

Cite as 8 WTD 445 (1989)

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

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| 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 Refund of) | |
|) | No. 89-546 |
|) | |
| . . .) | Registration No. . . . |
|) | |
|) | |
|) | |

[1] RULE 112, RULE 134, RULE 136, RULE 144, RULE 178,
AND RULE 189: RCW 82.12.010 (1) -- RCW 82.12.020 --
USE TAX -- MEASURE OF -- PRINTED MATERIALS. A
county government which makes and uses printed
materials is liable for use tax on the total value
of such materials which value includes labor and
overhead costs expended in the printing thereof.

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:

Petition for refund of use tax paid on papers printed in-
house.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is an account
established by the Department of Revenue (Department) for the
purpose of taxing county operations which are not reported
through principal or other branch registrations of the county
with the Department. In this action the taxpayer is
requesting a use tax refund of \$

. . . County operates a centralized copying, duplicating, and printing department. Various other county departments use the papers produced by the printing department. To determine the full value of their printed materials, the print shop manager fixed prices for all the items produced and then internally billed the other county departments accordingly. These prices included paper, ink, labor, and all other overhead factors. The taxpayer used these prices to determine the value of the printed materials for purposes of reporting and paying use tax to the Department of Revenue. Now, the taxpayer seeks a partial refund of the use tax paid based on the labor and overhead factors. The taxpayer takes the position that those factors may be excluded from the use tax calculation and that use tax is only owed on the purchase price of the paper and ink.

In making this argument, the taxpayer stresses several points. Its purchases of paper and ink are retail purchases. As to those items, the county is a consumer. It is not in the manufacturing business. Its print shop constitutes less than one half of one percent of total county activities. The print shop does not make actual sales. It only bills for internal accounting purposes. It is not subjecting the printed materials to commercial or industrial use. To be subject to use tax, the taxpayer would have to be a wholesale buyer who sells to others but also uses some of its product itself. Because county print shops are exempt of B&O tax,¹ it follows that a similar exemption should be extended to sales and use tax. For use tax to apply on labor and overhead, the county would have to sell the printed items to somebody other than themselves. The taxpayer claims it is due a use tax refund measured by the difference between its total internal billings and the cost of the print materials purchased. The only reason the taxpayer bills internally is to keep track of which department uses what and how much.

The issue is whether labor and other overhead factors should be included in determining the measure of use tax on the county's printed materials.

DISCUSSION:

RCW 82.12.020 reads in part:

¹ RCW 82.04.240 and RCW 82.04.397 were cited by the taxpayer as authority for this statement.

USE TAX IMPOSED.

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same.... The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020....

[1] The county agrees that it is a consumer. It admits that its various departments use the printed materials. Therefore, there can be no question, based on the quoted statute, that use tax applies to those materials.

The question which needs to be resolved is what should be the measure of that tax. The quoted statute states that measure is the "value of the article used." That phrase is defined in RCW 82.12.010 (1) which reads in part:

(1) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter.... In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the department of revenue may prescribe.

The article under consideration here, printed papers, is manufactured by the taxpayer in that in the print shop:

...labor or skill is applied, by hand or machinery, to materials [paper and ink] 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....
(Bracketed inclusion ours.)

RCW 82.04.120.

The taxpayer argues that the printed materials are not put to commercial or industrial use. Conveniently, that phrase is defined as well. RCW 82.04.130 states:

"Commercial or industrial use" means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities.

Emphasis ours.

A "consumer" is:

- (1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business....

RCW 82.04.190.

The county's various departments use the printed materials for assorted purposes. Therefore, the taxpayer is a consumer and, as stated earlier, it has acknowledged the same.

Now, back to "value of the article used." RCW 82.12.010 (1), as quoted above, says that where the article is manufactured, its value is to be determined according to the retail selling price of similar articles in the same locale. In this case no one has attempted to show the prices for which similar articles sell. Indeed, such a comparison is likely impossible because of what we assume to be the unique nature of materials printed and used by the county for their own particular purposes.

...

In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs.

WAC 458-20-112 (Rule 112).

From this authority we conclude that labor and other overhead costs related to the printing of materials by a county for its own use are to be included in determining the measure of the use tax owed on such materials. Indeed, the "article used," upon which the use tax is supposed to be based, is the finished, printed product as opposed to the principal ingredients of that product, the paper and the ink.

In denying the taxpayer's petition for refund on the basis immediately above-stated, we are assuming that use tax on "in-house," printed materials is not reported by one or more of the other . . . County entities registered with the Department. As we understand the situation, the county has more than one "account" or registration number with the Department. Also, we wish to point out to the taxpayer that the use tax at issue here is predicated on the taxpayer's use of the printed materials rather than the fact that, for accounting purposes, it made "internal sales" to its various departments. That latter fact we regard as irrelevant to this question of use tax.

Finally, a couple of additional points. The taxpayer has emphasized that it is neither in the manufacturing or the printing "business." There is no requirement that one be in a particular kind of business before he or she may be subjected to use tax. See RCW 82.12.020. Also, if the legislature intended that the products of county print shops were to be exempt of use tax like they are of B&O tax, it would have codified an exemption in Chapter 82.12 RCW like it did in Chapter 82.04 RCW at RCW 82.04.397.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 19th day of December 1989.