State of Washington Department of Revenue

Excise Tax Advisory

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CORPORATION HOLDING A CONTRACT FOR THE SALE OF CASTINGS SUPPLIED BY AN AFFILIATE

Issued September 30, 1966

Where a corporation holds a contract for the sale of castings, is it subject to the Business Tax upon the gross proceeds from the contract even though the corporation has arranged for an affiliate to supply all or some of the castings?

The taxpayer, a steel casting corporation, was assessed a Business Tax upon transactions involving an affiliated corporation in Portland, Oregon, which had the same name as the taxpayer but was separately organized under Oregon law. The auditor concluded that the taxpayer had made purchases from the affiliate and had made sales thereof to Washington customers. The taxpayer contended that those transactions should be treated as sales made by the affiliate directly to the customers involved. The affiliate operated a plant which made small castings in large quantities; whereas, the taxpayer made specialized large castings. When the taxpayer was a successful bidder on contracts calling for castings, a part of them were furnished occasionally by the affiliate. In such cases, the affiliate invoiced the taxpayer and the taxpayer billed the customer for the total contract price. Upon receipt of the customer's payment in full, the taxpayer remitted to the affiliate the amount due it for the work completed by it. The taxpayer claimed that this was a transaction between the corporations only in form and not in substance, since there was no markup over the amount charged by the affiliate in the amount billed the customer by the taxpayer. Further, the taxpayer noted that the customers knew of the affiliate's participation although it was not obligated by the contract. If the affiliate had billed the customer directly, the taxpayer claimed that no tax would have been due, and thus the transaction was merely one of form and the taxpayer should not have been assessed the Business Tax.

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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The Tax Commission held that where the taxpayer held the contract for the sale of castings, it was subject to the Business Tax upon the gross proceeds from the contract, irrespective of whether it manufactured all the castings. In such cases, the measure of the tax is the gross contract price, and even if the taxpayer had arranged with its customer to make the payment directly to its affiliate, the taxpayer would remain liable for the tax upon the gross contract price. The Commission, therefore, concluded that in the transaction in question, the taxpayer was simply purchasing castings from its Portland affiliate for resale and the fact that there was no markup was immaterial for there is no deduction for transactions made at no profit or loss. (Order.)