

In the Matter of the Petition) F I N A L
For Correction of Assessment of) D E T E R M I N A T I O
N)
) No. 89-43A
)
) Registration No. . . .
) . . . /Audit No. . . .
)

Headnotes are provided as a convenience for the reader and are not in any way part of the decision or in any way to be used in construing or interpreting this Determination.

DATE OF HEARING: January 3, 1989

The taxpayer petitions for a review and adjustment of Determination 89-43, providing information from its supplier not previously available.

Faker, Sr. ALJ -- The taxpayer purchased an off-the-shelf computer program and subsequently engaged a programming firm to make certain modifications to the program, and to perform other work to the taxpayer's specifications. The programmer has now provided the taxpayer with a breakdown of the work done which is the subject of the assessment generated by a

portion of Schedules V and V-A of the audit report. Based on this breakdown, both the taxpayer and the programmer feel that the programmer has provided professional services rather than making retail sales subject to retail sales tax or use tax.

DISCUSSION:

Determination 89-43 clearly and accurately states the Department's position with respect to modifications performed on "canned" software. The comments in that Determination, as well as the reference to Determination 87-359, 4 WTD 327 (1987), are incorporated herein by reference.

However, the information now provided leads to the conclusion that the programmer in fact provided services of both a retail nature (modifications to the program), and services of a professional nature (i.e., "price book set", stated to be programming developed from "scratch"). Since the programmer has been able to "group" its various activities, and the audit identifies a number of individual charges, it appears that specific charges can be traced to specific activities. It is important to note here that the work at issue was not performed pursuant to a single contract for a single, lump sum billing. Rather, the work constituted a combination of activities classifiable as either retailing or service activities. Taxpayer now claims to have documented the various activities. Accordingly, subject to confirmation of the claimed segregation of activities and charges, the taxpayer is entitled to the appropriate tax classification for each. See RCW 82.04.440.

DECISION AND DISPOSITION:

The taxpayer is provisionally sustained in part. If the taxpayer can provide the Audit Section with information and documentation sufficient to support the segregation of activities performed by . . . , appropriate adjustments will be made to the assessment. The taxpayer is advised that the initiation of action in this regard is its responsibility. Document No. . . . in the amount of \$. . . , plus extension interest of \$. . . , for a total of \$. . . , is due for payment by June 29, 1989. If the Audit Section is contacted and additional time is needed to complete adjustments, the Audit Section will arrange for the needed extension.

DATED this 30th day of May 1989.