

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 Ruling of Tax Liability)
of)
) No. 89-197
)
 . . .) Registration No. . . .
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RULE 171: RCW 82.04.280 -- RCW 82.04.050 -- PUBLIC ROAD CONSTRUCTION -- MASS TRANSIT FACILITY -- BUS MAINTENANCE AREA -- BUS STORAGE AREA. Bus maintenance and storage facilities are considered to be mass transit facilities and construction or modifications to such buildings are considered public road construction, because such buildings are directly related to foot and vehicular traffic.

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:

Taxpayer petitions for a ruling of tax liability on the modification of a sprinkler system in the bus storage and maintenance areas of a public transit system.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer is the mass transit authority for It requested an opinion as to whether the modifications to the fire sprinkler system in the bus maintenance and storage areas would be "public road construction" under Rule 171. It requested a speedy reply, so that it could proceed with the advertisement for bids for the project.

DISCUSSION:

RCW 82.04.280 provides, in relevant part, as follows:

Upon every person engaging within this state in the business of: . . . (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved . . . as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of forty-four one hundredths of one percent.

RCW 82.04.050 defines a sale at retail in relevant part, as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof. . . The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280, subsections (2) and (7) and RCW 82.04.290.

. . .

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a

municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. . . .

WAC 458-20-171 (Rule 171), is the Department of Revenue's duly authorized administrative rule administering the above sections. It provides, in relevant part:

[The term building, repairing, or improving of a publicly owned street, place, road, etc.] . . . also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States. . .

Such contractors are taxable under the public road construction classification upon their total contract price. . .

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts. . .

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. . . .

Buildings that are directly related to foot or vehicular traffic are considered to be "mass transportation facilities" by the Department of Revenue. A building that is used for the storage and maintenance of buses would be considered such a facility. Therefore, the modification to the fire sprinkler system in such areas would be considered public road construction under Rule 171, and entitled to the tax treatment specified therein. Thus, costs incurred in modifying the sprinkler system are not taxable to the [Authority], but the contractors of such work are the consumers of all materials and supplies used in performing such modifications and retail sales tax or use tax must be paid on all such items.

RULING:

The modifications to the fire sprinkler system in the bus maintenance and storage areas are considered to be public road construction and entitled to the tax treatment outlined herein.

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.

DATED this 12th day of April 1989.