

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. 88-29
)	
. . . )	Registration No. . . .
)	

**RULE 246 AND RCW 82.04.423:** B&O TAX -- EXEMPTION -- SALES MADE TO OR THROUGH DIRECT SELLER'S REPRESENTATIVE - - CONSUMER PRODUCT -- AUTOMOTIVE PRODUCTS -- PERSONAL USE AND ENJOYMENT. The B&O tax does not apply to an out-of-state person in respect to sales made to or through a direct seller's representative of "consumer products." Where taxpayer sold automotive products (aluminum wheels, sport grips, running boards, seat belts), they are held to be within Rule 246's definition of "consumer products" because they are sold for personal use or enjoyment. A "consumer product" is not limited to those products used in the home or to be worn by the user.

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: . . .

NATURE OF ACTION:

Petition for a ruling that the automotive products (aluminum wheels, sport grips, running boards and seat belts) produced and sold by the taxpayer qualify as "consumer products" for purposes of the exemption from B&O tax granted on sales to or through a direct seller's representative per WAC 458-20-246 (Rule 246).

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is a California corporation based in . . . , California. The taxpayer produces and sells automotive products such as aluminum wheels, sport grips, running boards and seat belts. In the state of Washington, the taxpayer is represented by . . . , located at . . . , Redmond, Washington.

The taxpayer asserts that . . . is a "direct seller's representative" under WAC 458-20-246 (Rule 246) because it sells or solicits the sale of the taxpayer's "consumer products" in other than a permanent retail establishment, is paid on a commission basis pursuant to a written agreement, and is not treated as an employee for federal tax purposes but as an independent contractor.

The taxpayer further asserts (1) it does not own or lease real property within Washington, (2) it does not regularly maintain a stock of tangible personal property in Washington for sale in the ordinary course of business, (3) it is not a corporation incorporated under the laws of Washington, and (4) it makes all sales in Washington through its representative, . . . .

By letter dated November 4, 1987 addressed to the Department's Taxpayer Information and Education Section, the taxpayer stated the above assertions and requested a ruling that it was exempt from the Washington B&O tax on its gross income from such above-described sales. If found exempt, the taxpayer requested information as to how to obtain a refund of taxes paid.

By letter dated December 11, 1987, the Taxpayer Information and Education Section (I & E) responded that the taxpayer was not qualified for the B&O tax exemption effective August 23, 1983 contained in RCW 82.04.423 and Rule 246 because:

. . . [taxpayer's] products are not "consumer products" as defined in WAC 458-20-246. "Consumer products" are defined in this section of the Administrative Code to include:

. . . such things as home furnishings, clothing, personal effects, household goods, food products, and similar items purchased for personal use or consumption. (Emphasis supplied.)

Automotive products are not represented by the types of products listed in the above cited regulation, nor are automotive products similar to any of the products listed. The types of products included as "consumer products" are those products used in the home or to be worn by the user.

The issue is whether the taxpayer's automotive products are "consumer products" within the definition provided by Rule 246.

#### TAXPAYER'S POSITION:

The taxpayer asserts that its automotive products must be considered consumer products because they benefit nobody else but the consumer. The taxpayer believes that there is no distinction

between a slipcover made for a chair in a consumer's living room and a steering wheel cover made for a consumer's car and that they are both for the consumer's own personal use and enjoyment. The taxpayer further believes that the intent of Rule 246 was to merely provide some examples of what is meant by a consumer product, and not to limit that terminology to only those items actually mentioned in Rule 246.

#### DISCUSSION:

Rule 246 in pertinent part provides:

#### DEFINITIONS

For purposes of the exemption explained herein, the following definitions shall apply:

The term "consumer product" means any article of tangible personal property, or component part thereof, of the type sold for personal use or enjoyment. The term includes only those kinds of items of tangible personal property which are customarily sold at stores, shops, and retail outlets open to the public in general. It includes such things as home furnishings, clothing, personal effects, household goods, food products, and similar items purchased for personal use or consumption. The term does not include commercial equipment, manufacturing items, industrial use products, and the like, including component parts thereof. However, if a product is primarily used for personal use or enjoyment, it remains a "consumer product" within this definition notwithstanding that a portion of the product's distribution is for commercial, industrial, or manufacturing purposes. (Emphasis supplied.)

Clearly, the rule's definition of "consumer product" accentuates "personal use or enjoyment" as opposed to business use (commercial equipment, manufacturing items, industrial use). If "consumer products" were limited to "such things as home furnishings, clothing, personal effects, household goods, food products, and similar items," many products purchased for "personal use and enjoyment" would not qualify such as cameras, golf clubs, umbrellas, kites, etc. Accordingly, we disagree with I & E's limited view that "the types of products included as 'consumer products' are those products used in the home or to be worn by the user."

The automobile is a product primarily used for personal use or enjoyment. The taxpayer's products (aluminum wheels, sport grips, running boards and seat belts) are component parts of the automobile. While some automobiles are for business use and a portion of the taxpayer's product distribution may be for business

use, nevertheless the taxpayer's product "remains a 'consumer product'." Rule 246.

RULING:

Automotive products are held to be within Rule 246's definition of "consumer products."

Therefore, the taxpayer having met all the requirements of Rule 246 is exempt from the B&O tax with respect to sales made to or through its direct seller's representative. RCW 82.04.423.

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 change 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.

In its November 4, 1987 letter, the taxpayer requested information as to how to obtain a refund of taxes paid. Apparently, I & E did not respond to this request because it ruled that the taxpayer was not eligible for the exemption in Rule 246.

WAC 458-20-100 (Rule 100), . . . , with respect to refunds provides:

(6) Petition for refund shall be in writing and shall set forth the amount of tax believed to have been overpaid, the date of payment, the periods for which such tax was paid and the reasons why the petitioner believes that a refund should be granted.

RCW 82.32.060, the statute dealing with refunds, in pertinent part provides:

If, upon receipt of an application by a taxpayer for a refund or for an audit of his records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes prescribed by RCW

82.32.050 a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at his option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

. . .

. . . interest at the rate of three percent per annum shall be allowed by the department . . . on the amount of any refund or recovery allowed to a taxpayer for taxes, penalties or interest paid by him . . .

DATED this 12th day of February 1988.