 88-18 addressing the appeal  
of . . . (taxpayer). The contents of that Determination are  
incorporated in this Supplemental Determination.

Part of Determination 88-18 which dealt with Schedule III of the audit report includes in the Decision and Disposition part that:

The taxpayer's petition is granted. The amounts reported as subject to Retailing B&O tax were incorrectly reclassified to the RITE [Retailing Interstate Transportation Equipment] B&O tax which has a higher tax rate. The taxpayer is entitled to a refund of the tax and interest paid resulting from the reclassification plus statutory refund interest. (Bracketed words supplied.)

It has been brought to our attention that the taxpayer had reported most, if not all, of its sales of fishing boats as interstate sales to buyers in Alaska and had taken the interstate sales tax deductions as provided in WAC 458-20-193A (Rule 193A), . . . .

[1] Rule 193A, in pertinent part, provides:

Person engaged in these activities [manufacturing] in Washington and who transfer or make deliveries of articles produced to points outside the state are subject to business tax under the . . . . manufacturing classification and are not subject to tax under the retailing or wholesaling classification . . . the activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey, the tax is measured by the value of products as determined by the selling price. (Bracketed word and emphasis supplied.)

The taxpayer produces (manufactures) fishing boats which are sold to customers in Alaska. The taxpayer ships the boats to the Alaskan customers by delivering them to a pier where they are loaded on transports for delivery in Alaska. The taxpayer hired the shipping company which operates the transports.

Thus, while the taxpayer is not subject to tax under the Retailing or Wholesaling B&O tax (nor the RITE B&O tax as held in Determination No. 88-18), the taxpayer is subject to the Manufacturing B&O tax on the amounts received from its interstate sales where it was the manufacturer of the fishing boats. Rule 193A.

For the audit period of March 1, 1983 through September 30, 1986, the tax rates for RITE B&O and Manufacturing B&O were the same, that is, .00581 effective March 1, 1983 until June 30, 1983, and a tax rate of .00484 effective July 1, 1983 and thereafter, while the tax rate of Retailing B&O remained at .00471.

Accordingly, in the computation of the amount of refund to which the taxpayer may be entitled because of the incorrect reclassification to RITE B&O tax, the appropriate amounts will be reclassified as subject to Manufacturing B&O tax. This ruling necessitates revision of Determination No. 88-18's Decision and Disposition (see below).

Furthermore, the taxpayer is instructed to report its interstate sales of boats and equipment manufactured by it as subject to Manufacturing B&O tax, not Retailing B&O tax. See Rule 193A.

#### DECISION AND DISPOSITION:

The taxpayer's petition with respect to Schedule III is granted in part. The amounts reported by the taxpayer as subject to Retailing B&O tax which were incorrectly reclassified to the RITE B&O tax will be reclassified to Manufacturing B&O tax or Retailing B&O tax under the guidelines of Rule 193A. This matter is being referred to the Department's Audit Section for computation of the amount of refund, if any, including applicable interest in line with the holding in this Supplemental Determination, and for authorization of the issuance of the appropriate refund to the taxpayer.

DATED this 18th day of March 1988.