

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 Refund of)
) No. 89-227

)
) Registration No. . . .
) Audit No. . . .

[1] **RULE 136:** B&O TAX -- PRINTING AND PUBLISHING -- IN-
HOUSE PRINTING. Persons acting for business
purposes as their own printers are subject tax under
the manufacturing B&O tax classification upon that
activity. Group Health v. Department of Rev., 106
Wn.2d 391 (1986); Det. No. 88-186, 5 WTD 319 (1988).

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 CONFERENCE: March 23, 1989

NATURE OF ACTION:

Taxpayer petitions for refund of taxes paid on its in-house
printing activities and for clarification of the Department of
Revenue's position on which printed materials are taxable.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is a large corporation which,
partially due to its size and various needs, produces its own
forms, stationery, and other printed office supplies for its
internal use. During a recently-completed audit covering the
years 1983-1986, inclusive, the auditor found that taxpayer
had paid tax on some of its printing activities which were not
taxable, and a refund was issued. Taxpayer now takes the

position that more types of printed materials should have qualified for the exemption from tax granted for internal communications. The auditor and the taxpayer mutually agreed upon use of a "test period" for making a determination of a percentage of nontaxable printing to be applied to the full audit period. Under taxpayer's calculation, the percentage of materials not subject to B&O tax would be increased from 66% to 73.6%.

Taxpayer also states that "[t]he language used [in the auditor's report] indicates the treatment [of materials classification] to be an informal administrative policy of the Washington Department of Revenue. Therefore, the taxpayer requests a formal definition that it may apply to its act of printing internal communications." (Brackets supplied.) Taxpayer states that the auditor's brief comment that "not included within the department's definition of internal communications are forms" fails to provide guidance as to exactly which printed materials are exempt from B&O taxation.

It argues that many of its materials qualify as "internal communications," stating that its materials qualify under the Webster's New Collegiate Dictionary definitions of those words because

the items are available and generally required to be used by employees;

some items communicate what information is required in a particular situation;

most items are physically stored in areas convenient to employees; and

all items are used strictly within the taxpayer's organization. (Emphasis supplied.)

Taxpayer provided numerous examples of the documents created so that, if necessary, a determination of each item's taxability could be made.

DISCUSSION:

[1] WAC 485-20-136 (Rule 136) classifies the activity of printing materials for a taxpayer's own use as "manufacturing." The taxable incident is the production of new, different or useful products. The fact that a taxpayer's printing activity is a small part or that it is not the primary focus of the taxpayer's overall business operations is

not controlling for B&O tax purposes. "The thrust of Rule 136 is qualitative in nature and not quantitative." Group Health v. Department of Rev., 106 Wn.2d, 391, 405-406 (1986). See also Det. No. 88-186, 5 WTD 319 (1988). Consequently, any materials printed by the taxpayer which do not qualify as "internal communications" are subject to B&O taxation.

Taxpayer's complaint about a lack of clarity as to exactly which types of printed materials fit the Department's definition of "internal communications" is well taken, however. Submitted with its petition materials were several Departmental communications which consistently state that internal communications are exempt, but that forms are not. However, they all stop short of explaining just when, or if, something stops being a form and becomes an internal communication.

The Department has consistently stated that the issue presents a close question. Its position has been that an internal communication is created when a blank piece of paper is transformed into a document that has meaning and purpose.

However, the Department has expressly stated that the production of forms or other documents in a taxpayer's print shop for use by employees in the course of their work is not subject to tax.

The Department later attempted to clarify the issue of when an item is an internal communication by finding that the difference is that the taxable materials (forms) appear to be used repeatedly in [that taxpayer's] day-to-day operation and are retained for a longer period of time, while the exempt ones (communications) appear to be a one-time or short-lived type of information.

We find that the problem of which products are taxable has been confused by the various attempts to clearly identify categories of printed items as to their taxability. By focusing on whether an item is put to repeated or multiple uses or is retained for a certain period of time, what could be a simple distinction is buried in the qualifications.

Simply put, the materials are exempt from tax only at the time that the printing process involves putting the "internal communication" on them. Manufacture of the forms themselves is not manufacture of an internal communication, because the internal communication upon which the business acts does not appear on the form until an employee begins to fill in the

blanks. As a result, a blank form is no more an internal communication than is a blank sheet of letterhead stationery; consequently, the production of both of those items is taxable. Once a newsletter or similar qualifying item is printed on the blank stationery, the new sheet created thereby is not subject to B&O taxation, because an internal communication has been created and is exempt. The completion of the blanks on a form does not result in B&O tax liability, and that status is unchanged by this Determination. We note that this tax treatment is consistent with that encountered by professional printing shops performing the same tasks for hire that this taxpayer performs on its premises. When it is engaged in the activity of printing and publishing, it is subject to B&O tax thereon.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 21st day of April 1989.