

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

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Assessment)   
of )   
 ) No. 89-237  
 )   
 )   
 . . . ) Registration No. . . .  
 ) . . . /Audit No. . . .  
 )   
 )

[1] **RULE 110 and RULE 156** -- DELIVERY CHARGES -- ESCROW BUSINESS -- 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. See Det. 88-21, 5 WTD 49 (1988).

[2] **RULE 111:** RETAIL SALES TAX -- ADVANCES -- REIMBURSEMENTS -- ESCROW AGENT -- DELIVERY COSTS -- MESSENGER SERVICES. Charges made on a real estate settlement statement for a messenger services are subject to retail sales tax where the escrow agent is . . . liable to pay the messenger service.

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: April 13, 1989

NATURE OF ACTION:

The taxpayer petitions for the correction of assessment of Retail sales tax and retailing B&O tax on messenger service fees.

### FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer is a Washington corporation that closes real estate transactions. At the time of closing, a settlement statement is prepared which is presented to parties in the transaction for their approval. At closing there may be a charge for a messenger service which is separately stated as a cost to be paid from the buyer's or seller's funds. The auditor assessed retail sales tax and retailing B&O tax on that amount.

The amount of the charge is an amount equal to the sum paid to an independent messenger service to deliver documents or checks related to the transaction. The taxpayer indicates that these amounts are advanced to it by the party charged before the service is performed. The messenger service is contacted by the taxpayer who pays the fee without disclosing the name or names of the parties for whom the delivery is made.

Because of the nature of the hearing (telephone conference), no documents other than a sample settlement statement mailed in by the taxpayer were reviewed to verify the taxpayer's claim that all moneys were advanced to the taxpayer by the customers prior to paying the delivery charges in dispute. The amounts in question are charged to the clients on the taxpayer's settlement statements. The taxpayer indicated that no markup was added to the messenger charges.

The issue is whether or not that charge is subject to retail sales tax and retail B&O tax. The taxpayer also protests that the Department of Revenue did not notify it of this obligation until the time of the audit, nine years after it began business.

### DISCUSSION:

[1] 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.)

RCW 82.04.050(3) defines "SALE AT RETAIL" or "RETAIL SALE" to include:

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal business or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others; (b) abstract, title insurance and escrow businesses; (c) credit bureau businesses; (d) automobile parking and storage garage businesses. (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.

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.

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." See Det. 88-21, 5 WTD 49 (1988).

The taxpayer argues that it does not provide the delivery service and does not increase the fee of the messenger service. It contends that it is not in the delivery service business, but the escrow business. WAC 458-20-156 (Rule 156) includes all service charges received by escrow agents in gross receipts subject to the retail sales tax and the retailing business and occupation tax. Rule 156 ( . . . ) defines the term escrow to mean:

any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumber, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is

then to be delivered by such third person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof. (emphasis supplied).

Delivery of various documents or money constitutes a part of the escrow service any charges for such delivery is subject to the tax treatment for service charges prescribed by the rule.

[2] WAC 458-20-110 (Rule 110) states that amounts received by a seller from a purchaser for freight and delivery costs incurred by the seller prior to completion of sale constitute the costs of doing business and must be included in the gross proceeds reported by the seller regardless of whether the costs are billed separately. However, Rule 110 ( . . . ) goes on to state that, "`Reimbursements' received by a seller for the actual amount of freight and delivery costs advanced for a purchaser after completion of a sale are deductible from the selling price or gross proceeds of sales."

WAC 458-20-111 (Rule 111) defines "advance" and "reimbursement" and excludes from the measure of tax money received by a taxpayer as a reimbursement of an advance in accordance with the regular and usual custom of the business. Rule 111 ( . . . ) states:

The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily other than as agent for the customer or client.

The messenger service is contacted by the taxpayer. This can occur before, during or after the closing. The messenger service bills the taxpayer for its fee after the closing. At no time is the messenger service notified that the taxpayer is acting as an agent of another party. Even if another party were primarily liable, since the messenger service is unaware of who that party is, the taxpayer would be . . . liable to pay the messenger service. Since the taxpayer is . . . liable, the payments it receives from its customers do not qualify as "advances" or "reimbursements" and the exclusion does not apply.

The Department is not required to make sure that every business correctly understands its tax obligations before it

can impose taxes, interest or penalties. With over 275,000 registered taxpayers in Washington, the burden and the responsibility must be on the taxpayer to properly determine if it has an obligation to pay or collect taxes.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 27th day of April 1989.