

Cite as Det. No. 00-197, 21 WTD 85 (2002)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment and Refund of)	
)	No. 00-197
)	
...)	Registration No. ...
)	FY. . ./Audit No. ...

RULE 145; RCW 82.14.020: RETAIL SALES TAX -- LOCAL TAX -- RATE -- SALE OF GOODS AND SERVICES -- ASSEMBLY SERVICES. Where parts to a 340-ton shovel are manufactured outside the state and delivered via thirteen trailers to the mine location and assembled on-site, the location where the assembly services were primarily performed determines the applicable local sales tax rate.

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:

A coal mine owner petitions for a refund of overpaid local retail sales taxes on its purchase of a 340-ton shovel assembled on-site.¹

FACTS:

Okimoto, A.L.J. -- [Taxpayer] operates a coal mine in western Washington. Taxpayer's books and records were examined by the Audit Division (Audit) of the Department of Revenue (Department) for the period July 1, 1993 through June 30, 1997. An audit report resulted in additional taxes and interest owing of \$. . . and Document No. FY. . . was issued in that amount on January 29, 1999.

Taxpayer protests the denial of a refund claim based on Taxpayer's contention that it paid local retail sales tax on its purchase of a 340-ton shovel at the incorrect rate. Taxpayer argues that the

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

applicable local sales tax rate should be unincorporated [A] County where the shovel was assembled and not the Seattle rate where the local sales outlet was located.

Taxpayer explains in its petition:

. . . The auditor was asked to consider a refund for overpayment of sales taxes on a . . . front loading shovel purchased by [Taxpayer] in Unincorporated [A] County from Company. Also, clarification of the proper taxable location, Unincorporated [A] County or King County, Washington. The criteria of the sale complies with Rule II in WAC 458-20-145. The auditor declined our request and advised us to seek a hearing on this issue.

The bid process was carried out at the [County A] facilities. Company was selected to provide the . . . front loading shovel. This is not a piece of equipment that Company had in inventory or keeps in stock because of its size and cost. Each piece of equipment is custom made. The . . . shovel was built in component parts, [outside Washington], then put on 13 flat bed semi tractor-trailer trucks and delivered to the [County A] site. In order for the . . . shovel to be operational, as ordered, [manufacturer] and Company supplied a crew of eight men, two crane operators, rental of two cranes and other equipment to assemble the shovel . . . at the mine. The size of the . . . shovel is equivalent to a new factory set up of a manufacturing facility.

We feel that the labor involved in installing the . . . shovel at the mine site is sufficient to support Rule II of WAC 458-20-145 for governing the local tax for the Unincorporated [A] County location.

Taxpayer also cites Det. No. 91-262, 11 WTD 447, (1991) in support of its position.

The vendor [Company] charged the Seattle local retail sales tax rate because it believed that it was a retailer of goods and its Seattle office had participated in the sales process. Audit and the retailer applied RULE I contained in WAC 458-20-145 (Rule 145).

ISSUE:

Which local sales tax rate applies to a sale of thirteen trailer-loads of parts shipped directly from an out-of-state plant and assembled on-site to create a 340-ton shovel?

DISCUSSION:

RCW 82.14.020 defines where a sale occurs for purposes of the local retail sales tax. It states in part:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of the second paragraph of RCW 82.04.050, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

WAC 458-20-145 (Rule 145) implements RCW 82.14.020 and states:

The following illustrates the application of these rules in various situations:

RULE I.

(A) This rule applies to retail sales consisting solely of tangible personal property (i.e., goods or merchandise). If retail labor and services are also involved Rule II applies to the entire sale. Secondly, the total tax is determined by the place at which or from which delivery is made. For most retailers the location of his place of business governs the local tax application. He collects the tax if his place of business is in a jurisdiction levying the local tax, even though he may deliver the goods sold to his customer to a location in the state not levying the tax. On the other hand a merchant whose place of business is in a jurisdiction not levying the local tax collects only the state tax, irrespective of whether delivery is made into a jurisdiction levying the local tax.

To sum up this part of the rule: The origin of the goods determines the local tax and destination or fact of delivery elsewhere in the state are immaterial.

(B) Special applications of the rules for goods located outside the state:

(1) When the state business and occupation tax applies to a sale in which the goods are delivered into Washington from a point outside the state this means a local in-state facility, office, outlet, agent or other representative even though not formally characterized as a "salesman" of the seller participated in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, his agent or representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax shall be determined by the location of the customer.

Rule 145 states that RULE I applies only to: "... retail sales consisting solely of tangible personal property (i.e., goods or merchandise)." Taxpayer refers to RULE I and concludes that the vendor has not made a retail sale consisting solely of tangible personal property because the vendor is required by contract to assemble the shovel on-site. Therefore, Taxpayer argues that RULE II applies.

From the facts, it is undisputed that Taxpayer's purchase of the shovel involves both a sale of the shovel's component parts and also a sale of services to assemble the shovel at the mining pit site. Taxpayer states that the shovel is simply too large to feasibly transport and deliver as a fully assembled shovel. Consequently, we find that the assembly services are an integral part of the shovel's purchase contract. In Audit's response, it attempts to distinguish assembly services from installation services. We, however, find no such distinction in the law. Both installation and assembly services involve significant and substantial amounts of labor that are required to be performed at the site of the customer's business location. Both services are integral parts of a purchase contract for tangible personal property. Based on the above facts, we conclude that this retail sale is not one "... consisting solely of tangible personal property (i.e., goods or merchandise)." Accordingly, RULE II applies to this transaction.

RULE II states in part:

This rule applies to retail sales of labor or services and also applies to sales of tangible personal property when labor and services are rendered in conjunction therewith. The local tax is governed by the place where the labor and services are primarily performed.

(A) Retailers who primarily render their services at their place of business will collect the local sales tax if they are located in a jurisdiction which levies the tax. Examples of retailers normally falling in this class: Auto repair shops, hotels, motels, amusement or recreation businesses, title insurance, credit bureau, escrow businesses, auto parking, storage garages, laundries.

(B) Retailers primarily performing their services at the location of their customers will collect the local sales tax for the jurisdiction in which the customer is located. Examples of this class of retailers are: Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell, as carpet layers often do, fall under Rule II-place where work is done governs the local tax to be applied-if the installation would normally call for an extra charge) earthmovers, house-wreckers.

Examples:

(1) A dealer sells a TV set, delivers it and puts it in working order in his customer's home. This falls under Rule I, not Rule II, because there is normally no extra charge for "installing" a TV set.

(2) A hardware store sells yard fencing at \$5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.

(3) A home furnishings dealer sells carpeting at \$12.00 per yard and agrees to install it for \$2.00 per yard additional. The entire transaction falls under Rule II and the \$14.00 per yard will be subject to the local tax levied by the jurisdiction in which the customer resides. Rule I is limited to retail transactions consisting SOLELY of sales of goods or merchandise.

Since we have found that Taxpayer's acquisition of its shovel was a purchase of tangible personal property in conjunction with assembly services, RULE II applies to this sale. Under these circumstances it provides that "The local tax is governed by the place where the labor and services are primarily performed." Here, the assembly services were performed at the [County A] site and we find that the local sales tax in effect at that location is applicable. See, Det. No. 91-262, 11 WTD 447 (1991). Taxpayer's petition is granted on this issue.

DECISION AND DISPOSITION:

Taxpayer's petition for refund is granted.

Dated this 21st day of November, 2000.