

Cite as Det. No. 01-138, 21 WTD 141 (2002)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Ruling of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 01-138
...)	
)	Registration No. . . .
)	Docket No. . . .
)	

RULE 141; RCW 82.04.050: RETAIL SALES TAX - IMPRINT ENVELOPES - BAR CODING SERVICE. The definition of "retail sale" includes the imprinting of tangible personal property. Envelopes are tangible personal property. The printing of bar codes on envelopes is a retail 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.

NATURE OF ACTION:

Appeal of a letter ruling that Taxpayer's bar coding services are a retail activity.¹

FACTS:

Lewis, A.L.J. -- Taxpayer provides a bar coding service for businesses that desire "automation postage rates," rates lower than standard rates. To qualify for the automation rates, each item mailed must have a bar coding that permits the postal service to machine sort the mail.

Taxpayer's customers deliver pre-addressed letters to Taxpayer. Taxpayer adds the appropriate postage to the envelope and adds the U.S. postal service routing bar code information to each envelope.² The letters are then delivered to the U.S postal service for delivery.

Taxpayer has been collecting retail sales tax from its customer's on the charge it makes for the bar coding service. Recently a customer informed Taxpayer that two of its competitors were not

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² The customers advance the cost of postage.

charging retail sales tax on bar coding services.³ Investigation by Taxpayer's accountant confirmed that Taxpayer's competition was not charging retail sales tax. Apparently, the competitors' decision not to collect retail sales tax was based on the competitors' interpretation of the ruling contained in Det. No. 87-347, 4 WTD 273 (1987).

In Det. No. 87-347 the Department's Appeals Division ruled that a company that consolidates and assembles assorted flyers one inside another and mails them with a detached address card provides a service and not a retail activity. The decision was based on the finding that the taxpayer did not perform the functions of a mailing bureau. WAC 458-20-141 ("Rule 141") requires mailing bureaus to pay retailing business and occupation ("B&O") tax on the gross proceeds received from it customers because the activities they perform, the labeling, folding, enclosing, and [other] activities, come within the definition of retail sales. RCW 82.04.050.

Specifically Det. No. 87-347 found that the taxpayer was not a mailing bureau because it did "shut in all around" the advertising materials.⁴

In February 2001 Taxpayer wrote to the Department of Revenue's ("Department") Taxpayer Information and Education Division ("TI&E") for a ruling as to whether Taxpayer's activities were subject to retail sales tax.

On June 22, 2001, TI&E ruled that Taxpayer had correctly been collecting retail sales tax. The letter stated in pertinent part:

The act of placing a bar code onto the item being mailed, alters, imprints and/or improves the item. Therefore, the total charges related to the mailing and bar coding are taxable as a retail sale. Report such charges under the retailing B&O tax classification and under the retail sales tax classification. You may deduct charges to customers for postage purchased on their behalf.

Taxpayer disagreed. On August 17, 2001, Taxpayer filed a petition, appealing TI&E's June 22, 2001 letter ruling, with the Appeals Division. Taxpayer's appeal stated:

Judge Dressel reads the statutory definitions of "sales at retail" or "retail sales," RCW 82.04.050, and interprets WAC 458-20-141 to require that a mailing service must do something "*in addition to their mailing function*" before the service is taxable as a retail sale. Addressing the postal cards, for example, is a mailing function and not a retail sale, just as assembling flyers into packets and organizing the packets for carrier route delivery is a mailing function and not a retail sale. The legal significance of the ruling is that addressing postal cards, assembling packets, and sorting for postal delivery to obtain a

³ Taxpayer has a substantial economic disadvantage if it is adding retail sales tax to its invoices and its competitors are not.

⁴ "Only the side of the flyers next to the folded side of the wrap piece is contained. The other three sides are open."

lower postal rate is neither the statutory “imprinting” or “improving” of personal property that constitutes a retail sale.

ISSUE:

Is the placing of bar codes on mail a retail activity?

DISCUSSION:

Taxpayer’s business activity is simple. Taxpayer adds postage and bar code information to prestuffed and addressed letters supplied by its customers. Rule 141 states:

Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar material for other customers. As part of these services, the bureaus also label, fold, enclose and seal. All of these activities come within the definition of “sale at retail” (RCW 82.04.050) as constituting “labor and services rendered in respect to . . . the . . . altering, imprinting or improving of tangible personal property of or for consumers.”

RCW 82.04.050 provides:

- (2) The term “sale at retail” or “retail sale” shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:
 - (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto

The definition of retail sale includes the imprinting of tangible personal property. That is exactly what Taxpayer does. Accordingly, we find that Taxpayer has correctly been collecting retail sales tax from its customers.

We do not find the ruling in Det. No. 87-347 controlling. The activities performed by the taxpayer in Det. No. 87-347 are distinguishable from this Taxpayer’s activities. The primary activity of the taxpayer in Det. No. 87-347 was consolidating and assembling coupons and flyers. In this case, the taxpayer’s primary activity is imprinting bar codes on envelopes. The taxpayer in Det. No. 87-347 did not provide a retail activity that required collection of retail sales tax from its customers. This taxpayer provides a retail activity, the imprinting of bar codes on envelopes, and must collect retail sales tax from its customers.

Although Det. No. 87-347 has precedential value because it is published (RCW 82.32.410), Taxpayer’s competitor’s alleged reliance on their interpretation of Det. No. 87-347 as their basis for not collecting retail sales tax from their customers is perilous. Published determinations serve to aid taxpayers in determining their tax reporting responsibilities. However, in analyzing

the determination the taxpayer must realize that the tax result is driven by the facts and that a different tax result may arise if the facts are materially different.

DECISION AND DISPOSITION:

The tax reporting instructions contained in the Department's June 22, 2001 letter are affirmed.

Dated this 28th day of September 2001.