State of Washington
Department of Revenue
REVENUE

Excise Tax Advisory

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DISTRIBUTOR FOR OUT-OF-STATE MANUFACTURER-- AGENT OR SELLER

Issued August 19, 1966

Where a subsidiary corporation acts as a distributing agent of its out-of-state parent under a contract describing the parties as "buyer" and "seller," and the distributor has the power to sell in its own name, is the distributor taxable as a seller or agent?

The taxpayer, a distributing company, was the wholly owned subsidiary of an out-of-state manufacturer. By contract between the two companies, the taxpayer had the exclusive right to sell all the products manufactured by the parent corporation. The taxpayer received a fixed fee on all products sold plus a reimbursement for expenses and losses, and thus had no risk of loss on the sales and no bad debt expenses. Although taxpayer had the power to sell all the products of the parent, the taxpayer contended it never had actual or constructive possession of the goods or title documents. Rather, the parent shipped the goods from outside the state directly to customers.

The taxpayer contended that, notwithstanding the agreement between itself and parent which specified the parties as "buyer" and "seller," it was merely a sales agent taking orders for the parent. Therefore, taxpayer liability should be limited to the commissions received rather than its gross income from sales.

The Tax Commission held the taxpayer to be a buyer and seller of goods and not merely an agent promoting sales for the parent company; Under Rule 159 an agency relationship is recognized only when, among other things, the contract or agreement between such persons clearly establishes the relationship of principal and agent. Here the taxpayer's contract not only failed to establish the principal-agent relationship but, by specifying the parties as "buyer" and "seller", specifically contradicted such a relationship.

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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Even if the contract between the taxpayer and the parent clearly established the principal-agent relationship, the taxpayer would have remained taxable as a seller because it had actual or constructive possession of the property, as evidenced by its power to sell the products in its own name. See RCW 82.04.480; Rule 159.

(Note: Original ETB 144 issued August 12, 1966, contained typographical error--3 words omitted in second paragraph.)