

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

In the Matter of the Petition)	<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>
For Correction of Assessment)	
of)	No. 88-443
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	
)	

RULE 136: B&O TAX -- MANUFACTURING -- EDUCATIONAL KITS. Putting books, tapes, posters and similar items into a plastic container for shipment to customers is not a manufacturing activity. Determination No. 88-180, 5 WTD 307 (1988).

RULE 136: B&O TAX -- MANUFACTURING -- LAMINATING WITH CLEAR PLASTIC. Laminating paper materials with clear plastic through the use of a machine is a manufacturing activity.

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: August 5, 1987

NATURE OF ACTION:

The taxpayer petitioned for correction of an assessment issued after a routine audit.

FACTS AND ISSUES:

Potegal, A.L.J. -- The taxpayer is a non-profit corporation dedicated to the improvement of health education activities in Washington and other states. It sells packages, or kits, consisting of various educational materials which it has purchased separately, put into a plastic container, and resold as a unit to customers. The materials include such things as books, video cassettes, posters, transparencies, games and puppets. For the most part, the taxpayer does nothing with these materials other than to select which ones go into a particular kit, put them into the plastic container, and ship them to the customer who placed the order. However, the taxpayer, with its own machine, laminates paper items such as posters with a clear, plastic film.

The taxpayer reports retailing business and occupation tax and retail sales tax on all its sales to Washington customers. It neither pays business and occupation tax nor collects and remits sales tax on sales to customers outside of Washington. The sales to out-of-state customers are in interstate commerce and exempt from tax under the terms of WAC 458-20-193A.

The audit staff assessed manufacturing business and occupation tax on the value of the kits sold out of state. Under WAC 458-20-136, persons who manufacture products in this state and sell them in interstate commerce are liable for manufacturing business and occupation tax.

The taxpayer contends that it is not a manufacturer with respect to the kits.

The taxpayer also objects to the assessment of use tax on master videotapes acquired in 1984. The taxpayer asserts that it paid sales tax when it purchased the tapes.

DISCUSSION:

With the exception of one aspect of the taxpayer's operation, we agree that the taxpayer is not liable for manufacturing business and occupation tax with respect to the kits. The basis for this finding is the decision in Determination No. 88-180, 5 WTD 307 (1988),

The exception relates to the laminating of paper items with a clear, plastic film. The term "to manufacture" is defined by RCW 82.04.120 to include:

all activities of a commercial or industrial nature
wherein labor or skill is applied, by hand or

machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles.

The taxpayer uses a machine to cover articles for sale in plastic. The plastic enhances the durability of these articles. The articles are therefore different and more useful after lamination than before. This activity falls squarely within the definition of "to manufacture" and is properly taxable. At the conference, the taxpayer represented that the amount of this activity related to out-of-state sales could be extracted from its records.

With respect to use tax assessed on the videotapes, the taxpayer offered into evidence a purchase order and invoice. These documents do not show that sales tax was paid on \$. . . worth of tapes, but that tax was paid on \$. . . worth of carts. Tax was not assessed on the carts in the audit.

DECISION AND DISPOSITION:

The taxpayer's petition is denied with respect to use tax on tapes and manufacturing business and occupation tax on its laminating activities. The taxpayer's petition is otherwise granted. An amended assessment will be issued in due course.

DATED this 22nd day of November 1988.