

Cite as Det. No. 03-0236, 23 WTD 276 (2004)

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>
TI&E Ruling of)	
)	No. 03-0236
...)	
)	Registration No. . . .
)	Appeal of TI&E Ruling
)	Docket No. . . .

RULE 171; RCW 82.04.050: RETAIL SALES TAX – EXEMPTION – PUBLIC ROAD CONSTRUCTION -- PARKING. Improvements to the portion of a right of way that parallels a primary arterial and is used for motor vehicle circulation, parking, and access for homes, businesses, and a pedestrian pathway qualify for the public road construction exemption.

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.

Mahan, A.L.J. – A city appeals a ruling denying the public road exemption for improvements to an internal parking and circulation area within a public road right-of-way. We grant the taxpayer’s petition.¹

ISSUE

Do improvements to the portion of a right of way that parallels a primary arterial and is used for motor vehicle circulation, parking, and access for homes, businesses, and a pedestrian pathway qualify for the public road construction exemption provided under RCW 82.04.050(7)?

FINDINGS OF FACT

The taxpayer is a municipal corporation (City). In 2001, the City contracted with a company for a public works project to be completed on a . . . -foot public right-of-way owned by the City. Part of the right-of-way was used for a primary arterial for the City. As envisioned, the project

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

extended approximately . . . miles along the arterial and had three components, a transportation component, a drainage component, and a power distribution component.²

The transportation component included the creation of a “ . . . multi-use pedestrian pathway located within the . . . right-of-way . . . Additional components include improvements to transit stops and pedestrian crossings; reconfiguration of internal parking and circulation; consolidation of entrances and exits off [the arterial]; and the addition of landscaping.” The improvements to the parking and circulation area involved resurfacing that portion of the right-of-way and reconfiguring it so that traffic could circulate between the businesses and homes along the project without the need to reenter and exit from the arterial. The reconfiguration to improve circulation resulted in a loss of parking spaces, leaving approximately . . . parking spaces. The parking and circulation area provided the only “on-street” parking for the businesses, homes, and pedestrian pathway along this stretch of the arterial. As described by one of the City’s project managers, the circulation area served as a frontage road for the homes and businesses along the arterial. The transportation component also consisted of resurfacing the arterial.

The drainage component consisted of replacing and rehabilitating the drainage system along the arterial. This included the drainage system in the parking and circulation area. The power distribution component involved the installation of electrical vaults and ducts for high capacity lines.

With the exception of the power distribution component, the City considered the labor and services on the project to be subject to the exclusion from the definition of retail sales tax for public road construction, in accordance with RCW 82.04.050(7). The contractor, however, raised an issue with respect to the parking and circulation aspect of the transportation component. As a consequence, the City sought a ruling from the Department of Revenue’s Taxpayer Information and Education section (TI&E). By letter dated September 17, 2002, TI&E equated the parking and circulation area to a parking lot and ruled:

The activity of constructing, repairing, or improving a parking lot does not qualify as public road construction unless the parking lot is part of a mass transportation facility. In this case, the parking area in question is not part of a mass transportation facility. Therefore, labor and services directly related to reconfiguring the parking area do not qualify as public road construction.

This appeal followed.

ANALYSIS

The sale of materials and labor to build, repair, or improve structures on real property are generally subject to retail sales tax. RCW 82.08.020; 82.04.050. A limited exception is provided for certain public road improvements. RCW 82.04.050(7). Under this provision, labor

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and service charges for improvements to roads owned by municipal corporations or political subdivisions are not retail sales. Contractors are considered to be the consumers of the materials used in such projects, and must pay retail sales tax on the purchase of such materials. RCW 82.04.190(3). Thus, the state receives retail sales tax on the value of the materials used, but receives no retail sales tax on the labor and services portion of public road construction projects. *See also* WAC 458-20-171 (Rule 171).

RCW 82.04.050(7) provides:

The term [retail sale] 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.

At issue in this case is whether the contractor's charge for materials, labor, and services rendered in respect to the reconfiguration of the parking and circulation area within the City's right-of-way is subject to retail sales tax. Although the statute specifically identifies mass transit parking facilities as being exempt, the statute is silent as to parking areas associated with public roads.³

In considering this issue, we must give effect to the Legislature's intent. To do so we look first to the language of the statute. *Lacey Nursing v. Department of Rev.*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). Absent ambiguity, we rely on the plain language of a statute or rule.⁴ *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 608-609, 998 P.2d 884 (2000). Definitions in a rule can be used to define the terms of an unambiguous statute. *See, e.g., International Ass'n of Fire Fighters Local 3266, AFL-CIO v. Department of Ret. Sys.*, 97 Wn. App. 715, 719-20, 987 P.2d 115 (1999); *Anderson v. Department of Ecology*, 34 Wn. App. 744, 748- 49, 664 P.2d 1278 (1983) (cases relying on WAC definitions); *see also, Choi v. City of Fife*, 60 Wn. App. 458, 462, 803 P.2d 1330 (1991) (resorting to dictionary when term not defined in either statute or regulation).

Under Rule 171, the term "building, repairing or improving of a publicly owned street, place, road, etc." is defined to include landscaping along the road, road signage, road lighting, and road drainage facilities.⁵ It is defined to not include "the constructing of water mains, telephone,

³ The subject exclusion from the definition of retail sales tax has the effect of exempting certain public road construction labor and services from retail sales tax. *Port of Seattle v. Department of Rev.*, 101 Wn. App. 106, 113 (2000), *rev. denied*, 142 Wn.2d 1012, 16 P.3d 1264 (2000).

⁴ If ambiguous, we engage in statutory construction. *Id.* A statute is ambiguous if it is susceptible to more than one reasonable interpretation. *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 608, 998 P.2d 884 (2000). RCW 82.04.050(7) is considered an exemption statute that is strictly construed against the taxpayer. *Port of Seattle v. Department of Rev.*, 101 Wn. App. 106, 113 (2000), *rev. denied*, 142 Wn.2d 1012, 16 P.3d 1264 (2000).

⁵ The term specifically includes the:

telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system.” *Id.* In other words, right-of-way improvements directly related to the construction of roadways or pedestrian pathways for vehicular or pedestrian travel are exempt, but right-of-way improvements unrelated to such vehicular or pedestrian travel are not exempt. On-street parking is not specifically identified in the Rule 171 definition as being either exempt or not exempt. But such right-of-way improvements are ordinarily directly related to the construction of roadways or pedestrian pathways for vehicular or pedestrian travel, unlike water main or electrical distribution system improvements. In fact, on-street parking is a part of the roadway used for vehicular traffic.

. . .

In the present case, the parking and circulation area is part of a public road used for vehicular travel. It provided on-street parking, circulation, and access for homes, businesses, and the pedestrian pathway that ran along the arterial. Accordingly, the labor and services for such improvements are exempt from retail sales tax.

DECISION AND DISPOSITION:

We grant the taxpayer’s petition and reverse the TI&E ruling.

Dated this 9th day of July 2003.

clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: PROVIDED, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.