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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 Correction of Assessment of)	
)	No. 88-21
)	
. . .)	Registration No. . . .
)	

- [1] **RULE 110:** DELIVERY CHARGES -- RUSH SERVICES -- GROSS PROCEEDS OF SALES -- SELLING PRICE: Charges for "rush services" are "delivery costs" which are to be included as part of the measure of both the B&O tax and the retail sales tax.

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.

NATURE OF ACTION:

The taxpayer protests the reclassification of certain income from the Service classification of the business and occupation (B&O) tax to the Retailing B&O and retail sales tax classifications. The income in question relates to "rush service" charges.

FACTS AND ISSUES:

Mastrodonato, A.L.J. -- The taxpayer engages in the following business activities: wholesale and retail sales of finished 35mm slides; paste up and layout of art work; and duplicating slides for retail customers. The majority of the taxpayer's business is in the duplicating area.

The Department of Revenue examined the taxpayer's business records for the period from January 1, 1985 through December 31, 1986. As a result of this audit, Tax Assessment No. . . . was issued on July 16, 1987, in the amount of \$ The taxpayer made a partial payment of \$. . . on August 17, 1987. The balance of the assessment, plus extension interest, remains unpaid.

The taxpayer reported the income it received from delivery charges and rush order charges under the Service B&O tax classification. The Department's auditor reclassified this income to the Retailing

B&O tax and retail sales tax classifications. The auditor stated in his report that the delivery and rush order charges were a part of the total retail selling price of the products sold. Thus, the auditor believes that the income should be considered a retailing, rather than a service, activity.

The taxpayer disagrees with the auditor's conclusions. While the taxpayer agrees that the retail sales tax should be charged on the service of delivery, the taxpayer does not agree that the retail sales tax should be charged on rush services. It makes the following argument in support of its petition:

Rush service is just that, a service. It creates no change in the product. There is no additional cost to us for the tangible product as a result of the service. The customer is charged for the intangible privilege of getting their product sooner than normal turnaround. The only difference is time. Time is a service not a product.

Furthermore, the taxpayer states that the auditor cited no precedent, example, or court case in support of the Department's position that the charges for rush service should be classified as retailing in nature. Thus, the taxpayer contends that the income from rush charges should be taxed under the Service B&O tax rate, and should not be considered a retailing activity.

DISCUSSION:

The Retailing B&O tax is imposed by RCW 82.04.250 as follows:

Upon every person . . . engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, . . . (Emphasis supplied.)

The term "gross proceeds of sales" is defined by RCW 82.04.070 to mean

. . . the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. (Emphasis supplied.)

Similarly, the retail sales tax is imposed by RCW 82.08.020(1) as follows:

There is levied and there shall be collected a tax on each retail sale in this state equal to [6.5] percent of the selling price. (Emphasis supplied.)

The term "selling price" is defined by RCW 82.08.010(1) in a manner nearly identical to the term "gross proceeds of sales," as follows:

"Selling price" means the consideration, whether money, credits, rights, or other property except trade in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; but shall not include the amount of cash discount actually taken by a buyer; . . . (Emphasis supplied.)

Thus, under the Washington Revenue Act, the statutory definitions of both "gross proceeds of sales" and "selling price," for purposes of calculating the B&O tax and retail sales tax, respectively, include "delivery costs" as part of the measure of the tax. Furthermore, even if an item of cost relating to delivery cannot be neatly categorized as a "delivery cost," it might still be classified as "any other expense whatsoever paid or accrued" under the statutes and properly includable as part of the measure of the B&O tax and sales tax.

Here, the taxpayer concedes that its regular charges for delivering goods to customers are subject to Retailing B&O tax and retail sales tax, as part of the cost of goods sold. However, it does not agree that rush service should be treated in the same manner.

We do not agree with the taxpayer's analysis. The term "delivery costs," as it is used in both RCW 82.04.070 and RCW 82.08.010(1), encompasses all types of delivery methods. Thus, charges for delivery services, however provided, must be included as part of the "gross proceeds of sales" or "selling price," notwithstanding the fact that these delivery services may be provided by the U.S. Post Office, United Parcel Service, or a commercial freight company. Furthermore, special (and extraordinary) delivery methods, such as overnight express, one-day service, or rush service, and for which a special or additional charge is made by the seller, does not alter the character of the charge as a bona fide "delivery cost."

Thus, the charges for rush services are properly part of calculating the "gross proceeds of sales" or "selling price" for

purposes of the Retailing B&O tax and retail sales tax, as the case may be.

DECISION AND DISPOSITION:

The taxpayer's petition is hereby denied.

DATED this 12th day of February 1988.